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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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DRUSCILLA BRUMFIELD; C.L.B.,  
a minor child; and C.N.B., a minor  
child,

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Plaintiffs,

NO. 2:23-CV-0341-TOR

ORDER DENYING PLAINTIFFS'  
MOTION TO REMAND

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v.

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THE STANDARD FIRE  
INSURANCE COMPANY, a foreign  
insurer,

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Defendant.

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BEFORE THE COURT is Plaintiffs' Motion to Remand (ECF No. 5). The

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matter was submitted for consideration without oral argument. The Court has

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reviewed the record and files herein and is fully informed. For the reasons

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discussed below, Plaintiff's Motion to Remand (ECF No. 5) is **DENIED**.

18

**BACKGROUND**

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This matter arises out of a roll-over automobile accident involving Plaintiff

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Druscilla Brumfield and her two minor children, Plaintiffs C.L.B. and C.N.B. *See*

1 ECF No. 1-3 at 3-4, ¶ 2.1. Plaintiffs were not at fault for the collision, which  
2 occurred due to their vehicle skidding on a patch of ice into a ditch. *Id.* at 3-4, ¶¶  
3 2.2.-2.3. Plaintiffs maintained an active automobile insurance policy with  
4 Defendant Standard Fire Insurance Company<sup>1</sup> at the time of the accident, which  
5 included Personal Injury Protection (“PIP”) benefits for medical treatment. *Id.* at  
6 4, ¶¶ 3.1-3.2. Defendant denied coverage after Plaintiffs underwent independent  
7 medical examinations (IMEs) which concluded that further treatment would be  
8 unreasonable. *Id.* at 6-7, ¶¶ 3.20-3.23. Defendant also declined to renew  
9 Plaintiffs’ automobile insurance policy for the following term. *Id.* at 7, ¶ 3.24.

10 Plaintiffs filed suit in Spokane County Superior Court, bringing claims for  
11 (1) insurance bad faith; (2) breach of fiduciary duty; (3) breach of contract; (4)  
12 violation(s) of the Washington Consumer Protection Act (“CPA”); (5) violation(s)  
13 of the Washington Insurance Fair Conduct Act (“IFCA”); and (6) negligence. *Id.*  
14 at 7-10. Plaintiffs request the following relief: (1) back-payment of approximately  
15 \$15,129 in medical expenses; (2) treble damages under the CPA, plus reasonable  
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17 <sup>1</sup> The original complaint filed in state court names “Travelers Insurance  
18 Company, doing business as the Standard Fire Insurance Company” as the  
19 Defendant, *see* ECF No. 1-3 at 2, but the parties later stipulated that Standard Fire  
20 Insurance was the sole defendant in the action, *see* ECF No. 4.

1 attorney's fees and costs; (3) treble damages under IFCA, plus reasonable  
2 attorney's fees and costs; (4) all damages resulting from defendant's breach of  
3 contract; (5) economic and non-economic damages in an amount to be proven at  
4 trial; and (6) prejudgment interest on all liquidated damages. *See id.* at 7, ¶ 3.25;  
5 9-10, ¶¶ 6.3, 7.3-8.3; 10, ¶¶ 10.1-10.6; *see also* ECF No. 5 at 2. On November 20,  
6 2023, Defendant timely removed the action to this Court. ECF No. 1.

## 7 DISCUSSION

8 Plaintiffs move to remand the case back to state court and request an award  
9 of attorney's fees for the expense incurred in bringing this motion. ECF No. 5.

### 10 I. Amount in Controversy

11 Plaintiffs' motion to remand alleges that the Court lacks subject matter  
12 jurisdiction over this action. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines  
13 at any time that it lacks subject-matter jurisdiction, the court must dismiss the  
14 action."); *see also* *Gunn v. Minton*, 568 U.S. 251, 256 (2013) ("Federal courts are  
15 courts of limited jurisdiction,' possessing 'only that power authorized by  
16 Constitution and statute.'" (quoting *Kokkonen v. Guardian Life Ins. Co. of*  
17 *America*, 511 U.S. 375, 377 (1994)). Congress has authorized the federal district  
18 courts to exercise original jurisdiction over "all civil actions where the matter in  
19 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs,  
20 and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1); *see also*

1 28 U.S.C. § 1441(a) (authorizing removal where the court has original  
2 jurisdiction).

3       The parties here agree that Plaintiffs, as citizens of Washington State, and  
4 Defendant, as a foreign insurer, have satisfied the requirement of diversity, but  
5 disagree as to whether the amount in controversy exceeds the sum or value of  
6 \$75,000. *See* ECF Nos. 5 at 5; 6 at 5. The “amount in controversy” refers to “all  
7 relief claimed at the time of removal to which the plaintiff would be entitled if she  
8 prevails.” *Chavez v. JPMorgan Chase Co.*, 888 F.3d 413, 418 (9th Cir. 2018).  
9 When a defendant invokes federal court jurisdiction in a notice of removal, the  
10 alleged amount in controversy will be accepted so long as it is made in good faith  
11 and not “not contested by the plaintiff or questioned by the court.” *Dart Cherokee*  
12 *Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87-88 (2014). Otherwise, the  
13 removing defendant bears the burden of proving the requisite amount in  
14 controversy by a preponderance of the evidence. 28 U.S.C. § 1446(c)(2)(B); *see*  
15 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996) (holding  
16 that, under the preponderance of the evidence standard, a defendant must establish  
17 it is “more likely than not” that the amount in controversy exceeds \$75,000).

18       In evaluating whether the jurisdictional threshold has been met, the court  
19 first considers whether the amount in issue is “facially apparent” from the  
20 complaint. *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.

1 1997). When it is unclear from the complaint whether the amount in controversy  
2 exceeds \$75,000, then the court will turn to “evidence outside the complaint,  
3 including affidavits or declarations, or other ‘summary-judgment-type evidence  
4 relevant to the amount in controversy at the time of removal.’” *Ibarra v. Manheim*  
5 *Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015) (quoting *Singer*, 116 F.3d at 377).  
6 Mere speculation, conjecture, or unreasonable assumptions will not support the  
7 court’s exercise of subject-matter jurisdiction. *Id.* However, a plaintiff may avoid  
8 removal “by stipulating to amounts at issue that fall below the federal jurisdictional  
9 requirement.” *Standard Fire Ins. v. Knowles*, 568 U.S. 588, 595 (2013). Notably,  
10 such stipulations are legally binding upon plaintiffs. *Id.*; *see, e.g., Henson v. Nat’l*  
11 *Gen. Ins.*, No. 3:23-cv-05842-DGE, 2023 WL 8369320, at \*3 (W.D. Wash. Dec. 4,  
12 2023) (accepting a plaintiff’s post-removal affidavits averring that she would seek  
13 less than \$75,000 in damages in state court but warning that she may be “judicially  
14 estopped from taking an inconsistent position” later on).

15 Although evidence is required where the amount in controversy is subject to  
16 reasonable dispute, the defendant’s initial notice of removal need not contain more  
17 than a “plausible allegation” that the amount in controversy exceeds \$75,000. *Dart*  
18 *Cherokee*, 574 U.S. at 89 (also noting that “a dispute about a defendant’s  
19 jurisdictional allegations cannot arise until *after* the defendant files a notice of  
20 removal”) (emphasis in original); *see also Acad. of Country Music v. Cont’l Cas.*

1 Co., 991 F.3d 1059, 1068 (9th Cir. 2021) (“[A] shortcoming in a notice of removal  
2 concerning the amount in controversy is not jurisdictional, at least not until the  
3 movant has an opportunity to correct any perceived deficiency in the notice.”).  
4 When the amount in controversy is challenged, however, both sides should submit  
5 proof to allow the court to make an accurate determination of the sum in issue.  
6 *Acad. of Country Music*, 991 F.3d at 1068 (citing *Dart Cherokee*, 574 U.S. at 88);  
7 *Willingham v. Morgan*, 395 U.S. 402, 407 n.3 (1969) (when relevant factual  
8 information is added later to the record, “it is proper to treat the removal petition as  
9 if it had been amended to include the relevant information contained in the later-  
10 filed affidavits”).

11 When pressing that the sum of damages meets the statutory minimum, a  
12 defendant may rely upon a plaintiff’s claims of (1) general and specific damages,  
13 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); (2) punitive  
14 damages, *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001), including  
15 treble damages under the CPA, up to \$25,000, *Wise v. Long*, --- F. Supp. 3d ----,  
16 No. 3:23-cv-05111-RJB, 2023 WL 2787223, at \*5 (W.D. Wash. Apr. 5, 2023), and  
17 treble damages under IFCA, *Pashkovsky v. Geico Choice Ins. Co.*, No. 2:20-CV-  
18 00376-SAB, 2020 WL 7695331, at \*3 (E.D. Wash. Dec. 28, 2020); and (3)  
19 contractually or statutorily-authorized attorney’s fees, *McConnell v. Mothers Work,*  
20 *Inc.*, 479 F. Supp. 2d 1147, 1149 (E.D. Wash. 2001).

1 In calculating damages actions involving multiple plaintiffs, courts must  
2 remain wary of potential aggregation issues. “Aggregation has been permitted  
3 only (1) in cases in which a single plaintiff seeks to aggregate two or more of his  
4 own claims against a single defendant and (2) in case in which two or more  
5 plaintiffs unite to enforce a single title or right in which they have a common and  
6 undivided interest.” *Snyder v. Harris*, 394 U.S. 332, 335 (1969); *see also Gibson*,  
7 261 F.3d at 944 (limiting aggregation to matters “where a defendant owes an  
8 obligation to a group of plaintiffs as a group and not to the individuals severally”).

9 Bearing these principles in mind, the court turns to the substance of  
10 Defendant’s allegations and Plaintiffs’ arguments. In its notice of removal,  
11 Defendant discussed the fact that Plaintiffs were seeking \$15,129 in medical  
12 expenses, plus treble damages under the CPA (which are capped at \$25,000), and  
13 treble damages under IFCA (which would be approximately \$45,387, based on the  
14 medical expenses), which would bring the grand total of damages to \$70,387. ECF  
15 No. 1 at 3, ¶¶ 5-9. Defendant extrapolates that the remainder of the jurisdictional  
16 threshold of \$75,000.01 will be satisfied by the economic and non-economic  
17 damages in issue, plus attorney’s fees. ECF No. 6 at 6.

18 Plaintiffs make five general arguments in support of remand: (1) that  
19 Defendant introduced no evidence establishing the amount in controversy met the  
20 jurisdictional threshold in its notice of removal; (2) that aggregation of Plaintiffs’

1 claims is impermissible; (3) that Defendant’s estimation of damages is too  
2 speculative; (4) that an award of attorney’s fees will not count towards the amount  
3 in controversy; and (5) that remand will needlessly waste judicial resources. *See*  
4 ECF Nos. 5; 7.

5 Plaintiffs’ first contention misconstrues the case law. *See* ECF No. 5 at 5.  
6 As the Court recited, all that is required at the time of removal is a “plausible  
7 allegation” that the amount in controversy exceeds \$75,000. *Dart Cherokee*, 574  
8 U.S. at 89. In its notice of removal, Defendant discussed the fact that Plaintiffs  
9 were seeking \$15,129 in medical expenses, plus treble damages under the CPA (up  
10 to \$25,000) and treble damages under IFCA. ECF No. 1 at 3, ¶¶ 5-9. Defendant  
11 argued that the remainder of the jurisdictional threshold would be satisfied by the  
12 economic and non-economic damages in issue, plus attorney’s fees. *Id.* at 3, ¶¶ 8-  
13 9. Because these allegations made it plausible that the amount in controversy  
14 exceeded the jurisdictional minimum, the Court does not find Defendant’s notice  
15 of removal to be deficient.

16 Plaintiffs’ second argument is also untenable. Plaintiffs maintain that their  
17 medical expenses—totaling \$15,129—cannot be aggregated for purposes of  
18 evaluating the amount in controversy, including for trebling damages under the  
19 CPA and IFCA. ECF No. 7 at 6-7. Plaintiffs assert that their unpaid PIP benefits  
20 total approximately \$5,000 per Plaintiff and therefore the sum in issue for each of



1 them falls well below the \$75,000-plus required for this Court. However, the fact  
2 that Plaintiffs sustained separate injuries in the car crash does not mean that the  
3 damages in their joint action to enforce the terms of their insurance policy can be  
4 disaggregated.

5 Several cases from the Western District of Washington are illustrative of this  
6 point. In *Stanfield v. Metro. Cas. Ins. Co.*, No. C21-5092 BHS, 2021 WL 2155050  
7 (W.D. Wash. May 27, 2021), and *Houghland v. Metro. Cas. Ins. Co.*, No. C21-5090  
8 BHS, 2021 WL 2155049 (W.D. Wash. May 27, 2021), plaintiffs Stanfield and  
9 Houghland were insured under a shared automobile policy with Metropolitan  
10 Casualty Insurance Company. The policy provided \$100,000 in uninsured  
11 motorist (UIM) coverage. 2021 WL 2155050 at \*1. Following an accident and  
12 settlement with an at-fault uninsured motorist, plaintiffs sought their individual  
13 \$100,000 policy limit from Metropolitan. *Id.* When Metropolitan refused to  
14 tender the full \$100,000 each, plaintiffs filed a joint complaint in state court. *Id.*  
15 Metropolitan removed the case to the United States District Court for the Western  
16 District of Washington on the basis of diversity, at which point the plaintiffs  
17 voluntarily dismissed their complaint. *Id.* Later, plaintiffs refiled their claims in  
18 state court, albeit separately. *Id.* Metropolitan again removed on the basis of  
19 diversity in each case and sought to consolidate the two cases. *Id.* Plaintiffs  
20 opposed consolidation and moved for a remand. *Id.* In granting the plaintiffs'

1 motions for remand, the court explained: “Hougland and Stanfield have  
2 purposefully decided to bring separate claims. Hougland and Stanfield were  
3 previously united to enforce their rights under the UIM policy but chose to  
4 voluntarily dismiss and refile separately.” *Id.* at \*4. The court also distinguished  
5 the set of cases from *Ali v. Progressive Direct Ins. Co.*, No. C19-1015 RSM, 2019  
6 WL 4565495 (W.D. Wash. Sep. 20, 2019), a case where two plaintiffs brought  
7 their separate automobile insurance claims together and the court concluded that  
8 aggregation was permissible, stating: “The Court cannot say that Houghland and  
9 Stanfield are united in litigation to enforce a single title or right in which they have  
10 a common undivided interest, unlike *Ali*. Their claims are therefore not aggregable  
11 to satisfy the amount in controversy.” 2021 WL 2155050 at \*4.

12 Like the plaintiffs in *Ali* and the claimants in the original, joint *Houghland*  
13 and *Stanfield* action, the Plaintiffs here brought a joint action seeking to enforce a  
14 single right to which they have a common and undivided interest: that is, the  
15 enforcement of their insurance policy. *Snyder*, 394 U.S. at 335. Accordingly,  
16 aggregation of their claims for purposes of calculating the amount in controversy is  
17 permissible.

18 Relatedly, Plaintiffs contend that even if aggregation is permissible in other  
19 circumstances, their claims for punitive damages under the CPA and IFCA cannot  
20 be aggregated for purposes of calculating the amount in controversy. ECF No. 7 at

1 3-4. This contention also falls flat. The Court agrees with Plaintiffs that damages  
2 sought under IFCA and the CPA are punitive. ECF No. 7 at 4-5. Contrary to  
3 Plaintiffs’ assertions, however, punitive damages may be aggregated in actions  
4 involving multiple Plaintiffs—the Ninth Circuit has only disaggregated punitive  
5 damages in cases involving *class* actions. *See, e.g., Gibson*, 261 F.3d at 931 (9th  
6 Cir. 2001) (case discussed by Plaintiffs which involved three state-law class  
7 actions against Chrysler); *see also, e.g., Eagle v. Am. Tel. & Tel. Co.*, 769 F.2d  
8 541, 542 (9th Cir. 1985) (case discussed by Plaintiffs involving a class action filed  
9 on behalf of a group of minority shareholders). The purpose animating  
10 disaggregation of punitive damages in class actions is to ensure that damages do  
11 not “exceed constitutional limitations.” *Wakefield v. ViSalus, Inc.*, 51 F.4th 1109,  
12 1120-21 (9th Cir. 2022) (“[C]ourts . . . have grappled with the constitutionality of  
13 statutory damages awards challenged in the aggregate where the award is  
14 unusually high because of either the large number of violations at issue in a single  
15 dispute or, most relevant to this case, the aggregation of damages in class action  
16 litigation.”). The potential punitive damages are not so high against the single  
17 Defendant in this case that they raise constitutional concerns, and no class of  
18 policyholders has been certified. *See Fed. R. Civ. P. 23*. Therefore, aggregation of  
19 Plaintiffs’ CPA and IFCA claims is permissible.

1 Plaintiffs’ third and fourth arguments are best addressed together. Broadly,  
2 Plaintiffs urge that Defendants’ calculation of the amount in controversy is  
3 speculative, and that an award of attorney’s fees cannot apply to the amount in  
4 controversy. *See* ECF Nos. 5 at 10-11; 7 at 4-5. Respecting Plaintiffs’ argument  
5 that Defendants’ calculation is based on conjecture, the Ninth Circuit has  
6 emphasized that parties “‘need not predict the trier of fact’s eventual award with  
7 one hundred percent accuracy.’” *Jauregui v. Roadrunner Transp. Servs., Inc.*, 28  
8 F.4th 989, 993 (9th Cir. 2022) (quoting *Valdez v. Allstate Ins. Co.*, 372 F.3d 1115,  
9 1117 (9th Cir. 2004)); *see also* *Scott v. Cricket Commc’ns., LLC*, 865 F.3d 189,  
10 196 (4th Cir. 2017) (“Estimating the amount in controversy is not nuclear science,  
11 as a removing defendant is somewhat constrained by the plaintiff. . . . In many  
12 cases, a defendant’s allegations rely to some extent on reasonable estimates,  
13 inferences, and deductions.”). Accordingly, a reasonable estimate may be  
14 accepted, so long as it is “more likely than not” that the amount in issue exceeds  
15 the jurisdictional threshold. *Sanchez*, 102 F.3d at 404.

16 Plaintiffs believe Defendant should not have relied on attorney’s fees  
17 because of authority stating that “when a statute, such as RCW 48.30.015(1), calls  
18 for an award of attorneys’ fees as part of court costs, rather than as part of  
19 damages, said attorneys’ fees are not considered in determining . . . the  
20 jurisdictional minimum.” ECF No. 7 at 7 (quoting *Vasquez v. Allstate Ins. Co.*,

1 No. CV-08-5027-LRS, 2008 WL 2518734, at \*2 (E.D. Wash. June 20, 2008)).  
2 The Court respectfully disagrees with this authority. In more recent years, courts  
3 in the Ninth Circuit have allowed claims for statutory attorney’s fees to apply to  
4 the jurisdictional minimum. *See Fritsch v. Swift Transp. Co. of Arizona, LLC*, 889  
5 F.3d 785, 794 (9th Cir. 2018) (“[A] court must include future attorneys’ fees  
6 recoverable by statute or contract when assessing whether the amount-in-  
7 controversy requirement is met.”); *see also, Kido as Trustee for Kido v.*  
8 *Transamerica Life Ins. Co.*, 2020 WL 428978 (W.D. Wash. Jan. 28, 2020) (“The  
9 amount in controversy may include not just actual damages, but also statutorily  
10 authorized treble damages and attorney fees.”) (citing *Galt G/S v. JSS Scandinavia*,  
11 142 F.3d 1150, 1156 (9th Cir. 1998)). The Court will therefore allow Defendant to  
12 rely upon statutory attorney’s fees in calculating the amount of Plaintiffs’ damages.

13 Plaintiffs provided a specific estimate of their medical expenses, totaling  
14 approximately \$15,000, and Defendant used that value to estimate that treble  
15 damages under IFCA and the CPA totaled approximately \$70,000, while also  
16 taking into account potential attorney’s fees and other economic and non-economic  
17 damages. ECF No. 6 at 6. Under these circumstances, Defendant’s reliance on  
18 Plaintiffs’ complaint to approximate that the amount in controversy exceeded  
19 \$75,000 was not unreasonable. *See also Bender v. USAA Gen. Indem. Co.*, C22-  
20 1765-JCC, 2023 WL 2326910, at \*2 (W.D. Wash. Mar. 2, 2023) (holding that

1 where trebling of the estimated damages under the CPA and IFCA placed the  
2 amount in controversy at approximately \$70,000 and plaintiffs made multiple CPA  
3 claims and sought attorney's fees, defendants had satisfied the amount in  
4 controversy requirement). Given these facts and taking into account that Plaintiffs  
5 failed to stipulate that they were seeking less than \$75,000, the Court finds that  
6 Defendant has proven it is more than likely the amount in controversy exceeds the  
7 jurisdictional minimum.

8 Finally, Plaintiffs contest that removal is against the interests of judicial  
9 efficiency. Specifically, Plaintiffs allege that the Ninth Circuit has *sua sponte*  
10 remanded cases to state court due to jurisdictional defects and that if the Court  
11 does not order remand here then "this case could be litigated to virtual completion,  
12 only to have the entirety of the proceedings vacated on appeal for lack of subject  
13 matter jurisdiction." ECF No. 5 at 12. The Court respectfully disagrees.

14 To be clear, Plaintiffs are the "master[s] of [their] complaint." *Caterpillar*  
15 *Inc. v. Williams*, 482 U.S. 386, 398-99 (1987). It is within Plaintiffs' prerogative  
16 to dismiss this action and refile separately to avoid the exercise of this Court's  
17 jurisdiction if they so choose, or to amend their complaint and file a stipulation  
18 affirming that they are seeking \$75,000 or less. *See, e.g., Mireles v. Wells Fargo*  
19 *Bank, N.A.*, 845 F. Supp. 2d 1034, 1050 (C.D. Cal. 2012) (extending the principle  
20 that a plaintiff may "plead to avoid federal jurisdiction" by only pleading state law

1 claims to the requirements of diversity jurisdiction). However, federal courts  
2 ““have no more right to decline the exercise of jurisdiction which is given, than to  
3 usurp that which is not given.’” *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368,  
4 376 (2012) (quoting *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821)). Where  
5 Defendant has successfully established that the parties are completely diverse and  
6 the amount in controversy exceeds \$75,000, the Court will not deprive the parties  
7 of a federal forum.

## 8 **II. Attorney’s Fees**

9 Plaintiffs request an award of attorney’s fees for the costs incurred in  
10 bringing this motion. *See* 28 U.S.C. § 1447(c) (“An order remanding the case may  
11 require payment of just costs and any actual expenses, including attorney fees,  
12 incurred as a result of the removal.”). Because Plaintiffs did not prevail on their  
13 motion to remand, their associated request for attorney’s fees is denied.

### 14 **ACCORDINGLY, IT IS HEREBY ORDERED:**

15 Plaintiffs’ Motion to Remand (ECF No. 5) is **DENIED**.

16 The District Court Executive is directed to enter this Order and furnish  
17 copies to counsel. The file remains **OPEN**.

18 DATED February 14, 2024.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge