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5 cc: order, docket, remand letter to  
6 Los Angeles Superior Court,  
7 No. BC 499815

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

10 ROSA VANDIVER,

11 Plaintiff,

12 v.

13 THE WESTERN AND SOUTHERN LIFE  
INSURANCE CO. et al.,

14 Defendants.

Case No. 2:13-cv-01227-ODW (VBKx)

**ORDER REMANDING CASE TO LOS  
ANGELES COUNTY SUPERIOR  
COURT**

16 On February 20, 2013, Defendants The Western and Southern Life Insurance  
17 Co. and Thomas C. Johnson removed Plaintiff Rosa Vandiver's case to this Court.  
18 But after carefully considering the papers filed in conjunction with the Notice of  
19 Removal, the Court determines that it lacks subject-matter jurisdiction over this case.  
20 The Court accordingly **REMANDS** this case to the Los Angeles County Superior  
21 Court.

22 Federal courts are courts of limited jurisdiction, only having subject-matter  
23 jurisdiction over matters authorized by the Constitution and Congress. *See, e.g.,*  
24 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in  
25 state court may be removed to federal court if the federal court would have had  
26 original jurisdiction over the suit. 28 U.S.C. § 1441(a). But a removed action must be  
27 remanded to state court if the federal court lacks subject-matter jurisdiction. 28  
28 U.S.C. § 1447(c).

1 The removing party bears the burden of establishing federal jurisdiction.  
2 *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*  
3 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992)). Here, Defendants claim that this  
4 Court has subject-matter jurisdiction over this state-law action based upon diversity  
5 jurisdiction under 28 U.S.C. § 1332. (ECF No. 1.)

6 For a federal court to be vested with diversity jurisdiction, there must be  
7 complete diversity between the parties, and the amount in controversy must exceed  
8 the sum or value \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a).  
9 When a complaint is silent as to the total amount in controversy, the defendant bears  
10 the burden of proving that amount by a preponderance of the evidence. *Guglielmino*  
11 *v. McKee Foods Corp.*, 506 F.3d 696, 701 (9th Cir. 2007).

12 An individual's citizenship is "determined by her state of domicile, not her state  
13 of residence. A person's domicile is her permanent home, where she resides with the  
14 intention to remain or to which she intends to return." *Kanter v. Warner-Lambert Co.*,  
15 265 F.3d 853, 857 (9th Cir. 2001). Although the determination of a party's domicile  
16 is a mixed question of law and fact, it is a fact-intensive inquiry and the defendant  
17 bears the burden of establishing it. *Lew v. Moss*, 797 F.2d 747, 749–50 (9th Cir.  
18 1986).

19 The Court finds that Defendants failed to carry their burden of proving  
20 Vandiver's citizenship. Defendants merely assert that Vandiver is a California citizen  
21 because Vandiver alleges that she is a California resident in her Complaint. (Notice of  
22 Removal ¶ 12; *see also* Compl. ¶ 2.) But Defendants erroneously attempt to conflate  
23 residency with citizenship. They cite no other objective facts to establish that  
24 Vandiver is a California citizen, such as "voting registration and voting practices,  
25 location of personal and real property, location of brokerage and bank accounts,  
26 location of spouse and family, membership in unions and other organizations, place of  
27 employment or business, driver's license and automobile registration, and payment of  
28 taxes." *Lew*, 797 F.2d at 750. Further, Defendants' assertion of Vandiver's

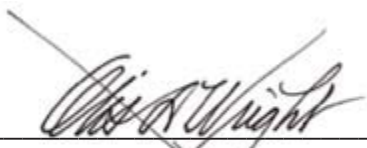
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citizenship under “information and belief” falls far short of the standard necessary to establish this Court’s diversity jurisdiction over this action. (Notice of Removal ¶ 12.)

In light of the foregoing, the Court hereby **REMANDS** this case to the Los Angeles County Superior Court. The Clerk of Court shall close this case.

**IT IS SO ORDERED.**

February 27, 2013



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**OTIS D. WRIGHT II**  
**UNITED STATES DISTRICT JUDGE**