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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JILL ASHLEY FISHER,

Plaintiff,

v.

HNTB CORPORATION, et al.,  
Defendants.

Case No. 2:18-cv-08173-AB-MRW

**ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND**

**I. INTRODUCTION**

Before the Court is Plaintiff Jill Ashley Fisher's ("Plaintiff") Motion to Remand this case to state court. (Dkt. No. 16 ("Mot.")) Defendants HNTB Corporation, Amy Turner, and Lisa Ely (collectively "Defendants") filed an opposition. (See Dkt. No. 22 ("Opp'n").) Plaintiff filed a reply. (See Dkt. No. 23 ("Reply").) The Court heard oral argument on November 30, 2018 and took the matter under submission. Having carefully reviewed the parties' submissions and considered the arguments presented during oral argument, and for the reasons explained below, the Court **DENIES** Plaintiff's Motion to Remand.

1           **II. BACKGROUND**

2           **A. The Parties**

3           Plaintiff is, and at all relevant times was, a resident of Orange County,  
4 California. (Dkt. No. 1 (“Removal”), Ex. 2. (“Compl.”) ¶ 1.) HNTB Corporation  
5 (“HNTB”) is, and at all relevant times was, incorporated in Delaware and has its  
6 principal place of business in Missouri.<sup>1</sup> (See Removal, Ex. 9, Declaration of Amy  
7 Turner (“Turner Decl.”) ¶ 3.) Amy Turner and Lisa Ely (collectively, “the Individual  
8 Defendants”) are, and at all relevant times were, citizens and residents of Kansas.<sup>2</sup>  
9 (See Turner Decl. ¶¶ 8-9; Removal, Ex. 8, Declaration of Lisa Ely (“Ely Decl.”)  
10 ¶¶ 3-4.)

11           **B. Factual Background**

12           This lawsuit involves an employment dispute arising from HNTB’s alleged  
13 wrongful termination of Plaintiff. (See generally Compl.) Plaintiff began working at  
14 HNTB as a Senior Administrative Receptionist on December 29, 2014. (Compl. ¶ 8.)  
15 In January 2017, HNTB promoted Plaintiff to the position of Senior Administrative  
16 Facilities. (Compl. ¶ 9.) Plaintiff alleges that she has Amyotrophic Lateral Sclerosis  
17 (“ALS”). (Compl. ¶ 10.)

18           In June 2017, Plaintiff informed her supervisor, Terrie Breit, that her doctor  
19 suspected she had ALS and scheduled surgery on August 2, 2017. (Compl. ¶ 11.) At  
20 that time, Plaintiff requested medical leave from July 21, 2017 to October 24, 2017.  
21 (*Id.*) Plaintiff’s doctor later extended her medical leave to January 30, 2018. (*Id.*)

22           Plaintiff alleges that while on medical leave, the Individual Defendants, who  
23 also worked at HNTB, “required that [Plaintiff’s] doctor send proof of her disability,  
24 including information regarding her diagnosis and specifics on her condition, every  
25

26 \_\_\_\_\_  
<sup>1</sup> HNTB’s citizenship is undisputed.

27 <sup>2</sup> Plaintiff disputed this fact in the moving papers, arguing the Individual Defendants  
28 are, and at all relevant times were, residents of Orange County, California. (Compl. ¶  
2.)

1 two to four week[s],” which “took a toll on her” by causing her to feel “overwhelmed,  
2 stressed, and anxious.” (*Id.*) Plaintiff further alleges HNTB terminated her  
3 employment on January 25, 2018 because she took medical leave and requested  
4 accommodations prior to returning to work. (Compl. ¶ 12.)

### 5 C. Procedural History

6 Plaintiff initiated this action against Defendants on August 20, 2018 in Los  
7 Angeles Superior Court. (*See* Compl.; Opp’n, Declaration of Laura Booth (“Booth  
8 Decl.”) ¶ 3, Ex. A.) Plaintiff alleges the following six causes of action: (1) violation  
9 of the Fair Employment and Housing Act (“FEHA”); (2) breach of express oral  
10 contract; (3) breach of implied-in-fact contract; (4) negligent hiring, supervision, and  
11 retention; (5) wrongful termination in violation of public policy; and (6) intentional  
12 infliction of emotional distress (“IIED”). (*Id.*) The first cause of action for violation  
13 of the FEHA and sixth cause of action for IIED are the only causes of action against  
14 the Individual Defendants. (*Id.*)

15 On August 23, 2018, HNTB was served with the summons and complaint.  
16 (Turner Decl. ¶ 10; Removal ¶ 6; Opp’n at 6; Booth Decl. ¶ 3, Ex. A.) On September  
17 5, 2018, Amy Turner was served with the summons and complaint. (Booth Decl. ¶ 4,  
18 Ex. B.)

19 On September 20, 2018, HNTB timely removed the action to this Court based  
20 on diversity jurisdiction pursuant to 28 U.S.C. § 1332. (Booth Decl. ¶ 5, Ex. C; *see*  
21 *also* Removal.) HNTB simultaneously filed declarations of the Individual Defendants  
22 stating they were residents and citizens of Kansas at the time Plaintiff filed the  
23 complaint and at the time of removal. (Booth Decl. ¶ 6, Exs. D, E.) In the Individual  
24 Defendants’ declarations they indicated their consent to removal. (*Id.*)

25 On September 27, 2018, Turner joined in the removal of this action. (*See* Dkt.  
26 No. 13; Booth Decl. ¶ 8, Ex. F.) HNTB also filed a civil cover sheet on September  
27 20, 2018, which indicated that Plaintiff was a citizen of California. (*See* Dkt. No. 2.)  
28

1 At the time of removal, Ely had not been served with the summons or  
2 complaint, but she consented to removal in her declaration filed with the Notice of  
3 Removal. (Booth Decl. ¶ 7, Ex. E; Ely Decl. ¶¶ 5-6.) Ely was not served until on or  
4 about October 18, 2018. (Booth Decl. ¶ 9.) On October 31, 2018, Ely joined in the  
5 removal of this action. (See Dkt. No. 18; Booth Decl. ¶ 10, Ex. G.)

6 On October 17, 2018, Plaintiff filed the instant Motion to Remand. (Removal at  
7 1.) Defendants filed an opposition on November 9, 2018, and Plaintiff filed a reply on  
8 November 16, 2018. (See Opp'n; Reply.)

### 9 III. LEGAL STANDARD

10 Under 28 U.S.C. § 1441(a), a civil action may be removed to the district court  
11 where the action is pending if the district court has original jurisdiction over the  
12 action. Under 28 U.S.C. § 1332, a district court has original jurisdiction of a civil  
13 action where the matter in controversy exceeds the sum or value of \$75,000, exclusive  
14 of interest and costs, and the dispute is between “citizens of different states.” Section  
15 1332 requires complete diversity, i.e., that “the citizenship of each plaintiff is diverse  
16 from the citizenship of each defendant.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67-68  
17 (1996). Section 1441 limits removal to cases where no defendant “properly joined  
18 and served . . . is a citizen of the State in which such action is brought.” 28 U.S.C.  
19 § 1441(a)(b)(2). Section 1446(b) governs the timeliness of removals. If the case  
20 stated by the initial pleading is “removable on its face,” then a defendant has thirty  
21 days from receipt of the pleading to remove the case. *Carvalho v. Equifax Info. Servs.,*  
22 *LLC*, 629 F.3d 876, 884-85 (9th Cir. 2010).

23 Removal statutes are “strictly construe[d] against removal.” *Gaus v. Miles,*  
24 *Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). Federal jurisdiction must be rejected if there  
25 is any doubt as to the right of removal in the first instance. *Id.* Accordingly, the  
26 removing party bears a heavy burden of establishing original jurisdiction in the district  
27 court. *Id.*

1           **IV. DISCUSSION**

2           In the moving papers, Plaintiff provides three principal arguments in support of  
3 remand: (1) Defendants failed to establish complete diversity between Plaintiff and  
4 Defendants; (2) Defendants failed to establish that the amount in controversy exceeds  
5 \$75,000; (3) HNTB removed the action before Plaintiff had served any defendant.  
6 (*See generally* Mot.)

7                   **A. Obligation to Meet and Confer**

8           The Court reminds the parties that Local Rule 7-3 requires counsel to meet and  
9 confer at least seven days prior to filing a motion in a civil matter. To satisfy Local  
10 Rule 7-3, counsel must first “contact opposing counsel to discuss thoroughly,  
11 preferably in person, the substance of the contemplated motion and any potential  
12 resolution.” If the moving party does not comply with Local Rule 7-3, the Court may  
13 refuse to hear the motion. *See, e.g., Singer v. Live Nation Worldwide, Inc.*, No. SACV  
14 11-0427 DOC (MLGx), 2012 WL 123146, \*2 (C.D. Cal. Jan. 13, 2012) (denying  
15 motion due to the movant’s failure to abide by Local Rule 7-3).

16           After reading the communications attached as Exhibit 2 to Plaintiff’s counsel’s  
17 declaration in support of Plaintiff’s Motion to Remand, the Court concludes that  
18 Plaintiff has not complied with Local Rule 7-3. In reference to the Motion to Remand,  
19 Plaintiff’s counsel sent an email to defense counsel on September 27, 2018 that stated  
20 “[w]e intend on filing a motion to remand for this matter on the basis that the matter  
21 was removed before Plaintiff had a chance to serve all the entities involved. Please let  
22 us know if you will agree to remand the matter without our filing of the motion.”  
23 (Mot., Declaration of Kristina Unanyan, Ex. 2.) On September 28, 2018, defense  
24 counsel responded, stating “[w]e believe we removed on proper grounds and we will  
25 not agree to remand the action.” (*Id.*)

26           The parties made no effort to “thoroughly” discuss “the substance of the  
27 contemplated motion,” as required by the local rules. The majority of the arguments in  
28 the motion to remand are unnecessary and could have easily been resolved without

1 court intervention.<sup>3</sup> Although the Court, in its discretion, will nonetheless rule on the  
2 merits of the dispute, any future failure to engage in the required meet-and-confer  
3 process, including the requirement to “thoroughly” discuss “the substance” of the  
4 contemplated motion, will result in appropriate sanctions.

5 **B. The Complete Diversity Requirement Is Satisfied<sup>4</sup>**

6 Plaintiff’s argument with respect to complete diversity is two-fold: First,  
7 Plaintiff argues that Defendants have not met their burden to establish that Plaintiff is  
8 a citizen of California because the complaint alleges only Plaintiff’s residence. (Mot.  
9 at 6-7, 10-12.) Second, Plaintiff argues the Court lacks original jurisdiction because,  
10 among other things, there is not complete diversity between Plaintiff, a citizen of  
11 California, and the Individual Defendants, who Plaintiff contends are citizens of  
12 California. (Mot. at 7.)

13 A natural person’s citizenship is determined by state of domicile, not residence.  
14 “A person’s domicile is her permanent home, where she resides with the intention to  
15 remain or to which she intends to return.” *Kanter v. Warner-Lambert Co.*, 265 F.3d  
16 853, 857 (9th Cir. 2001). Plaintiff alleges that she resides, and has resided during all  
17 relevant times, in California. (*See* Compl. ¶ 1.) That is, Plaintiff affirmatively alleges  
18 she has been a resident of California from at least 2014 (when alleges she began  
19 working for HNTB) through the present. Plaintiff’s contention that more than four  
20 years of living and working exclusively in California is insufficient to establish  
21 California is Plaintiff’s “permanent home” is unavailing. As Defendants note in their  
22 opposition, this finding is consistent with Plaintiff’s allegation that she worked for  
23 HNTB in Orange County, California from December 29, 2014 through January 25,  
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25 <sup>3</sup> For example, it was unnecessary for Plaintiff to devote seven pages of her motion  
26 arguing the Individual Defendants are not sham defendants when the Individual  
27 Defendants’ declarations clearly state they are, and at all relevant times were,  
28 residents and citizens of Kansas. Had the parties discussed the merits of the motion,  
Plaintiff would have known the sham defendant rule was not at issue.

<sup>4</sup> At the hearing on the motion to remand, Plaintiff conceded complete diversity exists.

1 2018 (Compl. ¶¶ 1-2, 8-12), as well as Plaintiff’s moving papers in which she states  
2 she is a “Californian[.]” (Mot. at 7; Opp’n at 5, 7-9; Reply at 5.) Plaintiff has neither  
3 presented evidence nor made statements to the contrary. *See Lopez v. Nationstar*  
4 *Mortg. LLC*, No. CV-15-03288-MWF (AJWx), 2015 WL 6478263, at \*2 (C.D. Cal.  
5 Oct. 26, 2015) (“Plaintiff alleges in the [First Amended Complaint] that his primary  
6 place of residence is in Diamond Bar, California. In the absence of evidence to the  
7 contrary, Plaintiff is considered a citizen of California for federal diversity  
8 purposes.”). Therefore, the Court concludes that Plaintiff is a citizen of California.

9 Plaintiff argues, “even if [Defendants] ha[ve] established the domiciles of the  
10 parties at issue . . . there is not complete diversity” because Plaintiff and the Individual  
11 Defendants “are all Californians.” (Mot. at 7.) The Court disagrees. In support of the  
12 Notice of Removal and Opposition to the Motion to Remand, Defendants submitted  
13 declarations of the Individual Defendants confirming the Individual Defendants’  
14 current addresses are, and at this action was filed were, located in Kansas and that the  
15 Individual Defendants are, and at the time this action was filed were, citizens of  
16 Kansas. (*See Ely Decl.* ¶¶ 3-4; *Turner Decl.* ¶¶ 8-9.) Given the absence of any  
17 evidence to the contrary, the Court finds the Individual Defendants are citizens of  
18 Kansas.

19 The complete diversity requirement is therefore satisfied because Plaintiff is a  
20 citizen of California, the Individual Defendants are citizens of Kansas, and HNTB is a  
21 citizen of Delaware and Missouri.<sup>5</sup>

### 22 C. The Amount in Controversy Requirement Is Met

23 The Court must decide whether Defendants have demonstrated that the amount  
24 in controversy exceeds \$75,000. Plaintiff’s complaint seeks damages for past and  
25 future lost wages and employment benefits, emotional distress, attorneys’ fees and  
26 costs, pre-judgment and post-judgment interest, and punitive damages, and specifies

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27 <sup>5</sup> A corporation is a “citizen” both of the state in which it was incorporated and the  
28 state where it has its principal place of business. *See* 28 U.S.C. § 1332(c).

1 that the amount sought exceeds \$25,000. (*See* Compl. ¶¶ 13-15, 16; *see also* Compl.  
2 at 16 (prayer for relief).) The Court finds Defendants have satisfied their burden of  
3 plausibly alleging an amount in controversy exceeding \$75,000 in their Notice of  
4 Removal. Accordingly, the Court must determine whether Defendants have met their  
5 burden by presenting evidence establishing, by a preponderance of the evidence, that  
6 the jurisdictional amount in controversy is satisfied.

7 **1. Past and Future Lost Wages and Employment Benefits**

8 Defendants assert that lost wages should be based on the length of time from  
9 termination through the date of trial, which Defendants estimate is one year from the  
10 date of removal. (Removal ¶ 24; Opp'n at 12.)

11 In support of removal and their opposition, Defendants submitted the  
12 declaration of HNTB's Senior Benefits Analyst (and defendant) Amy Turner, in  
13 which she declared that on the date of Plaintiff's termination, Plaintiff's annual salary  
14 was \$61,900.80 and her hourly rate was \$29.76. (Turner Decl. ¶ 5.)

15 Plaintiff was terminated on January 25, 2018, and Defendants filed their Notice  
16 of Removal on September 20, 2018—a period of approximately 34 weeks. Based on  
17 Plaintiff's annual salary of \$61,900.80, Plaintiff's weekly salary was approximately  
18 \$1190.40 per week (\$61,900.80 divided by 52 weeks). Therefore, Plaintiff's lost  
19 wages at the time of removal were at least \$40,473.60 (\$1190.40 per week multiplied  
20 by 34 weeks).

21 The Court may also include other benefits in the lost wages analysis. *See*  
22 *Melendez v. HMS Host Family Rests., Inc.*, No. CV 11-3842 ODW (CWx), 2011 WL  
23 3760058, at \*3 (C.D. Cal. Aug. 25, 2011). Here, Turner declared that Plaintiff  
24 received employment benefits<sup>6</sup> that totaled \$12,816.72 annually. (Turner Decl. ¶¶ 5-

25 \_\_\_\_\_  
26 <sup>6</sup> Specifically, Turner declared Plaintiff received the following benefits at HNTB's  
27 cost: medical; dental; vision; supplemental life insurance (three times Plaintiff's  
28 annual salary); paid holidays (worth \$29.76 per hour for nine holidays); paid time off  
(worth \$29.76 per hour for 120 hours of paid time off per year); sick time (worth  
\$29.76 per hour for 56 hours of sick time per year); short-term disability; long-term



1 7.) Plaintiff’s employment benefits are worth approximately \$246.48 per week  
2 (\$12,816.72 divided by 52 weeks). Plaintiff’s past lost employment benefits are  
3 therefore worth \$8,380.32 (\$246.48 multiplied by 34 weeks).

4 Accordingly, the total amount of Plaintiff’s past lost wages and employment  
5 benefits, for purposes of jurisdiction, is at least \$48,853.92 (\$40,473.60 in lost past  
6 wages plus \$8,380.32 for lost employment benefits).

7 “Because Plaintiff ‘claims at the time of removal that her termination caused  
8 her to lose future wages, . . . then there is no question that future wages are “at stake”  
9 in the litigation, whatever the likelihood that she will actually recover them.’” *Molina*  
10 *v. Target Corp.*, No. CV 18-03181-RSWL-FFM, 2018 WL 3935347, at \*3 (C.D. Cal.  
11 Aug. 14, 2018) (quoting *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th  
12 Cir. 2018)). Therefore, the Court must also consider lost *future*<sup>7</sup> wages from the date  
13 of removal until trial.<sup>8</sup> The parties have not set a trial date; however, the Court finds

14 \_\_\_\_\_  
15 disability; life insurance basic in the sum of \$124,000; life insurance AD&D in the  
16 sum of \$124,000; disability insurance in the sum of \$818.40; 401k with company  
17 match of sixty percent of first \$1,600; ESOP with company match of fifty percent of  
18 first \$4,000. (Turner Decl. ¶ 6.)

19 <sup>7</sup> In the notice of removal and opposition, Defendants refer to wages from the date of  
20 removal to the date of trial as “*back pay*.” (Removal ¶ 24; Opp’n at 11-12.) The  
21 weight of authority, however, requires the Court to ascertain jurisdiction at the *time of*  
22 *removal*. *Fortescue v. Ecolab Inc.*, 2014 WL 296755, at \*2 (C.D. Cal. Jan. 28, 2014)  
23 (“[I]n determining the amount in controversy, the court declines to project lost wages  
24 forward to some hypothetical trial date.”); *Soto v. Kroger Co.*, 2013 WL 3071267, \*3  
25 (C.D. Cal. June 17, 2013); *see also Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029,  
26 1032 (N.D. Cal. 2002) (limiting amount of lost wages considered in amount in  
27 controversy to those accrued at time of removal). Accordingly, the Court separates  
28 lost wages into two categories: past wages—i.e., lost wages between the date of  
Plaintiff’s termination and the date of removal—and future wages—i.e., lost wages  
between the date of removal and trial.

<sup>8</sup> At the hearing, Plaintiff argued she will likely find gainful employment before trial,  
and therefore, any amount for future lost wages is speculative. “Such mitigation,  
however, is inapplicable to the amount-in-controversy calculation.” *Molina v. Target*  
*Corp.*, No. CV 18-03181-RSWL-FFM, 2018 WL 3935347, at \*3 (C.D. Cal. Aug. 14,  
2018); *see also Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1108  
(9th Cir. 2010) (“[I]f a district court had to evaluate every possible defense that could  
reduce recovery below the jurisdictional amount the district court would essentially

1 Defendants’ proposed date of trial for purposes of this motion—one year from the  
2 date of removal—is a conservative estimate of the trial date. (*See* Removal ¶ 24;  
3 Opp’n at 11-12.) Therefore, Plaintiff’s future wages at stake is \$61,900.80, the  
4 amount of Plaintiff’s annual salary.<sup>9</sup>

5 The sum of Plaintiff’s past and future lost wages is \$102,374.40; the sum of  
6 past and future lost wages and past employment benefits is \$110,754.72.

## 7 2. Emotional Distress and Punitive Damages

8 Plaintiff’s complaint seeks unspecified damages for emotional distress. (*See*  
9 *generally* Compl.) Emotional distress damages are properly considered in the amount  
10 in controversy for jurisdiction purposes. *See, e.g., Kroske v. U.S. Bank Corp.*, 432  
11 F.3d 976, 980 (9th Cir. 2005); *Cain v. Hartford Life & Acc. Ins. Co.*, 890 F. Supp. 2d  
12 1246, 1250 (C.D. Cal. 2012); *see also Simmons*, 209 F. Supp. 2d at 1034. “To  
13 establish the amount of emotional distress in controversy, a defendant may introduce  
14 evidence of jury verdicts in other cases.” *Cain*, 890 F. Supp. 2d at 1250 (citing *Rivera*  
15 *v. Costco Wholesale Corp.*, No. C 08-02202 CW, 2008 WL 2740399, at \*1 (N.D. Cal.  
16 July 11, 2008)). Defendants cite several cases that consider other emotional distress  
17 awards for purposes of deciding a motion to remand or in affirming awards for  
18 emotional distress in other employment discrimination or retaliation cases, where  
19 emotional distress damages ranged from \$30,000 to \$3.5 million. (*See* Removal ¶ 28.)

20 Plaintiff also seeks an unspecified amount in punitive damages. “It is well  
21 established that punitive damages are part of the amount in controversy” for purposes  
22 of establishing diversity jurisdiction. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945  
23 (9th Cir. 2001); *see Bell v. Preferred Life Assur. Soc. of Montgomery, Ala.*, 320 U.S.  
24 238, 240 (1943). In order to establish probable punitive damages, a party asserting  
25 \_\_\_\_\_  
26 have to decide the merits of the case before it could determine if it had subject matter  
jurisdiction.”).

27 <sup>9</sup> The Court finds it is unnecessary to calculate or address future lost employment  
28 benefits given that the sum of lost past and future wages and past employment benefits  
substantially exceeds \$75,000.

1 federal diversity jurisdiction may also introduce evidence of jury verdicts in cases  
2 involving analogous facts.” *Surber v. Reliance Nat. Indem. Co.*, 110 F. Supp. 2d  
3 1227, 1232 (N.D. Cal. 2000). Defendants have neither cited cases nor produced any  
4 evidence of jury verdicts awarding punitive damages. (*See* Removal ¶ 29.) Instead,  
5 Defendants rely on Supreme Court cases that held punitive damages must bear a  
6 “reasonable relationship” to actual damages and found “punitive damages of four  
7 times the amount of action damages, while ‘close to the line,’ of being excessive, were  
8 still constitutional.” (*Id.* (citations omitted).) From there, Defendants conclude that  
9 “Plaintiff’s punitive damage claim could range from \$195,000 to over \$330,000”  
10 based on the “economic damages figures for backpay.” (*Id.*)

11 Without deciding whether this case is sufficiently analogous to those cited by  
12 Defendants, or quantifying the exact value of Plaintiff’s claims for emotional distress  
13 or punitive damages, the Court recognizes that emotional distress and punitive  
14 damages are more likely than not to be more than nominal. *See Hurd v. Am. Income*  
15 *Life Ins.*, No. CV-13-05205 RSWL-MRW, 2013 WL 5575073, at \*7 (C.D. Cal. Oct.  
16 10, 2013) (“Punitive damages and emotional distress damages in disability  
17 discrimination cases can be ‘substantial’ even when lost wages fall short of the  
18 jurisdictional minimum.”). In other words, they are likely worth at least \$1 each.

### 19 3. Attorneys’ Fees

20 Defendants correctly note that attorneys’ fees may be considered for purposes  
21 of determining whether the amount in controversy requirement is met. (Removal  
22 ¶ 30.) However, a “district court may reject the defendant’s attempts to include future  
23 attorneys’ fees in the amount in controversy if the defendant fails to satisfy this burden  
24 of proof.” *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 795 (9th Cir.  
25 2018).

26 In the Notice of Removal, Defendants assert that “Plaintiff’s attorneys’ fees  
27 alone would exceed \$75,000” assuming only “one of Plaintiff’s FEHA causes of  
28 action[] is litigated through trial.” (Removal ¶ 30.) Defendants fail to provide the

1 specific estimate of attorneys’ fees, hourly rates, or evidence of attorneys’ fees in  
2 similar cases. The Court will not include attorneys’ fees in the amount in controversy  
3 calculation because the estimated attorneys’ fees that could be awarded is speculative.  
4 *See Eberle v. Jaguar Land Rover N. Am., LLC*, No. 2:18-cv-06650-VAP-PLA, 2018  
5 WL 4674598, at \*3 (C.D. Cal. Sept. 26, 2018) (“Defendant has merely indicated that  
6 while it ‘is presently unaware of Plaintiff’s counsel [sic] hourly rate, it reasonably  
7 anticipates the fees “likely to be expended” in this case will be in excess of the “less  
8 than \$5,000” amount stated in Plaintiff’s motion.’ This is not enough.”) (citation  
9 omitted).

#### 10 **4. Aggregation of Claims**

11 The amount in controversy, for purposes of jurisdiction, is the total “amount at  
12 stake in the underlying litigation.” *Theis Research, Inc. v. Brown & Bain*, 400 F.3d  
13 659, 662 (9th Cir. 2005). As stated above, the Court finds that there is at least  
14 \$102,374.40 in lost past and future wages, \$8,380.32 in lost past employment benefits,  
15 \$1 in emotional distress, and \$1 in punitive damages at stake. Accordingly, the Court  
16 is persuaded that Defendants have established by a preponderance of the evidence  
17 that, when viewed in combination, Plaintiff’s claims exceed \$75,000, exclusive of  
18 interest and costs.

#### 19 **D. The Forum Defendant Rule Does Not Apply**

20 Even if diversity jurisdiction is present, 28 U.S.C. § 1441(b) prohibits removal  
21 if one or more of the named defendants is a citizen of the forum state, i.e., California,  
22 in the instant action. The statute states, in pertinent part, that a case can be removed  
23 based on diversity jurisdiction “only if none of the parties in interest properly joined  
24 and served as defendants is a citizen of the State in which such action is brought.” 28  
25 U.S.C. § 1441(b); *see also Lively v. Wild Oats Mkts., Inc.*, 456 F.3d 933, 939 (9th Cir.  
26 2006). This is known as the “forum defendant” or “local defendant” rule.

27 Plaintiff contends the forum defendant rule applies here. The Court disagrees  
28 because, as explained above, none of the named defendants are citizens of California.

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**V. CONCLUSION**

For the reasons set forth above, the Court **DENIES** Plaintiff's Motion to Remand.

**IT IS SO ORDERED.**

Dated: December 03, 2018



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HONORABLE ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT COURT JUDGE