

II. BACKGROUND

1
2 Hope Wine, LLC and OneHope, Inc. (collectively “OneHope”) hired Plaintiff
3 Sarah Finucane as a Director of Product and User Experience Design in July 2017.
4 (Decl. of Sarah Finucane (“Finucane Decl.”) ¶ 3, ECF No. 12-3.) OneHope’s
5 principal place of business is in Santa Ana, California. (Decl. of Tom Leahy ISO
6 NOR (“Leahy Decl. NOR”) ¶¶ 5, 8, ECF No. 1-6.) Finucane resided in Los Angeles
7 County at the time of hiring. (Finucane Decl. ¶ 2.)

8 Since 2010, Finucane has experienced significant health issues and she was
9 diagnosed with thyroid cancer in 2014. (Decl. of Matthew W. Burris Ex. A
10 (“Compl.”) ¶¶ 15–16, ECF No. 1-2.) Finucane did not have any major health issues
11 during her first two years working for OneHope. (*Id.* ¶ 17.) However, in the spring of
12 2019, she began to experience debilitating back pain and an MRI revealed a tumor
13 near her spine. (*Id.* ¶ 18.) Over the summer, Finucane began seeking advice from
14 doctors in Connecticut, where her parents live, because she wanted to be near her
15 family while undergoing medical treatment. (*Id.* ¶ 20; Decl. of Erik Ober ISO Defs.’
16 Opp’n ¶ 5, ECF No. 15-5; Finucane Decl. ¶ 6.) The parties dispute whether she
17 received approval and support from supervisors to work remotely. (Finucane Decl.
18 ¶ 6; Decl. of Tom Leahy ISO Defs.’ Opp’n (“Leahy Decl. Opp’n”) ¶¶ 5–7, ECF
19 No. 15-4.) On October 15, 2019, Finucane filed a change of address form with
20 OneHope; she moved into an Additional Dwelling Unit (“ADU”) at her parents’
21 residence in Connecticut three days later. (Leahy Decl. NOR ¶ 12, Ex. B.; Reply 1,
22 ECF No. 16; Suppl. Decl. of Sarah Finucane (“Finucane Suppl. Decl.”) ¶ 2, ECF
23 No. 16-1.) On October 25, 2019, OneHope informed Finucane that they terminated
24 her position, effective early November. (Finucane Decl. ¶ 8.) Finucane asked her
25 supervisors by email to remain with the company in the months that followed. (*Id.*
26 ¶ 9.) She has since applied to at least eight other jobs based in California. (*Id.* ¶ 10.)

27 On April 14, 2021, Finucane filed her complaint in Los Angeles County
28 Superior Court asserting nine state law claims under the California Fair Employment

1 and Housing Act. (Compl. ¶¶ 26–97.) Defendants removed the action to this Court
2 based on alleged diversity jurisdiction. (See NOR.) It is undisputed that OneHope
3 and Hope Wine, LLC are both citizens of California. (*Id.* ¶¶ 19–25.) Defendants
4 assert that Finucane is a citizen of Connecticut, whereas Finucane contends her
5 domicile remains in California. (*Id.* ¶¶ 12–18; Mot. 1.) Finucane now moves to
6 remand, arguing that Defendants have not established complete diversity of
7 citizenship for diversity jurisdiction. (See Mot.) Finucane also requests attorneys’
8 fees and costs incurred from the removal of her action. (*Id.* at 15–16.)

9 III. LEGAL STANDARD

10 Federal courts have subject matter jurisdiction only as authorized by the
11 Constitution and by Congress. U.S. Const. art. III, § 2, cl. 1; *Kokkonen v. Guardian*
12 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A suit filed in state court may be
13 removed to federal court if the federal court would have had original jurisdiction over
14 the suit. 28 U.S.C. § 1441(a). Federal courts have original jurisdiction where the
15 action arises under federal law, or where each plaintiff’s citizenship is diverse from
16 each defendant’s citizenship and the amount in controversy exceeds \$75,000.
17 28 U.S.C. §§ 1331, 1332(a). The removal statute is strictly construed against removal,
18 and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of
19 removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).
20 The party seeking removal bears the burden of establishing federal jurisdiction, with
21 the court resolving any doubts against removal. *Id.* “If at any time before final
22 judgment it appears that the district court lacks subject matter jurisdiction, the case
23 shall be remanded.” 28 U.S.C. § 1447(c).

24 IV. DISCUSSION

25 The Court first addresses the issue of remand before turning to Finucane’s
26 request for attorneys’ fees and costs. For the following reasons, the Court finds that
27 Defendants fail to establish complete diversity among the parties.
28

1 **A. Motion to Remand**

2 Jurisdiction founded on diversity “requires that the parties be in complete
3 diversity and the amount in controversy exceed \$75,000.” *See Matheson v.*
4 *Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *see also*
5 28 U.S.C. § 1332. The parties do not dispute the requisite amount in controversy.
6 Accordingly, this Motion turns on whether complete diversity exists, such that all
7 plaintiffs are diverse in citizenship from all defendants. *See, e.g., Allstate Ins. Co. v.*
8 *Hughes*, 358 F.3d 1089, 1095 (9th Cir. 2004). Finucane argues removal is improper
9 because she, like OneHope, is properly domiciled in California. OneHope contends
10 that Finucane has transferred her domicile to Connecticut by residing there with her
11 parents since October 2019.

12 Domicile is determined as of the time the lawsuit is filed. *Lew v. Moss*,
13 797 F.2d 747, 750 (9th Cir. 1986). “Domicile . . . requires both physical presence at a
14 given location and an intent to remain there indefinitely.” *Id.* at 752. The domicile
15 analysis thus includes both an objective component and a subjective component,
16 which may be established using objective factors. *See Gaudin v. Remis*, 379 F.3d 631,
17 637–38 (9th Cir. 2004). Tangible factors that reflect intent include “current residence,
18 voting registration and voting practices, location of personal and real property,
19 location of brokerage and bank accounts, location of spouse and family, membership
20 in unions and other organizations, place of employment or business, driver’s license
21 and automobile registration, and payment of taxes.” *Lew*, 797 F.2d at 750. “The place
22 where a person lives is taken to be his domicile until facts adduced establish the
23 contrary.” *Anderson v. Watts*, 138 U.S. 694, 706 (1891).

24 Many of the *Lew* factors apply to Finucane in both Connecticut and California
25 as of April 14, 2021, the date this suit was filed. The strongest fact suggesting a
26 Connecticut domicile is that Finucane has resided in Connecticut since October 2019,
27 one and a half years prior to commencing this action. Additional indicia that Finucane
28 is domiciled in Connecticut include Finucane using a Connecticut driver’s license

1 since at least 2002; registering an automobile in Connecticut in 2013; updating her
2 contact information at work to her Connecticut address; and sharing a close personal
3 connection with her family in Connecticut. (*See* Decl. of Matthew W. Burris ISO
4 Defs.’ Opp’n ¶¶ 5–6, ECF No. 15-1.)

5 On the other hand, Finucane has alleged facts weighing in favor of California
6 citizenship. First, Finucane submits declaration evidence that she moved to
7 Connecticut in 2019 only temporarily to receive medical treatment and always
8 intended to return to California. (Finucane Suppl. Decl. ¶ 3.) That Finucane has lived
9 in California on her own for nearly two decades, yet chose to reside in an ADU on her
10 parents’ property in Connecticut rather than find permanent housing or sign a lease,
11 lends credence to her stated intent to return to California. Moreover, Finucane
12 completed a similar temporary move to Connecticut in 2014, and she returned to
13 California upon completion of medical treatment. (*Id.*) Her prior return indicates to
14 the Court an intent and the ability to return to California again. Second, in addition to
15 seeking reemployment with California-based OneHope after the termination of her
16 position, Finucane has applied for work with least eight other California entities. Her
17 search for full-time employment indicates an intent to continue building a career in
18 California. Third, Finucane attests that the only car she currently owns, which she has
19 used since at least 2017, is registered in California. (*Id.*) Her state of vehicle
20 registration is another *Lew* factor weighing in favor of a California domicile. Finally,
21 although Finucane has a Connecticut driver’s license, she has maintained the license
22 throughout her seventeen years working and residing full-time in California, including
23 when she began working for OneHope. (*See* Leahy Decl. NOR ¶ 10.) Because she
24 used the out-of-state license while domiciled in California, the Court cannot infer
25 from the license an intent to remain in Connecticut indefinitely.

26 On balance, Defendants have failed to produce enough evidence to rebut the
27 “presumption in favor of an established domicile as against a newly acquired one.”
28 *Lew*, 797 F.2d at 751. None of the evidence submitted by the parties indicates

1 long-term or permanent plans for Finucane to remain indefinitely in Connecticut.
2 “Where doubt regarding the right to removal exists, a case should be remanded to
3 state court.” *Matheson*, 319 F.3d at 1090. Accordingly, because there are doubts as to
4 Finucane’s citizenship and Defendants have not carried their burden to resolve these
5 doubts, Finucane’s Motion to Remand is **GRANTED**.²

6 **B. Attorneys’ Fees and Costs**

7 Finucane seeks an award of attorneys’ fees pursuant to 28 U.S.C. § 1447(c).
8 (Mot. 15–16.) She argues that Defendants acted in bad faith and sought to avoid the
9 “forum defendant rule” of 28 U.S.C. § 1441(b)(2), which prohibits removal by in-state
10 defendants properly joined and served, by removing this action prior to completion of
11 service. (Mot. 2.)

12 “An order remanding the case may require payment of just costs and any actual
13 expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C.
14 § 1447(c). Generally, a district court may award attorneys’ fees under § 1447 only
15 when a defendant “lacked an objectively reasonable basis for seeking removal.”
16 *Martin v. Franklin Cap. Corp.*, 546 U.S. 132, 141 (2005). “Conversely, when an
17 objectively reasonable basis exists, fees should be denied.” *Id.* Given that Finucane
18 moved to a new state prior to filing the complaint, the question of complete diversity
19 was not objectively unreasonable. Additionally, given that service had not yet been
20 properly effectuated at the time Defendants removed, the Court finds their attempt to
21 remove was also not objectively unreasonable under a literal reading of the statute.
22 Thus, the Court **DENIES** Finucane’s request for fees and costs.

23 **V. CONCLUSION**

24 For the reasons discussed above, the Court **GRANTS** Finucane’s Motion to
25 Remand and **DENIES** her request for attorneys’ fees and costs. The Court
26 **REMANDS** the action to the Superior Court of the State of California, Stanley Mosk

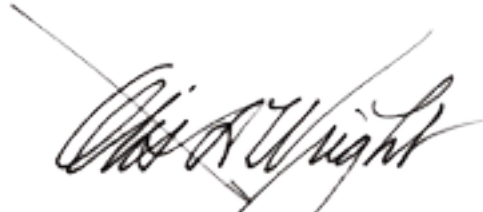
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28 ² As there is no diversity of citizenship, the Court need not reach the issue of whether Defendants’
removal prior to complete and effective service contradicted the policies governing the “forum
defendant rule” of 28 U.S.C. § 1441(b)(2). (*See* Mot. 9–15.)

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Courthouse, 111 N. Hill St., Los Angeles, California, 90014, Case No. 21STCV14242. The Clerk of the Court shall close this case.

IT IS SO ORDERED.

August 30, 2021



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