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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 BRYAN OVERHOLT,

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12 Plaintiff,

13 v.

14 AIRISTA FLOW INC., a Delaware
15 corporation; AIRISTA LLC, a Maryland
16 limited liability company; and RYAN
17 MADIGAN, an individual,

18 Defendants.

Case No.: 17cv1337-MMA (AGS)

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

[Doc. No. 7]

**GRANTING SPECIALLY
APPEARING DEFENDANTS
AIRISTA LLC AND RYAN
MADIGAN'S MOTION TO DISMISS
FOR LACK OF JURISDICTION**

[Doc. No. 10]

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20 Plaintiff Bryan Overholt ("Plaintiff") filed the instant action against Defendants
21 Airista Flow Inc., Airista LLC, and Ryan Madigan (collectively, "Defendants") in the
22 Superior Court of California for the County of San Diego on May 16, 2017. *See* Doc.
23 No. 1 at 2. On June 30, 2017, Airista Flow, Inc. removed the action to this Court on the
24 basis of diversity jurisdiction. *See id.* In his Complaint, Plaintiff asserts five state-law
25 causes of action for: (1) age discrimination in violation of California's Fair Employment
26 and Housing Act ("FEHA"), Cal. Gov't. Code § 12940, *et seq.*; (2) failure to prevent
27 discrimination in violation of FEHA, Cal. Gov't. Code § 12940, *et seq.*; (3) wrongful
28 termination in violation of public policy; (4) failure to pay earned wages upon discharge

1 in violation of Cal. Lab. Code § 201, *et seq.*; and (5) restitution for unfair business
2 practices, in violation of Cal. Bus. & Prof. Code § 17200. *See* Doc. No. 1-1 (hereinafter
3 “Complaint”).

4 On July 31, 2017, Plaintiff filed a motion to remand the action back to state court,
5 claiming that Airista Flow Inc. failed to sufficiently establish in its notice of removal that
6 the parties are diverse. *See* Doc. No. 7. Airista Flow, Inc. filed an opposition to
7 Plaintiff’s motion, to which Plaintiff replied. *See* Doc. Nos. 9, 12. Additionally, on
8 August 30, 2017, specially appearing defendants Airista LLC and Ryan Madigan filed a
9 motion to dismiss. *See* Doc. No. 10. Plaintiff filed an opposition, to which Airista LLC
10 and Ryan Madigan replied. *See* Doc. Nos. 17, 18. The Court found the matters suitable
11 for determination on the papers and without oral argument pursuant to Civil Local Rule
12 7.1.d.1. For the reasons set forth below, the Court **DENIES** Plaintiff’s motion to remand,
13 and **GRANTS** Airista LLC and Ryan Madigan’s motion to dismiss.

14 BACKGROUND

15 This action arises out of events involving the termination of Plaintiff’s employment
16 from Airista Flow Inc. (“Airista Flow”) in October 2016. *See* Complaint ¶ 20. At all
17 relevant times, Plaintiff has resided in San Diego County. *Id.* ¶ 1. Plaintiff alleges
18 Defendant Airista Flow is incorporated under the laws of Delaware, and has its principal
19 place of business in Maryland. *Id.* ¶ 2. Moreover, Plaintiff claims Defendant Airista
20 LLC is a Maryland limited liability company “doing business in California,” and that
21 Airista Flow is a subsidiary of Airista LLC. *Id.* ¶ 3. Plaintiff contends Defendant Ryan
22 Madigan (“Madigan”) is a resident of Maryland. *Id.* ¶ 4.

23 On or around November 13, 2006, Ekahau, Inc. (“Ekahau”) hired Plaintiff to work
24 for it as a Systems Engineer. *Id.* ¶ 17. On or around October 12, 2013, Ekahau
25 terminated Plaintiff’s employment, and rehired him as an independent contractor. *Id.*
26 However, in July 2014, Ekahau converted Plaintiff to a W-2 employee. *Id.*

27 In approximately March 2016, Plaintiff alleges Airista Flow and Airista LLC
28 “acquired Ekahau and assumed and controlled Ekahau’s business practices.” *Id.* ¶ 19.

1 Due to the acquisition, Plaintiff alleges he became an employee of Airista Flow and
2 Airista LLC. *See id.* Madigan served as Airista Flow’s President during this time. *See*
3 *id.*

4 In October 2016, Defendants terminated Plaintiff’s employment due to a
5 “reorganizing [of] the company.” *Id.* ¶ 20. Plaintiff alleges he was the only employee
6 terminated as a result of the reorganization. *See id.* “Plaintiff was 63 years old at the
7 time of the termination and was substantially older than Defendants’ other employees.”
8 *Id.* Plaintiff asserts that “Defendants replaced [him] with substantially younger
9 employees and these employees assumed [his] job and responsibilities.” *Id.* ¶ 21.
10 Plaintiff alleges Defendants terminated his employment because of his age. *Id.* ¶ 22.

11 Further, upon Plaintiff’s termination, Plaintiff alleges “Defendants failed to pay
12 Plaintiff earned non-discretionary bonuses, accrued vacation time, and expenses.” *Id.* ¶
13 23. Plaintiff alleges Madigan “was primarily involved in the decision not to pay
14 Plaintiff” his final wages. *Id.* ¶ 49. As a result, Plaintiff commenced the instant action.

15 PLAINTIFF’S MOTION TO REMAND

16 In its notice of removal, Airista Flow asserts “[t]he two other named Defendants
17 [Airista LLC and Ryan Madigan], who have not yet been served, are also non-California
18 residents.” Doc. No. 1. at 6. Specifically, Airista Flow contends that Airista LLC is a
19 Maryland limited liability company and Defendant Ryan Madigan is a Maryland resident.
20 *Id.* Plaintiff argues Airista Flow’s assertions are insufficient to establish the citizenship
21 of Airista LLC and Madigan for purposes of diversity jurisdiction, and that the Court
22 should remand this action.¹ *See* Doc. No. 7 at 3-4.

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26 ¹ Plaintiff does not challenge Airista Flow’s citizenship. For purposes of diversity jurisdiction, a
27 corporation “shall be deemed a citizen of any State by which it has been incorporated and of the State
28 where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Airista Flow is incorporated under
the laws of the state of Delaware, and has its principal place of business in Maryland. *See* Doc. No. 1 at
5-6; Complaint ¶ 2.

1 **1. Legal Standard**

2 Federal courts are of limited jurisdiction. *Lowdermilk v. U.S. Bank Nat’l Ass’n*,
3 479 F.3d 994, 997 (9th Cir. 2007). Federal courts possess only that power authorized by
4 the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534,
5 541 (1986). Pursuant to Title 28 of the United States Code, section 1332(a)(1), a federal
6 district court has jurisdiction over “all actions where the matter in controversy exceeds
7 the sum or value of \$75,000, exclusive of interest and costs,” and the dispute is between
8 citizens of different states. 28 U.S.C. § 1332(a)(1). The Supreme Court has interpreted §
9 1332 to require “complete diversity of citizenship,” meaning each plaintiff must be
10 diverse from each defendant. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 67-68 (1996).

11 Title 28 of the United States Code, section 1441(a), provides for removal of a civil
12 action from state to federal court if the case could have originated in federal court. If a
13 matter is removable solely on the basis of diversity jurisdiction pursuant to § 1332, the
14 action may not be removed if any properly joined and served defendant is a citizen of the
15 forum state. *See* 28 U.S.C. § 1441(b)(2). The statute is construed strictly against
16 removal, and “[f]ederal jurisdiction must be rejected if there is any doubt as to the right
17 of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992).
18 As the removing party, the defendant bears the burden of establishing that the court has
19 subject matter jurisdiction. *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 685
20 (9th Cir. 2006).

21 **2. Analysis**

22 Plaintiff argues that remand is appropriate for the following reasons: (a) Airista
23 Flow’s opposition to the instant motion is essentially an amendment to its notice of
24 removal and should be deemed untimely; (b) the declarations of Messrs. M. Sajjad and S.
25 Sajjad fail to establish diversity of the LLC members; (c) Airista Flow failed to establish
26 diversity of citizenship as to Madigan; and (d) Airista Flow failed to establish all of the
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1 defendants consented to removal.² See Doc. Nos. 7, 12. Plaintiff further requests an
2 award of attorney’s fees and costs arising out of the instant motion as Airista Flow’s
3 “clear procedural and sloppy errors . . . forced Plaintiff to file this motion.” Doc. No. 12
4 at 6. The Court considers Plaintiff’s arguments in turn.

5 a. Timeliness of Amendment

6 In opposition to the instant motion, Airista Flow submitted the declarations of both
7 of Airista LLC’s members, and Madigan’s declaration. See Doc. Nos. 9-2, 9-3, 9-4.
8 Plaintiff argues that “this clear attempt at amending their Notice of Removal is untimely
9 because it was not amended within the thirty-day period in which an action may be
10 removed.” Doc. No. 12 at 2.

11 28 U.S.C. § 1446(b) requires defendants to file a notice of removal within thirty
12 days after being served with the complaint. 28 U.S.C. § 1446(b). A defendant’s notice
13 of removal may be amended freely prior to the expiration of the initial thirty-day period
14 established by Section 1446(b). *Pinter v. Arthur J. Gallagher Serv. Co., LLC*, 2016 WL
15 614348, at *5 (C.D. Cal. Feb. 16, 2016) (citing *Smiley v. Citibank (S.D.) N.A.*, 863 F.
16 Supp. 1156, 1158 (C.D. Cal. 1993)). The Ninth Circuit, however, permits defendants to
17 amend defective allegations of jurisdiction in their notice beyond the initial thirty-day
18 period, as long as the initial notice of removal was timely filed and sets forth the same
19 legal grounds for removal. See *Barrow Dev. Co. v. Fulton Ins. Co.*, 418 F.2d 316, 318
20 (9th Cir. 1969) (allowing the defendant to amend notice of removal to cure inadequate
21 allegation of the citizenship of the defendant corporation). However, when a defendant
22 attempts to assert new grounds for removal, or “to create jurisdiction where none
23 existed,” a court should deny leave to amend. *Rockwell Int’l Credit Corp. v. U.S.*
24 *Aircraft Ins. Grp.*, 823 F.2d 302, 304 (9th Cir. 1987), *overruled on other grounds by*
25 *Partington v. Gedan*, 923 F.2d 686 (9th Cir. 1991). Courts are free to construe a

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28 ² Plaintiff does not challenge Airista Flow’s contention that the amount in controversy
requirement is satisfied. As such, the Court does not analyze this requirement.

1 defendant's opposition to a motion to remand as an amendment to the notice of removal.
2 *See Willingham v. Morgan*, 395 U.S. 402, 407 n.3 (1969).

3 Here, the Court finds that Airista Flow timely amended its notice of removal.
4 Importantly, Airista Flow is not asserting a new ground for removal. In its notice of
5 removal, Airista Flow asserts jurisdiction is proper because the parties are diverse.
6 Specifically, the notice of removal indicates that all three defendants (Airista Flow, a
7 corporation, Airista LLC, a limited liability company, and Madigan) were diverse from
8 Plaintiff. *See* Doc. No. 1 at 5-6. Airista Flow now seeks to supplement its notice of
9 removal with the declarations of the members of Airista LLC, and Madigan in support of
10 its claim that the parties are diverse. The Ninth Circuit expressly permits such an
11 amendment after the expiration of the initial thirty-day period in which an action may be
12 removed. *See Barrow Dev. Co.*, 418 F.2d at 317 (noting that "the removal petition
13 cannot be . . . amended to add allegations of substance but solely to clarify 'defective'
14 allegations of jurisdiction previously made."); *Geerlof v. C & S Wholesale Grocers, Inc.*,
15 2014 WL 1415974, at *5 (E.D. Cal. Apr. 14, 2014) (permitting amendment where the
16 defendants "merely seek to supplement their original Notice of Removal with facts that
17 support" diversity jurisdiction.); 28 U.S.C. § 1653 ("Defective allegations of jurisdiction
18 may be amended, upon terms, in the trial or appellate courts."). Accordingly, the Court
19 finds that the evidence Airista Flow submits is timely, and considers such evidence in
20 reaching its conclusion below.

21 b. Airista LLC's Citizenship

22 Plaintiff next contends that Airista Flow failed to establish the citizenship of each
23 member of Airista LLC, a limited liability company, in its notice of removal. *See* Doc.
24 No. 7 at 3. In opposition, Airista Flow asserts that Airista LLC has two members, both of
25 whom are citizens of Maryland. *See* Doc. No. 9 at 5. Thus, Airista Flow claims Airista
26 LLC's members are diverse from Plaintiff. *See id.*

27 Limited liability companies are citizens of all states of which their members are
28 citizens. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

1 For purposes of diversity jurisdiction, an individual is a citizen of the state in which he or
2 she is domiciled. *See Gilbert v. David*, 235 U.S. 561, 565–71 (1915); *Munoz v. Small*
3 *Bus. Admin.*, 644 F.2d 1361, 1365 (9th Cir. 1981). “A person’s domicile is her
4 permanent home, where she resides with the intention to remain or to which she intends
5 to return.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing *Lew*
6 *v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986)).

7 Here, the Court finds that Airista Flow has sufficiently alleged that Airista LLC’s
8 members are diverse from Plaintiff. In its opposition, Airista Flow submits the
9 declarations of two individuals: Mr. Masoud Sajjad, and Mr. Simon Sajjad. *See Doc.*
10 *Nos. 9-3* (hereinafter “M. Sajjad Decl.”), *9-4* (hereinafter “S. Sajjad Decl.”). Messrs. M.
11 Sajjad and S. Sajjad aver that they are the only two members of Airista LLC. M. Sajjad
12 Decl. ¶ 5; S. Sajjad Decl. ¶ 5. Mr. S. Sajjad declares that he is “currently a Maryland
13 citizen and was a Maryland resident at the time this lawsuit was filed and at the time of
14 removal.” S. Sajjad Decl. ¶ 4. Mr. M. Sajjad declares that he is currently a resident of
15 Maryland, and was a Maryland resident at the time of filing and at the time of removal.
16 M. Sajjad Decl. ¶ 4.

17 Plaintiff argues that these declarations are inadequate because “they fail to address
18 the *citizenship* of the declarants.” Doc. No. 12 at 5 (emphasis added). Plaintiff
19 emphasizes that Messrs. M. Sajjad and S. Sajjad only refer their residence and fail to
20 indicate whether they “ever resided in California or ever had an intention of remaining in
21 California or Maryland.” *Id.* Plaintiff’s argument, however, is misplaced because
22 “numerous courts have treated a person’s residence as *prima facie* evidence of
23 citizenship.” *Garcia v. Task Ventures, LLC*, 2016 WL 7093915, at *4 (S.D. Cal. Dec. 6,
24 2016); *see also Anderson v. Watts*, 138 U.S. 694, 706 (1891) (“The place where a person
25 lives is taken to be his domicile until facts adduced establish the contrary[.]”);
26 *Mondragon v. Capital One Auto Fin.*, 736 F.3d 880, 886 (9th Cir. 2013) (recognizing that
27 “numerous courts treat a person’s residence as prima facie evidence of the person’s
28 domicile”); 13E Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure

1 § 3612 (3d ed. 2013) (“It is assumed, for example, that a person’s current residence is
2 also his domicile[.]”). Thus, because Messrs. M. Sajjad and S. Sajjad aver that they
3 reside in Maryland, and because Plaintiff presents no evidence to the contrary, the Court
4 presumes that the individuals are domiciled in Maryland for purposes of diversity
5 jurisdiction.

6 Plaintiff further contends that the declarations of Messrs. M. Sajjad and S. Sajjad
7 are inadequate because they do not indicate “whether they were the only LLC members
8 *at the time of removal.*” Doc. No. 12 at 5 (emphasis in original). Yet, nothing in the
9 declarations suggests that there are, or have ever been, any other members of Airista
10 LLC. In fact, Mr. S. Sajjad claims that “[t]he only other member of AIRISTA, LLC is
11 Masoud Sajjad.” S. Sajjad Decl. ¶ 5. Similarly, Mr. M. Sajjad declares that “[t]he only
12 other member of AIRSITA, LLC is Simon S. Sajjad.” M. Sajjad Decl. ¶ 5. As such, the
13 Court is not persuaded by Plaintiff’s argument, and finds that Airista Flow has
14 sufficiently alleged that Airista LLC is a citizen of Maryland for purposes of diversity
15 jurisdiction.

16 c. Ryan Madigan’s Citizenship

17 Plaintiff also argues that Airista Flow failed to establish Madigan’s citizenship in
18 its notice of removal. *See* Doc. No. 7 at 4. As discussed in the previous section, for
19 purposes of diversity jurisdiction, an individual is a citizen of the state in which he or she
20 is domiciled. *See Gilbert*, 235 U.S. at 565–71; *Munoz*, 644 F.2d at 1365.

21 Here, Madigan declares that he resided in New York at the time this action was
22 filed, still resides in New York, and has “lived in New York for three years.” Doc. No. 9-
23 2 (hereinafter “Madigan Decl.”) ¶ 2. Further, Madigan asserts that he has “never been a
24 resident of the state of California.” *Id.* ¶ 3. Plaintiff appears to abandon this argument in
25 his reply brief, and does not respond to Madigan’s declaration. Accordingly, the Court
26 finds that Airista Flow has sufficiently alleged Madigan is a citizen of New York for
27 purposes of diversity jurisdiction.

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1 d. Unanimity of Consent

2 Furthermore, Plaintiff argues for the first time in his reply brief that Airista Flow
3 failed to establish unanimity of consent of all defendants before filing its notice of
4 removal; thus remand is appropriate. *See* Doc. No. 12 at 5. Plaintiff’s argument is
5 problematic for three reasons. First, courts generally do not consider arguments raised
6 for the first time in a reply brief. *See United States v. Bohn*, 956 F.2d 208, 209 (9th Cir.
7 1992). Plaintiff could have raised this argument in his motion to remand, but failed to do
8 so.

9 Second, Plaintiff waived such an argument. Pursuant to 28 U.S.C. § 1447(c), “[a]
10 motion to remand the case on the basis of any defect other than lack of subject matter
11 jurisdiction must be made within 30 days after the filing of the notice of removal under
12 section 1446(a).” 28 U.S.C. § 1447(c). Here, Airista Flow filed its notice of removal on
13 June 30, 2017. *See* Doc. No. 1. While Plaintiff timely filed a motion to remand, Plaintiff
14 did not raise this argument in his motion to remand. Rather, Plaintiff asserts this
15 argument for the first time in his reply brief, filed on September 1, 2017. *See* Doc. No.
16 12. The Ninth Circuit has held that a party must raise a procedural defect as a basis for
17 removal within thirty days of the notice of removal, *regardless of whether the motion to*
18 *remand is timely. N. Cal. Dist. of Laborers v. Pittsburg-Des Moines Steel Co.*, 69 F.3d
19 1034, 1038 (9th Cir. 1995) (emphasis added). “[T]he critical date is not when a motion
20 to remand is filed, but when the moving party asserts a procedural defect as a basis for
21 remand. Any other reading of [Section 1447(c)] would elevate form over substance.” *Id.*
22 As such, Plaintiff waived the right to challenge this procedural defect.

23 Third, even if the Court were to consider this argument, Plaintiff’s argument fails
24 on the merits. Section 1446(b)(2)(A) provides that “[w]hen a civil action is removed
25 solely under section 1441(a), all defendants who have been properly joined and served
26 must join in consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). This is
27 known as the rule of unanimity. “Where fewer than all the defendants have joined in a
28 removal action, the removing party has the burden under section 1446(a) to explain

1 affirmatively the absence of any co-defendants in the notice of removal.” *Prize Frize,*
2 *Inc. v. Matrix (U.S.) Inc.*, 167 F.3d 1261, 1266 (9th Cir. 1999), *superseded by statute on*
3 *other grounds.*

4 In *Prize Frize*, not all of the defendants joined in the notice of removal, and the
5 only explanation provided was that the removing defendants “have been informed and
6 believe that *many* of the defendants named in the fourth amended complaint caption have
7 not been properly served in this matter.” *Id.* (emphasis in original). The Ninth Circuit
8 found that because “the words ‘many’ and ‘all’ are not synonymous, the notice was
9 facially deficient for failing to explain why *all* non-joining defendants had not
10 consented.” *Id.* (emphasis in original).

11 Here, in contrast, Airista Flow noted in its notice of removal that based upon its
12 knowledge, “the other named defendants, who are not alleged to be California residents,
13 *have not been served* (Compl. ¶¶ 4, 5) and [Airista Flow] has no reason to believe they
14 would object to removal.” Doc. No. 1 at 2 (emphasis added). The Court finds that
15 Airista Flow’s explanation is sufficient to explain the absence of the remaining co-
16 defendants in the notice of removal. The Court notes that Plaintiff summarily asserts that
17 “all defendants have been served with the Complaint in this action,” and Airista Flow
18 “has not shown all Defendants consent to the Removal.” Doc. No. 12 at 6. Yet, Plaintiff
19 submits no evidence (i.e., executed summons, declarations, etc.) that at the time of
20 removal, all of the defendants had been properly served in this action. *See Destfino v.*
21 *Reiswig*, 630 F.3d 952, 956 (9th Cir. 2011) (observing that only defendants who have
22 been properly served must consent to removal). Nor does Plaintiff cite to any binding
23 case law in support of his position that remand is appropriate simply because Plaintiff
24 asserts in his reply brief, without submitting any evidence, that all of the defendants have
25 been served.³ As such, the Court finds that Airista Flow has met its burden in explaining
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28 ³ Even if the Court determined that Airista Flow’s notice of removal is facially deficient, which
it does not, Airista LLC and Madigan manifested their consent to removal. “Where consent is not

1 the absence of the other defendants in its notice of removal. Accordingly, remand on this
2 basis is inappropriate.

3 e. Attorney's Fees and Costs

4 Finally, Plaintiff claims that even if the Court “is inclined to accept Defendant’s
5 amendment to its Notice of Removal, Plaintiff respectfully requests an award of
6 attorney’s fees and costs arising out of the Motion to Remand as Defendant’s clear and
7 procedural and sloppy errors in the Petition for Removal forced Plaintiff to file this
8 motion.” Doc. No. 12 at 6. The Court disagrees.

9 Pursuant to 28 U.S.C. § 1447(c), “[a]n order remanding the case may require
10 payment of just costs and expenses, including attorney fees, incurred as a result of the
11 removal.” 28 U.S.C. § 1447(c). As the Supreme Court has indicated, “[a]bsent unusual
12 circumstances, courts may award attorney’s fees under § 1447(c) only where the
13 removing party lacked an objectively reasonable basis for seeking removal.” *Martin v.*
14 *Franklin Capital Corp.*, 546 U.S. 132, 141 (2005); *see also Chan Healthcare Grp., PS v.*
15 *Liberty Mut. Fire Ins. Co.*, 844 F.3d 1133, 1141 (9th Cir. 2017). Moreover, “the standard
16 for awarding fees should turn on the reasonableness of the removal.” *Martin*, 546 U.S at
17 141.

18 Plaintiff relies on *Navarro v. Servisair, LLC* in support of his request for fees and
19 costs. 2008 WL 3842984 (N.D. Cal. Aug. 14, 2008). In *Navarro*, the “notice of removal
20 treated [the] defendant as a corporation, not an LLC. This prompted [the] plaintiff to file
21 a motion to remand.” *Id.* at *7. The district court noted that in opposition to the
22 plaintiff’s motion to remand, the defendant sufficiently demonstrated that diversity of
23 citizenship exists, despite not specifying the citizenship of the members of the LLC in the

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25 explicit, courts have considered other indications of non-removing defendants’ consent to removal.”
26 *Manikan v. Pac. Ridge Neighborhood Homeowners Assoc.*, 2017 WL 2953958, at *3 (S.D. Cal. July 10,
27 2017). In *Manikan*, the district court considered the fact that the non-consenting defendant never
28 objected to removal, and filed a motion to dismiss; thus the court found the defendant “manifested its
consent to removal.” *Id.* Similarly here, Airista LLC and Madigan did not object to removal, and filed a
motion to dismiss based on lack of personal jurisdiction. *See* Doc. No. 10.

1 notice of removal. *See id.* The court awarded the plaintiff reasonable attorney’s fees and
2 costs “in order to dissuade sloppy drafting and eliminate perverse incentives[.]” *Id.*

3 Here, the Court finds Airista Flow did not lack an objectively reasonable basis for
4 seeking removal, nor does the Court find that unusual circumstances exist. In fact,
5 Plaintiff’s own allegations in his Complaint, albeit inaccurate with respect to Madigan’s
6 citizenship, support diversity jurisdiction. *See* Complaint ¶¶ 1-4. Moreover, *Navarro* is
7 distinguishable from the case at bar. In *Navarro*, unlike here, the notice of removal
8 treated the defendant as a corporation, not an LLC. *See id.* Here, in contrast, Airista
9 Flow indicated in its notice of removal that Airista LLC as a limited liability company.
10 Airista Flow even asserted that Airista LLC is “a Maryland resident,” and noted that
11 Madigan worked for Airista Flow in the state of New York and his last known address
12 was in the state of New York. Doc. No. 1 at 6. While Airista Flow could have been
13 more specific in its notice of removal about the citizenship of Airista LLC’s members,
14 and Madigan’s citizenship, the Court finds that an award of fees and costs, under these
15 circumstances, is improper. *See Martin*, 546 U.S at 141 (“The appropriate test for
16 awarding fees under § 1447(c) should recognize the desire to deter removals sought for
17 the purpose of prolonging litigation and imposing costs on the opposing party”). As
18 such, the Court **DENIES** Plaintiff’s request for attorney’s fees and costs.

19 **3. Conclusion**

20 In sum, the Court concludes that Airista Flow’s amendment to its notice of
21 removal is proper and timely. Additionally, the Court finds that Airista Flow has
22 sufficiently demonstrated that Airista LLC is a citizen of Maryland, and that Madigan is a
23 citizen of New York. Airista Flow also asserts, and Plaintiff does not contest, that Airista
24 Flow is a citizen of Delaware and Maryland, and that Plaintiff is a citizen of California.
25 *See* Doc. No. 1 at 4-5. Thus, because all defendants are diverse from Plaintiff, remand is
26 inappropriate. Lastly, Plaintiff’s unanimity of consent argument is without merit, and the
27 Court finds an award of fees and costs is not proper under these circumstances.
28 Accordingly, the Court **DENIES** Plaintiff’s motion to remand.

1 Airista LLC and Madigan object to Exhibit 1 on the ground that the wage
2 statement has not been properly authenticated. *See* Doc. No. 18-1 at 1. Federal Rule of
3 Evidence 901 provides in part, “[t]o satisfy the requirement of authenticating or
4 identifying an item of evidence, the proponent must produce evidence sufficient to
5 support a finding that the item is what the proponent claims it is.” Fed. R. Evid. 901(a).
6 Ms. Jones declares that this document is an accurate copy of one of Plaintiff’s wage
7 statements “produced to Plaintiff by Defendants.” Jones Decl. ¶ 4. Thus, Ms. Jones has
8 properly authenticated the document. Accordingly, the Court **OVERRULES** Airista
9 LLC and Madigan’s objection to Exhibit 1. *See also* Fed. R. Evid. 901(b)(1).

10 Airista LLC and Madigan object to Exhibit 2 ground that Airista LLC’s articles of
11 incorporation have not been properly authenticated. *See* Doc. No. 18-1 at 1. The Court
12 finds that Ms. Jones has properly authenticated that Exhibit 2 is a copy of the articles of
13 incorporation she found online on the Maryland Secretary of State’s website. As such,
14 the Court **OVERRULES** Airista LLC and Madigan’s objection to Exhibit 2.

15 Airista LLC and Madigan object to Exhibit 3 on the ground that the copy of Ms.
16 Jones’ research has not been properly authenticated. Jones Decl. ¶ 4; *see also* Doc. No.
17 18-1 at 2. The Court agrees. Federal Rule of Evidence 901 requires the proponent
18 “produce evidence sufficient to support a finding that the item is what the proponent
19 claims it is.” Fed. R. Evid. 901(a). Ms. Jones can properly authenticate that Exhibit 3 is
20 the product of her online research, but Ms. Jones is unable to authenticate the content of
21 Exhibit 3. Exhibit 3 consists of unverified statements on a website called “Relationship
22 Science.” *See* Doc. No. 17-7. To the extent Ms. Jones seeks to authenticate these
23 unverified statements to support the claim that “Airista Flow, Inc. and Airista, LLC
24 purchased Ekahau, Inc.,” the document is hearsay and does not fall under any recognized
25 exception. *See* Fed. R. Evid. 801, 803. Thus, the Court **SUSTAINS** Airista LLC and
26 Madigan’s objection to Exhibit 3.

27 Lastly, Airista LLC and Madigan object to Exhibit 4 on the ground that the patent
28 infringement case filed in the Eastern District of Texas is irrelevant. Federal Rule of

1 Evidence 401 provides that “[e]vidence is relevant if: (a) it has a tendency to make a fact
2 more or less probable than it would be without the evidence; and (b) the fact is of
3 consequence in determining the action.” Fed. R. Evid. 401. The Court finds the
4 objection well-taken, as a complaint filed against Airista LLC in a different state, alleging
5 different claims, is irrelevant to the case at bar. As such, the Court **SUSTAINS** Airista
6 LLC and Madigan’s objection to Exhibit. 4.

7 b. Objections to Declaration of Bryan Overholt

8 Airista LLC and Madigan further object to Plaintiff’s declaration (Doc. No. 17-1,
9 hereinafter “Overholt Decl.”) in its entirety, with the exception of one sentence in
10 paragraph 2, on the grounds that such statements constitute inadmissible hearsay, call for
11 legal conclusions, are speculative, irrelevant, and lack foundation. *See* Doc. No. 18-1 at
12 3-5. The Court does not rely on any statements in Plaintiff’s declaration that constitute
13 hearsay, call for legal conclusions, lack foundation, are irrelevant, or are otherwise
14 inadmissible. Rather, the Court relies only on objective facts supported by Plaintiff’s
15 personal knowledge. As such, to the extent the Court considers such statements, the
16 Court **OVERRULES** Airista LLC and Madigan’s objections to Plaintiff’s declaration.

17 **2. Legal Standard**

18 Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move for
19 dismissal based on lack of personal jurisdiction. On a motion to dismiss for lack of
20 personal jurisdiction, “the plaintiff bears the burden of establishing that jurisdiction
21 exists.” *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).
22 Uncontroverted allegations in a complaint must be taken as true when a prima facie
23 showing of personal jurisdiction is required. *Am. Tel. & Tel. Co. v. Compagnie Bruxelles*
24 *Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). However, the court “may not assume the
25 truth of allegations in a pleading which are contradicted by affidavit.” *Data Disc, Inc. v.*
26 *Systems Tech. Assocs. Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977). Conflicts between facts
27 contained in the parties’ affidavits must be resolved in favor of the party asserting
28 jurisdiction when deciding whether there has been a prima facie showing of personal

1 jurisdiction. *Am. Tel. & Tel.*, 94 F.3d at 588.

2 The Court applies the personal jurisdiction law of the forum state where, as here,
3 “there is no applicable federal statute governing personal jurisdiction[.]” *Dole Food Co.,*
4 *Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002). “California’s long-arm jurisdictional
5 statute is coextensive with federal due process requirements,” and so under California
6 law a court can exert personal jurisdiction over a defendant if doing so would be
7 consistent with constitutional due process. *Id.* A court may exercise personal jurisdiction
8 “over a non-resident defendant” without offending constitutional principles if that
9 defendant has “at least ‘minimum contacts’ with the relevant forum such that the exercise
10 of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’”
11 *Id.* at 1111 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

12 3. *Analysis*

13 Airista LLC and Madigan first argue that this Court lacks general personal
14 jurisdiction because the LLC and Madigan do not have systematic and continuous
15 contacts with California. Second, Airista LLC and Madigan contend that the Court
16 similarly lacks specific personal jurisdiction, arguing that neither Airista LLC nor
17 Madigan have engaged in any behavior to purposefully avail themselves of the privilege
18 of conducting business in California. In opposition, Plaintiff contends that Airista LLC
19 and Madigan “employed, supervised, and wrongfully terminated Plaintiff, who is a
20 California employee;” thus, “the Court should not dismiss Madigan and [Airista LLC] for
21 mere lack of their ‘physical presence’ in the forum state[.]” Doc. No. 17 at 1-2. The
22 Court addresses the defendants individually.

23 a. Ryan Madigan

24 Plaintiff argues that this Court may exercise specific personal jurisdiction over
25 Madigan because he served as President of Airista Flow, supervised Plaintiff’s
26 employment, allegedly wrongfully terminated Plaintiff’s employment, and allegedly
27
28

1 failed to pay all of Plaintiff’s wages owed upon termination.⁴ See Doc. No. 17 at 3.
2 Plaintiff asserts only one claim against Madigan: failure to pay earned wages upon
3 discharge in violation of California Labor Code § 201. See Complaint ¶¶ 46-51.

4 “[I]f a defendant has not had continuous and systematic contacts with the state
5 sufficient to confer ‘general jurisdiction,’” *Dole Food Co.*, 303 F.3d at 1111, specific
6 personal jurisdiction may be established by showing the following:

7
8 (1) The non-resident defendant must purposefully direct his activities or
9 consummate some transaction with the forum or resident thereof; or perform
10 some act by which he purposefully avails himself of the privilege of
11 conducting activities in the forum, thereby invoking the benefits and
12 protections of its laws; (2) the claim must be one which arises out of or
13 relates to the defendant’s forum-related activities; and (3) the exercise of
14 jurisdiction must comport with fair play and substantial justice, i.e. it must
15 be reasonable.

16 *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (citing *Schwarzenegger v. Fred*
17 *Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). Plaintiff bears the burden of
18 satisfying the first two prongs of the test for specific jurisdiction. *Dole Food Co.*, 303
19 F.3d at 1111 (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)).

20 The Ninth Circuit has emphasized that under the first prong of the specific personal
21 jurisdiction test, purposeful availment and purposeful direction are two separate and
22 distinct concepts. Specifically, “[t]he exact form of our jurisdictional inquiry depends on
23 the nature of the claim at issue.” *Picot*, 780 F.3d at 1212. For claims sounding in
24 contract, courts generally apply the “purposeful availment” analysis, which considers
25 whether a defendant has purposefully availed himself of the privilege of conducting
26 business with the forum state. *Id.* (citing *Schwarzenegger*, 374 F.3d at 802). For claims

26
27 ⁴ Plaintiff does not contend that the Court has general personal jurisdiction over Madigan.
28 Accordingly, the Court need not determine the issue as it relates to Madigan. See *Sher v. Johnson*, 911
F.2d 1357, 1361 (9th Cir. 1990) (declining to determine whether general jurisdiction existed because
plaintiff argued only specific jurisdiction existed).

1 sounding in tort, courts apply a “purposeful direction” test, and analyze whether the
2 defendant “has directed his actions at the forum state, even if those actions took place
3 elsewhere.” *Id.* (citing *Schwarzenegger*, 374 F.3d at 802-03).

4 As an initial matter, the parties do not indicate which approach applies to the case
5 at bar. In their respective briefs, the parties appear to apply the purposeful availment
6 analysis, although Plaintiff also relies on a Ninth Circuit case that applies the purposeful
7 direction approach. Plaintiff’s claim against Madigan for failure to pay earned wages
8 upon discharge is neither a contract nor tort claim. In an analogous case, *Rashidi v.*
9 *Veritiss, LLC*, the plaintiff asserted similar claims to those asserted here, including failure
10 to pay wages due in violation of California Labor Code § 201. 2016 WL 5219448, at *2
11 (C.D. Cal. Sept. 19, 2016). The district court noted that the plaintiff’s “claims are neither
12 tort nor contract claims,” and addressed the first prong of the specific jurisdiction test
13 under both the purposeful availment and purposeful direction approaches. *Id.* at *5; *see*
14 *also Senne v. Kansas City Royals Baseball Corp.*, 105 F. Supp. 3d 981, 1022 (N.D. Cal.
15 2015) (applying both approaches and noting that “[w]age and hour claims asserted under
16 the [Fair Labor Standards Act] and state law are neither tort nor contract claims.”). As
17 such, the Court proceeds to analyze the first prong of the specific jurisdiction test under
18 both approaches.

19 *i. Purposeful Availment*

20 In determining whether a defendant purposefully availed himself of the forum,
21 there must be “actions by the defendant himself that create a ‘substantial connection’
22 with the forum State.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)
23 (quoting *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957)). The defendant must
24 have “performed some type of affirmative conduct which allows or promotes the
25 transaction of business within the forum state.” *Sher*, 911 F.2d at 1362 (quoting *Sinatra*
26 *v. Nat’l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988)). “Merely ‘random,
27 fortuitous, or attenuated’ contacts are not sufficient.” *Picot*, 780 F.3d at 1212 (quoting
28 *Burger King*, 471 U.S. at 475).

1 Here, Plaintiff contends that Madigan purposefully availed himself of the privilege
2 of conducting business in California for the following reasons: (1) Madigan served as the
3 Airista Flow’s President during the relevant time period; (2) Madigan supervised
4 Plaintiff, a California employee; (3) Madigan “was responsible for [Airista Flow’s]
5 payroll practices;” (4) Madigan participated in terminating Plaintiff; and (5) Madigan
6 failed to issue Plaintiff’s final wages, making him individually liable. Doc. No. 17 at 4;
7 *see Overholt Decl.* ¶¶ 3-4, 6-7. Even assuming the truth of these allegations, Plaintiff
8 fails to explain how such conduct, without more, is sufficient to establish Madigan
9 purposefully availed himself of the privilege of conducting business in California.
10 Madigan asserts that while working for Airista Flow, he “carried out” his work “from
11 [his] home office in the state of New York and at times traveled to Maryland and Virginia
12 to do work.” Doc. No. 10-4 (hereinafter “Madigan Decl.”) ¶ 4. Though Plaintiff submits
13 one email Madigan sent to Plaintiff and several other Airista Flow employees, dated
14 April 19, 2016, this contact, alone, is insufficient to show Madigan has a “substantial
15 connection” with California. *See Overholt Decl.*, Exh. A. Moreover, Madigan “do[es]
16 not maintain personal offices in or have any personal business ventures in California,”
17 and has not been to California for more than one year. Madigan Decl. at ¶¶ 7, 11. Thus,
18 Plaintiff fails to explain how Madigan’s performance of managerial duties *outside* of
19 California demonstrates that Madigan purposefully availed himself of the privilege of
20 conducting business in California.

21 Accordingly, the Court finds that Plaintiff fails to demonstrate that Madigan “had
22 sufficient minimum contacts with California to subject him to specific personal
23 jurisdiction” here. *Picot*, 780 F.3d at 1212; *see also Walden v. Fiore*, 134 S. Ct. 1115,
24 1123 (2014) (stating “[d]ue process requires that a defendant be haled into court in a
25 forum State based upon his own affiliation with the State, not based on the ‘random,
26 fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated
27 with the State.”) (quoting *Burger King*, 471 U.S. at 475).

28 *ii. Purposeful Direction*

1 The Court next considers whether Plaintiff can demonstrate specific personal
2 jurisdiction under the purposeful direction analysis. *See Calder v. Jones*, 465 U.S. 783,
3 789 (1984) (establishing the “effects” test). “Purposeful direction ‘requires that the
4 defendant . . . have (1) committed an intentional act, (2) expressly aimed at the forum
5 state, (3) causing harm that the defendant knows is likely to be suffered in the forum
6 state.’” *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (quoting *Dole*
7 *Food Co.*, 303 F.3d at 1111).

8 Regarding the first prong of the *Calder* effects test, the Court finds that Plaintiff
9 has established that Madigan committed an intentional act. An intentional act is one that
10 denotes an external manifestation of the actor’s will, excluding any of its results, even the
11 most direct, immediate, and intended. *See Morrill*, 873 F.3d at 1142. In his Complaint,
12 Plaintiff alleges that “[u]pon information and belief, MADIGAN was primarily involved
13 in the decision not to pay Plaintiff and may be held liable as the employer under
14 California Labor Code § 558.1.” Complaint ¶ 49. In his declaration, Plaintiff avers that
15 he “believe[s] Ryan Madigan was primarily involved in the decision not to pay all wages
16 [he] was owed upon discharge because [he] understood [Madigan] was the individual
17 primarily involved with the Company pay practices.” Overholt Decl. ¶ 7. Moreover,
18 Plaintiff relies on Exhibit B in support of his argument that Madigan failed to pay all
19 wages due, which consists of several emails between Plaintiff and Mr. Patrick Jenkins,
20 Vice President of Airista Flow. *See Overholt Decl.*, Exh. B. Mr. Jenkins indicates in his
21 emails that Airista Flow will pay Plaintiff’s expenses, but notes that Plaintiff “will not be
22 paid for the bonus and vacation time[.]” *See id.* Plaintiff acknowledges that although the
23 “email is from Airista’s Vice President, Patrick Jenkins,” he “believe[s] Ryan Madigan
24 made the decision as [Madigan] is the President of the company and the superior of
25 Patrick Jenkins.” Overholt Decl. ¶ 7. Madigan does not contest these allegations. Thus,
26 the Court presumes the truth of Plaintiff’s allegations. *See Am. Tel. & Tel. Co.*, 94 F.3d
27 at 588 (noting that uncontroverted allegations in a complaint must be taken as true when
28 such allegations are not contradicted by affidavit). As such, the Court finds that Plaintiff

1 has sufficiently demonstrated Madigan committed an intentional act.

2 The Court next looks to whether Madigan’s intentional act was “expressly aimed at
3 the forum state[.]” *Morrill*, 873 F.3d at 1142. The “express aiming” requirement
4 “depends to a significant degree on the specific type or tort or other wrongful conduct at
5 issue.” *Picot*, 780 F.3d at 1206. However, courts are “limited to ‘the defendant’s suit-
6 related conduct.’” *Id.* at 1215 n.3 (quoting *Walden*, 134 S. Ct. at 1121). The Supreme
7 Court has clarified that courts must look “to the defendant’s contacts with the forum State
8 itself, not the defendant’s contacts with persons who reside there.” *Walden*, 134 S. Ct. at
9 1122. “[T]he plaintiff cannot be the only link between the defendant and the forum,” and
10 a “mere injury to a forum resident is not a sufficient connection to the forum.” *Id.* “The
11 proper question is not where the plaintiff experienced a particular injury or effect but
12 whether the defendant’s conduct connects him to the forum in a meaningful way.” *Id.* at
13 1125.

14 Plaintiff primarily relies on *Jillella v. International Solutions Group, Inc.*, 507 F.
15 App’x 706 (9th Cir. 2013), for the proposition that “employing a California employee
16 sufficiently establishes jurisdiction.” Doc. No. 17 at 2. In *Jillella*, the Ninth Circuit
17 found that the plaintiff satisfied the first and second prongs of the *Calder* effects test
18 because the defendant corporation sent its employee (the plaintiff) to work for a third
19 party in California for five months, and then allegedly refused to pay him. 507 F. App’x
20 at 708. The Ninth Circuit, applying the purposeful direction analysis, reasoned that the
21 defendant corporation “committed an intentional act expressly aimed at California, which
22 would likely cause harm in California.” *Id.*

23 *Jillella* is distinguishable from the case at bar for two reasons. First, Plaintiff
24 claims that Madigan “supervised Plaintiff (a California employee).” Doc. No. 17 at 4.
25 Plaintiff does not contend that Madigan, or Airista Flow, sent him to work in California.
26 Nor does Plaintiff allege that Madigan performed any supervisory duties in California.
27 Second, Plaintiff fails to note that in *Jillella*, the Ninth Circuit refused to determine
28 whether the district court has personal jurisdiction over Mr. Ravi Puli, the defendant

1 corporation's President. 507 F. App'x at 708-09. Mr. Puli argued that the district court
2 lacks personal jurisdiction over him "because he works and lives in Virginia and has
3 insufficient contacts with California." *Id.* at 708. The Ninth Circuit noted that the district
4 court did not apply the specific jurisdiction test to Mr. Puli individually, and remanded
5 the issue to the district court. *Id.* at 709. Thus, *Jillella* does not support Plaintiff's
6 contention that the Court has specific personal jurisdiction over Madigan by virtue of his
7 position as President of Airista Flow.

8 In considering Plaintiff's allegations, the Court finds that Plaintiff has not
9 established a prima facie case that Madigan's allegedly intentional act was "expressly
10 aimed" at California. Plaintiff declares that "[w]hile employed by Airista," he "lived and
11 performed work in the State of California."⁵ Overholt Decl. ¶ 3; *see also* Complaint ¶ 1.
12 Plaintiff also submits a copy of a wage statement issued by Airista Flow in support of his
13 assertion that he is a California employee. Jones Decl., Exh. 1. The wage statement
14 indicates that Plaintiff lives in Encinitas, California. *See id.* Plaintiff further alleges that
15 Madigan "oversaw [Airista Flow's] general payroll practices, including advising on how
16 each employees' wages would be taxed." Overholt Decl. ¶ 4. Plaintiff's allegations and
17 proffered evidence, at most, establish that Madigan knew Plaintiff worked and resided in
18 California. Mere knowledge that Plaintiff is a resident of the forum state at the time of
19 the alleged wrongful conduct, however, is insufficient to establish specific personal
20 jurisdiction. *See Walden*, 134 S. Ct. at 1126.

21 Prior to the Supreme Court's decision in *Walden*, the Ninth Circuit "repeatedly
22 stated that the 'express aiming' requirement is satisfied, and specific jurisdiction exists,
23 'when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff
24

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26 ⁵ The Court notes that Airista LLC and Madigan summarily assert in their reply brief that
27 "Plaintiff never rendered services for Airista Flow in California." Doc. No. 18 at 3. However, they
28 submit no declarations in support of this contention. As such, the Court presumes the truth of Plaintiff's
allegations. *See Am. Tel. & Tel. Co.*, 94 F.3d at 588 (noting that uncontroverted allegations in a
complaint must be taken as true when such allegations are not contradicted by affidavit).

1 whom the defendant knows to be a resident of the forum state.” *Washington Shoe Co. v.*
2 *A-Z Sporting Goods, Inc.*, 704 F.3d 668, 675 (9th Cir. 2012) (quoting *Dole Foods Co.*,
3 303 F.3d at 1111). However, in *Walden*, the Supreme Court stressed that even where an
4 intentional tort is alleged, the “defendant’s suit-related conduct must create a substantial
5 connection with the forum State,” and this “relationship must arise out of contacts that
6 the ‘defendant *himself*’ creates with the forum State.” 134 S. Ct. at 1121-22 (emphasis in
7 original) (quoting *Burger King*, 471 U.S. at 475). In 2015, the Ninth Circuit, addressing
8 *Walden*, affirmed that conduct must be expressly aimed at the forum state itself, not
9 merely a resident of the forum. *See Picot*, 780 F.3d at 1214. In *Picot*, the plaintiff
10 alleged that the defendant interfered with a California contract “from his residence in
11 Michigan, without entering California, contacting any person in California, or otherwise
12 reaching out to California.” *Id.* at 1215. Although the contract was executed in
13 California, the Ninth Circuit found no specific personal jurisdiction because “none of [the
14 defendant’s] challenged conduct had anything to do with [California] itself.” *Id.* Thus,
15 in light of *Walden* and *Picot*, the express aiming prong is not met where a defendant
16 merely targets a California resident. *See Walden*, 134 S. Ct. at 1125 (“The proper
17 question . . . is whether the defendant’s conduct connects him to the forum in a
18 *meaningful way.*”) (emphasis added).

19 As noted previously, Madigan lives in New York, and has for several years, has
20 never resided in California, did not perform services on behalf of Airista Flow in
21 California, owns no real or personal property in California, and as of August 15, 2017,
22 had not been to California for more than one year. *See Madigan Decl.* ¶¶ 2-4, 6, 11.
23 Moreover, Madigan’s alleged decision to not pay Plaintiff’s final wages presumably
24 occurred in New York, where Madigan lives and primarily works, or in Maryland or
25 Virginia, where Madigan traveled to occasionally for work. *Id.* ¶ 4. Plaintiff does not
26 allege Madigan traveled to California, met with Plaintiff in California, or otherwise
27 engaged in numerous communications with Plaintiff while Plaintiff worked for Airista
28 Flow in California. The only link between Madigan and California, as alleged, is that

1 Plaintiff resides in California and Plaintiff suffered harm in California. Such a
2 connection is insufficient to satisfy the “express aiming” requirement.

3 Therefore, because Plaintiff “*cannot be the only link between the defendant and the*
4 *forum,*” Plaintiff has not shown that Madigan directed his conduct at California in a
5 meaningful way. *Walden*, 134 S. Ct. at 1125 (emphasis added); *see also Standard v.*
6 *Cameron*, 2017 WL 5466718, at *7 (E.D. Cal. Nov. 14, 2017) (concluding that the
7 plaintiff failed to demonstrate purposeful direction where “[t]he only connection that
8 Defendants have to California is that [the plaintiff] resides in California and [the plaintiff]
9 experienced harm in California.”); *Lycurgan, Inc. v. Griffith*, 2017 WL 325079, at *5
10 (S.D. Cal. July 31, 2017) (finding the plaintiff fails to show the defendant expressly
11 aimed his activity at California where the plaintiff merely demonstrated that the
12 defendant “intentionally targeted [the] Plaintiff who happens to reside in the state.”); *cf.*
13 *Phillippe Charriol Int’l Ltd. v. A’lor Int’l Ltd.*, 2014 WL 12284076, at *6 (S.D. Cal. May
14 2014) (finding purposeful direction where the record shows that the counterdefendants
15 “traveled to California, and frequently contacted [counterclaimant’s] personnel in
16 California to conduct business via Skype videoconferencing, phone, email, and written
17 communications. . . . Thus, unlike in *Walden*, [counterdefendants] have contacts with
18 California beyond mere knowledge that [counterclaimant] has connections here.”).

19 *iii. Conclusion*

20 In sum, the Court finds that Plaintiff has failed to make a prima facie showing of
21 specific jurisdiction over Madigan. Specifically, Plaintiff has not established that
22 Madigan either purposefully availed himself of the privilege of conducting activities in
23 California, or that Madigan expressly aimed his action at California. Plaintiff’s theory of
24 jurisdiction is not compatible with the Supreme Court’s analysis in *Walden*, or the Ninth
25 Circuit’s analysis in *Picot*. Accordingly, the Court concludes that it lacks personal
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1 jurisdiction over Madigan.⁶

2 b. Airista LLC

3 Plaintiff argues “personal jurisdiction exists as to Airista LLC” because “the LLC
4 is in the same business” as Airista Flow; thus, Airista LLC has sufficient ties with
5 California as Plaintiff’s joint employer. Doc. No. 17 at 5-6. Plaintiff asserts all five
6 causes of action against Airista LLC for: (1) age discrimination; (2) failure to prevent
7 discrimination; (3) wrongful termination in violation of public policy; (4) failure to pay
8 earned wages upon discharge; and (5) restitution for unfair business practices. *See*
9 Complaint. The Court notes that Plaintiff does not specify whether the Court has specific
10 or general personal jurisdiction over Airista LLC. As such, the Court addresses both
11 bases for personal jurisdiction.

12 i. *General Personal Jurisdiction*

13 Courts have general personal jurisdiction over nonresident defendants whenever
14 the defendants’ activities within the forum state are “continuous and systematic.”
15 *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952). General jurisdiction
16 has “an exacting standard . . . because a finding of general jurisdiction permits a
17 defendant to be haled into court in the forum state to answer for any of its activities
18 anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801. Establishing general
19 personal jurisdiction requires that the defendant’s contacts with a forum be “so
20 substantial, continuous, and systematic that the defendant can be deemed to be present in
21 that forum for all purposes.” *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199,
22 1205 (9th Cir. 2006) (internal quotations omitted).

23 Here, Plaintiff alleges that Airista LLC is a limited liability company “doing
24 business in California.” Complaint ¶ 3. Moreover, Plaintiff claims that Airista Flow is a

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27 ⁶ Because Plaintiff has failed to establish the first prong of the specific jurisdiction test under
28 both the purposeful availment and purposeful direction approaches, the Court “need not address whether
the suit arises out of [Madigan’s] forum-related activities, or whether the exercise of jurisdiction would
be reasonable,” the remaining two prongs of the specific jurisdiction test. *Picot*, 780 F.3d at 1213 n.2.

1 subsidiary of Airista LLC, and is “either based in, authorized, or registered to conduct, or
2 in fact conducts substantial business in the State of California, County of San Diego.” *Id.*
3 ¶¶ 3, 11.

4 Airista LLC, however, submits the declarations of its two members, Messrs. S.
5 Sajjad and M. Sajjad, to refute Plaintiff’s allegations. *See* Doc. No. 10-2 (hereinafter “S.
6 Sajjad Decl.”); Doc. No. 10-3 (hereinafter “M. Sajjad Decl.”). Messrs. M. and S. Sajjad
7 declare under penalty of perjury that: (1) Airista, LLC was formed under the laws of
8 Maryland (M. Sajjad Decl. ¶ 3; S. Sajjad Decl. ¶ 3); (2) Messrs. M. Sajjad and S. Sajjad
9 currently reside in Maryland, and resided in Maryland at the time the lawsuit was filed
10 and at the time of removal (M. Sajjad Decl. ¶¶ 4, 8; S. Sajjad Decl. ¶¶ 4, 8); (3) Airista
11 LLC is *not registered to conduct business within the state of California*, has *never*
12 *conducted business in California*, and has *never employed employees in California* (M.
13 Sajjad Decl. ¶ 8; S. Sajjad Decl. ¶ 8) (emphasis added); (4) Airista LLC has no property
14 in California (M. Sajjad Decl. ¶ 9; S. Sajjad Decl. ¶ 9); and (7) Airista LLC has no bank
15 accounts in California (M. Sajjad Decl. ¶ 10; S. Sajjad Decl. ¶ 10). Thus, given Airista
16 LLC’s lack of systematic and continuous contacts with California, the Court concludes
17 that it lacks general personal jurisdiction over Airista LLC.

18 *ii. Specific Personal Jurisdiction*

19 As set forth above, specific personal jurisdiction may be established by showing
20 that three requirements are met: 1) the defendant purposefully directs his activities or
21 conducts some transaction with the forum, or performs some act by which he
22 purposefully avails himself of the privileges of conducting activities in the forum state,
23 thereby invoking the protections of its law; 2) the claim arises out of the defendant’s
24 forum-related activities; and 3) exercising jurisdiction is reasonable. *See Picot*, 780 F.3d
25 at 1211. Plaintiff must satisfy the first two prongs of the test. *See Dole Food Co.*, 303
26 F.3d at 1111. Courts apply the purposeful availment analysis to claims sounding in
27 contract, while courts apply the purposeful direction analysis to claims sounding in tort.
28 *See Picot*, 780 F.3d at 1212.

1 Here, the Court finds that Plaintiff has not sufficiently alleged that Airista LLC
2 actually employed him, which is fatal under both the purposeful availment and
3 purposeful direction approaches. Plaintiff asserts that “the LLC is in the same business”
4 as Airista Flow and that “the LLC has sufficient ties with the forum state as a joint
5 employer.” Doc. No. 14 at 6. However, Plaintiff does not submit any admissible
6 evidence demonstrating that Airista LLC actually employed him. In fact, Airista Flow
7 and Airista LLC “are separate legal entities” and Airista LLC “is not involved in the
8 business operations of [Airista Flow].” M. Sajjad Decl. ¶ 6; S. Sajjad Decl. ¶ 6. Airista
9 LLC is not registered to conduct business in California, has never conducted business in
10 California, and most importantly, “has never employed employees in California.” M.
11 Sajjad Decl. ¶ 6; S. Sajjad Decl. ¶ 6. The declarations of Messrs. M. Sajjad and S. Sajjad
12 directly contradict Plaintiff’s allegation that “the LLC is liable as Plaintiff’s employer
13 with the power to control, fire, issue wages, and conduct other business matters as it
14 relates to at least one California employee.” Doc. No. 17 at 6.

15 Plaintiff submits as evidence Airista Flow’s initial disclosures in this case, wherein
16 Airista Flow admits that Airista LLC’s members, Messrs. M. and S. Sajjad, “are
17 witnesses in this matter.” Doc. No. 17 at 6. The initial disclosures indicate that Mr. S.
18 Sajjad is Airista Flow’s CEO, and that Mr. M. Sajjad is Airista Flow’s CFO. *See* Doc.
19 No. 17-9 at 2. Plaintiff seems to imply that because Messrs. M. and S. Sajjad serve as
20 officers of Airista Flow, in addition to being the only two members of Airista LLC,
21 Airista LLC is somehow Plaintiff’s joint employer. Plaintiff does not, however, explain
22 this argument, or cite to any legal authority in support of this position.

23 Plaintiff further contends that “Defendants do not deny” that a “parent-subsiary
24 relationship” exists between Airista Flow and Airista LLC. Doc. No. 17 at 6. Even
25 assuming such a relationship exists, “[i]t is well-established that a parent-subsiary
26 relationship alone is insufficient to attribute the contacts of the subsidiary to the parent
27 for jurisdictional purposes.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements*
28 *Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). A subsidiary’s contacts may be imputed to the

1 parent only in two situations: (1) where the subsidiary is the parent’s alter ego, or (2)
2 where the subsidiary acts as the general agent of the parent. *See id.* Plaintiff, however,
3 fails to address the exceptions altogether. Thus, even if such a parent-subsidiary
4 relationship exists, Plaintiff has not demonstrated that the contacts of Airista Flow may
5 be attributed to Airista LLC for purposes of personal jurisdiction.

6 In sum, considering Plaintiff’s admissible evidence, along with the declarations of
7 Messrs. M. and S. Sajjad, the Court concludes that Plaintiff fails to make a prima facie
8 showing of specific jurisdiction over Airista LLC. Specifically, the Court finds that
9 Plaintiff has failed to demonstrate that Airista LLC has any connection to California.
10 Thus, under the purposeful availment analysis, Plaintiff is unable to demonstrate that
11 Airista LLC performed any “affirmative conduct which allows or promotes the
12 transaction of business” within California. *Sher*, 911 F.2d at 1362. Regarding the
13 purposeful direction analysis, Plaintiff is unable to establish that Airista LLC committed
14 an intentional act expressly aimed at California. *See Morrill*, 873 F.3d at 1142.
15 Accordingly, the Court concludes that it lacks personal jurisdiction over Airista LLC.⁷

16 c. Jurisdictional Discovery

17 In his opposition to the instant motion, Plaintiff requests the Court allow the parties
18 to conduct jurisdictional discovery “so that Plaintiff may make a more satisfactory
19 showing” of Airista LLC and Madigan’s contacts with California. Doc. No. 17 at 6.
20 Madigan and Airista LLC oppose Plaintiff’s request, noting that the declarations of
21 Madigan, M. Sajjad, and S. Sajjad “make clear that Arista, LLC and Mr. Madigan
22 conduct no business in California and lack sufficient ties to the state to establish
23 jurisdiction.” Doc. No. 18 at 7.

24 In the Ninth Circuit, jurisdictional discovery “should ordinarily be granted where
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27 ⁷ Because Plaintiff fails to satisfy the first prong of the specific personal jurisdiction test as to
28 Airista LLC, the Court need not address whether the second and third prongs of the specific jurisdiction
test are met. *See Picot*, 780 F.3d at 1213 n.2.

1 ‘pertinent facts bearing on the question of jurisdiction are controverted or where a more
2 satisfactory showing of the facts is necessary.’” *Butcher’s Union Local No. 498 v. SDC*
3 *Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (quoting *Data Disc, Inc.*, 557 F.2d at 1285 n.
4 1). The Ninth Circuit has indicated that courts should permit jurisdictional discovery
5 where “[f]urther discovery . . . might well demonstrate facts sufficient to constitute a
6 basis for jurisdiction[.]” *Harris Rutsky & Co. Ins. Servs., Inc.*, 328 F.3d at 1135.
7 However, courts may deny a request for jurisdictional discovery “if it is clear that further
8 discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction,”
9 *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977), or
10 when the request is “based on little more than a hunch that it might yield jurisdictionally
11 relevant facts,” *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008).

12 Here, the Court finds that jurisdictional discovery is not warranted. With respect to
13 Airista LLC, Plaintiff summarily asserts that “the LLC is the joint employer of Plaintiff
14 and that the LLC and the Corporation are equally liable for Plaintiff’s claims.” Doc. No.
15 17 at 7. However, Plaintiff submits no evidence in support of this proposition, nor does
16 Plaintiff allege that Airista LLC paid him, or otherwise had any contact with him during
17 his employment with Airista Flow. In fact, the wage statement that Plaintiff submits as
18 Exhibit 1 to Ms. Jones’ declaration was issued by Airista Flow, Inc. and “Airista Flow
19 LLC” does not appear anywhere on the wage statement. *See* Jones Decl., Exh. 1.

20 Moreover, Messrs. M. and S. Sajjad declare under penalty of perjury that the LLC
21 and Airista Flow are separate entities, Airista LLC does not conduct business in
22 California, has never conducted business in California, and has never employed
23 employees in California. M. Sajjad Decl. ¶¶ 6, 8; S. Sajjad Decl. ¶¶ 6, 8. Simply put, the
24 declarations offered by Messrs. M. and S. Sajjad attest to a complete lack of contact with
25 the forum state. As such, Plaintiff’s request for jurisdictional discovery cannot be said to
26 be based on more than a “hunch” that it will yield relevant facts. *Boschetto*, 539 F.3d at
27 1020; *see also Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 562 (9th Cir. 1995) (“Where
28 a plaintiff’s claim of personal jurisdiction appears to be both attenuated and based on bare

1 allegations in the face of *specific denials made by defendants*, the Court need not permit
2 even limited discovery.”) (citation omitted) (emphasis added).

3 With respect to Madigan, Plaintiff contends that “jurisdictional discovery *may*
4 show Madigan’s involvement with Plaintiff’s termination and the Company’s payroll
5 practices of employees who are discharged in California.” Doc. No. 17 at 7 (emphasis
6 added). Plaintiff’s speculation, however, is similarly insufficient to warrant jurisdictional
7 discovery. *See Butcher’s Union Local No. 498*, 788 F.2d at 540 (upholding the denial of
8 a request for jurisdictional discovery where plaintiffs stated only that they “believed”
9 discovery would enable them to demonstrate sufficient California contacts to establish
10 personal jurisdiction). Additionally, Plaintiff does not specify the discovery he seeks to
11 conduct, or how it would be helpful in the Court’s jurisdictional analysis. *See Getz v.*
12 *Boeing Co.*, 654 F.3d 852, 860 (9th Cir. 2011) (noting that the district court did not abuse
13 its discretion in denying the plaintiffs’ request for discovery in light of the plaintiffs’
14 failure to “identify any specific facts, transactions, or conduct that would give rise to
15 personal jurisdiction over [the defendant] in California.”). Accordingly, the Court
16 **DENIES** Plaintiff’s request for jurisdictional discovery.

17 **4. Conclusion**

18 In sum, the Court finds that Plaintiff has not met his burden in establishing that the
19 Court has personal jurisdiction over Airista LLC and Madigan. Plaintiff has shown
20 neither that Madigan purposefully availed himself of the privilege of conducting
21 activities in California, nor that Madigan expressly aimed his conduct at the forum state.
22 Moreover, Plaintiff has not demonstrated that Airista LLC has any contacts with the
23 forum state. As such, the Court concludes that it lacks personal jurisdiction over Airista
24 LLC and Madigan. Further, the Court finds that jurisdictional discovery is not warranted.
25 Accordingly, the Court **GRANTS** Airista LLC and Madigan’s motion to dismiss for lack
26 of personal jurisdiction.

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1 CONCLUSION

2 Based on the foregoing, the Court **DENIES** Plaintiff's motion to remand.
3 Additionally, the Court **GRANTS** Airista LLC and Madigan's motion pursuant to
4 Federal Rule of Civil Procedure 12(b)(2), and **DISMISSES** Plaintiff's claims against
5 them without prejudice. *Grigsby v. CMI Corp.*, 765 F.2d 1369, 1372 n.5 (9th Cir. 1985)
6 (dismissal for lack of personal jurisdiction must be without prejudice).

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8 **IT IS SO ORDERED.**

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10 Dated: January 10, 2018

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12 HON. MICHAEL M. ANELLO
13 United States District Judge
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