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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WASHINGTON STATE
UNIVERSITY,

Plaintiff,

v.

FACTORY MUTUAL INSURANCE
COMPANY, a Rhode Island
corporation,

Defendant.

NO. 2:21-CV-0243-TOR

ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND

BEFORE THE COURT is Plaintiff's Motion to Remand (ECF No. 7). This matter was initially submitted for consideration without argument. However, Defendant requested oral argument in its opposition. Pursuant to LCivR 7(i)(3)(B)(iii), the Court finds oral argument unnecessary and strikes the telephonic hearing on this motion scheduled for November 3, 2021. The Court has reviewed the record and files herein, the completed briefing, and is fully informed. For the

1 reasons discussed below, Plaintiff’s Motion to Remand (ECF No. 7) is

2 **GRANTED.**

3 **BACKGROUND**

4 This concerns an insurance coverage dispute over the financial impacts of
5 the COVID-19 pandemic at Plaintiff Washington State University (“WSU”). ECF
6 No. 1-2. On July 2, 2021, Plaintiff filed suit in the Superior Court of Washington
7 for Whitman County. *Id.* On August 12, 2021, Defendant removed the case to this
8 Court. ECF No. 1. Defendant removed on the basis of diversity jurisdiction,
9 alleging that Plaintiff is a citizen of Washington as a political subdivision of the
10 State. ECF No. 1 at 3, ¶ 9. Defendant alleges that it is a citizen of Rhode Island
11 with a principal place of business in Johnson, Rhode Island. ECF No. 1 at 2, ¶ 8.

12 On September 10, 2021, Plaintiff filed the instant Motion to Remand with a
13 request for attorney’s fees and costs. ECF No. 7. The parties timely filed their
14 respective response and reply. ECF Nos. 8, 11.

15 **DISCUSSION**

16 **A. Motion to Remand Standard**

17 Pursuant to 28 U.S.C. § 1441(a), a defendant may remove an action from
18 state to federal court only if the federal court has original subject matter
19 jurisdiction over the action. “In civil cases, subject matter jurisdiction is generally
20 conferred upon federal district courts either through diversity jurisdiction, 28

1 U.S.C. § 1332, or federal question jurisdiction, 28 U.S.C. § 1331.” *Peralta v.*
2 *Hispanic Bus., Inc.*, 419 F.3d 1064, 1068 (9th Cir. 2005). Diversity jurisdiction
3 exists when the matter in controversy is between “citizens of different States.” 28
4 U.S.C. § 1332(a). The removal statute is strictly construed and the party seeking
5 removal bears the burden of establishing federal jurisdiction. *Ethridge v. Harbor*
6 *House Rest.*, 861 F.2d 1389, 1393 (9th Cir. 1988).

7 Here, the present dispute centers on whether WSU is a citizen of
8 Washington for purposes of diversity jurisdiction. ECF Nos. 7-8.

9 **B. University Citizenship**

10 WSU asserts that it is not a citizen of Washington because it is the arm or
11 alter ego of the State. ECF No. 7 at 3-4. Defendant asserts that WSU is a political
12 subdivision of Washington rather than an arm or alter ego. ECF No. 8 at 3-8.

13 “There is no question that a State is not a ‘citizen’ for purposes of the
14 diversity jurisdiction.” *Moor v. Alameda Cty.*, 411 U.S. 693, 717 (1973). “Thus,
15 neither a state nor a state agency can be a party to a diversity action.” *Dep’t of*
16 *Fair Emp. & Hous. v. Lucent Techs., Inc.*, 642 F.3d 728, 737 (9th Cir. 2011)
17 (internal citation, quotation marks, and bracket omitted). However, a political
18 subdivision of a State is a citizen for diversity purposes “unless it is simply the
19 ‘arm or alter ego of the State.’” *Moor*, 411 U.S. at 717 (internal citation omitted).

20 A political subdivision is considered a citizen because it is more akin to a

1 corporation, who is a citizen of a state for purposes of diversity jurisdiction. *Id.* at
2 718.

3 The Ninth Circuit stated that a “similar rule [to Eleventh Amendment
4 Immunity] controls the determination of diversity jurisdiction”. *Ronwin v.*
5 *Shapiro*, 657 F.2d 1071, 1073 (9th Cir. 2981). In the context of determining
6 whether an agency is an arm of a state for Eleventh Amendment purposes, the
7 Ninth Circuit looks to the real party in interest, *id.*, and courts must consider the
8 following factors: (1) whether a money judgment would be satisfied out of state
9 funds, (2) whether the entity performs central governmental functions, (3) whether
10 the entity may sue or be sued, (4) whether the entity has the power to take property
11 in its own name or only the name of the state, and (5) the corporate status of the
12 entity. *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982). The first
13 factor is “a crucial question”. *Ronwin*, 657 at 1073.

14 In *Moor*, the Supreme Court considered “virtually identical factors” as the
15 Eleventh Amendment analysis in determining whether a county was a political
16 subdivision for diversity purposes: (1) “the corporate status of the county[,]” (2)
17 “whether it could sue and be sued[,]” (3) “financial liability for judgments against
18 the county[,]” (4) “the ability to hold property[,]” and (5) “the functions
19 performed”. *Befitel v. Glob. Horizons, Inc.*, 461 F. Supp. 2d 1218, 1222 (D. Haw.
20 2006) (citing *Moor*, 411 U.S. at 719-20).

1 The first factor weighs in favor of finding WSU as an arm of the State where
2 a money judgment against WSU would be satisfied out of the State’s treasury.
3 RCW 4.92.130; RCW 28B.10.842. The second factor weighs in favor of finding
4 WSU as an arm of the State where courts have found that higher education serves
5 an essential government function. *See Competitive Techs. v. Fujitsu Ltd.*, 286 F.
6 Supp. 2d 1118, 1133-34 (N.D. Cal. 2003) (collecting cases). The third factor
7 somewhat weighs against finding WSU as an arm of the State where there is no
8 dispute that WSU can sue (as it has done in this case) and be sued. ECF No. 11 at
9 6; *But see Univ. of Idaho v. Great Am. Ins. Co.*, No CV 05-220, 2005 WL
10 2367538, at *5 (D. Idaho Sept. 27, 2005) (“[T]he fact the University has the power
11 to sue and be sued has lost its import as persuasive evidence of a university’s status
12 as independent from or an alter ego of the state.”). The fourth factor somewhat
13 weighs against finding WSU as an arm of the State where there is no dispute that
14 WSU has the power to buy property. RCW 28B.30.150(5); *But see Univ. of Idaho*,
15 2005 WL 2367538, at *5 (finding that while the university may buy property, it is
16 “still dependent largely upon appropriations from Idaho’s general fund.”). Finally,
17 the fifth factor weighs in favor of finding WSU as an arm of the State where the
18 state legislature regulates the power and duties of WSU’s Board of Regents and the
19 governor appoints members to WSU’s Board of Regents. RCW 28B.30.100; RCW
20 28B.30.150; *see also Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1350 (9th

1 Cir. 1981), *abrogation on other grounds recognized by Arizona Students Ass’n v.*
2 *Arizona Bd. of Regents*, 824 F.3d 858 (9th Cir. 2016).

3 Considering the relevant factors, the Court finds that WSU is an arm of
4 Washington State because WSU lacks “a sufficiently independent corporate
5 character” to constitute a political subdivision. *Moor*, 411 U.S. at 721. This
6 finding is consistent with the Ninth Circuit’s holding that a state university is an
7 arm of the state for purposes of Eleventh Amendment immunity.¹ *Flint v.*
8 *Dennison*, 488 F.3d 816, 825 (9th Cir. 2007); *Ronwin*, 657 F.2d at 1073 (In
9 addition to being protected by the Eleventh Amendment, the Ninth Circuit found
10 the Board of Regents was also “not a ‘citizen’ within the meaning of 28 U.S.C. §
11 1332.”). The cases Defendant cites to the contrary are out of Circuit and appear to
12 be minority holdings that do not change this Court’s analysis of the relevant
13 factors. *See* ECF No. 8 at 6. The Court finds Defendant failed to meet its’ burden
14 in establishing federal diversity jurisdiction in this matter. *Ethridge*, 861 F.2d at
15 1393.

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18 ¹ This is also consistent with this Court’s prior finding that WSU is an
19 “instrumentality of the State of Washington.” *Lewis v. Washington State Univ.*,
20 No. CV-12-475-RHW, 2013 WL 1858604, at *2 (E.D. Wash. May 2, 2013).

1 In sum, WSU is not a citizen for diversity purposes. *Moor*, 411 U.S. at 717.
2 Therefore, removal was improper and this case must be remanded to the Superior
3 Court of Washington in Whitman County.

4 **C. Attorney’s Fees and Costs**

5 Under 28 U.S.C. § 1447(c), “[a]n order remanding the case may require
6 payment of just costs and any actual expenses, including attorney fees, incurred as
7 a result of the removal.” However, “absent unusual circumstances, attorney’s fees
8 should not be awarded when the removing party has an objectively reasonable
9 basis for removal.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 136 (2005).

10 Here, the dispute turned on whether WSU was an arm or alter ego of the
11 State rather than a political subdivision. The Court cannot say Defendant’s basis
12 for removal – that WSU is a political subdivision for diversity purposes – was
13 objectively unreasonable. Therefore, the Court declines to award Plaintiff
14 attorney’s fees and costs.

15 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 16 1. Plaintiff’s Motion to Remand (ECF No. 7) is **GRANTED**. Plaintiff’s
17 request for attorney’s fees and costs is **DENIED**.
- 18 2. This matter is **REMANDED** to the Superior Court of Washington for
19 Whitman County (former Whitman County Superior Court No. 21-2-
20 00095-38).

1 The District Court Executive is directed to enter this Order, furnish copies to
2 counsel, mail a certified copy to the Clerk of Whitman County Superior Court, and
3 **CLOSE** this case.

4 DATED October 26, 2021.



Thomas O. Rice
7 THOMAS O. RICE
8 United States District Judge
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