

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-1424 PA (FFMx)	Date	March 5, 2014
Title	Dino Bruce v. Kind, LLC		

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Paul Songco

N/A

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: IN CHAMBERS – COURT ORDER

Before the Court is a Class Action Complaint filed by plaintiff Dino Bruce (“Plaintiff”). Plaintiff alleges jurisdiction exists based on diversity of citizenship pursuant to the Class Action Fairness Act (“CAFA”). See 28 U.S.C. § 1332(d)(2).

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See, e.g., Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377, 114 S. Ct. 1673, 1675, 128 L. Ed. 2d 391 (1994). To establish diversity jurisdiction pursuant to CAFA, Plaintiff must demonstrate, at a minimum, that at least one plaintiff and one defendant are citizens of different states and that the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interests and costs. 28 U.S.C. § 1332(d)(2).

The party asserting jurisdiction bears the burden of proof. Kanter v. Warner-Lambert Co., 265 F.3d 853, 857–58 (9th Cir. 2001). “Absent unusual circumstances, a party seeking to invoke diversity jurisdiction should be able to allege affirmatively the actual citizenship of the relevant parties.” Id. at 857. “[A] plaintiff, suing in federal court, must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so, the court, on having the defect called to its attention or on discovering the same, must dismiss the case” Smith v. McCullough, 270 U.S. 456, 459, 46 S. Ct. 338, 339, 70 L. Ed. 682 (1926).

To establish citizenship for diversity purposes, a natural person must be a citizen of the United States and be domiciled in a particular state. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). A person is domiciled in the place he resides with the intent to remain or to which he intends to return. See Kanter, 265 F.3d at 857. “A person residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of that state.” Id. A corporation is a citizen of both its state of incorporation and the state in which it has its principal place of business. 28 U.S.C. § 1332(c)(1); see also New Alaska Dev. Corp. v. Guetschow, 869 F.2d 1298, 1300-01 (9th Cir. 1989). Finally, the citizenship of a partnership or other unincorporated entity is the citizenship of its members. See Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006) (“[L]ike a partnership, an LLC is a citizen of every state of which its owners/members are citizens.”); Marseilles Hydro Power, LLC v. Marseilles Land & Water Co., 299 F.3d 643, 652 (7th Cir. 2002) (“the relevant

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citizenship [of an LLC] for diversity purposes is that of the members, not of the company”); Handelsman v. Bedford Village Assocs., Ltd. P’ship, 213 F.3d 48, 51-52 (2d Cir. 2000) (“a limited liability company has the citizenship of its membership”); Cosgrove v. Bartolotta, 150 F.3d 729, 731 (7th Cir. 1998); TPS Utilicom Servs., Inc. v. AT & T Corp., 223 F. Supp. 2d 1089, 1101 (C.D. Cal. 2002) (“A limited liability company . . . is treated like a partnership for the purpose of establishing citizenship under diversity jurisdiction.”).

Plaintiff seeks to represent a class of “[a]ll persons in the State of California who purchased one of the Products from four years from the first-filed complaint in this action.” Even if the Court were to accept that this class definition includes California citizens, the Complaint still does not allege facts establishing jurisdiction under CAFA because Plaintiff has not properly alleged the citizenship of defendant Kind, LLC. Specifically, the Complaint alleges that “Kind, LLC is a Delaware Limited Liability Company headquartered at 8 West 38th Street, 6th Floor, New York, New York 10018.” Because the defendant is a limited liability company, and not a corporation, Plaintiff’s allegations concerning the state of incorporation and the location of the LLC’s headquarters do not properly allege Kind, LLC’s citizenship. Because the Complaint has not sufficiently alleged the citizenship of defendant, Plaintiff has failed to establish that this action satisfies CAFA’s diversity requirements. Indeed, as a result of Plaintiff’s deficient allegations concerning defendant’s citizenship, the Court cannot determine that there is diversity of citizenship between at least one plaintiff and one defendant.

Accordingly, the Court dismisses Plaintiff’s Complaint for lack of subject matter jurisdiction. A district court may, and should, grant leave to amend when it appears that subject matter jurisdiction may exist, even though the complaint inadequately alleges jurisdiction. See 28 U.S.C. § 1653; Trentacosta v. Frontier Pac. Aircraft Indus., Inc., 813 F.2d 1553, 1555 (9th Cir. 1987). Therefore, the Court grants Plaintiff leave to amend to attempt to establish federal subject matter jurisdiction. Plaintiff’s First Amended Complaint, if any, is to be filed by March 17, 2014. The failure to file a First Amended Complaint by that date or to adequately allege the Court’s jurisdiction may result in the dismissal of this action without prejudice.

IT IS SO ORDERED.