

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 22-2044 PA (Ex) Date April 1, 2022

Title Jenifer Blum et al v. Fashion Nova, LLC

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman

Not Reported

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 (“Complaint”) filed by Plaintiffs Jenifer Blum, Jamie Dumelle, Amanda Offley, Kerry Hines, and Tanisha DiVito (collectively, “Plaintiffs”) against defendant Fashion Nova, LLC (“Defendant” or “Fashion Nova”). Plaintiffs allege jurisdiction exists based on diversity jurisdiction pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). (Dkt. No. 1; Compl. ¶ 15.)

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, 395 (1994). The party asserting jurisdiction bears the burden of proof. Kanter v. Warner-Lambert Co., 265 F.3d 853, 857–58 (9th Cir. 2001); Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986). “[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, 70 L. Ed. 682 (1926).

To establish diversity jurisdiction under CAFA, a plaintiff must demonstrate, at a minimum, that at least one plaintiff and one defendant are citizens of different states, that the class contains no less than 100 members, and that the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interests and costs. 28 U.S.C. §§ 1332(d)(2), (d)(5). A natural person must be a citizen of the United States and be domiciled in a state to establish “state citizenship” for diversity purposes. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). Persons are domiciled in the places they reside with the intent to remain or to which they intend 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 every state in which it was incorporated and of the State where it has its principal place of business. 28 U.S.C. § 1332(c); see also Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990). Finally, the citizenship of a partnership or other unincorporated entity is the citizenship of its members. See Johnson v. Columbia Props.

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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 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.”).

Plaintiffs seeks to represent multiple classes: (1) a nationwide class comprised of all persons in the United States who purchased an item from Fashion Nova’s website from January 1, 2015 through and including December 25, 2018; (2) Plaintiff Jenifer Blum seeks to represent a class defined as all persons within the State of California who purchased an item from Fashion Nova’s website from January 1, 2015 through and including December 25, 2018 (“California Class”); (3) Plaintiff Jamie Dumelle seeks to represent a class defined as all persons within the State of Florida who purchased an item from Fashion Nova’s website from March 28, 2018 through and including December 25, 2018 (the “Florida Class”); (4) Plaintiff Kerry Hines seeks to represent a class defined as all persons within the State of New Jersey who purchased an item from Fashion Nova’s website from March 28, 2016 through and including December 25, 2018 (the “New Jersey Class”); and (5) Plaintiff Tanisha DiVito seeks to represent a class defined as all persons within the State of Michigan who purchased an item from Fashion Nova’s website from March 28, 2016 through and including December 25, 2018 (the “Michigan Class”). (Compl. ¶¶ 40-49.)

Plaintiffs have not properly alleged the citizenship of Defendant. As alleged in the Complaint, Defendant is a California corporation headquartered in California. However, Plaintiffs also allege that Defendant is an “unincorporated association” under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). (Compl. ¶ 16.) These inconsistent allegations fail to adequately allege Defendant’s citizenship. Moreover, Defendant’s name refers to an LLC and not a corporation. Because the Complaint has not sufficiently alleged the citizenship of defendant, Plaintiffs have failed to establish that this action satisfies CAFA’s diversity requirements. Indeed, as a result of Plaintiffs’ inconsistent allegations concerning defendant’s citizenship, the Court cannot determine that there is diversity of citizenship between at least one plaintiff and one defendant.

In addition, the Complaint makes the allegation that “there are more than 100 class members.” (See Compl. ¶ 15.) No facts are alleged elsewhere in the Complaint to support this jurisdictional requirement, and accordingly, Plaintiffs have failed to adequately allege that the proposed class contains more than 100 members.

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Nor do Plaintiffs' allegations that "the aggregate claims of all members of the proposed Class exceed \$5,000,000, exclusive of interest and costs" satisfy the amount in controversy requirement for diversity jurisdiction. While a plaintiff's uncontested "amount-in-controversy allegation is accepted if made in good faith," Dart Cherokee Basin Operating Co., LLC v. Owens, 135 S. Ct. at 553, 190 L. Ed. 2d 495 (2014), "[i]t is plaintiff's burden . . . to allege with sufficient particularity the facts creating jurisdiction." St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288 n.10, 58 S. Ct. 586, 82 L. Ed. 845 (1938). See also Petkevicius v. NBTY, Inc., Case No.: 3:14-cv-02616-CAB-(RBB), 2017 WL 1113295, at *4 (S.D. Cal. Mar. 24, 2017) ("[S]imply stating that the amount in controversy exceeds \$5,000,000, without any specific factual allegations as to the actual amount sought by the plaintiffs does not constitute a good faith allegation of the amount in controversy . . ."). The Complaint does not allege sufficient facts to establish that the amount in controversy, in the aggregate, exceeds the jurisdictional minimum.

For the forgoing reasons, the Court dismisses Plaintiffs' Complaint for lack of subject matter jurisdiction. Despite these deficiencies, 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 Plaintiffs leave to amend the Complaint to attempt to establish federal subject matter jurisdiction. Plaintiffs' First Amended Complaint, if any, is to be filed by April 25, 2022. 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.