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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BBK Tobacco & Foods, LLP,,
Plaintiff,
vs.
Green Planet, Inc.,
Defendant.

No. CV-13-01247-PHX-PGR

ORDER

The defendant removed this action on June 21, 2013 solely on the basis of diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332. Having reviewed the defendant's Notice of Removal of Action to determine if subject matter jurisdiction exists in this Court, the Court finds that the notice of removal is facially deficient because it fails to properly allege the existence of diversity of citizenship jurisdiction.

The defendant has not met its jurisdictional pleading burden regarding the citizenship of the plaintiff in that the notice of removal merely states that the plaintiff is an Arizona limited liability partnership with its principal place of business in Arizona. This allegation is insufficient as a matter of law because to properly plead diversity jurisdiction when a partnership is a named party, the notice of removal must

1 affirmatively allege the citizenship of each individual partner, whether general or
2 limited, since a partnership is not a “citizen” for purposes of § 1332.¹ Carden v.
3 Arkoma Associates, 494 U.S. 185 (1990).

4 The defendant has also not properly alleged its own citizenship since the
5 notice of removal merely states that it is a California corporation. Since a corporate
6 party is a citizen of the state by which it has been incorporated and of the state
7 where it has its principal place of business, 28 U.S.C. § 1332(c)(1), "an allegation
8 that a corporation is a citizen of a certain state (without more) is not an allegation of
9 fact, but a mere conclusion of law" that is inadequate to establish diversity
10 jurisdiction.² Fifty Associates v. Prudential Insurance Co. of America, 446 F.2d
11 1187, 1190 (9th Cir. 1970).

12 In order to cure these jurisdictional pleading deficiencies, the Court will
13 require the defendant to file an amended notice of removal that properly and
14 affirmatively identifies each partner of the plaintiff and each partner’s citizenship,
15 and properly alleges its own state of incorporation and the state in which it has its
16 principal place of business. The defendant is advised that its failure to timely comply
17 with this order will result in the remand of this action without further notice for lack

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21 Since only a corporation or an individual may be a citizen for purposes of
22 § 1332, the amended notice of removal must set forth any sublayers of partners or
23 other non-citizen entities that the plaintiff may have. If any of the plaintiff’s partners
24 are individuals, their state of citizenship, not their state of residency, must be
25 affirmatively alleged.

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27 Although the complaint alleges that the defendant “maintains a place of
28 business” in Riverside, California, that is not sufficient to cure the pleading deficiency
29 in the notice of removal because the Court cannot determine from that allegation
30 where the defendant has its principal place of business.

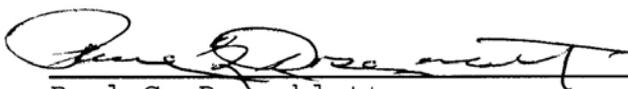
1 of subject matter jurisdiction. Therefore,

2 IT IS ORDERED that the defendant shall file an amended notice of removal
3 in compliance with this Order no later than **July 8, 2013**.

4 DATED this 25th day of June, 2013.

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Paul G. Rosenblatt
United States District Judge

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