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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARIA YESENIA JOAQUIN,	)	Case No. CV 16-4890 FMO (AJWx)
Plaintiff,	)	
v.	)	<b>ORDER REMANDING ACTION</b>
VICTORIA'S SECRET STORES, LLC,	)	
Defendant.	)	

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On May 13, 2016, Maria Yesenia Joaquin (“plaintiff”) filed a Complaint in the Los Angeles County Superior Court against Victoria’s Secret Stores, LLC (“VSS” or “defendant”) and Does 1 through 100. (See Notice of Removal (“NOR”) at ¶ 1 & Exhibit A (“Complaint”). On July 5, 2016, defendant removed that action on diversity jurisdiction grounds pursuant to 28 U.S.C. § 1332. (See NOR at ¶ 5).

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute[.]” Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S.Ct. 1673, 1675 (1994). The courts are presumed to lack jurisdiction unless the contrary appears affirmatively from the record. See DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 342 n. 3, 126 S.Ct. 1854, 1861 (2006). Federal courts have a duty to examine jurisdiction sua sponte before proceeding to the merits of a case, see Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S.Ct. 1563, 1569 (1999), “even in the absence of a challenge from any party.” Arbaugh v. Y&H Corp., 546 U.S. 500, 514, 126 S.Ct. 1235, 1244 (2006).

1           “The right of removal is entirely a creature of statute and a suit commenced in a state court  
2 must remain there until cause is shown for its transfer under some act of Congress.” Syngenta  
3 Crop Protection, Inc. v. Henson, 537 U.S. 28, 32, 123 S.Ct. 366, 369 (2002) (internal quotation  
4 marks omitted). Where Congress has acted to create a right of removal, those statutes, unless  
5 otherwise stated, are strictly construed against removal jurisdiction.<sup>1</sup> See id. Unless otherwise  
6 expressly provided by Congress, “any civil action brought in a State court of which the district  
7 courts of the United States have original jurisdiction, may be removed by the defendant or the  
8 defendants, to the district court[.]” 28 U.S.C. § 1441(a); see Dennis v. Hart, 724 F.3d 1249, 1252  
9 (9th Cir. 2013) (same). A removing defendant bears the burden of establishing that removal is  
10 proper. See Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006) (per  
11 curiam) (noting the “longstanding, near-canonical rule that the burden on removal rests with the  
12 removing defendant”); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (“The strong  
13 presumption against removal jurisdiction means that the defendant always has the burden of  
14 establishing that removal is proper.”) (internal quotation marks omitted). Moreover, if there is any  
15 doubt regarding the existence of subject matter jurisdiction, the court must resolve those doubts  
16 in favor of remanding the action to state court. See Gaus, 980 F.2d at 566 (“Federal jurisdiction  
17 must be rejected if there is any doubt as to the right of removal in the first instance.”).

18           “Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that  
19 provision, [the removing defendant] must demonstrate that original subject-matter jurisdiction lies  
20 in the federal courts.” Syngenta Crop Protection, 537 U.S. at 33, 123 S.Ct. at 370. Failure to do  
21 so requires that the case be remanded, as “[s]ubject matter jurisdiction may not be waived, and  
22 . . . the district court must remand if it lacks jurisdiction.” Kelton Arms Condo. Owners Ass’n, Inc.  
23 v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). Indeed, “[i]f at any time before final  
24 judgment it appears that the district court lacks subject matter jurisdiction, the case shall be  
25 remanded.” 28 U.S.C. § 1447(c); see Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n. 2

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27           <sup>1</sup> For example, an “antiremoval presumption” does not exist in cases removed pursuant to the  
28 Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). See Dart Cherokee Basin Operating  
Co., LLC v. Owens, 135 S.Ct. 547, 554 (2014).

1 (9th Cir. 1988) (“It is elementary that the subject matter jurisdiction of the district court is not a  
2 waivable matter and may be raised at anytime by one of the parties, by motion or in the  
3 responsive pleadings, or sua sponte by the trial or reviewing court.”); Washington v. United Parcel  
4 Serv., Inc., 2009 WL 1519894, \*1 (C.D. Cal. 2009) (a district court may remand an action where  
5 the court finds that it lacks subject matter jurisdiction either by motion or sua sponte).

6 The court’s review of the NOR and the attached state court Complaint makes clear that this  
7 court does not have subject matter jurisdiction over the instant matter. See 28 U.S.C. § 1441(a);  
8 Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429 (1987) (“Only state-court  
9 actions that originally could have been filed in federal court may be removed to federal court by  
10 the defendant.”) (footnote omitted). In other words, plaintiff could not have originally brought this  
11 action in federal court, as plaintiff does not competently allege facts supplying diversity  
12 jurisdiction.<sup>2</sup> See 28 U.S.C. § 1332(a).<sup>3</sup>

13 When federal subject matter jurisdiction is predicated on diversity of citizenship pursuant  
14 to 28 U.S.C. 1332(a), complete diversity must exist between the opposing parties. See Caterpillar  
15 Inc. v. Lewis, 519 U.S. 61, 68, 117 S.Ct. 467, 472 (1996) (stating that the diversity jurisdiction  
16 statute “applies only to cases in which the citizenship of each plaintiff is diverse from the  
17 citizenship of each defendant”). Defendant contends that complete diversity exists because  
18 plaintiff is a citizen of California, (see NOR at ¶ 7; Complaint at ¶ 1), and defendant is not a citizen  
19 of California because it “is neither incorporated in California nor does it have a principal place of  
20 business in California.” (NOR at ¶ 9). However, defendant improperly relies on the standard  
21 applicable to corporations despite the fact that defendant is a limited liability company. (See id.)  
22 (“VSS is a limited liability company[.]”).

23 Limited liability companies (“LLCs”) are treated like partnerships rather than corporations  
24 for the purpose of determining citizenship, and are deemed “a citizen of every state of which its

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26 <sup>2</sup> Defendant seeks only to invoke the court’s diversity jurisdiction. (See NOR at ¶ 5).

27 <sup>3</sup> In relevant part, 28 U.S.C. § 1332(a) provides that “district courts shall have original  
28 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of  
\$75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]”

1 owners/members are citizens.” Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899  
2 (9th Cir. 2006); see Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 569, 124 S.Ct. 1920,  
3 1923 (2004) (“[A] partnership . . . is a citizen of each State or foreign country of which any of its  
4 partners is a citizen.”). “There is no such thing as ‘a [state name] limited partnership’ for purposes  
5 of . . . diversity jurisdiction. There are only partners, each of which has one or more citizenships.”  
6 Hart v. Terminex Int’l, 336 F.3d 541, 544 (7th Cir. 2003) (internal quotation marks omitted).  
7 Moreover, “[a]n LLC’s principal place of business [or] state of organization is irrelevant” for  
8 purposes of diversity jurisdiction. See Buschman v. Anesthesia Business Consultants LLC, 42  
9 F.Supp.3d 1244, 1248 (N.D. Cal. 2014); Tele Munchen Fernseh GMBH & Co  
10 Produktionsgesellschaft v. Alliance Atlantis Int’l Distribution, LLC, 2013 WL 6055328, \*4 (C.D. Cal.  
11 2013) (“As a limited liability company, [defendant]’s principal place of business is irrelevant for  
12 purposes of diversity jurisdiction.”). If a member of an LLC is a corporation, then the state of that  
13 member’s incorporation and its principal place of business must be shown.

14 Defendant has failed to set forth the citizenship of each of its owners and/or partners.  
15 (See, generally, NOR). In short, it has failed to show that complete diversity of the parties exists.  
16 Given that any doubt regarding the existence of subject matter jurisdiction must be resolved in  
17 favor of remanding the action to state court, see Gaus, 980 F.2d at 566, the court is not  
18 persuaded, under the circumstances here, that defendant has met its burden. Therefore, there  
19 is no basis for diversity jurisdiction.

20 **This order is not intended for publication. Nor is it intended to be included in or**  
21 **submitted to any online service such as Westlaw or Lexis.**

22 Based on the foregoing, IT IS ORDERED that:

23 1. The above-captioned action shall be **remanded** to the Superior Court of the State of  
24 California for the County of Los Angeles, 111 North Hill St., Los Angeles, CA 90012, for lack of  
25 subject matter jurisdiction pursuant to 28 U.S.C. § 1447(c).

26 2. The Clerk shall send a certified copy of this Order to the state court.

27 Dated this 25th day of July, 2016.

28 \_\_\_\_\_  
/s/  
Fernando M. Olguin  
United States District Judge