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CC: LASC- COUNTY OF VENTURA

**United States District Court
Central District of California**

SALVADOR MAGANA and LAURA
MAGANA,

Plaintiffs,

v.

SANDVIK MINING AND
CONSTRUCTION USA, LLC;
UNITED SCREENING AND
CRUSHING, INC.; EXTEC, INC.; and
DOES 5 through 100, inclusive,

Defendants.

Case No: 2:19-cv-00713-ODW (SSx)

**ORDER GRANTING MOTION TO
REMAND [27]**

I. INTRODUCTION

On May 11, 2017, Plaintiffs Salvador Magana and Laura Magana (“Plaintiffs”) filed this personal injury action in the Superior Court of California for the County of Ventura. (Notice of Removal Ex. A (“Compl.”), ECF No. 1-1.) Prior to the current defendants appearing, Defendant Sandvik, Inc.,¹ (“Sandvik”) removed this matter based on federal diversity jurisdiction. (See Notice of Removal ¶¶ 9, 13, 17, ECF No. 1.) Plaintiffs move to remand. (Mot. to Remand (“Mot.”), ECF No. 27.) For the

¹ Not to be confused with Defendant Sandvik Mining and Construction USA, LLC.

1 reasons that follow, the Court **GRANTS** Magana’s Motion and **REMANDS** this
2 action to state court.²

3 **II. FACTUAL AND PROCEDURAL BACKGROUND**

4 On May 13, 2015, Plaintiff Salvador Magana worked as a laborer for Santa
5 Paula Materials, Inc. (“Santa Paula”). (Decl. of William M. Grewe (“Grewe Decl.”)
6 ¶ 2, ECF No. 27-1.) Plaintiff Laura Magana is the lawful spouse of Plaintiff Salvador
7 Magana. (Second Am. Compl. (“SAC”) ¶ 16, ECF No. 25.) Mr. Magana used an “S5
8 Screener” machine to process rocks and materials. (SAC ¶ 2.) The machine caught
9 his arm, pulled his arm into the machine, and severed his arm from his body.
10 (Mot. 2.)

11 On May 11, 2017, Plaintiffs filed a complaint against Mr. Magana’s employer,
12 Santa Paula Materials, Inc., in the Superior Court of California for the County of
13 Ventura, asserting claims for negligence, strict product liability, failure to warn,
14 breach of warranty, and loss of consortium claims. (SAC.) Upon learning that Santa
15 Paula was not liable for the injury, Plaintiffs filed a request for dismissal. (Mot. 2)

16 On November 26, 2018, the Department of Occupational Safety and Health
17 informed Plaintiffs that Extec, Inc. (“Extec”) manufactured, distributed, packaged,
18 labeled, and warranted the subject S5 Screener. (SAC ¶ 3.) Plaintiffs believe that the
19 S5 Screener was manufactured by Extec sometime in 2006 and subsequently sold or
20 distributed to Santa Paula. (Mot. 3.) In 2007, a Sandvik entity acquired and merged
21 with Extec. (Mot. 3.) In 2009, Extec filed a Certification of Surrender of Right to
22 Transact Intrastate Business with the California Secretary of State. (Grewe Decl. ¶
23 11, Ex. 9.)

24 On December 18, 2018, Plaintiffs filed their First Amended Complaint in state
25 court adding a theory of successor liability. (Grewe Decl. ¶ 13.) On December 28,
26 2018, Plaintiffs filed a DOE Amendment naming Sandvik as Defendant DOE 1.

27
28 ² After carefully considering the papers filed in connection with the Motion, the Court deemed the
matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 (Grewe Decl. ¶ 14.) On January 30, 2019, Sandvik, removed this matter to federal
2 court based on federal diversity jurisdiction because (1) Sandvik is a Delaware
3 corporation with its principal place of business in New Jersey; (2) Plaintiffs are
4 citizens of California; and (3) the amount in controversy exceeded \$75,000. (Mot. 6.)

5 In response to a Motion to Dismiss filed by Sandvik, Inc., the parties met and
6 conferred. (Grewe Decl. ¶ 18.) Plaintiffs learned Extec merged with Sandvik Mining
7 (“Sandvik Mining”) in 2009. (Mot. 8.) Additionally, Plaintiffs also learned that Santa
8 Paula obtained the S5 Screener from United Screening and Crushing, Inc. (“United
9 Screening”). (*Id.*) United Screening is a California corporation with its principal
10 place of business in California. (*Id.*) After informal discovery and discussion with
11 Sandvik’s attorney, Plaintiffs learned Sandvik was not a proper defendant and
12 dismissed Sandvik from the matter. (*Id.*)

13 On March 28, 2019, Plaintiffs filed a Second Amended Complaint naming
14 Sandvik Mining and Construction USA, LLC; United Screening and Crushing, Inc.;
15 and Extec, Inc. as Defendants. (Mot.) Plaintiffs now moves to remand on the basis
16 that the Court lacks subject matter jurisdiction. (Mot.)

17 **III. LEGAL STANDARD**

18 Federal courts are courts of limited jurisdiction, having subject-matter
19 jurisdiction only over matters authorized by the Constitution and Congress. *See e.g.*,
20 U.S. Const. Art. III, § 2, cl. 1; *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
21 375, 377 (1994). A suit filed in state court may be removed to federal court only if the
22 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
23 Federal courts have original jurisdiction where an action arises under federal law, *id.* §
24 1331, or where each plaintiff’s citizenship is diverse from each defendant’s citizenship
25 and the amount in controversy exceeds \$75,000, *id.* § 1332(a).

26 Courts strictly construe the removal statute against removal jurisdiction. *Gaus*
27 *v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). Therefore, “federal
28 jurisdiction must be rejected if there is any doubt as to the right of removal in the first

1 instance.” *Id.* This “strong presumption” against removal demands that a court
2 resolve all ambiguity in favor of remand to state court. *Id.* (quoting *Nishimoto v.*
3 *Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 n.3 (9th Cir. 1990)); see *Matheson*
4 *v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“Where doubt
5 regarding the right to removal exists, a case should be remanded to state court.”).

6 Remand may be ordered for lack of subject matter jurisdiction or for “any
7 defect in removal procedure.” 28 U.S.C § 1447(c). Lack of subject matter jurisdiction
8 may be raised “at any time before final judgement.” 28 U.S.C § 1447(c). If at any
9 time before a final judgment it appears that the district court lacks subject matter
10 jurisdiction over a case removed from state court, the case shall be remanded. 28
11 U.S.C § 1447(c).

12 IV. DISCUSSION

13 The Court finds that it no longer has subject matter jurisdiction, and the matter
14 should be remanded to the Superior Court of Ventura.

15 The Supreme Court “ha[s] consistently interpreted § 1332 as requiring complete
16 diversity: In a case with multiple plaintiffs and multiple defendants, the presence in
17 the action of a single plaintiff from the same State as a single defendant deprives the
18 district court of original diversity jurisdiction over the entire action.” *Exxon Mobil*
19 *Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553 (2005). A person’s citizenship is
20 determined by her domicile, “where she resides with the intention to remain or to
21 which she intends to return.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th
22 Cir. 2001). A corporation is a citizen of both its state of incorporation and principal
23 place of business. 28 U.S.C. § 1332(c).

24 Plaintiffs originally filed this case in the Superior Court of California for the
25 County of Ventura. (*See generally* Compl.) Defendant Sandvik removed the case
26 pursuant to 28 U.S.C. § 1332. (Mot. 3.) The amount in controversy in the First
27 Amended Complaint exceeded \$75,000. (First Am. Compl., ECF No 1-3.) Plaintiffs
28 are citizens of California, and Sandvik is a Delaware corporation with its principal

1 place of business in New Jersey. (Mot. 8.) At the time of removal, complete diversity
2 was satisfied, thus the Court had subject matter jurisdiction over the matter. On
3 March 25, 2019, Plaintiffs dismissed Sandvik from this action because Sandvik was
4 not a proper defendant. (Notice of Dismissal, ECF No. 22.)

5 After dismissing Sandvik, Plaintiffs filed a Second Amended Complaint
6 (“SAC”), and named Sandvik Mining and Construction USA, LLC; United Screening
7 and Crushing, Inc.; and Extec, Inc. as defendants. (SAC ¶¶ 1–4.) Sandvik Mining is a
8 limited liability company incorporated in Delaware and maintains its principal place
9 of business in Delaware. (Mot. 8.) In March of 2009, Sandvik Mining merged with
10 Extec. (SAC ¶ 1.) United Screening is incorporated in the state of California and
11 maintains its principal place of business in California. (SAC ¶ 2.) United Screening
12 was involved in the selling, leasing, distributing and/or delivering the S5 Screener that
13 caused Plaintiffs’ injuries. (*Id.*) Extec was incorporated in the State of Delaware and
14 maintains its principal place of business in California. (SAC ¶ 3.) Extec is the alleged
15 manufacturer of the S5 Screener that caused Plaintiffs’ injuries. (*Id.*)

16 Here, diversity jurisdiction is not satisfied, newly named Defendants United
17 Screening and Extec are corporations with their principal place of businesses in
18 California. (SAC 2.); *see* 28 U.S.C. § 1332(c) (a corporation is a citizen of both its
19 state of incorporation and principal place of business.) Consequently, diversity
20 jurisdiction is no longer met and the requirements of 28 U.S.C. § 1332(a) are no
21 longer satisfied.

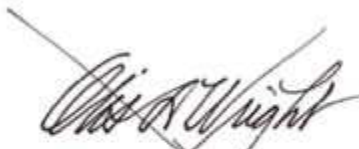
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V. CONCLUSION

For the reasons discussed above, the Court **REMANDS** the action to the **Superior Court of California for the County of Ventura, Case No. 56-2017-00496365-CU-PL-VTA** located at 800 South Victoria Avenue, Ventura, California 93009. The Clerk of the Court shall close the case.

IT IS SO ORDERED.

August 29, 2019



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE