

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Case No. **CV 20-8208 FMO (ASx)** Date **October 16, 2020**

Title **PGB Holdings LLC v. Ohio Security Insurance Company**

Present: The Honorable **Fernando M. Olguin, United States District Judge**

**Vanessa Figueroa**

**None**

**None**

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorney Present for Plaintiff:

Attorney Present for Defendant:

None Present

None Present

**Proceedings: (In Chambers) Order Remanding Action**

On August 3, 2020, plaintiff PGB Holdings LLC (“plaintiff”) filed a Complaint in the Los Angeles County Superior Court against Ohio Security Insurance Company (“defendant”). (See Dkt. 1, Notice of Removal (“NOR”) at ¶ 1). On September 8, 2020, defendant removed that action on diversity jurisdiction grounds pursuant to 28 U.S.C. § 1332. (See *id.* at ¶ 5).

**LEGAL STANDARD**

“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 *Ruhrigas 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).

“The right of removal is entirely a creature of statute and a suit commenced in a state court must remain there until cause is shown for its transfer under some act of Congress.” *Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 32, 123 S.Ct. 366, 369 (2002) (internal quotation marks omitted). Where Congress has acted to create a right of removal, those statutes, unless otherwise stated, are strictly construed against removal jurisdiction.<sup>1</sup> See *id.* Unless otherwise expressly provided by Congress, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court[.]” 28 U.S.C. § 1441(a); see *Dennis v. Hart*, 724 F.3d 1249, 1252 (9th Cir. 2013) (same). A removing defendant bears the burden of establishing that removal is

<sup>1</sup> For example, an “antiremoval presumption” does not exist in cases removed pursuant to the 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).

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proper. See Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006) (*per curiam*) (noting the “longstanding, near-canonical rule that the burden on removal rests with the removing defendant”); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (“The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.”) (internal quotation marks omitted). Moreover, if there is any doubt regarding the existence of subject matter jurisdiction, the court must resolve those doubts in favor of remanding the action to state court. See Gaus, 980 F.2d at 566 (“Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.”).

### DISCUSSION

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

When federal subject matter jurisdiction is predicated on diversity of citizenship pursuant to 28 U.S.C. 1332(a), complete diversity must exist between the opposing parties. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 68, 117 S.Ct. 467, 472 (1996) (stating that the diversity jurisdiction statute “applies only to cases in which the citizenship of each plaintiff is diverse from the citizenship of each defendant”). Defendant contends that complete diversity exists because defendant is a citizen of New Hampshire and Massachusetts, (Dkt. 1, NOR at ¶ 10.b), and plaintiff is a citizen of California. (Id. at ¶ 10.d). However, defendant improperly relies on the standard applicable to corporations despite the fact that plaintiff is a limited liability company. (See id.) (contending that plaintiff is a citizen of California because it was “incorporated under the laws of the State of California, and continues to have its principal place of business in Commerce, California”).

Limited liability companies (“LLCs”) are treated like partnerships rather than corporations for the purpose of determining citizenship, and are deemed “a citizen of every state of which its owners/members are citizens.” Johnson v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006); see Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S. 567, 569, 124 S.Ct. 1920, 1923 (2004) (“[A] partnership . . . is a citizen of each State or foreign country of which any of its

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<sup>2</sup> Defendant seeks only to invoke the court’s diversity jurisdiction. (See Dkt. 1, NOR).

<sup>3</sup> In relevant part, 28 U.S.C. § 1332(a) provides that “district courts shall have original 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[.]”

