

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

JS - 6

Case No. **CV 20-11258 FMO (AFMx)** Date **January 7, 2021**

Title **Shurla Cayer Cloud v. DePuy Synthes, Inc., et al.**

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 November 14, 2020, Shurla Cayer Cloud (“plaintiff”) filed a Complaint in the Los Angeles County Superior Court against DePuy Synthes, Inc. (“DePuy Inc.”), Johnson & Johnson (“Johnson”), Synthes USA Products, LLC (“Synthes”), DePuy Synthes Sales, Inc. (“DS Sales”), and DePuy Synthes Products, Inc. (“DS Products”) (collectively “defendants”), asserting state law general negligence and products liability claims. (See Dkt. 1, Notice of Removal (“NOR”) at ¶ 1); (Dkt. 1-2, Exh. A (“Complaint”) at ECF 12-19). On December 11, 2020, defendants removed that action on diversity jurisdiction grounds pursuant to 28 U.S.C. § 1332. (See Dkt. 1, NOR at ¶ 3). Having reviewed the pleadings, the court hereby remands this action to state court for lack of subject matter jurisdiction. See 28 U.S.C. § 1447(c).

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 n. 3 (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).

“Under the plain terms of § 1441(a), in order properly to remove [an] action pursuant to that provision, [the removing defendant] must demonstrate that original subject-matter jurisdiction lies in the federal courts.” Syngenta Crop Prot., Inc. v. Henson, 537 U.S. 28, 33, 123 S.Ct. 366, 370 (2002); 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). If there is any doubt regarding the existence of subject matter jurisdiction, the court must resolve those doubts in favor of remanding

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the action to state court.¹ 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 Complaint makes clear that this court does not have subject matter jurisdiction over the instant matter. In other words, plaintiff could not have originally brought this action in federal court, as plaintiff does not competently allege facts supplying diversity jurisdiction.² Therefore, removal was improper. 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.”).

When federal subject matter jurisdiction is predicated on diversity of citizenship, complete diversity must exist between the opposing parties, and the amount in controversy must exceed \$75,000. See 28 U.S.C. § 1332;³ 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”). Defendants bear the burden of proving by a preponderance of the evidence that the amount in controversy meets the jurisdictional threshold. See Valdez v. Allstate Ins. Co., 372 F.3d 1115, 1117 (9th Cir. 2004); Matheson v. Progressive Specialty Ins. Co., 319 F.3d 1089, 1090 (9th Cir. 2003) (*per curiam*) (“Where it is not facially evident from the complaint that more than \$75,000 is in controversy, the removing party must prove, by a preponderance of the evidence, that the amount in controversy meets the jurisdictional threshold. Where doubt regarding the right to removal exists, a case should be remanded to state court.”) (footnote omitted).

Here, there is no basis for diversity jurisdiction because defendants have failed to show that the parties are diverse and that the amount in controversy exceeds the diversity jurisdiction threshold of \$75,000. (See, generally, Dkt. 1, NOR). With respect to diversity of citizenship, defendants contend that complete diversity exists because plaintiff is a citizen of California, (see

¹ 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, 574 U.S. 81, 89, 135 S.Ct. 547, 554 (2014).

² Defendants seek only to invoke the court’s diversity jurisdiction. (See, generally, Dkt. 1, NOR).

³ In relevant part, 28 U.S.C. § 1332(a) provides that a district court has diversity jurisdiction “where the matter in controversy exceeds the sum or value of \$75,000, . . . and is between . . . citizens of different States” or “citizens of a State and citizens or subjects of a foreign state[.]” 28 U.S.C. §§ 1332(a)(1)-(2).

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id. at ¶ 8a), and defendants are not. (See id. at ¶¶ 8b-f).

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 partners is a citizen.”). “There is no such thing as ‘a [state name] limited partnership’ for purposes of . . . diversity jurisdiction. There are only partners, each of which has one or more citizenships.” Hart v. Terminex Int’l, 336 F.3d 541, 544 (7th Cir. 2003) (internal quotation marks omitted). Moreover, “[a]n LLC’s principal place of business [or] state of organization is irrelevant” for purposes of diversity jurisdiction. See Buschman v. Anesthesia Business Consultants LLC, 42 F.Supp.3d 1244, 1248 (N.D. Cal. 2014); Tele Munchen Fernseh GMBH & Co Produktionsgesellschaft v. Alliance Atlantis Int’l Distribution, LLC, 2013 WL 6055328, *4 (C.D. Cal. 2013) (“As a limited liability company, [defendant]’s principal place of business is irrelevant for purposes of diversity jurisdiction.”). If a member of an LLC is a corporation, then the state of that member’s incorporation and its principal place of business must be shown.

Defendants contend that Synthes, an LLC, “is incorporated in Delaware with its principal place of business in Indiana and is therefore considered a citizen of Indiana for purposes of diversity jurisdiction.” (Dkt. 1, NOR at ¶ 8d). However, defendants improperly rely on the standard applicable to corporations despite the fact that Synthes is a limited liability company. (See id.). In short, they have failed to show that complete diversity of the parties exists.

With respect to the amount in controversy, the amount of damages plaintiff seeks cannot be determined from the Complaint, as the Complaint does not set forth a specific amount, (see, generally, Dkt. 1-2, Exh. A, Complaint), and defendants do not point to any such claim or request for relief. (See, generally, Dkt. 1, NOR). Indeed, defendants do not even attempt to show that the amount in controversy exceeds the jurisdictional threshold, and appear instead to rely solely on plaintiff’s claims as proof, ipso facto, that the amount plaintiff seeks would meet the amount in controversy requirement. (See id. at ¶¶ 13-15). In other words, defendants did not satisfy their burden of setting forth facts supporting their assertion that the amount in controversy exceeds the jurisdictional threshold. See 28 U.S.C. 1332(a); Gaus, 980 F.2d at 567 (remanding for lack of diversity jurisdiction where defendant “offered no facts whatsoever. . . . [to] overcome[] the strong presumption against removal jurisdiction, [and did not] satisf[y] [defendant’s] burden of setting forth . . . the underlying facts supporting its assertion that the amount in controversy exceeds [\$75,000].”) (internal quotation marks omitted) (emphasis in original).

In sum, given that any doubt regarding the existence of subject matter jurisdiction must be resolved in favor of remanding the action, see Gaus, 980 F.2d at 566, the court is not persuaded, under the circumstances here, that defendants have met their burden of showing that the parties are diverse and of proving by a preponderance of the evidence that the amount in controversy meets the jurisdictional threshold. See Matheson, 319 F.3d at 1090 (“Where it is not facially

