

1 Plaintiffs' Motion on March 23, 2009. For the reasons set forth
2 below, Plaintiffs' Motion to Remand is GRANTED.¹

3
4 BACKGROUND

5 Plaintiffs are beer wholesalers. They were contracted
6 beverage distributors for Crown and Co-Defendants Butte Creek
7 Brewing Company ("Butte") and Bison Brewing Company, LLC ("Bison").
8 Crown is a Delaware limited liability corporation, having its
9 principal place of business in Chicago, Illinois. Def.'s Notice of
10 Removal, ¶ 10. Butte and Bison are both California corporations.
11 Pls.' Complaint ¶¶ 5-6. In August of 2008, Plaintiffs agreed to
12 sell all of their assets and goodwill to DBI Beverage Sacramento
13 ("DBI"), including the right to distribute beverage products sold
14 by the manufacturers with whom Plaintiffs had contracted. Pls.'
15 Memo in Support of Motion to Remand 2.
16

17 Defendants allegedly withheld consent to the transfer of
18 distribution rights to DBI. Pls.' Memo in Support of Motion to
19 Remand 2. Plaintiffs filed suit in Sacramento County Superior
20 Court against all three Defendants for damages arising out of their
21 alleged violations of California Business and Professions Code
22 section 25000.9. Pls.' Complaint ¶¶ 10-30. Crown then filed its
23 Notice of Removal, seeking to remove the action to federal court on
24 the basis of diversity jurisdiction. Plaintiffs subsequently filed
25
26

27 ¹ Because oral argument will not be of material assistance,
28 the court orders this matter submitted on the briefs. E.D. Cal.
L.R. 78-230(h).

1 their Motion to Remand. In response, Crown claims that it was
2 improperly joined. Specifically, Crown contends that Plaintiffs'
3 claims against Crown are not sufficiently related to those against
4 Butte and Bison, whom Plaintiffs' joined in order to defeat
5 diversity jurisdiction in federal court. Crown asks the Court to
6 deny Plaintiffs' Motion to Remand or, in the alternative, deny
7 Plaintiffs' Motion as to Crown and sever and remand the claims
8 against Butte and Bison. Def.'s Resp. 1-3.

10 OPINION

11 A defendant may remove an action to federal court when it is
12 within the original jurisdiction of the United States district
13 court. 28 U.S.C. § 1441(a) (1982). That section provides that "if
14 at any time before final judgment it appears that the district
15 court lacks subject matter jurisdiction, the case shall be
16 remanded." 28 U.S.C. § 1441(c). The burden of establishing
17 federal jurisdiction is upon the party seeking removal. The
18 removal statute is strictly construed against removal jurisdiction.
19 See Emrich v. Touche Ross & Co., 846 F.2d 1190 (9th Cir. 1988); see
20 also Salveson v. Western States Bankcard Ass'n., 731 F.2d 1423,
21 1426 (9th Cir. 1984). The strong presumption against removal
22 jurisdiction means that the defendant always has the burden of
23 establishing that removal is proper. Gaus v. Miles, Inc., 980 F.2d
24 564, 566 (9th Cir. 1992). In this case, Defendant has failed to
25 meet that burden.
26
27
28

1 In cases between diverse parties, complete diversity is
2 required in order for diversity jurisdiction to apply. Complete
3 diversity exists when no plaintiff is from the same state as any
4 defendant. See 28 U.S.C. § 1332. Defendants Bison and Butte are
5 both California residents, as are Plaintiffs. As a result,
6 complete diversity does not exist in this case.
7

8 As Crown notes, however, there are exceptions to the complete
9 diversity requirement. One recognized exception is the doctrine of
10 fraudulent joinder. Some jurisdictions have recognized a separate,
11 but related, exception - fraudulent misjoinder. Def.'s Resp. 2.
12 Crown claims that fraudulent misjoinder constitutes an "exception
13 to the requirement of complete diversity for purposes of subject
14 matter jurisdiction." Def.'s Resp. 2. Crown argues that the
15 claims it faces are not sufficiently related to Plaintiffs' claims
16 against Co-Defendants Butte and Bison, whom Plaintiffs joined in
17 this action in order to defeat diversity jurisdiction in federal
18 court. See Def.'s Resp. 2-5. In other words, Crown contends that
19 Plaintiffs' claims constitute fraudulent misjoinder.
20

21 The fraudulent misjoinder doctrine, where accepted, holds that
22 a plaintiff's claims against various defendants must contain a
23 sufficient factual commonality. See Tapscott v. MS Dealer Service
24 Corp., 77 F.3d 1353, 1360 (11th Cir. 1996); see also Sutton v.
25 Davol, Inc., 251 F.R.D. 500, 504 (E.D. Cal. 2008). Often referred
26 to as the *Tapscott* doctrine, fraudulent misjoinder is distinct from
27
28

1 the traditional fraudulent joinder doctrine. The latter inquires
2 into the substantive factual or legal basis for the plaintiff's
3 claim against a resident defendant. Specifically, fraudulent
4 joinder occurs where there is no possibility that the plaintiff can
5 state a cause of action against a resident defendant or where there
6 has been outright fraud in the plaintiff's pleading of
7 jurisdictional facts. See Morris v. Princess Cruises, Inc., 236
8 F.3d 1061, 1067 (9th Cir. 2001). The fraudulent misjoinder
9 doctrine, on the other hand, inquires into the procedural basis for
10 the plaintiff's joinder of the resident defendant. Specifically,
11 fraudulent misjoinder, when accepted, occurs where the joined
12 claims are not sufficiently related. See Sutton v. Davol, Inc.,
13 251 F.R.D. 500, 503 (E.D. Cal. 2008).

14
15
16 The Ninth Circuit and its encompassed districts have split on
17 the validity of the fraudulent misjoinder doctrine. See Greene v.
18 Wyeth, 344 F.Supp.2d 674, 684 (D. Nev. 2004). However, this Court
19 finds no reason to delve into the doctrine's validity or worthiness
20 because the facts in this case are insufficient to establish its
21 existence.² In Tapscott, the Eleventh Circuit articulated that a
22 misjoinder is fraudulent if it rises to the level of egregiousness.
23 Tapscott, 77 F.3d at 1360. Such is not the case here. The joined
24

25
26 ² The Court notes, however, that Judge Karlton has declined to
27 apply the fraudulent misjoinder doctrine and, in doing so,
28 expressed "substantial doubts" regarding its propriety. See Osborn
v. Metropolitan Life Ins. Co., 341 F.Supp.2d 1123, 1126, 1128-29
(E.D. Cal. 2009).

1 lawsuits are not so completely separate and distinct as to
2 constitute egregiousness. The causes of action asserted against
3 all three Defendants arise out of a single transaction, Plaintiffs'
4 sale to DBI. Plaintiffs' claims also involve common questions of
5 law and fact, particularly given that Plaintiffs are suing all
6 three defendants for violation of the same California Business and
7 Professions Code section. Regardless of the fraudulent misjoinder
8 doctrine's validity or application in the Ninth Circuit, the facts
9 here are insufficient to warrant its invocation.
10

11 On the other hand, the facts are clearly sufficient to satisfy
12 California joinder rules. In determining whether joinder was
13 proper, this Court must apply California law. See Bass v. First
14 Pacific Networks, Inc., 219 F.3d 1052, 1055 n.2 (9th Cir.2000).
15 California joinder rules have been construed liberally. See Osborn
16 v. Metropolitan Life Ins. Co., 341 F.Supp.2d 1123, 1128-29 (E.D.
17 Cal. 2004); see also Landau v. Salam, 4 Cal.3d 901, 904 (1971);
18 Russello v. Mori, 153 Cal.App.2d 828, 831 (1957). Under those
19 rules, multiple defendants are joined properly if the claim arises
20 out of the same transactions or occurrences and if it contains
21 questions of law or fact common to those defendants. Cal. Code
22 Civ. Pro § 379(a)(1).
23
24

25 As stated previously, the causes of action asserted against
26 the three Defendants arise out of a single transaction, Plaintiffs'
27 sale to DBI. Additionally, Plaintiffs' claims will involve common
28

1 questions of law and fact, as they are suing all three defendants
2 for violation of the same California Business and Professions Code
3 section. Therefore, this Court finds that joinder is proper under
4 California law.

5
6 ORDER

7 The facts in this case do not rise to the level necessary to
8 establish fraudulent misjoinder, regardless of that doctrine's
9 validity in the Ninth Circuit. Plaintiffs' actions against all
10 three Defendants arise out of the same transaction and allege
11 violations of the same California law. This is sufficient to
12 satisfy California's joinder requirements. Because there is
13 neither complete diversity nor fraudulent misjoinder, the Court
14 lacks jurisdiction over this case. Accordingly, the Court remands
15 this matter to the Sacramento Superior Court.
16

17 Plaintiffs' Motion to Remand is GRANTED.

18
19 IT IS SO ORDERED.

20
21 Dated: April 20, 2009

22 
23 JOHN A. MENDEZ,
24 UNITED STATES DISTRICT JUDGE
25
26
27
28