

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

10 KIRANJEET BADYAL and DILAWAR No. 2:11-cv-00349-MCE-GGH  
BADYAL,

Plaintiffs,

MEMORANDUM and ORDER

14 BOSCH PACKAGING TECHNOLOGY,  
INC.; SBM SCHOELLER-BLECKMAN  
15 MEDIZINTECHNIK; KUHLMAN  
TECHNOLOGIES, INC.; and DOES 1  
through 50, inclusive,

### Defendants.

-----oo0oo-----

19 Through this personal injury action, Kiranjeet and Dilawar  
20 Badyal ("Plaintiffs") seek redress in connection with the  
21 explosion of an autoclave sterilizer allegedly designed,  
22 manufactured, and sold by Robert Bosch Packaging Technology, Inc.  
23 ("RBPT"); SBM Schoeller-Bleckman Medizintechnik ("SBM"); and  
24 Kuhlman Technologies, Inc. ("Kuhlman"). Plaintiffs filed this  
25 action in Yolo County Superior Court. On February 7, 2011, RBPT  
26 removed to this Court on the basis of diversity jurisdiction.  
27 However, Defendant RBPT has not alleged sufficient facts to  
28 establish complete diversity.

1       It is fundamental that federal courts are courts of limited  
2 jurisdiction. Vacek v. United States Postal Serv., 447 F.3d  
3 1141, 1145 (9th Cir. 2006). Regardless of whether the issue is  
4 raised by the parties, a district court has a duty to consider  
5 the basis of subject matter jurisdiction *sua sponte*. United  
6 Investors Life Ins. v. Waddell & Reed Inc., 360 F.3d 960, 966-67  
7 (9th Cir. 2004). See also Fed. R. Civ. P. 12(h)(3). There is a  
8 "strong presumption" against removal jurisdiction, and the  
9 defendant bears the burden of establishing that removal is  
10 proper. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992).  
11 As a result, defendants must affirmatively allege the basis of  
12 diversity jurisdiction in the notice of removal. Kanter v.  
13 Warner-Lambert Co., 265 F.3d 853, 857-58 (9th Cir. 2001).

14       Diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)  
15 requires complete diversity of citizenship between the parties  
16 opposed in interest. Kuntz v. Lamar Corp., 385 F.3d 1177, 1181  
17 (9th Cir. 2004). Individuals are citizens of their state of  
18 domicile. Munoz v. Small Business Administration, 644 F.2d 1361,  
19 1365 (9th Cir. 1981). A corporation is a citizen of its state(s)  
20 of incorporation and its principal place of business. 28 U.S.C.  
21 § 1332(c)(1). A party must affirmatively allege both a  
22 corporation's state of incorporation and principle place of  
23 business to establish diversity. Fifty Associates v. Prudential  
24 Ins. Co. of America, 446 F.2d 1187, 1190 (9th Cir. 1970).

25       ///  
26       ///  
27       ///  
28       ///

1 A defendant who is not properly joined and served in state court  
2 is not required to consent to removal under 28 U.S.C. § 1441, but  
3 is still relevant to determining diversity of citizenship.

4 Preaseau v. Prudential Ins. Co. of America, 591 F.2d 74, 78 (9th  
5 Cir. 1979).

6 In its Notice of Removal, RBPT properly alleges that it is a  
7 citizen of Minnesota, Kiranjeet Badyal is a citizen of  
8 California, and Kuhlman is a citizen of Washington. (Notice of  
9 Removal 1-2.) However, after noting that Plaintiffs' First  
10 Amended Complaint did not provide Dilawar Badyal's citizenship or  
11 residence, RBPT states only that "[p]resumably Dilawar is the  
12 husband of Kiranjeet and a citizen of California as well."<sup>1</sup> (Id.  
13 at 2 n.1.) Further, RBPT alleges only that SBM is a "company  
14 based in Austria." (Id. at 3.) Because RBPT has not  
15 affirmatively alleged the citizenship of Plaintiff Dilawar Badyal  
16 and Defendant SBM, it has not met its burden to establish subject  
17 matter jurisdiction. See Kanter, 265 F.3d at 857-58 (upholding  
18 remand where the notice of removal stated only that plaintiffs  
19 were "residents" of California). As a result, the case must be  
20 remanded to state court. See 28 U.S.C. § 1447(c).

21 ///

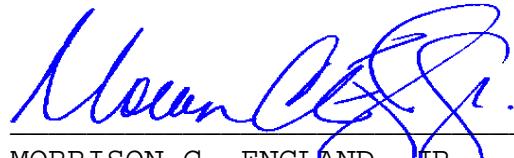
---

22 <sup>1</sup> RBPT contends that regardless of Dilawar's citizenship,  
23 complete diversity exists because none of the parties properly  
24 joined and served as defendants are citizens of the state where  
25 the action was brought. (Notice of Removal 2 n.1.) This  
26 contention reflects an improper conflation of removal pursuant to  
27 28 U.S.C. § 1441(a) and original jurisdiction pursuant to  
28 28 U.S.C. § 1332(a). To remove a diversity action pursuant to  
§ 1441, no defendant who has been properly joined and served can  
be a citizen of the forum state. Although this is a necessary  
condition for removal, it is not sufficient to establish  
jurisdiction. The district court must also have original  
jurisdiction over the action. See 28 U.S.C. § 1441(a).

1       Based on the foregoing, the case is hereby REMANDED to the  
2 Superior Court of the State of California, County of Yolo,  
3 pursuant to 28 U.S.C. § 1447(c). The Clerk is ordered to close  
4 the case.

5       IT IS SO ORDERED.

6       Dated: February 25, 2011



7  
8       MORRISON C. ENGLAND, JR.  
9       UNITED STATES DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28