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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BERKELEY RESEARCH GROUP, LLC, a
California limited liability company,

Plaintiff,

v.

UNITED POTATO GROWERS OF
AMERICA, INC., an Idaho corporation;
UNITED POTATO GROWERS OF IDAHO,
INC., an Idaho corporation; IDAGRO, INC.,
an Idaho corporation; ALBERT WADA, an
Idaho resident; WADA FARMS, INC., an
Idaho corporation; WADA FARMS
POTATOES, INC., an Idaho corporation;
WADA FARMS MARKETING GROUP,
LLC, an Idaho limited liability company;
WADA-VAN ORDEN POTATOES, INC., an
Idaho corporation; CEDAR FARMS, INC., an
Idaho corporation; WADA FAMILY, LLC, an
Idaho limited liability company; PROFRESH,
LLC, an Idaho limited liability company;
JEFF RAYBOULD, an Idaho resident;
RAYBOULD BROTHERS FARMS, LLC, an
Idaho limited liability company; MICHAEL
CRANNEY, an Idaho resident;
CORNELISON FARMS, INC., a former
Idaho corporation; KEITH CORNELISON, an
Idaho resident; SNAKE RIVER PLAINS
POTATOES, INC., an Idaho corporation;
LANCE FUNK, an Idaho resident;
PLEASANT VALLEY POTATO, INC., an
Idaho corporation; KCW FARMS, INC., an
Idaho corporation; KIM WAHLEN, an Idaho
resident; and DOES 1-100,

Defendants.

No. C 16-07205 WHA

**ORDER HOLDING MOTION
TO REMAND IN ABEYANCE
PENDING JURISDICTIONAL
DISCOVERY**

1 Defendants were also allowed (and took) an opportunity to file a surreply to this motion
2 after BRG filed new evidence in their reply (*ibid.*).

3 BRG now asserts diversity is incomplete between them and defendants because United
4 Potato Growers of America, Inc., one of the removing defendants, is a citizen of Utah, and at
5 least four BRG limited liability company members have “a permanent, primary residence in
6 Utah” (Pl.’s Reply Br. at 2). UPGA’s Utah citizenship is not contested.

7 This order follows full briefing and oral argument.

8 ANALYSIS

9 The issue presented is whether at least one of BRG’s members is a *citizen* of Utah, and
10 whether defendants should be permitted to engage in limited jurisdictional discovery.

11 In determining diversity jurisdiction, a limited liability partnership is a citizen of every
12 state in which its members are citizens. Our court of appeals has extended this rule to limited
13 liability companies. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir.
14 2006). Citizenship, for diversity jurisdiction, is synonymous with an individual’s domicile. An
15 individual’s domicile is where she is both physically present and evinces an intention to remain
16 there indefinitely. *Lew v. Moss*, 797 F.2d 747, 749–50 (9th Cir. 1986). In *Lew*, our court of
17 appeals indicated a number of objective factors that evince an individual’s domicile (none is
18 dispositive alone): Current residence, voting registration and voting practices, location of
19 personal and real property, location of brokerage and bank accounts, location of spouse and
20 family, membership in unions and other organizations, place of employment or business,
21 driver’s license and automobile registration, and payment of taxes. *Id.* at 750.

22 1. THE SHOWING BY BRG IS NOT CONCLUSIVE.

23 BRG provides declarations from four of its members, stating: (1) each were members of
24 BRG since June 2011 and were members when this action was filed in California in November
25 2016; (2) each maintains a permanent residence in Utah; (3) Utah has been the primary
26 residence of each since becoming members of BRG; (4) each is registered to vote in Utah; and
27 (5) the primary BRG office of three of the four members was in Salt Lake City, Utah
28 (Dkt. No. 17-3–17-6). The fourth member did not indicate his primary BRG office, but he

1 executed his declaration in Los Angeles and BRG’s website shows Los Angeles as his primary
2 BRG office (Defs.’ Surreply at 6).

3 BRG argues that its members’ declarations sufficiently “establish the [limited liability
4 company] membership status and permanent residence of these individuals in Utah, citing
5 factors including primary residence, workplace, and voter registration in the state” (Pl.’s Reply
6 at 5).

7 Defendants understandably object, pointing out domicile is not the same as residence.
8 BRG repeatedly asserts its members’ residence in Utah but, inexplicably, never asserts their
9 intent to remain or, explicitly, that their members are domiciled in, or citizens of, Utah. The
10 objective facts that the members maintain permanent residences, are registered to vote, and have
11 their primary office in Utah would support a statement of intent to remain, but they make none.

12 Only two explanations come to mind for not including a statement of intent to remain
13 with BRG’s declarations: (1) the neglect of counsel, or (2) the members do not intend to stay in
14 Utah. While statements of intent in the domicile context are entitled to little weight when in
15 conflict with the facts, *Lew*, 797 F.2d at 750, the total absence of an assertion of intent to remain
16 indefinitely inserts suspicion into BRG’s evidence. Without such an assertion, a permanent
17 residence could just as well be a vacation home.

18 **2. LIMITED JURISDICTIONAL DISCOVERY IS APPROPRIATE.**

19 “Discovery may be appropriately granted where pertinent facts bearing on the question
20 of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.”
21 *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008).

22 BRG, unlike defendants, is capable of providing substantial evidence that its Utah
23 members are in fact domiciled in Utah. BRG’s unnecessarily cryptic declarations leave us
24 needing “a more satisfactory showing of the facts” to determine the intent of the BRG members
25 to remain in Utah. As such, BRG’s remand motion will be **HELD IN ABEYANCE** while
26 defendants engage in limited jurisdictional discovery to resolve the issue. BRG shall *not* try to
27 head off the discovery by rushing in with supplemental declarations.

28

1 As a final point, BRG argues that defendants' request for jurisdictional discovery is
2 merely a ploy designed to delay BRG's motion and hear defendants' motion to dismiss for lack
3 of personal jurisdiction first. This Court suspects the same. BRG offered to provide the Utah
4 members' state driver's licenses but defendants denied this opportunity to resolve the question
5 sooner (Dkt. No. 17-1 at 2). In fact, defendants could have noticed their motion in state court
6 two months ago. Instead, they took advantage of this forum. This Court will ensure removal
7 was legitimate before hearing defendants' motion.

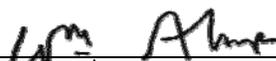
8 **CONCLUSION**

9 For the foregoing reasons, BRG's motion to remand is **HELD IN ABEYANCE** pending
10 limited jurisdictional discovery. Defendants may engage in the following jurisdictional
11 discovery against each asserted Utah BRG member (Paul Shields, Patrick Kilbourne, David
12 Judd, and Vernon Calder): (1) ten reasonably narrow interrogatories, (2) ten reasonably narrow
13 document requests, and (3) one half-day deposition. The jurisdictional discovery is limited to
14 the issue of the citizenship of those individuals. With the benefit of this discovery, defendants
15 must then show cause why this action should not be remanded to state court for lack of subject-
16 matter jurisdiction by **MARCH 30, 2017**. BRG may then file a response by **APRIL 6, 2017**. The
17 issue will then be decided on the papers unless a hearing is deemed advisable.

18 Defendants' pending motion to dismiss for lack of personal jurisdiction will be **HELD IN**
19 **ABEYANCE** until the jurisdictional discovery is complete and the specific subject-matter
20 jurisdiction issue presented by the instant motion to remand is resolved. The hearing scheduled
21 for March 23, 2017, is **VACATED**, and it will be re-set if the case is kept here.

22
23 **IT IS SO ORDERED.**

24
25 Dated: March 13, 2017.

26 
27 _____
28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE