

United States District Court
Northern District of California

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

DAVID BERLANGA, ET AL.,
Plaintiffs,
v.
EQUILON ENTERPRISES LLC, et al.,
Defendants.

Case No. [17-cv-00282-MMC](#)

**ORDER DISMISSING COMPLAINT
FOR LACK OF SUBJECT MATTER
JURISDICTION; AFFORDING
PLAINTIFFS LEAVE TO AMEND;
CONTINUING CASE MANAGEMENT
CONFERENCE**

Before the Court is the "Class Action Complaint for Damages, Restitution, and Injunctive Relief," filed January 19, 2017,¹ by plaintiffs David Berlanga, Brandon Ehresman, Charles Gaeth, Michael Gonzalez, John Langlitz and Christopher Palacio on their own behalf and on behalf of a putative class. Having read and considered the complaint, the Court, for the reasons stated below, will dismiss the action for lack of subject matter jurisdiction and will afford plaintiffs the opportunity to amend to allege, if they can do so, sufficient facts to support jurisdiction.

The complaint consists of four causes of action, each arising under state law and each based on plaintiffs' allegations that defendants, who are alleged to be plaintiffs' employers, have not provided plaintiffs with "off-duty breaks." (See Compl. ¶¶ 33-38, 43-44, 47, 52, 61.) In their jurisdictional statement, plaintiffs allege that "[t]his Court has jurisdiction under 28 U.S.C. § 1332 because [p]laintiffs are California residents,

¹The above-titled action was reassigned to the undersigned on April 10, 2017.

1 [d]efendants are incorporated in Delaware and headquartered in Houston, Texas, and the
2 amount in controversy exceeds \$75,000." (See Compl. ¶ 14.)

3 A district court has diversity jurisdiction where "the matter in controversy exceeds
4 the sum or value of \$75,000, exclusive of interest and costs" and the matter is "between
5 . . . citizens of different States." See 28 U.S.C. § 1332(a). The allegations in the instant
6 complaint, however, are insufficient as a matter of law to support a finding that the matter
7 is between citizens of different states.

8 First, the complaint includes no factual allegations to support a finding that any of
9 the six plaintiffs, each of whom is an individual, is a citizen of any state. As the Ninth
10 Circuit has explained:

11 To be a citizen of a state, a natural person must first be a citizen of the
12 United States. The natural person's state citizenship is then determined by
13 [that person's] state of domicile, not [his/her] state of residence. A person's
14 domicile is [his/her] permanent home, where [he/she] resides with the
intention to remain or to which [he/she] intends to return. A person residing
in a given state is not necessarily domiciled there, and thus is not
necessarily a citizen of that state.

15 See Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001). Although the
16 complaint alleges each plaintiff is a "resident" of California (see Compl. ¶¶ 1-6),² such
17 allegation fails to support the "assertion of diversity citizenship." See Kanter v. Warner-
18 Lambert Co., 265 F.3d 853, 857-58 (9th Cir. 2001) (holding notice of removal failed to
19 adequately allege parties were diverse, where notice alleged plaintiffs were "residents" of
20 California, and, consequently, failed to "[make] any allegation regarding [p]laintiffs' state
21 citizenship").

22 Second, the complaint includes no factual allegations from which the Court could
23 determine the state(s) of which any of the three defendants, each of which is an artificial
24 entity, is a citizen. The complaint alleges that defendant Equilon Enterprises is an "LLC,"
25 i.e., a limited liability company (see Compl. ¶ 9), and that defendants CRI U.S. and Shell

26 _____
27 ²The complaint includes, *inter alia*, an "Introduction" and a section titled "The
28 Parties," both of which contain paragraphs numbered 1-4. (See Compl. at 1:2-24, 2:26 -
3:5.) The above citation is to the latter.

1 Pipeline Company are each "LPs," i.e., limited partnerships (see Compl. ¶¶ 10-11). An
2 LLC is a citizen of every state of which its "owners/members" are citizens, see Johnson v.
3 Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9th Cir. 2006), and an LP is a
4 citizen of every state of which "all of the members," i.e., its "general partners" and "limited
5 partners," are citizens, see Carden v. Arkoma Associates, 494 U.S. 185, 192, 195 (1990)
6 (internal quotation and citation omitted). Consequently, a district court cannot determine
7 the citizenship of an LLC or an LP in the absence of a showing as to the identity and
8 citizenship of each of its members. Further, "because a member of [an artificial entity]
9 may itself have multiple members – and thus may itself have multiple citizenships – the
10 federal court needs to know the citizenship of each 'sub-member' as well." See V & M
11 Star, LP v. Centimark Corp., 596 F.3d 354, 356 (6th Cir. 2010) (internal quotation and
12 citation omitted). Here, the complaint does not identify the members of the three
13 defendants, let alone each member's state(s) of citizenship, and, as to any member that
14 is not an individual or corporation, each sub-member's state(s) of citizenship.

15 In sum, the complaint includes no facts to support a finding as to the citizenship of
16 any plaintiff or any defendant, let alone facts to support a finding of "complete diversity of
17 citizenship." See Carden, 494 U.S. at 187 (internal quotation and citation omitted).

18 Accordingly, the complaint is subject to dismissal for lack of subject matter
19 jurisdiction, see Fed. R. Civ. P 12(h)(3) (providing "[i]f the court determines at any time
20 that it lacks subject-matter jurisdiction, it must dismiss the action"), and plaintiffs may file
21 an amended complaint if they can allege facts that would support a finding that the
22 parties are diverse, see 28 U.S.C. § 1653 (providing "[d]efective allegations of jurisdiction
23 may be amended").

24 CONCLUSION

25 For the reasons stated above, the complaint is hereby DISMISSED for lack of
26 subject matter jurisdiction. If plaintiffs wish to file an amended complaint for purposes of
27 curing the above-referenced jurisdictional deficiencies, plaintiffs shall file such pleading
28 no later than May 19, 2017.

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In light of the above, the Case Management Conference is hereby CONTINUED from May 5, 2017, to June 30, 2017, at 10:30 a.m. A Joint Case Management Statement shall be filed no later than June 23, 2017.

IT IS SO ORDERED.

Dated: April 26, 2017


MAXINE M. CHESNEY
United States District Judge