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4 IN THE UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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7 MIRA BLANCHARD, ET AL.,

8 Plaintiffs,

9 v.

10 FLUENT, INC., et al.,

11 Defendants.

Case No. [17-cv-01551-MMC](#)

**ORDER DIRECTING DEFENDANT
FLUENT, LLC TO SHOW CAUSE WHY
ACTION SHOULD NOT BE
REMANDED; CONTINUING HEARING
ON SAUPHTWARE, INC.'S MOTION
TO DISMISS**

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13 Before the Court is defendant Fluent, LLC's ("Fluent") Notice of Removal, filed
14 March 22, 2017, by which said defendant has removed the above-titled action on the
15 asserted basis of diversity jurisdiction. Having read and considered the Notice, the Court,
16 for the reasons set forth below, will direct Fluent to show cause why said action should
17 not be remanded for lack of subject matter jurisdiction.

18 A district court has diversity jurisdiction where "the matter in controversy exceeds
19 the sum or value of \$75,000, exclusive of interest and costs" and the parties are diverse
20 in citizenship. See 28 U.S.C. § 1332(a). Diversity of citizenship exists where, inter alia,
21 the matter is between "citizens of different States," see 28 U.S.C. § 1332(a)(1), or
22 "citizens of different States and in which citizens or subjects of a foreign state are
23 additional parties," see 28 U.S.C. § 1332(a)(3).

24 Here, in the operative complaint, the First Amended Complaint ("FAC"), plaintiffs
25 allege against thirteen named defendants a single cause of action under § 17529.5 of the
26 California Business & Professions Code, as to which claim plaintiffs seek damages of "at
27 least \$1,265,000." (See FAC, Prayer for Relief, ¶ B.) Plaintiffs also allege that each
28 plaintiff is a citizen of California. (See Compl. ¶¶ 8-17.) Consequently, as the amount in

1 controversy exceeds \$75,000, removal is proper if none of the thirteen defendants is a
2 citizen of California.

3 In support of its assertion that the parties are diverse, Fluent states that defendant
4 Andres Mary, whom plaintiffs allege is a citizen of California, is in fact a citizen of
5 Argentina, and that "[a]ll of the defendants, other than Andres Mary, are alleged to be
6 non-California citizens." (See Notice of Removal ¶ 6.)¹ As to eleven of the twelve other
7 defendants, however, the FAC does not allege sufficient facts to show those parties are
8 citizens of states other than California.²

9 First, as to Fluent itself, the FAC alleges said defendant is "a Delaware corporation
10 with its principal place of business in New York." (See Compl. ¶ 19.) As a corporation is
11 a citizen of the state in which it is incorporated and the state in which it maintains its
12 principal place of business, see 28 U.S.C. § 1332(c)(1), said allegation, if true, would
13 suffice to establish Fluent is diverse in citizenship from plaintiffs. In its Notice of
14 Removal, however, Fluent states it is an "LLC," i.e., a limited liability company. (See
15 Notice of Removal ¶ 3.) An LLC "is a citizen of every state of which its owners/members
16 are citizens." See Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899
17 (9th Cir. 2006). Consequently, a district court cannot determine the citizenship of an LLC
18 in the absence of a showing as to the identify and citizenship of each of its members.
19 See id. Further, "because a member of [an LLC] may itself have multiple members – and
20 thus may itself have multiple citizenships – the federal court needs to know the
21 citizenship of each 'sub-member' as well." See V & M Star, LP v. Centimark Corp., 596
22 F.3d 354, 356 (6th Cir. 2010) (internal quotation and citation omitted). Here, the FAC
23 does not identify the members of Fluent, let alone each member's state(s) of citizenship,

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25 ¹On April 3, 2017, plaintiffs filed a motion to remand, in which they assert Andres
26 Mary is, as alleged in the FAC, a citizen of California, and, in addition, argue a served
defendant has not joined in the Notice of Removal.

27 ²The FAC does sufficiently allege that one defendant is diverse, specifically,
28 Saughtware Inc., a corporation, which, according to plaintiffs, is both incorporated in and
has its principal place of business in the state of Nevada. (See FAC ¶ 25.)

1 and, as to any member that is not an individual or corporation, the FAC does not identify
2 each sub-member's state(s) of citizenship. Consequently, Fluent's reliance on the FAC
3 to establish its citizenship is unavailing.

4 Next, as to the defendants identified in the FAC as LLCs, specifically, Reward
5 Zone USA, LLC, RewardsFlow, LLC, and American Prize Center, LLC, the sole allegation
6 therein is that each is a "Delaware limited liability company." (See Compl. ¶¶ 20-22.)
7 The FAC does not identify the members/sub-members of any of these three LLCs, let
8 alone each member/sub-member's state(s) of citizenship. Consequently, Fluent's
9 reliance on the FAC to establish the citizenship of Reward Zone, USA, LLC,
10 RewardsFlow, LLC, and American Prize Center, LLC is unavailing.

11 As to four defendants, specifically, AdReaction, Anglo Iditech, FortAnalysis8
12 Develop and Concept Network, each of which is identified in the FAC as a "business
13 entity of unknown formation," the FAC alleges only that such defendants have their
14 "principal place of business" in, respectively, the United Arab Emirates, New Jersey,
15 Louisiana and Washington. (See Compl. ¶¶ 26-29.) To the extent any of these four
16 defendants is a corporation, the FAC does not identify the state of incorporation, and, to
17 the extent any of these four defendants is an LLC, the FAC does not identify the LLC's
18 members/sub-members or their state(s) of citizenship. Consequently, Fluent's reliance
19 on the FAC to establish the citizenship of AdReaction, Anglo Iditech, FortAnalysis8
20 Develop and Concept Network is unavailing.

21 As to the remaining three defendants, each of whom is identified in the FAC as an
22 individual, the FAC alleges only that Mohit Singla "resides in New York" (see Compl.
23 ¶ 23), that Diego Rufino has "a principal place of business in Atlanta, Georgia" (see
24 Compl. ¶ 30), and that Priscila Arekelian has "a principal place of business in Las Vegas,
25 Nevada (see Compl. ¶ 31). The FAC does not identify the respective states of which said
26 individuals are citizens. See Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir.
27 2001) (holding "person residing in a given state is not necessarily domiciled there, and
28 thus is not necessarily a citizen of that state"); Hester v. Tressard Fabrics, Inc., 203

1 U.S.P.Q. 817, 1978 WL 21364, at *3 (C.D. Cal. February 6, 1978) (holding "allegations of
2 residence are insufficient to confer diversity of citizenship"; further holding "complaint
3 identif[ying] plaintiff as an individual doing business with his principal place of business in
4 California" at best "qualif[ies] as an allegation of residence"). Consequently, Fluent's
5 reliance on the FAC to establish the citizenship of Mohit Singla, Diego Rufino and Priscila
6 Arekelian is unavailing.

7 Accordingly, in light of the deficiencies in the Notice of Removal identified above,
8 Fluent is hereby ORDERED TO SHOW CAUSE, in writing and no later than April 17,
9 2017, why the above-titled action should not be remanded for lack of subject matter
10 jurisdiction. If plaintiffs wish to file a reply to Fluent's response, plaintiffs shall do so no
11 later than April 24, 2017.


12 Lastly, as the Court must resolve the issue of subject matter jurisdiction prior to
13 considering any other issues raised by the parties, the May 5, 2017, hearing on
14 defendant Saughtware, Inc.'s motion to dismiss is hereby VACATED, and will be reset,
15 as appropriate, following the Court's determination as to subject matter jurisdiction.

16 **IT IS SO ORDERED.**

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18 Dated: April 4, 2017

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MAXINE M. CHESNEY
United States District Judge

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