

E-Filed 09/08/2010

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION11
12 NATURAL PROTEINS, LLC,

No. C 09-01451 RS

13 Plaintiff,

**ORDER DISMISSING ACTION FOR
LACK OF JURISDICTION**

14 v.

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16 OCEAN PROTEIN, LLC,17 Defendant.
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19 Plaintiff Natural Proteins, LLC, an Oregon limited liability company initiated this action in
20 this court, asserting there was complete diversity of citizenship between it and defendant Ocean
21 Protein, LLC, a Washington limited liability company, and that the amount in controversy exceeds
22 \$75,000. Apparently unbeknownst to Natural Protein, one of the members of Ocean Protein is
23 Pacific Marketing Group, Inc. ("PMG"), an Oregon corporation. PMG's status as a member of
24 Ocean Protein precludes diversity jurisdiction because the citizenship of a limited liability company
25 is determined by looking to the citizenship of all of its members. *See Johnson v. Columbia*
26 *Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) ("We therefore join our sister circuits
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1 and hold that, like a partnership, an LLC is a citizen of every state of which its owners/members are
2 citizens.)

3 This jurisdictional defect did not appear until Natural Proteins sought leave to amend the
4 complaint to name as additional defendants all of the members of Ocean Protein, including PMG.
5 At that point, Ocean Protein first raised the fact that PMG is an Oregon corporation.¹ An order to
6 show cause issued directing Natural Proteins to demonstrate that jurisdiction exists.

7 In response to the order to show cause, Natural Proteins submitted evidence that the online
8 records of the Washington Secretary of State did not reflect PMG as a member of Ocean Protein.
9 This showing was adequate to shift the burden to Ocean Protein to come forward with evidence to
10 the contrary. Ocean Protein responded by submitting declarations that PMG in fact is a member of
11 Ocean Protein, copies of annual reports submitted to the Washington Secretary of State so stating, a
12 corporate document executed by PMG as an Ocean Protein member, and evidence that the
13 Washington Secretary of State's online records now show PMG as one of Ocean Protein's members.

14 Natural Proteins argues that Ocean Protein's evidence is insufficient to establish
15 conclusively that PMG was either a founding member of the LLC or thereafter properly added as a
16 member pursuant to the provisions of its operating agreement. Natural Proteins' speculation that
17 there may have been some technical defect or failure to comply with the terms of the operating
18 agreement when PMG became a member of Ocean Protein is insufficient to meet its burden of
19 persuasion to show that jurisdiction is proper here. *See Hertz Corp. v. Friend*, 130 S.Ct. 1181
20 (2010) ("The burden of persuasion for establishing diversity jurisdiction, of course, remains on the
21 party asserting it."). Ocean Protein has represented to the State of Washington that PMG is one of
22 its members, and it has acted consistently with those representations, with PMG participating in the
23 conduct of its corporate affairs. There is no indication that PMG was added as a sham member
24 solely to defeat diversity jurisdiction in this or any other action. Natural Protein has offered no
25 authority that the jurisdictional inquiry should entail a searching analysis of Washington corporate

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27 ¹ Ocean Protein apparently did not realize that PMG's status as its member precludes diversity
28 whether or not it were to be added as an additional defendant.

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law or the provisions of the operating agreement to determine whether there might be some technical formation defect, or that any such defect would create jurisdiction notwithstanding the evidence that Ocean Protein has conducted itself as if PMG is a member. Accordingly, this action is dismissed, without prejudice, for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Dated: 09/08/2010



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE