

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CENTURY 21 REAL ESTATE LLC, a
limited liability company formerly known
as CENTURY 21 REAL ESTATE
CORPORATION, a Delaware
corporation,

Plaintiff,

v.

SAN VICENTE REAL ESTATE
SERVICES, INC., a California
corporation, *et al.*,

Defendants.

Civil No. 07-CV-1423-L(RBB)

**ORDER DISMISSING COMPLAINT
FOR LACK OF SUBJECT MATTER
JURISDICTION**

Plaintiff, Century 21 Real Estate LLC ("Century 21") filed a complaint for breach of contract and other state law claims based on diversity of citizenship pursuant to 28 U.S.C. § 1332. Since the complaint fails to allege the information necessary to determine whether the parties are diverse, it is dismissed.

The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of N.Y.*, 790 F.2d 769, 774 (9th Cir. 1986). It possesses only that power authorized by the Constitution or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is constitutionally required to raise issues related to federal subject matter jurisdiction, and may do

/////

1 so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus.*
2 *Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990).

3 The plaintiff bears the burden of demonstrating that jurisdiction is properly before the
4 court. *See Thornhill Publ'g Co. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir.
5 1979). "The essential elements of diversity jurisdiction, including the diverse residence of all
6 parties must be affirmatively alleged in the pleadings." *Bautista v. Pan American World*
7 *Airlines, Inc.*, 828 F.2d 546, 551 (9th Cir. 1987).

8 Plaintiff alleges that it "is a limited liability company organized under the laws of the
9 State of Delaware. Plaintiff was formerly known as Century 21 Real Estate Corporation, a
10 corporation organized under the laws of the State of Delaware." (Compl. ¶ 1.) That Plaintiff
11 was formerly a corporation is irrelevant because "[s]ubject matter jurisdiction is determined on
12 the basis of the facts that existed at the time the action was filed." *See Stock West Corp. v.*
13 *Taylor*, 964 F.2d 912, 917 (9th Cir. 1992). Plaintiff further alleges that its "principal place of
14 business is in the State of New Jersey" and that "[t]he majority of Plaintiff's employees, tangible
15 property and operations are located in the State of New Jersey." These facts have no bearing on
16 Plaintiff's citizenship for purposes of diversity jurisdiction. The citizenship of a limited liability
17 company is determined by examining the citizenship of each of its members. *Carden v. Arkoma*
18 *Assoc.*, 494 U.S. 185, 195-96 (1990). The complaint does not allege the citizenship of each of
19 its members, which is necessary to establish diversity in this case.

20 Because the complaint does not allege any facts necessary to establish complete diversity
21 as required by 28 U.S.C. § 1332, it is **DISMISSED** for lack of subject matter jurisdiction.
22 Plaintiff may amend the complaint by sufficiently alleging the citizenship of each of its
23 members. *See* 28 U.S.C. § 1653. Any such amended complaint shall be filed no later than
24 **August 20, 2007.**

25 **IT IS SO ORDERED.**

26 DATED: August 6, 2007

27 
28 M. James Lorenz
United States District Court Judge

1 COPY TO:
2 HON. RUBEN B. BROOKS
3 UNITED STATES MAGISTRATE JUDGE
4 ALL PARTIES/COUNSEL

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28