



1 **Background**

2 Plaintiff Long initiated this action against his former employer, Defendant Linspire,  
3 alleging that he and Linspire entered into an employment contract whereby Linspire would pay  
4 Long a lump sum payment of six months base salary and make available the benefits made  
5 generally available to Linspire’s employees if Long was terminated from employment without  
6 cause. (Compl. ¶¶12–13.) According to Long, he was terminated due to a reduction in  
7 workforce and not for cause, thus triggering Linspire’s obligation to pay the severance and  
8 make available the described benefits. (Id. ¶16.) Long alleges that Linspire has not fulfilled  
9 its obligations under this agreement. (Id. ¶¶17–18.)

10 Based on these factual allegations, Long has brought suit for two California state law  
11 causes of action for breach of contract and failure to pay wages pursuant to California Labor  
12 Code section 201, et seq. Long alleges that this Court has jurisdiction over his claims based  
13 on diversity of citizenship under 28 U.S.C. §1332. (Id. ¶8.) Long alleges in his complaint that  
14 he is a resident of this judicial district, the Southern District of California. (Id. ¶5.) Long  
15 further alleges that Linspire is a corporation organized and existing under the laws of Delaware  
16 with a principle place of business within this judicial district. (Id. ¶6.) Linspire moves to  
17 dismiss Long’s complaint for lack of subject matter jurisdiction under Federal Rules of Civil  
18 Procedure 12(b)(1) and 12(h)(3), arguing that diversity between the parties is lacking. (Doc.  
19 No. 18.)

20 **Discussion**

21 **I. Legal Standard Motion to Dismiss for lack of Subject Matter Jurisdiction**

22 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows a motion to dismiss for  
23 lack of subject matter jurisdiction. Federal courts are courts of limited jurisdiction and limits  
24 upon federal jurisdiction must not be disregarded or evaded. Owen Equipment & Erection Co.  
25 v. Kroger, 437 U.S. 365, 374 (1978). Federal courts have original jurisdiction over disputes  
26 involving diverse citizens. 28 U.S.C. §1332. The plaintiff has the burden to establish that  
27 subject matter jurisdiction is proper. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377  
28 (1994). This burden, at the pleading stage, must be met by pleading sufficient allegations to

1 show a proper basis for the court to assert subject matter jurisdiction over the action. McNutt  
2 v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936); FED.R.CIV.P. 8(a)(1). A  
3 defense based on the lack of subject matter jurisdiction is never waived, and may be raised by  
4 any party at any time. Attorneys Trust v. Videotape Computer Products, Inc., 93 F.3d 593,  
5 594–95 (9th Cir. 1996). When a defendant challenges jurisdiction “facially,” all material  
6 allegations in the complaint are assumed true, and the question for the court is whether the lack  
7 of federal jurisdiction appears from the face of the pleading itself. Thornhill Publishing Co. v.  
8 General Telephone Electronics, 594 F.2d 730, 733 (9th Cir.1979).

9 Plaintiff asserts this Court has jurisdiction based on diversity of the parties under 28  
10 U.S.C. § 1332, which confers district courts with original jurisdiction “of all civil actions  
11 where the matter in controversy exceeds the sum or value of \$75,000, . . . and is between  
12 citizens of different states.” 28 U.S.C. §1332(a)(1). For purposes of diversity jurisdiction,  
13 corporations are “deemed to be a citizen of any State by which it has been incorporated and  
14 of the State where it has its principle place of business . . . .” Id. §1332(c)(1). A corporation  
15 with dual citizenship cannot be sued in Federal court based on diversity if the plaintiff is a  
16 citizen of either state. Bank of Cal. Nat’l Ass’n v. Twin Harbors Lumber Co., 465 F.2d 489,  
17 491 (9th Cir. 1972).

18 Plaintiff Long bears the burden of establishing jurisdiction and has failed to do so. See  
19 Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d 1090, 1092 (9th Cir. 1990). From the face of  
20 the complaint, diversity jurisdiction is lacking. Long’s complaint alleges that he is a citizen  
21 of California and that Defendant Linspire is incorporated in Delaware and has a principle place  
22 of business in California. A corporation only has a single principle place of business for  
23 determining its citizenship, and Long does not allege Linspire’s principle place of business is  
24 anywhere other than in California. See id. at 1092–94. Thus, Plaintiff and Defendant are both  
25 citizens of California for purposes of diversity jurisdiction. Accordingly, the Court grants  
26 Linspire’s motion to dismiss for lack of subject matter jurisdiction.

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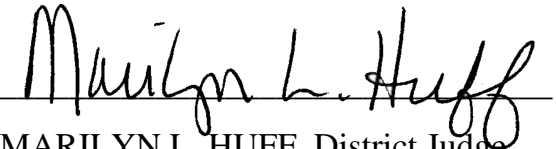
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**Conclusion**

The Court GRANTS Defendant Linspire's motion to dismiss for lack of subject matter jurisdiction. As the lack of subject matter jurisdiction cannot be cured, the Court orders the case terminated.

**IT IS SO ORDERED.**

DATED: January 29, 2009

  
MARILYN L. HUFF, District Judge  
UNITED STATES DISTRICT COURT