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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NORBERT TSCHAKERT,  
Plaintiff,  
v.  
HART ENERGY PUBLISHING, LLLP,  
*et al.*,  
Defendants.

Civil No. 10cv2598-L(WMC)

**ORDER DISMISSING COMPLAINT  
FOR LACK OF SUBJECT MATTER  
JURISDICTION AND GRANTING  
LEAVE TO AMEND**

Plaintiff Norbert Tschakert filed an action against several Defendants to set aside an alleged fraudulent transfer pursuant to California law. Plaintiff alleges that the court has subject matter jurisdiction pursuant to 28 U.S.C. Section 1332(a)(1). Because Plaintiff did not adequately allege subject matter jurisdiction, the action is **DISMISSED WITH LEAVE TO AMEND.**

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 so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). A federal court must satisfy itself of its jurisdiction over the subject matter before proceeding to the merits of the case.

1 *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577, 583 (1999).

2 The plaintiff bears the burden of demonstrating that jurisdiction is properly before the  
3 court. *See Thornhill Publ'g Co. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir.  
4 1979). The complaint must affirmatively allege the state of citizenship of each party. *Bautista v.*  
5 *Pan Am. World Airlines, Inc.*, 828 F.2d 546, 551 (9th Cir. 1987); *see also Kanter v. Warner-*  
6 *Lambert, Co.*, 265 F.3d 853 (9th Cir. 2001).

7 Defendant Rextag Strategies, Inc. (“Rextag”) is a Nevada corporation. For diversity  
8 purposes, “a corporation shall be deemed to be a citizen of any State by which it has been  
9 incorporated and of the State where it has its principal place of business . . .” 28 U.S.C.  
10 § 1332(c)(1). Although Plaintiff alleged the state of incorporation, it did not allege its principal  
11 place of business. Plaintiff therefore did not adequately allege Rextag’s citizenship.

12 The nature of Defendant Tzolkin Holdings (“Tzolkin”) ownership is not clearly alleged.  
13 It is therefore not possible to determine whether its citizenship is sufficiently alleged for  
14 purposes of diversity jurisdiction. Plaintiff must clearly allege the form of Tzolkin’s ownership.  
15 Plaintiff alleged that Rextag changed its name into Tzolkin. If this is merely a change in the  
16 name rather than form of ownership, Tzolkin’s citizenship is inadequately alleged for the same  
17 reasons Rextag’s citizenship is inadequately alleged. .

18 Defendant Hart Energy Publication, LLLP is a limited partnership and Defendant Hart  
19 Energy Mapping and Data Services, LLC is a limited liability company. The citizenship of an  
20 artificial entity, including a limited partnership or a limited liability company, for purposes of  
21 diversity jurisdiction is determined by examining the citizenship of each of its members. *Carden*  
22 *v. Arkoma Assoc.*, 494 U.S. 185, 195-96 (1990). Plaintiff alleges in a conclusory manner that  
23 each of the members is not a Massachusetts citizen, and therefore not a citizen of Plaintiff’s  
24 state. In the absence of stating the citizenship of each member of these Defendants, Plaintiff  
25 failed to adequately allege citizenship.

26 Because the complaint does not allege the facts necessary to establish diversity as  
27 required by 28 U.S.C. Section 1332, the complaint is dismissed for lack of subject matter  
28 jurisdiction. Pursuant to 28 U.S.C. Section 1653, Plaintiff is granted leave to file an amended

1 complaint to supplement the jurisdictional allegations. If Plaintiff chooses to file an amended  
2 complaint, he must do so no later than **January 21, 2011**.

3 **IT IS SO ORDERED.**

4 DATED: January 6, 2011

5   
6 M. James Lorenz  
United States District Court Judge

7 COPY TO:

8 HON. WILLIAM McCURINE, Jr.  
9 UNITED STATES MAGISTRATE JUDGE

10 ALL PARTIES/COUNSEL

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