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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 E.P, a minor child, by and through his
10 Guardian ad litem, EMMENLE
11 PRESTON, Sr.; and MAJEL WILLIAMS,
12 an individual,
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Plaintiffs,

v.

CHULA VISTA CENTER, L.P.; ROUSE
PROPERTIES, LLC; KONE, INC.; and
DOES1-50, inclusive,

Defendants.

Case No.: 3:18-cv-0006-CAB-(JMA)

**ORDER REMANDING ACTION FOR
LACK OF SUBJECT MATTER
JURISDICTION**

On July 10, 2017, Plaintiffs commenced this personal injury suit against Defendants in the San Diego Superior Court. [Doc. No. 1-2 at 6-25.] On January 2, 2018, Defendants removed this action to federal court on the basis of diversity jurisdiction. [Doc. No. 1.]

On January 3, 2018, this Court ordered Defendants to show cause on or before January 10, 2018, why this matter should not be remanded for lack of subject matter jurisdiction. [Doc. No. 2.] Specifically, the Court was concerned whether there is complete diversity among the parties. Rather than respond to the order to show cause, Defendants filed a Motion to Request Additional Time to Submit Briefing Responsive to the OSC re Jurisdiction [Doc. No. 4] on January 10, 2018. But, the Court declines to grant the extension because Defendants should have ascertained the citizenship of all of the

1 members/partners prior to filing the notice of removal proffering the diversity of the
2 parties.

3 By failing to respond to the Order to Show Cause Defendants have not assuaged the
4 Court's concerns regarding jurisdiction. In order to invoke this Court's diversity
5 jurisdiction, Defendants must demonstrate there is complete diversity of citizenship
6 between the parties and that the amount in controversy exceeds \$75,000. *Caterpillar Inc.*
7 *v. Lewis*, 519 U.S. 61, 68 (1996). To meet their burden to establish complete diversity,
8 Defendants must allege the actual citizenship of all of its members/partners. *Provincial*
9 *Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). Here, the
10 vague assurances provided that all entities related to Defendants are Delaware entities with
11 their principal places of business in New York, NY are not sufficient. Furthermore, the
12 myriad of reasons¹ provided by Defendants for needing more time to comply with the OSC
13 is evidence that Defendants have not determined the existence of complete diversity
14 between the parties. Thus, although being given the opportunity to do so, Defendants have
15 not met their burden of demonstrating there is complete diversity of citizenship.

16 Because Defendants fail to establish diversity jurisdiction as required by 28 U.S.C.
17 § 1332 and 1441 removal was improper and the Court *sua sponte* **REMANDS** this action
18 back to the San Diego Superior Court for lack of subject matter jurisdiction. *See* 28 U.S.C
19 § 1447(c) (“[i]f at any time before final judgment it appears that the district court lacks
20 subject matter jurisdiction, the case shall be remanded.”). *See also Gaus v. Miles, Inc.*, 980
21 F.2d 564, 566 (9th Cir. 1992) (the removal statute is strictly construed, and any doubt about
22 the right of removal requires resolution in favor of remand); *Polo v. Innoventions Int'l.,*
23 *LLC*, 833 F.3d 1193, 1197 (9th Cir. 2016) (if federal jurisdiction is absent from the
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26 ¹ Defendants request an extension to respond to the OSC because (1) they need to contact other
27 organizations not parties to this action; (2) one of the Defendants has undergone a corporate reorganization
28 and relocation; (3) they are reluctant to disclose “confidential business information or proprietary data or
identities of members/partners without some measure of protection;” and (4) “while Defendants
understand the Court must be satisfied there is complete diversity, Defendants should not be required to
disclose the entire hierarchy of their corporate formation and operations.” [Doc. No. 4 at 3.]

1 commencement of a case, [a case] is not “properly removed” – and therefore need not “stay
2 [] removed.”) (internal quotation marks and citation omitted). Additionally, the Court
3 **DENIES** Defendants’ motion for extension of time. [Doc. No. 4.]

4 It is **SO ORDERED**.

5 Dated: January 11, 2018



Hon. Cathy Ann Bencivengo
United States District Judge

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