

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KOAMI AGBALENYO,	:	
	:	21 Civ. 3034 (LGS)
Plaintiff,	:	
	:	<u>ORDER</u>
-against-	:	
	:	
KEVIN JAY EVANS, et al.,	:	
	:	
Defendants.	:	
-----X		

LORNA G. SCHOFIELD, District Judge:

WHEREAS, Defendants filed a Notice of Removal on April 8, 2021. Dkt. No. 1.

WHEREAS, the Notice of Removal failed to allege the citizenship of Defendant Kevin Jay Evans and the state of incorporation of Continental Logistics Services, both at the time of commencement of the action and the time of removal. See Dkt. No. 1.

WHEREAS, a District Court may *sua sponte* remand a case for a procedural defect within thirty (30) days of the filing of the Notice of Removal. *Mitskovski v. Buffalo & Fort Erie Pub. Bridge Auth.*, 435 F.3d 127, 131 (2d Cir. 2006); accord *Banks v. Steiger*, No. 21 Civ. 1343, 2021 WL 634144, at *1 (S.D.N.Y. Feb. 17, 2021).

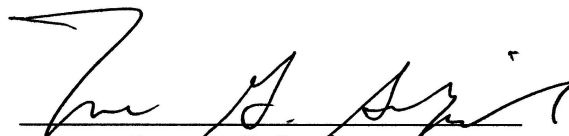
WHEREAS, a Notice of Removal should allege the citizenship of the parties both at the time of the commencement of the action and at the time of the Notice of Removal. “The general rule is when, as in this case, diversity is the sole basis for asserting removal jurisdiction, diversity must exist both at the time the original action is filed in state court and at the time removal is sought to federal court.” *Adrian Family Partners I, L.P. v. ExxonMobil Corp.*, 79 Fed. Appx. 489, 491 (2d Cir. 2003); see also *United Food & Commercial Workers Union, Local 919 v. CenterMark Properties Meriden Square, Inc.*, 30 F.3d 298, 301 (2d Cir. 1994).

WHEREAS, “[c]itizenship for diversity purposes depends on domicile, not residency,” *Henry v. Gershan*, 2020 WL 7625164, at *2 (S.D.N.Y. Dec. 22, 2020), and “residence alone is

insufficient to establish domicile,” *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 54 (2d Cir. 2019). It is hereby

ORDERED that the matter is summarily remanded to state court. Defendants’ Notice of Removal is procedurally defective. Pursuant to section 1447(c), the Clerk of Court is respectfully directed to mail a certified copy of this Opinion and Order to the Supreme Court of the State of New York, Bronx County. The Clerk of Court is further directed to close the case.

Dated: April 14, 2020
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE