

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

WELK RESORT GROUP, INC. et al., Plaintiffs, v. REED HEIN & ASSOCIATES, LLC, et al., Defendants.
--

Case No.: 17cv1499-L(AGS)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

In this action arising from alleged violations of California Vacation Ownership and Time-Share Act and related claims, Plaintiffs claim federal jurisdiction based on diversity of citizenship under 28 U.S.C. §1332. (Compl. at 7.) Because the complaint does not sufficiently allege citizenship of all the parties, the action is dismissed with leave to amend.

Unlike state courts,

Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction.

1 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted).
2 Federal courts are constitutionally required to raise issues related to federal subject matter
3 jurisdiction and may do so *sua sponte*. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514
4 (2006). A federal court must satisfy itself of its jurisdiction over the subject matter
5 before proceeding to the merits of the case. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S.
6 574, 577, 583 (1999).

7 The plaintiff bears the burden of demonstrating that jurisdiction is properly before
8 the Court. *See Thornhill Publ'g Co. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733
9 (9th Cir. 1979). Plaintiffs rely on 28 U.S.C. §1332, which requires complete diversity of
10 citizenship between plaintiffs and defendants. The complaint must affirmatively allege
11 the state of citizenship of each party. *Bautista v. Pan Am. World Airlines, Inc.*, 828 F.2d
12 546, 552 (9th Cir.1987); *see also Kanter v. Warner-Lambert, Co.*, 265 F.3d 853 (9th Cir.
13 2001).

14 The complaint names Welk Resort Group, Inc. and Welk Resort Platinum Owners
15 Association as Plaintiffs, and Reed & Hein Associates, LLC dba Timeshare Exit Team,
16 Schroeter Goldmark & Bender P.S., and Ken B. Privett, PLC as Defendants. For
17 diversity purposes, the citizenship of a corporation is determined by its state of
18 incorporation and the state of its principal place of business. 28 U.S.C. § 1332(c). The
19 citizenship of a non-corporate business entity is determined by the citizenship of each of
20 its members. *Carden v. Arkoma Assoc.*, 494 U.S. 185, 195-96 (1990). Except for Welk
21 Resort Group, Inc., Plaintiffs do not adequately allege the citizenship of any named party.
22 (*See Compl. at 6-7.*) In addition, Plaintiffs do not state whether Schroeter Goldmark &
23 Bender P.S., and Ken B. Privett, PLC are corporations or non-corporate entities. The
24 complaint is insufficient to establish that the parties meet all the requirements of diversity
25 jurisdiction.

26 Because Plaintiffs do not allege the facts necessary to establish diversity, the
27 complaint is dismissed for lack of subject matter jurisdiction. Plaintiffs are granted leave
28 to file an amended complaint to supplement the jurisdictional allegations. *See* 28 U.S.C.

1 §1653. If Plaintiffs choose to file an amended complaint, they must do so no later than
2 **August 11, 2017.**

3 **IT IS SO ORDERED.**

4
5 Dated: July 26, 2017

6 
7 Hon. M. James Lorenz
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28