



1 1332(d)(4)(B), if Plaintiffs file an amended complaint.

2 The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of N.Y.*,  
3 790 F.2d 769, 774 (9th Cir. 1986). It possesses only that power authorized by the Constitution  
4 or a statute. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). It is  
5 constitutionally required to raise issues related to federal subject matter jurisdiction and may do  
6 so *sua sponte*. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998); *see Indus.*  
7 *Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990). A federal court must satisfy  
8 itself of its jurisdiction over the subject matter before proceeding to the merits of the case.  
9 *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577, 583 (1999). The plaintiff bears the burden  
10 of demonstrating that jurisdiction is properly before the court. *See Thornhill Publ'g Co. v.*  
11 *General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

12 Plaintiffs base federal subject matter jurisdiction on federal question pursuant to 28  
13 U.S.C. Section 1331. (Compl. at 2.) Under section 1331, “district courts . . . have original  
14 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United  
15 States.” Plaintiffs contend that a reference to the Food, Drug and Cosmetic Act, 21 U.S.C. § 21  
16 U.S.C. 321(g)(1)(B), in support of the contention that Defendants’ product is not a drug  
17 approved by the Food and Drug Administration (Compl. at 4), provides basis for federal  
18 question jurisdiction over their complaint, which alleges only state law causes of action.  
19 (Compl. at 2.)

20 “[F]or a state law claim to provide a basis for federal jurisdiction, the state law claim must  
21 ‘turn on substantial questions of federal law,’ and ‘really and substantially involv[e] a dispute or  
22 controversy respecting the validity, construction or effect of [federal] law.’” *Williston Basin*  
23 *Interstate Pipeline*, 524 F.3d 1090, 1102 (9th Cir. 2008) quoting *Grable & Sons Metal Prods.,*  
24 *Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005). The Complaint provides no indication  
25 that Plaintiffs’ “right to relief necessarily depends on resolution of a substantial question of  
26 federal law,” *id.* at 1100, or that any state law claim “really and substantially involv[es] a dispute  
27 or controversy respecting the validity, construction or effect of [federal] law,” *id.* at 1102.  
28 Accordingly, Plaintiffs have failed adequately to allege federal question jurisdiction.

1 In the alternative, Plaintiffs contend that subject matter jurisdiction is based on diversity  
2 under 28 U.S.C. Section 1332(d) (Class Action Fairness Act of 2005, “CAFA”). (Compl. at 3.)

3 CAFA vests a district court with original jurisdiction over “a class action” where:  
4 (1) there are one-hundred or more putative class members; (2) at least one class  
5 member is a citizen of a state different from the state of any defendant; and (3) the  
aggregated amount in controversy exceeds \$5 million, exclusive of costs and  
interest.

6 *United Steel, Paper & Forestry, Rubber, Manufacturing Energy, Allied Indus. & Serv. Workers*  
7 *Int’l Union v. ConocoPhillips Co.*, \_\_ F.3d \_\_, 2010 WL 22701 (9th Cir. Jan. 6, 2010), citing 28  
8 U.S.C. §§ 1332(d)(2), (5)(B), (6).

9 The complaint must affirmatively allege the state of citizenship of each party. *Bautista v.*  
10 *Pan Am. World Airlines, Inc.*, 828 F.2d 546, 551 (9th Cir. 1987); *see also Kanter v. Warner-*  
11 *Lambert, Co.*, 265 F.3d 853 (9th Cir. 2001). In this case proper allegations are lacking as to each  
12 but one named party. It is therefore unclear whether the minimal diversity requirement of CAFA  
13 is met.

14 The named Plaintiffs allege that they are California residents and that Defendant Daniel  
15 S. Stein, M.D. is a Florida resident. (Compl. at 1, 2.) However, for diversity purposes, a person  
16 is a citizen of a state in which he or she is domiciled. *Kanter*, 265 F.3d at 857. “[T]he diversity  
17 jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency.” *Id.* “A person  
18 residing in a given state is not necessarily domiciled there, and thus is not necessarily a citizen of  
19 that state.” *Id.* Accordingly, Plaintiffs fail to adequately allege their own and Dr. Stein’s  
20 citizenship for purposes of diversity jurisdiction. *See id.*

21 Plaintiffs next allege that Defendant “General Nutrition Corp., dba GNC . . . is a  
22 Pennsylvania corporation operating in California,” Defendant STG Media Corp., dba Select Title  
23 Group Media Sales and Defendant STG Retail Direct are Arizona corporations operating in  
24 California, and that Defendant “CVS Caremark Corp., dba CVS . . . is a Delaware corporation  
25 operating in California.” (Compl. at 2.) For diversity purposes, “a corporation shall be deemed  
26 to be a citizen of any State by which it has been incorporated and of the State where it has its  
27 principal place of business . . .” 28 U.S.C. § 1332(c)(1). Plaintiffs do not allege the principal  
28 place of business for any of these Defendants. Accordingly, they did not adequately allege the

1 citizenship of these Defendants for purposes of diversity jurisdiction.

2 With respect to Defendant STG Interactive LLC, Plaintiffs allege that it is “an Arizona  
3 limited liability company operating in California.” (Compl. at 2.) For purposes of minimal  
4 diversity jurisdiction under CAFA, “an unincorporated association shall be deemed to be a  
5 citizen of the State where it has its principal place of business and the State under whose laws it  
6 is organized.” 28 U.S.C. § 1332(d)(10). Although Plaintiffs allege that STG Interactive LLC  
7 “operates” in California, they do not allege its principal place of business to enable the court to  
8 determine its citizenship for purposes of diversity jurisdiction.

9 The only party whose citizenship is alleged is Defendant Biotab Nutraceuticals, Inc.  
10 (“Biotab”), a California corporation with its principal place of business in California. (Compl. at  
11 1.) Biotab is a California citizen. The complaint therefore fails to allege the facts necessary for  
12 the court to conclude that the parties to this action are minimally diverse as required by CAFA.

13 The complaint does not allege the facts necessary to establish minimal diversity as  
14 required by 28 U.S.C. Section 1332(d)(2)(A). It is therefore **DISMISSED** for lack of subject  
15 matter jurisdiction. Pursuant to 28 U.S.C. Section 1653, Plaintiffs are granted **LEAVE TO**  
16 **AMEND** jurisdictional allegations under CAFA. Defendants’ motion to dismiss is **DENIED** as  
17 premature.

18 Because it appears on the face of the complaint that this action likely meets the home  
19 controversy exception specified in 28 U.S.C. Section 1332(d)(4)(B), the parties are **ORDERED**  
20 **TO SHOW CAUSE** why the court should not decline to exercise diversity jurisdiction under  
21 CAFA, if Plaintiffs file an amended complaint.

22 Based on the foregoing, it is hereby **ORDERED** as follows:

23 1. The complaint is **DISMISSED** for lack of subject matter jurisdiction. Plaintiffs are  
24 granted **LEAVE TO AMEND** to properly allege diversity jurisdiction under CAFA. If they  
25 choose to amend the complaint, they must file and serve it no later than **February 8, 2010**.

26 2. Defendants’ motion to dismiss the complaint under Federal Rule of Civil Procedure  
27 12(b)(6) is **DENIED WITHOUT PREJUDICE** as premature.


28 3. If Plaintiffs file an amended complaint, they must concurrently file a memorandum of

1 points and authorities of no more than ten (10) pages in length and supporting evidence, if any,  
2 to **SHOW CAUSE** why the court should not decline to exercise jurisdiction as provided in 28  
3 U.S.C. Section 1332(d)(4)(B).

4 4. No later than **February 16, 2010**, Defendants shall file a memorandum of points and  
5 authorities of no more than ten (10) pages in length and supporting evidence, if any, in response  
6 to Plaintiff's showing.

7 **IT IS SO ORDERED.**

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9 DATED: January 26, 2010

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12 M. James Lorenz  
13 United States District Court Judge  
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