



1 jurisdiction, and, if he does not do so, the court, on having the defect  
2 called to its attention or on discovering the same, must dismiss [or  
remand] the case, unless the defect be corrected by amendment.

3 Smith v. McCullough, 270 U.S. 456, 459, 46 S.Ct. 338, 339 (1926); accord, Rilling  
4 v. Burlington Northern Railroad Co., 909 F.2d 399, 400 (9th Cir. 1990). The  
5 defendant has not met its jurisdictional pleading burden because the Notice of  
6 Removal fails to affirmatively set forth the facts necessary for the Court to  
7 determine the citizenship of any party.

8 The Notice of Removal fails to allege the citizenship of the plaintiffs  
9 inasmuch as it merely states that they are individuals "residing in Maricopa  
10 County, Arizona." This allegation of residency is insufficient as a matter of law  
11 under 28 U.S.C. § 1332 because, as the Supreme Court has also repeatedly  
12 made clear,

13 [i]t has long been settled that residence and citizenship [are] wholly  
14 different things within the meaning of the Constitution and the laws  
15 defining and regulating the jurisdiction of the ... courts of the United  
16 States; and that a mere averment of residence in a particular state is  
not an averment of citizenship in that state for the purpose of  
jurisdiction.

17 Steigleder v. McQuesten, 198 U.S. 141, 143, 25 S.Ct. 616, 617 (1905); cf.,  
18 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9<sup>th</sup> Cir. 2001) (Plaintiffs'  
19 complaint ... state[s] that Plaintiffs were 'residents' of California. But the diversity  
20 jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. ...  
21 [The] failure to specify Plaintiffs' state of citizenship was fatal to [the] assertion of  
22 diversity jurisdiction.")

23 The Notice of Removal also fails to allege the citizenship of the defendant  
24 inasmuch as it merely states that the defendant "is a California limited liability  
25 company with its principal place of business in California." This allegation is

1 insufficient as a matter of law because a limited liability company is not treated as a  
2 corporation for purposes of determining whether diversity exists for purposes of § 1332.  
3 Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894, 899 (9<sup>th</sup> Cir. 2006)  
4 ("Notwithstanding LLCs' corporate traits, ... every circuit that has addressed the  
5 question treats them like partnerships for the purposes of diversity jurisdiction. ... We  
6 therefore join our sister circuits and hold that, like a partnership, an LLC is a citizen of  
7 every state of which its owners/members are citizens.") What is thus required in the  
8 Notice of Removal is an affirmative allegation of the citizenship of each member of the  
9 defendant limited liability company.

10 In order to cure these pleading deficiencies, the Court will require the defendant  
11 to file an amended notice of removal that affirmatively states the citizenship of each  
12 party. The defendant is advised that its failure to timely comply with this order shall  
13 result in the remand of this action without further notice for lack of subject matter  
14 jurisdiction. Therefore,

15 IT IS ORDERED that the defendant shall file an amended notice of removal  
16 properly stating a jurisdictional basis for this action no later than **July 7, 2006**.

17 DATED this 19<sup>th</sup> day of June, 2006.

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20 Paul G. Rosenblatt  
21 United States District Judge  
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