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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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10 Orly Darel,

11 Plaintiff,

No. CV-06-2397-PHX-PGR

12 vs.

ORDER

13 Dror Darel,

14 Defendant.

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16 The plaintiff, a Canadian citizen, seeks in this action to domesticate a
17 judgment for child and spousal support issued by a Canadian court; the complaint
18 alleges that the Court has subject matter jurisdiction over this action solely
19 pursuant to 28 U.S.C. § 1332. Having reviewed the complaint, the Court finds
20 that the jurisdictional allegations therein are insufficient as a matter of law to
21 establish the existence of diversity of citizenship jurisdiction. The Court will
22 therefore require the plaintiff to file an amended complaint curing the pleading
23 deficiencies. See 28 U.S.C. § 1653.

24 Since it is to be presumed that a cause of action lies outside of this Court's
25 limited subject matter jurisdiction unless the contrary is established by the party

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1 asserting jurisdiction, Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S.
2 375, 377, 114 S.Ct. 1673, 1677 (1994), the Supreme Court has long since, and
3 repeatedly, made clear that

4 [t]he established rule is that a plaintiff, suing in federal court, must
5 show in his pleading, affirmatively and distinctly, the existence of
6 whatever is essential to federal jurisdiction, and, if he does not do so,
7 the court, on having the defect called to its attention or on
8 discovering the same, must dismiss the case, unless the defect be
9 corrected by amendment.

10 Smith v. McCullough, 270 U.S. 456, 459, 46 S.Ct. 338, 339 (1926); accord, Rilling
11 v. Burlington Northern Railroad Co., 909 F.2d 399, 400 (9th Cir. 1990).

12 The jurisdictional allegation regarding the defendant's citizenship is facially
13 inadequate because it merely states that the defendant is "a resident of the
14 County of Maricopa, State of Arizona." As the Supreme Court has also made
15 clear,

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

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

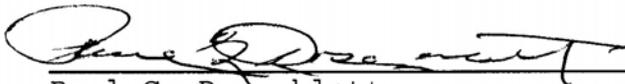
28 Given the nature of this action, the Court will require the plaintiff to
29 affirmatively set forth the following information in the amended complaint so that

1 the Court can determine whether it has diversity of citizenship jurisdiction: (1) the
2 subsection of 28 U.S.C. § 1332 upon which the plaintiff is basing subject matter
3 jurisdiction, (2) the country or countries of which the defendant is a citizen; (3) if
4 the defendant is not a United States citizen, his immigration status in the United
5 States, and (4) the state within the United States of which the defendant is a
6 citizen.¹

7 The plaintiff is advised that her failure to timely comply with this order shall
8 result in the dismissal of this action without further notice for lack of subject
9 matter jurisdiction. Therefore,

10 IT IS ORDERED that the complaint is dismissed for lack of subject matter
11 jurisdiction and that the plaintiff shall file an amended complaint properly stating a
12 jurisdictional basis for this action in conformity with this Order no later than
13 **November 13, 2006.**

14 DATED this 24th day of October, 2006.

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17 Paul G. Rosenblatt
18 United States District Judge
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Since the plaintiff is alleging that the judgment she seeks to domesticate was issued by the Court of Queen's Bench of Alberta, Judicial District of Edmonton, the Court will also require the plaintiff to correct or clarify in the amended complaint the allegations in the complaint, *i.e.*, paragraphs 13 and 15, which refer to the Superior Court of Ontario and the Province of Ontario.

The plaintiff is advised that the capitalization of the parties' names in the caption of the complaint violates LRCiv 7.1(a)(3).