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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

General Electric Capital Business  
Asset Funding Corporation of  
Connecticut, et al.,

Plaintiffs,

vs.

East Coast Foods I, LLC, et al.,

Defendants.

No. CV-11-1843-PHX-PGR

ORDER

In a complaint filed on September 20, 2011, the plaintiffs allege that the Court has diversity of citizenship jurisdiction over this action pursuant to 28 U.S.C. § 1332(a). Having reviewed the complaint, the Court finds that the jurisdictional allegations therein are patently insufficient as a matter of law to establish the existence of subject matter jurisdiction. The Court will therefore require the plaintiffs to file an amended complaint properly stating a jurisdictional basis for this action. See 28 U.S.C. § 1653; see *also*, Smith v. McCullough, 270 U.S. 456, 459, 46 S.Ct. 338, 339 (1926) ("The established rule is that a plaintiff, suing in federal court, must show in his pleading, affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and, if he does not do so,

1 the court, on having the defect called to its attention or on discovering the same,  
2 must dismiss the case, unless the defect be corrected by amendment.")

3 The existence of diversity jurisdiction is not evident from the face of the  
4 complaint inasmuch as the complaint fails to properly allege the citizenship of six  
5 of the seven named parties. First, as to the limited liability company parties, *i.e.*,  
6 plaintiff CEF Funding V, LLC and defendants East Coast Foods I, LLC and East  
7 Coast Foods II, LLC, the complaint improperly attempts to allege their citizenship  
8 as if they are corporations notwithstanding that it has been clearly established for  
9 years that a limited liability company cannot be treated as a corporation for  
10 purposes of alleging citizenship under § 1332. See Johnson v. Columbia  
11 Properties Anchorage, LP, 437 F.3d 894, 899 (9<sup>th</sup> Cir. 2006) ("Notwithstanding  
12 LLCs' corporate traits, ... every circuit that has addressed the question treats  
13 them like partnerships for the purposes of diversity jurisdiction. ... We therefore  
14 join our sister circuits and hold that, like a partnership, an LLC is a citizen of every  
15 state of which its owners/members are citizens.") Since the complaint fails to set  
16 forth the citizenship of any member of these limited liability companies, the Court  
17 will require the plaintiff to specifically identify in its amended complaint each LLC  
18 member by name, specifically allege the type of business entity that any non-  
19 individual member is, and affirmatively allege the state of citizenship of each  
20 member.<sup>1</sup>

21 Second, as to the individual defendants, *i.e.*, John Lopis, Stacey Lopis, and  
22 Alfred Duff, the complaint improperly attempts to allege their citizenship by setting

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25 Since only a corporation or an individual may be a citizen for purposes  
26 of § 1332 jurisdiction, the amended complaint must set forth any sub-layers of  
partners or members the limited liability companies may have.

1 forth the location where each has a residence. See Steigleder v. McQuesten, 198  
2 U.S. 141, 143, 25 S.Ct. 616, 617 (1905) ("It has long been settled that residence  
3 and citizenship [are] wholly different things within the meaning of the Constitution  
4 and the laws defining and regulating the jurisdiction of the ... courts of the United  
5 States; and that a mere averment of residence in a particular state is not an  
6 averment of citizenship in that state for the purpose of jurisdiction."); accord,  
7 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9<sup>th</sup> Cir. 2001) ("Plaintiffs'  
8 complaint ... state[s] that Plaintiffs were 'residents' of California. But the diversity  
9 jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. ...  
10 [The] failure to specify Plaintiffs' state of citizenship was fatal to [the] assertion of  
11 diversity jurisdiction.") The plaintiffs must affirmatively set forth the citizenship of  
12 each individual defendant in the amended complaint.

13 The plaintiffs are advised that their failure to timely or sufficiently comply  
14 with this order will result in the dismissal of this action for lack of subject matter  
15 jurisdiction. Therefore,

16 IT IS ORDERED that the complaint in this action is dismissed for lack of  
17 subject matter jurisdiction.

18 IT IS FURTHER ORDERED that the plaintiffs shall file an amended  
19 complaint properly stating a jurisdictional basis for this action no later than  
20 **October 3, 2011.**<sup>2</sup>

21 IT IS FURTHER ORDERED that the plaintiffs shall immediately provide a  
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24 <sup>2</sup>

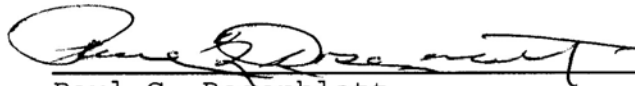
25 The parties are advised that the complete capitalization of a party's  
26 name in the caption of any document filed with the Court violates LRCiv 7.1(a)(3)  
unless that party's name is completely capitalized in its normal use.

1 copy of this order to any defendant already served with process.

2 DATED this 21<sup>st</sup> day of September, 2011.

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Paul G. Rosenblatt  
United States District Judge

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