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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The Lending Company, Inc., an Arizona corporation,

Plaintiff/Counterdefendant,

vs.

John Craythorn, an individual,

Defendant/Counterclaimant.

No. CV 12-01205-PHX-NVW

ORDER

John Craythorn, an individual,

Third-Party Plaintiff,

vs.

Mark Nickel and Jane Doe Nickel, Dave Johnson and Jane Doe Johnson, and R.J. Reynolds and Jane Doe Reynolds,

Third-Party Defendants.

Before the Court is The Lending Company’s Motion to Remand to State Court for Lack of Jurisdiction (Doc. 18), The Lending Company’s Rule 12(B)(1) Motion to Dismiss Counterclaim for Lack of Subject Matter Jurisdiction (Doc. 21), and Craythorn’s Motion for Leave to Amend Craythorn’s First Amended Verified Answer and Counterclaim (Doc. 23).

The Lending Company’s motions assert that Craythorn was actually a citizen of Arizona at the time The Lending Company filed this action and that there is accordingly

1 no diversity jurisdiction over this matter (Docs. 18, 21). The Lending Company makes
2 this assertion based on a statement in Craythorn's Answer that "Prior to leaving Arizona,
3 Craythorn informed TLC's lenders and various state and federal regulatory entities of his
4 skepticism regarding TLC's business practices. (April 21, 2012 Letter from Craythorn to
5 Lenders/Agencies, attached hereto as "Exhibit 2")" (Doc. 4 at 16).

6 Craythorn seeks leave to file an amended Answer to delete the reference to "prior
7 to leaving Arizona[,] " which he states is a "factual inaccuracy." (Doc. 22.) Craythorn
8 states that as of April 20, 2012, he was domiciled in Texas. The only opposition to
9 Craythorn's motion to amend is that he had not attached a red-lined version of the
10 proposed amended pleading as required by LRCiv 15.1 (Doc. 25). However, Craythorn
11 attached the proposed pleading to his reply (Doc. 26). The Court will therefore grant
12 Craythorn's motion to amend.

13 The Lending Company's motion to dismiss is duplicative of its motion to remand
14 and will accordingly be dismissed. In light of Craythorn's amended answer which omits
15 the "prior to Arizona" reference on which The Lending Company based its motion to
16 remand, The Lending Company shall either withdraw its motion to remand or reply to the
17 arguments raised and evidence presented in Craythorn's response to the motion to
18 remand by August 6, 2012. If The Lending Company elects to file a reply, Craythorn is
19 hereby given leave to file a surreply to that response by August 13, 2012.

20 IT IS ORDERED that Craythorn's Motion for Leave to Amend Craythorn's First
21 Amended Verified Answer and Counterclaim (Doc. 23) is granted.


22 IT IS FURTHER ORDERED that The Lending Company's Rule 12(B)(1) Motion
23 to Dismiss Counterclaim for Lack of Subject Matter Jurisdiction (Doc. 21) is denied
24 without prejudice to the determination on the merits of the jurisdictional issue on the
25 motion to remand.

26 IT IS FURTHER ORDERED that, by August 6, 2012, The Lending Company
27 either withdraw its Motion to Remand to State Court for Lack of Jurisdiction (Doc. 18) or
28 file a reply to the arguments and evidence presented in support of diversity jurisdiction

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raised in Craythorn's response to The Lending Company's motion to remand (Doc. 23).
If The Lending Company elects to file a reply, Craythorn is given leave to file a surreply
by August 13, 2012.

Dated this 26th day of July, 2012.



Neil V. Wake
United States District Judge