

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Electric Insurance Company,
Plaintiff,
vs.
Michael Lee Crane, et al.,
Defendants.

No. CV-13-01395-PHX-PGR

ORDER

In a complaint filed on July 11, 2013, the plaintiff alleges that the Court has diversity of citizenship jurisdiction over this declaratory judgment action pursuant to 28 U.S.C. § 1332. Having reviewed the complaint, the Court finds that the jurisdictional allegations therein are insufficient as a matter of law to establish the existence of subject matter jurisdiction. The Court will therefore require the plaintiff to file an amended complaint properly stating a jurisdictional basis for this action. See 28 U.S.C. § 1653; see *a/so*, 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, the court, on having the defect called to its attention or on discovering the same, must dismiss the case,

1 unless the defect be corrected by amendment.")

2 The jurisdictional allegations concerning the defendants are that Michael
3 Crane is currently incarcerated in the Maricopa County jail and that his last known
4 residence was in Mesa, Arizona and that Jessica Gaudet, Heidi Gaudet and Melissa
5 Gaudet are all residents of Clark County, Nevada. These allegations are facially
6 deficient because it is black letter law that an allegation of residency does not suffice
7 for purposes of § 1332. See Steigleder v. McQuesten, 198 U.S. 141, 143, 25 S.Ct.
8 616, 617 (1905) ("It has long been settled that residence and citizenship [are] wholly
9 different things within the meaning of the Constitution and the laws defining and
10 regulating the jurisdiction of the ... courts of the United States; and that a mere
11 averment of residence in a particular state is not an averment of citizenship in that
12 state for the purpose of jurisdiction."); accord, Kanter v. Warner-Lambert Co., 265
13 F.3d 853, 857-58 (9th Cir. 2001) (Plaintiffs' complaint ... state[s] that Plaintiffs were
14 'residents' of California. But the diversity jurisdiction statute, 28 U.S.C. § 1332,
15 speaks of citizenship, not of residency. ... [The] failure to specify Plaintiffs' state of
16 citizenship was fatal to [the] assertion of diversity jurisdiction.")

17 The plaintiff is advised that its failure to timely file an amended complaint that
18 cures the pleading deficiency noted in this Order shall result in the dismissal of this
19 action for lack of subject matter jurisdiction.¹ Therefore,

20 IT IS ORDERED that the complaint is dismissed for lack of subject matter
21 jurisdiction.

22 IT IS FURTHER ORDERED that the plaintiff shall file an amended complaint

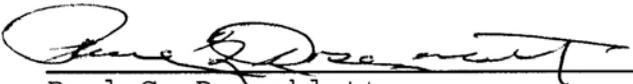
23 1

24 The plaintiff is advised that the complete capitalization of a party's name
25 in the caption of any document filed with the Court violates LRCiv 7.1(a)(3) unless
26 that party's name is completely capitalized in its normal use. The caption of the
amended complaint must comply with the local rule.

1 properly stating a jurisdictional basis for this action no later than **August 5, 2013.**

2 IT IS FURTHER ORDERED that the plaintiff shall serve a copy of this Order
3 on any defendant already served with process.

4 DATED this 23rd day of July, 2013.

5
6 
7 Paul G. Rosenblatt
8 United States District Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26