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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

General Electric Capital Corporation,  
Plaintiff,  
vs.  
Pizza Project, LLC, et al.,  
Defendants.

No. CV-13-01431-PHX-PGR

ORDER

In a complaint filed on July 16, 2013, the plaintiff alleges that the Court has diversity of citizenship jurisdiction over this 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 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, the court, on having the defect called to its attention or on discovering the same, must dismiss the case, unless the defect be corrected by

1 amendment.")

2 The existence of diversity jurisdiction is not evident from the face of the  
3 complaint inasmuch as the complaint fails to properly allege the citizenship of either  
4 defendant. First, Pizza Project, LLC is merely alleged to be a Nevada limited liability  
5 company with its principal place of business in Salt Lake City, Utah. This  
6 jurisdictional allegation is insufficient as a matter of law inasmuch as the complaint  
7 improperly attempts to allege the citizenship of Pizza Project as if it is a corporation  
8 notwithstanding that it has been clearly established for years that a limited liability  
9 company cannot be treated as a corporation for purposes of alleging citizenship  
10 under § 1332. See Johnson v. Columbia Properties Anchorage, LP, 437 F.3d 894,  
11 899 (9<sup>th</sup> Cir. 2006) ("Notwithstanding LLCs' corporate traits, ... every circuit that has  
12 addressed the question treats them like partnerships for the purposes of diversity  
13 jurisdiction. ... We therefore join our sister circuits and hold that, like a partnership,  
14 an LLC is a citizen of every state of which its owners/members are citizens.") Since  
15 the complaint fails to set forth the citizenship of any member of Pizza Project, the  
16 Court will require the plaintiff to specifically identify in its amended complaint each  
17 LLC member by name, specifically allege the type of business entity that any non-  
18 individual member is, and affirmatively allege the state of citizenship of each  
19 member.<sup>1</sup>

20 Second, James Taggart is merely alleged to reside in Draper, Utah. This  
21 allegation is facially deficient because it is black letter law that an allegation of  
22 residency does not suffice for purposes of § 1332. See Steigleder v. McQuesten,

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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 Pizza Project may have.

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

11 The plaintiff is advised that its failure to timely or sufficiently comply with this  
12 Order will result in the dismissal of this action for lack of subject matter jurisdiction.  
13 Therefore,

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

16 IT IS FURTHER ORDERED that the plaintiff shall file an amended complaint  
17 properly stating a jurisdictional basis for this action no later than **August 5, 2013**.<sup>2</sup>

18 IT IS FURTHER ORDERED that the plaintiff shall immediately provide a

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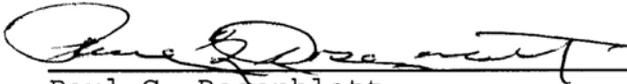
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24 The plaintiff is advised that the complete capitalization of a party's  
25 name in the caption of any document filed with the Court violates LRCiv 7.1(a)(3)  
26 unless that party's name is completely capitalized in its normal use. The caption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

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

2 DATED this 23<sup>rd</sup> day of July, 2013.

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Paul G. Rosenblatt  
United States District Judge