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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Echelon Property & Casualty Insurance
10 Company,

11 Plaintiff,

12 v.

13 Daniel M Fazio, et al.,

14 Defendants.

No. CV-20-02001-PHX-DWL

ORDER

15 On October 15, 2020, Plaintiff Echelon Property & Casualty Insurance Company
16 (“Echelon”) filed its complaint, seeking declaratory relief. (Doc. 1.) The “action arises
17 out of contract.” (*Id.* ¶ 35.) Specifically, Echelon denied coverage under an insurance
18 policy (“the Policy”) (*id.* ¶¶ 10, 30) and seeks a declaratory judgment that will
19 “[d]etermine whether there is coverage under the Policy.” (*Id.* at 7.) Plaintiff alleges that
20 “[t]his Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
21 §§ 2201-2202, the Federal Declaratory Judgment Act.” (*Id.* ¶ 8.)

22 The Court has an independent obligation to determine whether it has subject-
23 matter jurisdiction. *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).
24 Pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure, “[i]f the court
25 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
26 action.”

27 “Because the Declaratory Judgment Act does not by itself confer federal subject-
28 matter jurisdiction, [Plaintiff] was required to plead an independent basis for federal

1 jurisdiction.” *Nationwide Mut. Ins. Co. v. Liberatore*, 408 F.3d 1158, 1161 (9th Cir.
2 2005). Echelon did not plead an alternative basis for federal jurisdiction. Because this
3 action arises out of contract and does not appear to raise a federal question, the only
4 possible basis upon which subject-matter jurisdiction could rest is diversity. The
5 complaint appears to take a stab at alleging the facts that would give rise to diversity
6 jurisdiction (Doc. 1 ¶¶ 1-4, 9) but fails to properly allege the citizenship, for diversity
7 purposes, of any party to this action.

8 Diversity jurisdiction exists when there is complete diversity of citizenship
9 between the plaintiff and the defendants and the amount in controversy exceeds \$75,000,
10 exclusive of interests and costs. 28 U.S.C. § 1332. A controversy meets this requirement
11 when “all the persons on one side of it are citizens of different states from all the persons
12 on the other side.” *Strawbridge v. Curtiss*, 7 U.S. 267 (1806).

13 The party seeking to invoke diversity jurisdiction has the burden of
14 proof, *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986), by a preponderance of the
15 evidence. *McNatt v. Allied-Signal, Inc.*, 972 F.2d 1340 (9th Cir. 1992); see 13B Federal
16 Practice § 3611 at 521 & n. 34. “Absent unusual circumstances, a party seeking to
17 invoke diversity jurisdiction should be able to allege affirmatively the
18 actual citizenship of the relevant parties.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
19 857 (9th Cir. 2001).

20 A corporation, whether incorporated in a state of the United States or in a foreign
21 country, is “deemed a citizen of its place of incorporation and the location of its principal
22 place of business.” *Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20
23 F.3d 987, 990 (9th Cir. 1994). Both the place of incorporation and the location of its
24 principal place of business must be expressly pleaded. *Id.*

25 An LLC, on the other hand, “is a citizen of every state of which its
26 owners/members are citizens.” *Johnson v. Columbia Properties Anchorage, LP*, 437
27 F.3d 894, 899 (9th Cir. 2006). Thus, to properly establish diversity jurisdiction “with
28 respect to a limited liability company, the citizenship of all of the members must be

1 pled.” *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 611 (9th Cir. 2016). Plaintiff may
2 allege the LLC members’ citizenship on information and belief if the information is not
3 reasonably ascertainable. *Carolina Cas. Ins. Co. v. Team Equipment, Inc.*, 741 F.3d
4 1082, 1087 (9th Cir. 2014).

5 As to individual natural persons, an allegation about an individual’s residence does
6 not establish his or her citizenship for purposes of establishing diversity jurisdiction. “It
7 has long been settled that residence and citizenship [are] wholly different things within
8 the meaning of the Constitution and the laws defining and regulating the jurisdiction of
9 the . . . courts of the United States; and that a mere averment of residence in a particular
10 state is not an averment of citizenship in that state for the purpose of jurisdiction.”
11 *Steigleder v. McQuesten*, 198 U.S. 141, 143 (1905). “To be a citizen of a state, a natural
12 person must first be a citizen of the United States. The natural person’s state citizenship
13 is then determined by her state of domicile, not her state of residence. A person’s
14 domicile is her *permanent* home, where she resides with the intention to remain or to
15 which she intends to return.” *Kanter*, 265 F.3d at 858-59 (emphasis added) (citations
16 omitted).

17 Plaintiff must amend the complaint to correct these deficiencies.¹ *NewGen*, 840
18 F.3d at 612 (“Courts may permit parties to amend defective allegations of jurisdiction at
19 any stage in the proceedings.”).

20 Accordingly,

21 **IT IS ORDERED** that within two weeks of the date of this order, Echelon shall
22 file an amended complaint properly alleging the citizenship of each party.

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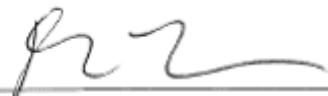
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28 ¹ This amended complaint pursuant to court order will not affect Plaintiff’s right
under Rule 15(a)(1) to later amend once as a matter of course. *See, e.g., Ramirez v. Cty.
of San Bernardino*, 806 F.3d 1002, 1006-09 (9th Cir. 2015).

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IT IS FURTHER ORDERED that if Echelon fails to timely file an amended complaint, the Clerk of the Court shall dismiss this case, without prejudice, for lack of subject matter jurisdiction.

Dated this 22nd day of October, 2020.



Dominic W. Lanza
United States District Judge