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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Cliffton Equities, Inc.,

Plaintiff,

vs.

Summerlin Asset Management III,  
LLC,

Defendant.

No. CV-12-08131-PHX-PGR

ORDER

On August 21, 2012, the Court entered an Order (Doc. 13) that dismissed the complaint because it failed to adequately allege the basis for diversity of citizenship jurisdiction and required the plaintiff to file an amended complaint that properly states a jurisdictional basis for this action. On August 30, 2012, the plaintiff filed a First Amended Complaint that is still jurisdictionally defective.

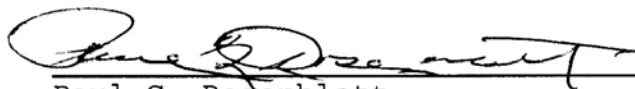
The Court's previous order required the plaintiff in part to "affirmatively allege the state of citizenship of each member" of defendant Summerlin Asset Management III, LLC. The First Amended Complaint alleges that the defendant's sole member is Summerlin Asset Management, LLC, which is alleged to have three members: "Peter Pakes, James Stepanian and Adam Pakes, each of whom is a resident of Lake Havasu City, Arizona." This allegation of residency is

1 deficient as a matter of law to invoke diversity jurisdiction because it fails to allege  
2 the individuals' citizenship as required. See Steigleder v. McQuesten, 198 U.S.  
3 141, 143, 25 S.Ct. 616, 617 (1905) ("It has long been settled that residence and  
4 citizenship [are] wholly different things within the meaning of the Constitution and  
5 the laws defining and regulating the jurisdiction of the ... courts of the United  
6 States; and that a mere averment of residence in a particular state is not an  
7 averment of citizenship in that state for the purpose of jurisdiction."); *accord*,  
8 Kanter v. Warner-Lambert Co., 265 F.3d 853, 857-58 (9<sup>th</sup> Cir. 2001) ("Plaintiffs'  
9 complaint ... state[s] that Plaintiffs were 'residents' of California. But the diversity  
10 jurisdiction statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. ...  
11 [The] failure to specify Plaintiffs' state of citizenship was fatal to [the] assertion of  
12 diversity jurisdiction.") To cure this pleading deficiency, the plaintiff must  
13 affirmatively allege the state of citizenship of the three individuals.

14 The plaintiff is advised that the Court will not permit a fourth attempt to  
15 plead diversity jurisdiction and that a failure to timely or sufficiently comply with  
16 this Order will result in the dismissal of this action for lack of subject matter  
17 jurisdiction. Therefore,

18 IT IS ORDERED that the First Amended Complaint is dismissed for lack of  
19 subject matter jurisdiction and that the plaintiff shall file a second amended  
20 complaint properly stating a jurisdictional basis for this action no later than  
21 **September 10, 2012.**

22 DATED this 4<sup>th</sup> day of September, 2012.

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25 Paul G. Rosenblatt  
United States District Judge