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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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11 OTASHE GOLDEN, M.D.,

No. CIV. S-14-497 LKK/EFB

12 Plaintiff,

13 v.

ORDER14 SOUND INPATIENT PHYSICIANS
15 MEDICAL GROUP, INC.; DAMERON
16 HOSPITAL ASSOCIATION, a
17 California Non-Profit
18 Association; NICHOLAS
19 ARISMENDI, an individual and
20 DOES 1-10, inclusive,

21 Defendants.

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23 The court has determined that the pending motion can be
24 determined on the basis of the papers already filed, and
25 accordingly the hearing on this motion, currently scheduled for
26 July 28, 2014, is **VACATED**.27 Plaintiff has filed a First Amended Complaint ("Complaint")
28 alleging three California claims, with federal jurisdiction
predicated solely upon diversity jurisdiction. ECF No. 14. This
court dismissed plaintiff's original complaint sua sponte because
it failed to allege plaintiff's citizenship, and the citizenship

1 of the defendants, depriving the court of the information it
2 needed to determine whether diversity jurisdiction existed. ECF
3 No. 13.

4 The amended Complaint once again does not plead plaintiff's
5 citizenship, even though the court, in its prior order,
6 specifically identified this defect in the original complaint.
7 Rather, the amended Complaint pleads, again, only that plaintiff
8 is a "resident" of California. ECF No. 14 ¶ 3. This allegation
9 is insufficient to establish plaintiff's citizenship.¹ Carolina
10 Cas. Ins. Co. v. Team Equipment, Inc., 741 F.3d 1082, 1086 (9th
11 Cir. 2014) ("The technical defects in this case include alleging
12 diversity jurisdiction based on residency rather than
13 citizenship, and failing to allege the principal place of
14 business of a corporation"); Harris v. Bankers Life and Cas. Co.,
15 425 F.3d 689, 695 (9th Cir. 2005) ("The face of Harris' initial
16 pleading did not affirmatively reveal information to trigger
17 removal based on diversity jurisdiction because the initial
18 pleading only stated Brown's 1972 residency, not his
19 citizenship"); Snell v. Cleveland, Inc., 316 F.3d 822, 824 (9th
20 Cir. 2002) (per curiam) ("The complaint inadequately alleged the
21 facts necessary to establish diversity jurisdiction" because "it
22 alleged that Donald Snell resided in North Dakota, not that he
23 was a citizen of that state"); Kanter v. Warner-Lambert Co., 265
24 F.3d 853, 857 (9th Cir. 2001) ("Plaintiffs' complaint and
25

26 ¹ For these purposes, diversity jurisdiction exists between
27 "citizens of different States," and between "citizens of a State
28 and citizens or subjects of a foreign state." 28 U.S.C.
§ 1332(a)(1) & (2).

1 Pfizer's notice of removal both state that Plaintiffs were
2 'residents' of California. But the diversity jurisdiction
3 statute, 28 U.S.C. § 1332, speaks of citizenship, not of
4 residency"); Mantin v. Broadcast Music, Inc., 244 F.2d 204, 206
5 (9th Cir. 1957) ("The complaint alleged that plaintiff was 'a
6 professional entertainer and composer residing in the County of
7 Los Angeles, State of California.' That, however, cannot be
8 regarded as an allegation that plaintiff was a citizen of
9 California. Residence and citizenship are not the same thing").

10 In addition, although plaintiff now alleges the place of
11 incorporation of defendant Sound Inpatient Physicians Medical
12 Group, Inc. ("Sound") - the only surviving defendant - she once
13 again fails to allege Sound's principal place of business, even
14 though in its prior order, the court specifically identified that
15 defect in the original complaint.² Plaintiff alleges that Sound
16 has its "principal office" in Tacoma Washington, but does not
17 allege where it has its principal place of business.³

18 The court is thus again deprived of the information it needs
19 to determine whether diversity jurisdiction exists. The failure

20 ² A corporation is a citizen "of every State and foreign state by
21 which it has been incorporated and of the State or foreign state
22 where it has its principal place of business." 28 U.S.C.
§ 1332(c)(1) (emphasis added).

23 ³ The complaint does not explain what legal relevance there is,
24 for diversity purposes, to the location of a corporation's
25 "principal office." However, the court notes that the location
26 of the "main office" is pertinent to diversity jurisdiction for a
27 national bank, not a corporation. See 28 U.S.C. § 1348; Wachovia
28 Bank v. Schmidt, 546 U.S. 303, 307 (2006) ("we hold that a
national bank, for § 1348 purposes, is a citizen of the State in
which its main office, as set forth in its articles of
association, is located").

1 to properly allege the citizenship of the parties is a technical
2 defect (that is, if the parties are, in fact, diverse), that
3 plaintiff should normally be permitted to cure by amendment.
4 Team Equipment, 741 F.3d at 1086 (alleging residence rather than
5 citizenship in a diversity case is a "technical defect[]", and
6 "plaintiff should be permitted to amend a complaint to cure
7 'technical' defects"). However, this is also the second
8 consecutive complaint in which plaintiff, who is represented by
9 counsel, has failed to allege jurisdiction properly. The
10 Complaint will therefore be dismissed with leave to amend.
11 However, plaintiff is cautioned that failure to properly allege
12 jurisdiction in the next amended complaint will subject her to
13 sanctions, including possible dismissal of the action with
14 prejudice.


15 Accordingly,

16 1. The First Amended Complaint is hereby **DISMISSED** with
17 leave to amend within 30 days from the date of this order; and

18 2. Defendant's motion to dismiss (ECF No. 19), which does
19 not address the jurisdictional issue, is **DENIED** as moot.

20 **IT IS SO ORDERED.**

21 Dated: July 22, 2014.

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24 
25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
27 UNITED STATES DISTRICT COURT
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