

1 Scarcella has now filed an amended complaint, but has not obeyed the Court's order.
2 Its factual allegations regarding the citizenship of Fitness EM's citizenship are identical to
3 those the Court found inadequate and told Scarcella not to rely on. Its sole allegation
4 regarding the citizenship of Fitness EM's owner/members is:

5 According to public records, Michael J. Savage and Donna L. Savage are
6 homeowners and residents of Charlton, Worcester County, Massachusetts,
thereby citizens of Massachusetts.

7 (Am. Compl., ¶ 8.)

8 For purposes of diversity jurisdiction, citizenship is determined by domicile, not
9 residence. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). People may
10 reside in a state and even own a home there without establishing domicile. See *Lew v. Moss*,
11 797 F.2d 747, 749–50 (9th Cir. 1986) (discussing definition of domicile for purposes of
12 diversity jurisdiction). An allegation of residence and home ownership, coupled with
13 Scarcella's own legal conclusion about the legal effect of those two facts, is inadequate. See
14 *Lacano Investments, LLC v. Balash*, 765 F.3d 1068, 1071 (9th Cir. 2014) (in deciding whether
15 to dismiss for lack of subject matter jurisdiction, court does not accept the complaint's legal
16 conclusions as true, even if they are cast as factual allegations). That is particularly true here,
17 where Scarcella's legal conclusions contradict binding authority.

18 While the Court did not specifically mention it, the amended complaint also fails to
19 allege Scarcella's own citizenship, saying only that he is a California resident and concluding
20 that this means he is a California citizen. (Am. Compl., ¶ 6.) Presumably, he knows what
21 state he is domiciled in and a citizen of, and can allege that.

22 Because Scarcella may inadvertently have filed the wrong document, the Court will
23 give him an opportunity to correct his error. No later than **April 27, 2015**, he is **ORDERED**
24 to file a second amended complaint properly alleging the citizenship of Fitness EM, and
25 alleging his own citizenship. He is particularly cautioned that alleging residency and home
26 ownership will not suffice, and that he must make factual allegations, not legal conclusions.

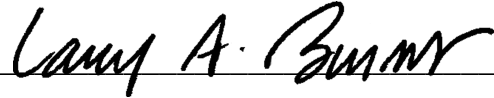
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1 If he does not do this within the time permitted, this action will be dismissed without prejudice
2 but without leave to amend.

3 **IT IS SO ORDERED.**

4 DATED: April 22, 2015

A handwritten signature in black ink, reading "Larry A. Burns", is written over a horizontal line.

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6 **HONORABLE LARRY ALAN BURNS**
United States District Judge

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