

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Judge Philip A. Brimmer**

Civil Action No. 16-cv-00776-PAB-MEH

ADPERIO NETWORK, LLC,

Plaintiff,

v.

APPSLIDE, LLC,

Defendant.

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**ORDER TO SHOW CAUSE**

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This matter is before the Court on plaintiff's Response to Order to Show Cause [Docket No. 75]. Plaintiff states that the Court has subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332. Docket No. 1 at 1, ¶ 3.

On January 26, 2017, the Court ordered plaintiff to show cause why this action should not be dismissed due to the Court's lack of subject matter jurisdiction. Docket No. 73. On February 10, 2017, plaintiff filed its response. Docket No. 75. While the response sufficiently describes the citizenship of Adperio Network, LLC, the complaint fails to sufficiently aver the domicile, as opposed to the residency, of AppSlide, LLC's sole member, Owen Mahan.

As the Court noted in its prior order, plaintiff must demonstrate the domicile of AppSlide's members. Docket No. 73 at 4. Domicile, not residency, is determinative of citizenship. See *Kramer v. Sears Roebuck & Co.*, 1997 WL 141175, \*3 (10th Cir. Mar. 28, 1997) (unpublished). While plaintiff states that Owen Mahan is "domiciled in

California,” Docket No. 75 at 2, the response to the order to show cause bases this on defendant’s opposition to plaintiff’s motion for leave to file an amended complaint, Docket No. 75 at 2, n.7 (citing Docket No. 58), which states that Mr. Mahan is a resident of California. The opposition makes no reference to Mr. Mahan’s domicile. The Court is unwilling to infer that Mr. Mahan is domiciled in California as opposed to being a part-time resident who considers himself to be a citizen of another state.

For the foregoing reasons, it is **ORDERED** that, on or before **5:00 p.m. on February 21, 2017**, plaintiff shall show cause why this case should not be dismissed due to the Court’s lack of subject matter jurisdiction.

DATED February 13, 2017.

BY THE COURT:

s/Philip A. Brimmer  
PHILIP A. BRIMMER  
United States District Judge