

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

Civil Action No. 18-cv-00842-PAB

LILU'S GARDEN, LTD, a Colorado Limited Liability Company, and
SLC1, LLC f/k/a Sweet Leaf Capital 1, LLC, a Colorado Limited Liability Company,

Plaintiffs,

v.

UNITED SCIENCE LLC, a Minnesota Limited Liability Company,

Defendant.

ORDER TO SHOW CAUSE

The Court takes up this matter *sua sponte* on plaintiffs' complaint [Docket No. 1]. Plaintiffs state that the Court has subject matter jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332. Docket No. 1 at 3, ¶ 8.

In every case and at every stage of the proceeding, a federal court must satisfy itself as to its own jurisdiction, even if doing so requires *sua sponte* action. See *Citizens Concerned for Separation of Church & State v. City & County of Denver*, 628 F.2d 1289, 1297 (10th Cir. 1980). Absent an assurance that jurisdiction exists, a court may not proceed in a case. See *Cunningham v. BHP Petroleum Great Britain PLC*, 427 F.3d 1238, 1245 (10th Cir. 2005). Courts are well-advised to raise the issue of jurisdiction on their own, regardless of parties' apparent acquiescence. First, it is the Court's duty to do so. *Tuck v. United Servs. Auto. Ass'n*, 859 F.2d 842, 844 (10th Cir. 1988). Second, regarding subject matter jurisdiction, "the consent of the parties is irrelevant, principles of estoppel do not apply, and a party does not waive the

requirement by failing to challenge jurisdiction.” *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (internal citations omitted). Finally, delay in addressing the issue only compounds the problem if, despite much time and expense having been dedicated to the case, a lack of jurisdiction causes it to be dismissed. See *U.S. Fire Ins. Co. v. Pinkard Constr. Co.*, No. 09-cv-00491-PAB-MJW, 2009 WL 2338116, at *3 (D. Colo. July 28, 2009).

“The party invoking federal jurisdiction bears the burden of establishing such jurisdiction as a threshold matter.” *Radil v. Sanborn W. Camps, Inc.*, 384 F.3d 1220, 1224 (10th Cir. 2004). Plaintiffs assert that this Court has diversity jurisdiction under 28 U.S.C. § 1332. Pursuant to that section, “district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” 28 U.S.C. § 1332(a). The facts presently alleged are insufficient to establish the parties’ citizenship.

In their complaint, plaintiffs state that they are “active Colorado limited liability compan[ies]” with their principal places of business in Denver, Colorado. Docket No. 1 at 1-2, ¶¶ 1, 3. Plaintiffs further allege that defendant United Science LLC “is an active Minnesota limited liability company” with its principal place of business located in Wisconsin. *Id.* at 2, ¶ 4. Unlike a corporation, however, the citizenship of a limited liability company is determined not by its state of organization or principal place of business, but by the citizenship of all of its members. See *Siloam Springs Hotel, LLC v. Century Sur. Co.*, 781 F.3d 1233, 1237-38 (10th Cir. 2015) (“[I]n determining the

citizenship of an unincorporated association for purposes of diversity, federal courts must include all the entities' members.”). Plaintiffs have not identified the parties' members or the citizenship of those members. *Cf. Fifth Third Bank v. Flatrock 3, LLC*, 2010 WL 2998305, at *3 (D.N.J. July 21, 2010) (concluding that an allegation that “upon information and belief, the members of [an LLC] are citizens of New York” was insufficient because plaintiff “failed to identify or trace the citizenship of each individual member” of the LLC (internal quotation marks omitted)). The Court is therefore unable to determine the citizenship of the parties and whether the Court has jurisdiction. See *United States ex rel. General Rock & Sand Corp. v. Chuska Dev. Corp.*, 55 F.3d 1491, 1495 (10th Cir. 1995) (“The party seeking the exercise of jurisdiction in his favor must allege in his pleading the facts essential to show jurisdiction.”) (citations and internal quotation marks omitted).

For the foregoing reasons, it is

ORDERED that, on or before **5:00 p.m. on April 23, 2018**, plaintiffs shall show cause why this case should not be dismissed due to the Court's lack of subject matter jurisdiction.

DATED April 13, 2018.

BY THE COURT:

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