

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RIVIERA DISTRIBUTORS, INC.,
Plaintiff,

Case No. 09-11380

v.

Honorable Patrick J. Duggan

RDI OF MICHIGAN, LLC,
Defendant.

**ORDER REQUIRING DEFENDANT TO DISCLOSE
CITIZENSHIP OF LLC MEMBERS**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on May 6, 2009.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
 U.S. DISTRICT COURT JUDGE

On April 20, 2009, the Court ordered Plaintiff to show cause as to why this action should not be dismissed for lack of subject matter jurisdiction, specifically noting that Plaintiff failed to submit information on the citizenship of the members of Defendant, a limited liability company (“LLC”). On April 27, 2009, Plaintiff responded to the order to show cause indicating that the sole member of Defendant RDI of Michigan, LLC, is another limited liability corporation, Eight Kids, LLC. Plaintiff further indicated that it “has no cause to believe that any Illinois resident is a member of RDIM” and that its exclusive dealings with Defendant have been through Robert C. Horvath, a Michigan resident. (Pl.’s Resp. ¶¶ 3-6.) Plaintiff was otherwise unable to obtain information regarding the members of RDI of Michigan, LLC, or Eight Kids, LLC. Plaintiff

requested that the Court enter an order dismissing the order to show cause or, in the alternative, allow Plaintiff to conduct limited discovery for the purpose of identifying Defendant's members and their citizenship.

On May 5, 2009, Defendant filed its answer to Plaintiff's Complaint. Therein, Defendant stated that it "does not dispute the legal conclusions" that this Court has diversity jurisdiction over the case. (Answer ¶ 5.) Defendant did not, however, identify its members or their citizenship.

For over a century, it has been "well established that when jurisdiction depends upon diverse citizenship the absence of sufficient averments or of facts in the record showing such required diversity of citizenship is fatal and cannot be overlooked by the court, even if the parties fail to call attention to the defect, or consent that it may be waived." *Thomas v. Bd. of Trs. of Ohio State Univ.*, 195 U.S. 207, 211, 25 S. Ct. 24, 25 (1904). In lieu of granting Plaintiff's discovery request, the Court directs Defendant to submit the necessary information for the Court to determine whether complete diversity exists. Accordingly,

IT IS ORDERED that, within twenty (20) days of the date of this Order, Defendant RDI of Michigan, LLC, file a statement disclosing its membership and the citizenship of those members.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
Peter M. Falkenstein, Esq.
Anthony DeLuca, Esq.