

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

BENJAMIN C. SMITH,

Plaintiff,

vs.

LOWE'S STORE, INC., a North  
Carolina Corporation,

Defendants.

No. CV 21-42-H-SEH

**ORDER**

On June 17, 2021, Plaintiff Benjamin C. Smith ("Plaintiff"), proceeding pro se, filed an Amended Complaint<sup>1</sup> as required by the Court Order of June 4, 2021,<sup>2</sup> which has been screened under 28 U.S.C. §§ 1915(e)(2) and 1915A(a) and read liberally.<sup>3</sup> Reasonable inferences have been made.<sup>4</sup>

The Court will not treat Plaintiff more favorably than parties with counsel of

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<sup>1</sup> Doc. 5.

<sup>2</sup> Doc. 4.

<sup>3</sup> See *Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018).

<sup>4</sup> See *McCabe v. Arave*, 827 F.2d 634, 640 n. 6 (9th Cir. 1987) (citing *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983)).

record,<sup>5</sup> is not obliged to assume or fill the role of Plaintiff's counsel, and may not provide personal assistance to Plaintiff.<sup>6</sup>

Plaintiff claims subject matter jurisdiction under 28 U.S.C. § 1332.

However, diversity jurisdiction has not been properly pleaded.<sup>7</sup>

Diversity of citizenship jurisdiction, if it exists, must be grounded in 28 U.S.C. § 1332, which provides, in pertinent part:

(a) The 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—

(1) Citizens of different States;<sup>8</sup>

Federal jurisdiction cannot be presumed. The diversity statute requires complete diversity of citizenship between all plaintiffs and all defendants.<sup>9</sup> It is to

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<sup>5</sup> See *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

<sup>6</sup> *Pliler v. Ford*, 542 U.S. 225, 231 (2004) (quoting *Martinez v. Ct. of Appeal of Cal., Fourth App. Dist.*, 528 U.S. 152, 162 (2000)).

<sup>7</sup> See Doc. 5 at 4-6.

<sup>8</sup> 28 U.S.C. § 1332 (a)(1).

<sup>9</sup> See 15 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 102.12, at 102-28 (3d ed. 2015).

be strictly construed.<sup>10</sup> Plaintiff, as the party asserting jurisdiction, has the burden of proving such jurisdiction exists.<sup>11</sup>

The Amended Complaint fails to properly plead the citizenship of Defendant Lowe's Store, Inc.<sup>12</sup> A corporation is a citizen of: (1) the state in which it is incorporated; and (2) the state in which it has its principal place of business.<sup>13</sup> Both must be properly plead to invoke diversity jurisdiction. Lack of jurisdiction can be raised at any time by a party, or by the court's own initiative, at any stage in the litigation, even after trial and judgment entry.<sup>14</sup>

An second amended complaint may be filed.

ORDERED:

1. Plaintiff is granted to and until **4:45 p.m. on Friday, July 23, 2021**, in which to file a second amended complaint that properly pleads diversity jurisdiction.

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<sup>10</sup> See *City of Indianapolis v. Chase Nat. Bank of City of New York*, 314 U.S. 63 (1941).

<sup>11</sup> See *Lew v. Moss*, 797 F.2d 747 (9th Cir. 1986).

<sup>12</sup> Doc. 5 at 4-6.

<sup>13</sup> 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 80-81 (2010).

<sup>14</sup> See *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006).

2. If a second amended complaint, appropriate in form and content, is not timely filed, this case will be dismissed.

DATED this 15<sup>th</sup> day of July, 2021.

A handwritten signature in black ink that reads "Sam E. Haddon". The signature is written in a cursive style and is positioned above a solid horizontal line.

SAM E. HADDON  
United States District Judge