

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 CENTEX HOMES, a Nevada general )
4 partnership, )

5 Plaintiff, )

6 vs. )

Case No.: 2:16-cv-01958-GMN-CWH

ORDER

7 NAVIGATORS SPECIALTY INSURANCE )
8 COMPANY, a New York corporation; )
9 EVEREST NATIONAL INSURANCE )
10 COMPANY, a Delaware corporation; )
11 INTERSTATE FIRE & CASUALTY )
12 COMPANY, an Illinois corporation; )
13 LEXINGTON INSURANCE COMPANY, a )
14 Delaware corporation; FEDERAL )
15 INSURANCE COMPANY, an Indiana )
16 corporation; and UNDERWRITERS AT )
17 LLOYDS LONDON, an England corporation; )
18 ST. PAUL FIRE AND MARINE )
19 INSURANCE COMPANY, a Connecticut )
20 corporation, )

21 Defendants. )

22 Pending before the Court is the Motion to Dismiss, (ECF No. 38), filed by Defendant St.
23 Paul Fire and Marine Insurance Company ("St. Paul"). Defendant Federal Insurance Company
24 ("Federal Insurance") joined the Motion, (ECF No. 40). Plaintiff Centex Homes ("Plaintiff")
25 filed a Response, (ECF No. 48), and St. Paul filed a Reply, (ECF No. 53). For the reasons
discussed below, the Court GRANTS St. Paul's Motion.

I. BACKGROUND

This case arises out of a separate lawsuit in which homeowners from developments built
by Plaintiff filed a construction defect action against Plaintiff in state court. See Christopher &
Phyllis Kachnik, et al. v. Centex Homes, et al., District Court, Clark County, Nevada, Case No.

1 A-15-726385-D (the “Kachnik case”). Specifically, the Kachnik case alleges that Plaintiff, a  
2 homebuilder, built homes in various developments that contained “defective and negligent  
3 engineering and construction” for which the homeowners want to hold Plaintiff liable. (Compl.  
4 ¶ 60, ECF No. 1). Plaintiff asserts that due to the Kachnik case, Plaintiff “has incurred and will  
5 continue to incur significant costs, including, but not limited to, forensic, investigative, and  
6 repair costs, attorneys’ fees and other expenses.” (Id. ¶ 62).

7 Because of the Kachnik case, Plaintiff filed the present action on August 17, 2016,  
8 against Defendants Navigators Specialty Insurance Company, Everest National Insurance  
9 Company, Interstate Fire & Casualty Company, Lexington Insurance Company, Federal  
10 Insurance, Underwriters at Lloyd’s London, and St. Paul (collectively “Defendants”).  
11 Plaintiff’s Complaint seeking indemnity alleges the following causes of action: (1) breach of  
12 contract; (2) breach of the implied covenant of good faith and fair dealing; (3) violations of  
13 Nevada’s Unfair Claims Settlement Practices Action; and (4) declaratory relief. (Compl. ¶¶ 98–  
14 119).

15 On December 30, 2016, St. Paul filed the instant Motion to Dismiss for Lack of  
16 Jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). St. Paul alleges that the  
17 Court does not have jurisdiction over this case because Plaintiff failed to allege complete  
18 diversity of Defendants. (Mot. to Dismiss (“MTD”) 3:3–5).

## 19 **II. LEGAL STANDARD**

20 Federal Rule of Civil Procedure 12(b)(1) provides for dismissal of an action for lack of  
21 subject matter jurisdiction. “A party invoking the federal court’s jurisdiction has the burden of  
22 proving the actual existence of subject matter jurisdiction.” *Thompson v. McCombe*, 99 F.3d  
23 352, 353 (9th Cir. 1996). A motion to dismiss for lack of subject matter jurisdiction pursuant to  
24 Rule 12(b)(1) may take one of two forms. *Thornhill Publ’g Co. v. General Tel. & Elec. Corp.*,  
25 594 F.2d 730, 733 (9th Cir. 1979). It may be a “facial” challenge or it may be a “factual”

1 challenge. Id. “In a facial attack, the challenger asserts that the allegations contained in a  
2 complaint are insufficient on their face to invoke federal jurisdiction.” *Safe Air for Everyone v.*  
3 *Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

4 Alternatively, “[a] factual challenge relies on affidavits or any other evidence properly  
5 before the court to contest the truth of the complaint’s allegations.” *Courthouse News Serv. v.*  
6 *Planet*, 750 F.3d 776, 780 (9th Cir. 2014). When a factual challenge is asserted, the Court need  
7 not presume the truthfulness of the allegations in the complaint. See *Meyer*, 373 F.3d at 1039;  
8 *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). “Once the moving party has converted the  
9 motion to dismiss into a factual motion by presenting affidavits or other evidence properly  
10 brought before the court, the party opposing the motion must furnish affidavits or other  
11 evidence necessary to satisfy its burden of establishing subject matter jurisdiction.” *Savage v.*  
12 *Glendale Union High Sch.*, 343 F.3d 1036, 1040 (9th Cir. 2003).

13 “District courts have jurisdiction in civil actions where there is complete diversity of  
14 citizenship among the parties and the amount in controversy exceeds \$75,000, exclusive of  
15 interest and costs.” See *Crum v. Circus Circus Enterprises*, 231 F.3d 1129, 1131 (9th Cir. 2000)  
16 (citing 28 U.S.C. § 1332(a)).

### 17 **III. DISCUSSION**

18 St. Paul alleges that this Court does not have jurisdiction because Plaintiff “fails to  
19 allege properly the citizenship of Defendant Certain Underwriters at Lloyd’s, London”  
20 (“Lloyd’s”). (MTD 3:7–9). Specifically, St. Paul alleges that “Lloyd’s is not a traditional  
21 insurance company, but rather a uniquely structured marketplace” where members are called  
22 “Names” and “each Name invests in a percentage of an insurance policy risk.” (Id. 5:1–3).  
23 Together, these Names “comprise ‘Syndicates,’ or groups of hundreds to thousands of Names,”  
24 and these Syndicates are treated as “unincorporated associations or groups for jurisdictional  
25 purposes.” (Id. 5:4–8). St. Paul seeks dismissal because Plaintiff fails to “allege the citizenship

1 of any Name in the Syndicate that purchased the insurance risk at issue,” and Plaintiff fails to  
2 “identify the citizenship of the lead underwriters assigned the Syndicate.” (MTD 6:8–10).

3 In its Complaint, Plaintiff alleges that Lloyd’s is “an England corporation with its  
4 principal place of business in London, England.” (Compl. ¶ 11). Moreover, Plaintiff contends  
5 that “Lloyd’s is no longer comprised of individual members with unlimited personal liability  
6 and now has a central corporate fund to meet liabilities.” (Resp. 2:8–10). Plaintiff asserts that  
7 “Lloyd’s is a corporation organized under the laws of England with its principal place of  
8 business in England—this should end the inquiry regarding diversity.” (Id. 4:20–21).

9 A corporation, even if a foreign one, is a citizen of the state of its incorporation and the  
10 state where it has its principal place of business. 28 U.S.C. § 1332(c)(1); *Danjaq, S.A. v. Pathe*  
11 *Communications Corp.*, 979 F.2d 772, 774 (9th Cir. 1992) (holding that § 1332(c) makes “no  
12 distinction [ ] between those corporations incorporated in a state of the United States and those  
13 incorporated in a foreign country”). Unincorporated entities, such as partnerships, however,  
14 have the citizenship of all of their members. *Carden v. Arkoma Associates*, 494 U.S. 185, 195–  
15 96 (1990); *Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)  
16 (“In cases where entities rather than individuals are litigants, diversity jurisdiction depends on  
17 the form of the entity. For example, an unincorporated association such as a partnership has the  
18 citizenships of all of its members”).

19 Although the Ninth Circuit has not addressed diversity requirements involving Names in  
20 the Lloyd’s insurance market, district courts within the Circuit have repeatedly held that “the  
21 citizenship of each Name must be considered for purposes of determining whether complete  
22 diversity exists.” *Certain Underwriters at Lloyd’s of London Syndicates v. Travelers Indem.*  
23 *Co.*, 2006 WL 1896341, at \*6 n.2 (W.D. Wash. July 7, 2006); see *Parse v. Those Certain*  
24 *Underwriters At Lloyd’s London*, 2014 WL 12561586, at \*3 (C.D. Cal. Mar. 4, 2014); *Majestic*  
25 *Ins. Co. v. Allianz Int’l Ins. Co.*, 133 F. Supp. 2d 1218, 1223 (N.D. Cal. 2001) (“[E]ach Name

1 must be diverse from Plaintiff to satisfy diversity jurisdiction requirements.”); Certain  
2 Underwriters at Lloyd’s London v. Raytheon Co., 2001 WL 1836268, at \*3 (N.D. Cal. Dec. 4,  
3 2001) (“[T]his order holds that for federal jurisdiction to exist, there must be complete diversity  
4 between [the plaintiff] and every Name.”); Genstar Container Corp. v. Certain Underwriters at  
5 Lloyd’s, 2000 WL 1897299, at \*3 (N.D. Cal. Dec. 22, 2000) (finding lack of subject matter  
6 jurisdiction where plaintiff failed to show complete diversity as to each Name under the  
7 policy); Queen Victoria Corp. v. Ins. Specialists of Haw., Inc., 711 F. Supp. 553, 554 (D. Haw.  
8 1989) (“[C]itizenship [of the Lloyd’s policy underwriters] is determined by the citizenship of  
9 all of its members.”).

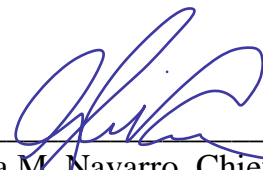
10 The Court agrees with the other districts in this Circuit. Accordingly, Plaintiff has failed  
11 to adequately allege complete diversity between Plaintiff and the relevant Names at Lloyd’s, as  
12 the current allegations are insufficient. The Court is therefore unable to determine whether the  
13 complete diversity requirement of § 1332 has been satisfied and does not have jurisdiction over  
14 this case.

15 **IV. CONCLUSION**

16 **IT IS HEREBY ORDERED** that St. Paul’s Motion to Dismiss, (ECF No. 38), is  
17 **GRANTED**. The Court does not have jurisdiction in this case and therefore all claims are  
18 **DISMISSED without prejudice**.

19 The Clerk of the Court shall enter judgment accordingly and close the case.

20 **DATED** this <sup>11</sup> day of September, 2017.

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24 \_\_\_\_\_  
25 Gloria M. Navarro, Chief Judge  
United States District Judge