

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:17-cv-199**

**TONY GALLOWAY, et al,** )  
 )  
 **Plaintiff(s),** )  
 )  
 **vs.** )  
 )  
 **UPDISH SERVICES, LLC,** )  
 )  
 )  
 **Defendant.** )  
 \_\_\_\_\_ )

**ORDER**

**THIS MATTER** is before the Court *sua sponte* to ascertain subject matter jurisdiction. The Defendant Up Dish Services, LLC, removed this action from state court based upon diversity jurisdiction (#1). In the Notice of Removal (#1), the Defendant alleges that it is a Delaware Limited Liability Company with its principal office in the state of Tennessee. The Defendant further alleges that the Plaintiffs are citizens and residents of Henderson County, North Carolina and thus there is complete diversity in this matter.

Courts have an affirmative duty to question subject matter jurisdiction even when the parties have not done so. Interstate Petroleum Corp. v. Morgan, 249 F.3d

215 (4<sup>th</sup> Cir. 2001); Plyer v. Moore, 129 F.3d 728, 732 n.6 (4th Cir. 1997),  
*certiorari denied* 524 U.S. 945, 118 S.Ct. 2359, 141 L.Ed.2d 727 (1998); 28  
U.S.C. §1447(c) (“If at any time before final judgment it appears that the district  
court lacks subject matter jurisdiction, the case shall be remanded.”). A limited  
liability company is a citizen of all states in which its constituent members are  
citizens. Carden v. Arkoma Associates, 494 U.S. 185, 110 S.Ct. 1015, 108  
L.Ed.2d 157 (1990). The Defendant has not disclosed in their Notice of Removal  
whether the constituent members or partners of its members are North Carolina  
residents and therefore will be required to do so.

**ORDER**

**IT IS, THEREFORE, ORDERED** that on or before **November 1, 2017**,  
the Defendant shall file a response disclosing the names and citizenships, if any, of  
all the constituent members or partners of the above referenced LLC and, for any  
such constituent members or partners that are limited liability companies or  
partnerships, to identify the citizenships of the respective constituent members or  
partners until all such constituents are fully identified.

Signed: October 3, 2017

  
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Dennis L. Howell  
United States Magistrate Judge

