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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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THEODORE MOFFITT and PATRICIA  
MOFFITT,

Plaintiffs,

v.

DESERT MESA CONSTRUCTION, LLC,

Defendant.

**MEMORANDUM DECISION AND  
ORDER REGARDING SUBJECT-  
MATTER JURISDICTION**

Case No. 4:19-cv-00019-DN

District Judge David Nuffer

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On February 13, 2019, the Moffitts filed a Complaint<sup>1</sup> commencing this action based on diversity of citizenship under [28 U.S.C. § 1332\(a\)\(1\)](#). Although the Complaint alleged that “[t]he Moffitts are residents of the state of Arizona,” it made no allegation regarding their citizenship, based on their domicile (rather than mere residence).<sup>2</sup> As a result, on February 22, 2019, an Order to Show Cause re: Subject-Matter Jurisdiction (“OSC”)<sup>3</sup> was entered requiring the Moffitts to “file an amended complaint containing allegations essential to show their respective citizenship” “by no later than Friday, March 1, 2019.”<sup>4</sup> While the Moffitts timely filed an Amended Complaint,<sup>5</sup> they failed to assert any new allegation to show their citizenship. Instead, they once again merely asserted that they “are residents of the state of Arizona.”<sup>6</sup>

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<sup>1</sup> Complaint, [docket no. 2](#), filed February 13, 2019.

<sup>2</sup> *Id.* ¶ 1.

<sup>3</sup> [Docket no. 8](#), filed February 22, 2019.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> [Docket no. 9](#), filed February 26, 2019.

<sup>6</sup> *Id.* ¶ 1.

On March 21, 2019, Defendant Desert Mesa Construction LLC (“DMC”) filed a Motion to Dismiss for Lack of Subject-Matter Jurisdiction (“SMJ Motion”)<sup>7</sup> under [Fed. R. Civ.](#)

[P. 12\(b\)\(1\)](#) “because the Amended Complaint fails to allege diversity of citizenship between citizens of different states.”<sup>8</sup> While the Moffitts have not yet filed a response to the SMJ Motion, they filed a Second Amended Complaint<sup>9</sup> on April 10, 2019, as is allowed under [Fed. R. Civ. P. 15\(a\)\(1\)\(B\)](#).

The Second Amended Complaint contains allegations sufficient to show the Moffitts’ citizenship for diversity purposes.<sup>10</sup>

THEREFORE, IT IS HEREBY ORDERED as follows:

1. The OSC<sup>11</sup> is SATISFIED based on the allegations of the Second Amended Complaint.
2. The SMJ Motion<sup>7</sup> is MOOT, and accordingly DENIED, based on the allegations of the Second Amended Complaint, which are sufficient to establish subject-matter jurisdiction in this diversity action.
3. In accordance with [Fed. R. Civ. P. 12\(a\)\(4\)\(A\)](#), DMC must serve a responsive pleading to the Second Amended Complaint by no later than *April 25, 2019*.

Signed April 11, 2019.

BY THE COURT:



David Nuffer  
United States District Judge

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<sup>7</sup> [Docket no. 14](#), filed March 21, 2019.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> [Docket no. 15](#), filed April 10, 2019.

<sup>10</sup> *See id.* ¶¶ 3-4.

<sup>11</sup> [Docket no. 8](#), filed February 22, 2019.