

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**JANE DOE AND JOHN DOE,
Plaintiffs,**

v.

Case No. 09-C-0985

**MERVIN SMUCKER, Ph.D., et al.,
Defendants.**

ORDER

On October 16, 2009, plaintiffs Jane and John Doe filed this action and alleged that I have subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are diverse and the amount in controversy exceeds \$75,000. On December 11, 2009, I issued an order to show cause why this action should not be dismissed for lack of subject matter jurisdiction. In the order to show cause, I noted that the jurisdictional allegations of the complaint were defective because plaintiffs had identified the residence of each individual party to the case rather than his or her state of domicile. As I noted in that order, “citizenship” for purposes of Section 1332 means domicile rather than residence. See, e.g., Denlinger v. Brennan, 87 F.3d 214, 216 (7th Cir. 1996).

On December 18, 2009, plaintiffs filed a motion to amend their complaint to correct the jurisdictional defect. Although the amended complaint corrects the allegations pertaining to the citizenship of defendant Smucker, it still identifies only the residence of the plaintiffs, rather than their domicile or citizenship. Thus, the jurisdictional allegations of the proposed amended complaint are defective, and plaintiffs’ motion to file the

amended complaint will be denied. However, if plaintiffs believe that they are citizens of Wisconsin, they may file an amended complaint that identifies their state of domicile.

THEREFORE, IT IS ORDERED that plaintiffs' motion to file an amended complaint is **DENIED**. However, plaintiffs have leave to file an amended complaint containing allegations identifying their domicile. Any amended complaint must be filed within **15 days** of the date of this order. If no amended complaint is filed, I will dismiss this action for lack of subject matter jurisdiction.

Dated at Milwaukee, Wisconsin, this 9 day of February, 2010.

/s _____
LYNN ADELMAN
District Judge