

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 20-cv-00512-MEH

SUZANNE DUNLAP,

Plaintiffs,

v.

USAA CASUALTY INSURANCE COMPANY,

Defendant.

ORDER TO SHOW CAUSE

Michael E. Hegarty, United States Magistrate Judge.

Before the Court is Defendant's Notice of Removal. ECF 1. Defendant invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1332. *Id.* This matter comes before the Court due to Defendant's failure to show that complete diversity of citizenship exists under prevailing law.

"The district courts of the United States, as we have said many times, are 'courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.'" *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005) (citation omitted). Pursuant to § 1332, "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 ... citizens of different States." 28 U.S.C. § 1332(a). Thus, "diversity jurisdiction exists only if no plaintiff and no defendant are citizens of the same state—that is, there must be 'complete diversity between all plaintiffs and all defendants.'" *Middleton v. Stephenson*, 749 F.3d 1197, 1200 (10th Cir. 2014) (quoting *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 89 (2005)). "[A] party invoking diversity jurisdiction bears the burden of proving its existence by a preponderance of the evidence." *Id.*

The facts presently alleged are insufficient to establish Plaintiff's citizenship. As relevant here, Defendant alleges:

Plaintiff is a citizen of Colorado. *See* Ex. A, ¶ 1 (Plaintiff was a resident of Colorado as of the referenced November 7, 2017 incident and 2020 filing of Complaint). The Complaint was filed on January 18, 2020 and lists Plaintiff's address as [REDACTED] Grand Junction, Colorado 81507. The Accident report filled out by Plaintiff and signed by Plaintiff shows Plaintiff's address as [REDACTED] Loveland, Colorado 80538. *See* Ex. F, Accident Report. The USAA CIC insurance policy at issue in this lawsuit and attached to Plaintiff's Complaint further includes the same Loveland, Colorado address. *See* Ex. A, p. 12. The fact that plaintiff has resided in the State of Colorado since at least November 7, 2017 shows that the state of her residency is also the state of her citizenship as there is an apparent intent to remain in Colorado. *See Walden v. Broce Constr. Co.*, [357] [F.2d] 242, 245 (10th [Cir.] [1966]).

Notice ¶ 3. Notably, *Walden* does not stand for the proposition that the length of residence in a state constitutes "an apparent intent to remain" in that state; rather, the Tenth Circuit found that a plaintiff who testified that he "had no home in Texas except with his son's family; his own family lived in Oklahoma at the place which had been their permanent residence; he visited his family and practiced his profession in Oklahoma from time to time; he drove an automobile supplied by the hospital in Oklahoma, which he had established; [and] he continued to use an Oklahoma driver's license" failed to demonstrate "the permanence of residence—the intent to remain—in Texas" for purposes of determining the plaintiff's domicile. *Walden*, 357 F.2d at 245.

A party's residence itself is not sufficient to establish citizenship. "For purposes of diversity jurisdiction, a person is a citizen of a state if the person is *domiciled* in that state." *Middleton*, 749 F.3d at 1200 (citing *Crowley v. Glaze*, 710 F.2d 676, 678 (10th Cir. 1983)) (emphasis added). "And a person acquires domicile in a state when the person resides there and intends to remain there indefinitely." *Id.* (citing *Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) ("[D]omicile is established by physical presence in a place in connection with a certain state of mind

concerning one's intent to remain there.”)). Thus, domicile, not residency or mailing address, is determinative of citizenship. *Pac. Specialty Ins. Co. v. Poirier*, No. 18-cv-00880-PAB, 2018 WL 4697323, at *1 (D. Colo. June 27, 2018) (citing *Whitelock v. Leatherman*, 460 F.2d 507, 514 (10th Cir. 1972) (“[A]llegations of mere ‘residence’ may not be equated with ‘citizenship’ for the purposes of establishing diversity.”)); *see also Holyfield*, 490 U.S. at 48 (“‘Domicile’ is not necessarily synonymous with ‘residence,’ and one can reside in one place but be domiciled in another.” (citations omitted))).

The Court has found no prevailing law demonstrating that the length of residence in a state is sufficient to establish domicile for purposes of Section 1332. “Although a party’s residency, work address, vehicle registration, and ownership of real property in a particular state are indicative of domicile, they are not conclusive.” *Ordonez v. Am. Auto. Ins. Co.*, No. 18-cv-02906-PAB, 2018 WL 6075251, at *2 (D. Colo. Nov. 21, 2018) (citing *Middleton*, 749 F.3d at 1200-01 (stating that courts should “consider the totality of the circumstances” to determine a party's domicile)). “Courts typically consider *several other factors* in determining a party’s citizenship, including ‘voter registration and voting practices;... location of brokerage and bank accounts; membership in unions, fraternal organizations, churches, clubs, and other associations; place of employment or business; driver’s license and automobile registration; [and] payment of taxes.’” *Id.* (quoting *Dumas v. Warner Literary Grp.*, No. 16-cv-00518-RM-NYW, 2016 WL 10879185, at *2 (D. Colo. Apr. 29, 2016)) (citation omitted) (emphasis added). Defendant has addressed none of these other factors. *See Lowe v. Travelers Home & Marine Ins. Co.*, No. 19-cv-00983-PAB, 2019 WL 1615070, at *1 (D. Colo. Apr. 15, 2019) (“Although defendant alleges plaintiff is a citizen of Colorado, the citations to the state court complaint do not allow the Court to infer plaintiff’s citizenship.”).

Because the parties' allegations are presently insufficient to allow the Court to determine the Plaintiff's citizenship or whether the Court has jurisdiction, *see United States ex rel. General Rock & Sand Corp. v. Chuska Dev. Corp.*, 55 F.3d 1491, 1495 (10th Cir. 1995) ("The party seeking the exercise of jurisdiction in his favor must allege in his pleading the facts essential to show jurisdiction.") (citations and internal quotation marks omitted), it is

ORDERED that Defendant file a written response to this Order to Show Cause **on or before March 6, 2020**, demonstrating why the Court should not remand this case (or recommend that it be remanded) for lack of subject matter jurisdiction.

Entered and dated at Denver, Colorado, this 26th day of February, 2020.

BY THE COURT:

A handwritten signature in black ink, reading "Michael E. Hegarty". The signature is written in a cursive, flowing style.

Michael E. Hegarty
United States Magistrate Judge