

No. 17-14194

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CAROL WILDING, *et al.*,

Appellants/Plaintiffs,

vs.

DNC SERVICES CORPORATION, *et al.*,

Appellees/Defendants.

Appeal from the United States District Court
for the Southern District of Florida

PLAINTIFFS'/APPELLANTS' MOTION TO AMEND COMPLAINT

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

To the best of undersigned's knowledge, the following is a complete list of the trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have or may have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

1. Kimberly Alberts, Plaintiff/Appellant.
2. Connie Anderson, Plaintiff/Appellant.
3. Antonino Hernandez, P.A., trial and appellate counsel for Plaintiffs/Appellants.
4. Kayite Ashcraft, Plaintiff/Appellant.
5. Lester John Bates, Plaintiff/Appellant.
6. Beck & Lee P.A., trial and appellate counsel for Plaintiffs/Appellants.
7. Elizabeth Lee Beck, trial and appellate counsel for Plaintiffs/Appellants.
8. Jared H. Beck, trial and appellate counsel for Plaintiffs/Appellants.
9. Mark Bedard, Plaintiff/Appellant.

10. Nancy Berners-Lee, Plaintiff/Appellant.
11. Jen Betterley, Plaintiff/Appellant.
12. Harris Bierhoff, Plaintiff/Appellant.
13. Timothy Bingen, Plaintiff/Appellant.
14. Stephanie Birdsong, Plaintiff/Appellant.
15. Marianne Blair, Plaintiff/Appellant.
16. Richard Booker, Plaintiff/Appellant.
17. Barbara Bowen, Plaintiff/Appellant.
18. Richard Boylan, Plaintiff/Appellant.
19. Matthew Joseph Brady, Plaintiff/Appellant.
20. Kyle Braund, Plaintiff/Appellant.
21. Chris Bubb, Plaintiff/Appellant.
22. Tristan Burgener, Plaintiff/Appellant.
23. D.J. Buschini, Plaintiff/Appellant.
24. Bruce Busto, Plaintiff/Appellant.
25. Joseph Callan, Plaintiff/Appellant.

26. Mark R. Caramanica, counsel for Defendants/Appellees.
27. Patricia Cassidy, Plaintiff/Appellant.
28. Susan Catterall, Plaintiff/Appellant.
29. Vincent Cauchi, Plaintiff/Appellant.
30. Cynthia Chan, Plaintiff/Appellant.
31. Torsha Childs, Plaintiff/Appellant.
32. Karlie Cole, Plaintiff/Appellant.
33. Aimee Coleman, Plaintiff/Appellant.
34. Rosalie Consiglio, Plaintiff/Appellant.
35. Daniel Cooper, Plaintiff/Appellant.
36. Yalonda Dye Cooper, Plaintiff/Appellant.
37. Suzanne Cork, Plaintiff/Appellant.
38. Rhiannon Crandall, Plaintiff/Appellant.
39. William Crandall, Plaintiff/Appellant.
40. Sharon Crawford, Plaintiff/Appellant.
41. Phyllis Criddle, Plaintiff/Appellant.

42. John Crowe, Plaintiff/Appellant.
43. Cullin O'Brien Law P.A., trial and appellate counsel for Plaintiffs/Appellants.
44. Craig Richard Currier, Plaintiff/Appellant.
45. Catherine Cyko, Plaintiff/Appellant.
46. Heather Dade, Plaintiff/Appellant.
47. Alecia Davis, Plaintiff/Appellant.
48. Sherry Davis, Plaintiff/Appellant.
49. Tammy Deitch-Coulter, Plaintiff/Appellant.
50. DNC Services Corporation, Defendant/Appellee.
51. Kathleen Dodge, Plaintiff/Appellant.
52. Diane Emily Dreyfus, Plaintiff/Appellant.
53. Dan Ellis Dudley, Plaintiff/Appellant.
54. Amalie Duvall, Plaintiff/Appellant.
55. Marc. E. Elias, counsel for Defendants/Appellees.
56. Eliza Feero, Plaintiff/Appellant.

57. Erik Michael Ferragut, Plaintiff/Appellant.
58. Elizabeth Figueroa, Plaintiff/Appellant.
59. Diana Flores, Plaintiff/Appellant.
60. William Scott Franz, Plaintiff/Appellant.
61. Susan Frisbie, Plaintiff/Appellant.
62. Elisabeth C. Frost, counsel for Defendants/Appellees.
63. Erik Furreboe, Plaintiff/Appellant.
64. Lisa Gale, Plaintiff/Appellant.
65. Laura Genna, Plaintiff/Appellant.
66. Ryan Ghan, Plaintiff/Appellant.
67. Joseph Gleason, Plaintiff/Appellant.
68. Jeffrey Goldberg, Plaintiff/Appellant.
69. Estrella Gonzalez, Plaintiff/Appellant.
70. Jose Alberto Gonzalez, Plaintiff/Appellant.
71. Prabu Gopalakrishnan, Plaintiff/Appellant.
72. Luke Grim, Plaintiff/Appellant.

73. Lucille Grooms, Plaintiff/Appellant.
74. Anthony Grudin, Plaintiff/Appellant.
75. Lauren Hale, Plaintiff/Appellant.
76. Julie Hampton, Plaintiff/Appellant.
77. Zachary James Haney, Plaintiff/Appellant.
78. Gayle Ann Harrod, Plaintiff/Appellant.
79. Jarath Hemphill, Plaintiff/Appellant.
80. Antonino Hernandez, trial and appellate counsel for Plaintiffs/Appellants.
81. Kirsten Hoffman, Plaintiff/Appellant.
82. Rebecca Hohm, Plaintiff/Appellant.
83. Kim Marie Houle, Plaintiff/Appellant.
84. Stephen Houseknecht, Plaintiff/Appellant.
85. Lewis Humiston, Plaintiff/Appellant.
86. United States Magistrate Judge Patrick M. Hunt.
87. Kirsten Hurst, Plaintiff/Appellant.

88. Benjamin Ilarraza, Plaintiff/Appellant.
89. Bakh Inamov, Plaintiff/Appellant.
90. Danielle Ingrassia, Plaintiff/Appellant.
91. Carolyn Jacobson, Plaintiff/Appellant.
92. Tukoi Jarrett, Plaintiff/Appellant.
93. Timo Johann, Plaintiff/Appellant.
94. Tamara Johnston, Plaintiff/Appellant.
95. Heather Jordan, Plaintiff/Appellant.
96. Rana Kangas-Kent, Plaintiff/Appellant.
97. Brandy Kincaid, Plaintiff/Appellant.
98. Amber Rae Knowlton, Plaintiff/Appellant.
99. Theda Larson-Wright, Plaintiff/Appellant.
100. Peggy Lew, Plaintiff/Appellant.
101. Melissa Liang, Plaintiff/Appellant.
102. Sarah Lopez, Plaintiff/Appellant.
103. Ruthzee Louijeune, counsel for Defendants/Appellees.

104. Edwin Lugo, Plaintiff/Appellant.
105. John Lynch, Plaintiff/Appellant.
106. Sean Lynch, Plaintiff/Appellant.
107. Christine Maiurano, Plaintiff/Appellant.
108. Melissa Marcotte, Plaintiff/Appellant.
109. Raymond Maxwell, Plaintiff/Appellant.
110. Lisa Anne Meneely, Plaintiff/Appellant.
111. David Meuli, Plaintiff/Appellant.
112. Greta Mickey, Plaintiff/Appellant.
113. Carl Miller, Plaintiff/Appellant.
114. Teri Monaco, Plaintiff/Appellant.
115. Angela Monson, Plaintiff/Appellant.
116. Brittany R. Musick, Plaintiff/Appellant.
117. Cullin O'Brien, trial and appellate counsel for Plaintiff/Appellant
118. Daniel O'Meara, Plaintiff/Appellant.
119. Andrew Orrino, Plaintiff/Appellant.

120. Perkins Coie LLP, counsel for Defendants/Appellees.
121. Steve Philipp, Plaintiff/Appellant.
122. Susan Phillips, Plaintiff/Appellant.
123. Jane Ellen Plattner, Plaintiff/Appellant.
124. Alette Prichett, Plaintiff/Appellant.
125. Kenneth Puckett, Plaintiff/Appellant.
126. David Pulaski, Plaintiff/Appellant.
127. David Pyles, Plaintiff/Appellant.
128. Valerie Elyse Rasch, Plaintiff/Appellant.
129. Michael Reed, Plaintiff/Appellant.
130. Susan Reed, Plaintiff/Appellant.
131. Daniel Reynolds, Plaintiff/Appellant.
132. Stanley Rifken, Plaintiff/Appellant.
133. Diane Robinson, Plaintiff/Appellant.
134. Rachel Roderick, Plaintiff/Appellant.
135. Jeff Rogers, Plaintiff/Appellant.

136. Dominic Ronzani, Plaintiff/Appellant.
137. Susan Lynne Roppel, Plaintiff/Appellant.
138. Andrew Rousseau, Plaintiff/Appellant.
139. Deborah Wasserman Schultz, Defendant/Appellee.
140. Lisa Settle, Plaintiff/Appellant.
141. Julianna Seymour, Plaintiff/Appellant.
142. Matthew Shaw, Plaintiff/Appellant.
143. Zeke Shaw, Plaintiff/Appellant.
144. James Simon, Plaintiff/Appellant.
145. Susan Singer, Plaintiff/Appellant.
146. Erika Sitzer, Plaintiff/Appellant.
147. Brenda Lee Smith, Plaintiff/Appellant.
148. Elesha Snyder, Plaintiff/Appellant.
149. Erich Sparks, Plaintiff/Appellant.
150. Bruce Spiva, counsel for Defendants/Appellees.
151. Marlowe St. Cloud Primack, Plaintiff/Appellant.

152. Alaina Talboy, Plaintiff/Appellant.
153. Felicia Michelle Taylor, Plaintiff/Appellant.
154. Brett Teegardin, Plaintiff/Appellant.
155. Thomas & Locicero PL, counsel for Defendants/Appellees.
156. George Thomas, Plaintiff/Appellant.
157. Gregg Thomas, counsel for Defendants/Appellees.
158. Laura Michelle Vaughn, Plaintiff/Appellant.
159. Carlos Villamar, Plaintiff/Appellant.
160. Beverly Virues, trial and appellate counsel for Plaintiff/Appellant.
161. Rick Washik, Plaintiff/Appellant.
162. Duffy Robert Weiss, Plaintiff/Appellant.
163. Mary Jasmine Welch, Plaintiff/Appellant.
164. Rebecca White-Hayes, Plaintiff/Appellant.
165. Carol Wilding, Plaintiff/Appellant.
166. Catherine Willott, Plaintiff/Appellant.
167. AnnMarie Wilson, Plaintiff/Appellant.

168. Graham Wilson, counsel for Defendants/Appellees.
169. Gregory Witkowski, Plaintiff/Appellant.
170. Emma Young, Plaintiff/Appellant.
171. United States District Court Judge William J. Zloch.

Plaintiffs/Appellants (“Plaintiffs”) respectfully file the instant motion to amend their complaint and in support state the following:

1. Pursuant to 28 U.S.C. § 1653, which is titled “Amendment of pleadings to show jurisdiction,” “[d]efective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.”

2. In its Supplemental Jurisdictional Question issued November 9, 2017, the Court requested that the parties address, *inter alia*, “whether the allegations should be amended on appeal, under 28 U.S.C. § 1653, to cure any jurisdictional deficiencies in the current pleadings[.]” The Court further advised that, “if applicable, the parties should submit any motions they consider necessary or appropriate to cure the deficiencies.” *Id.*

3. Under section 1653, a party shall be allowed to amend its complaint in order to provide a “complete statement of the basis for federal diversity jurisdiction”; the statute “provides a method for curing defective *allegations* of jurisdiction where the defect is merely one of the pleading and not one of an absence of proof of facts necessary to establish diversity of citizenship.” *Stafford v. Mobile Oil Corp.*, 945 F.2d 803, 806 (5th Cir. 1991) (citing *Aetna Cas. & Sur. Co. v. Hillman*, 796 F.2d 770, 775 (5th Cir. 1986) (emphasis in original)). *See also McArthur v. Kerzner Int’l Bahamas Ltd.*, 607 Fed. Appx. 845, 846 n.1 (11th Cir. Mar. 30, 2015) (granting motion to amend the complaint under section 1653 as a

matter of course to cure pleading deficiencies in the allegations of citizenship as to two of the defendants).

4. In its Final Order of Dismissal,¹ the District Court identified pleading deficiencies in the allegations of citizenship as to the named Plaintiffs in the operative complaint. (Doc. 62, p. 11). While the First Amended Complaint refers to each of the named Plaintiffs' state of residence, it does not explicitly set forth their respective state of citizenship. As in *McArthur*, Plaintiffs should be granted leave to amend their complaint to cure this pleading deficiency.

5. Defendants have indicated in their Position Regarding The Court's Jurisdictional Question of October 11, 2017 (filed with the Court Oct. 30, 2017), that they do not oppose “. . . permitting Plaintiffs to amend their pleadings on appeal for the sole purpose of attempting to cure their failure to plead citizenship properly.” *See id.* at 1. Plaintiffs' proposed Second Amended Complaint, attached hereto as **Exhibit A**, has the sole purpose of correcting the foregoing pleading deficiency.

¹ The Final Order of Dismissal dismissed the First Amended Complaint based on lack of subject-matter jurisdiction and did not grant leave to file an amended complaint.

WHEREFORE, Plaintiffs respectfully request that the Court grant the instant motion along with such other and further relief as may be necessary and proper.

DATED: November 24, 2017

RESPECTFULLY SUBMITTED,

/s/ Jared H. Beck

By: Jared H. Beck

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CERTIFICATE OF COMPLIANCE

Type-Volume. This document complies with the word limit of FRAP 26(d)(2) because, excluding the parts of the document exempted by FRAP 27(a)(2)(B) and applicable rules, this document contains 454 words according to Microsoft Word word processing software. **Typeface and Type-Style.** This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6).

/s/ Jared H. Beck

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 24, 2017, a true and correct copy of the foregoing has been sent via ECF portal to attorneys for Defendants/Appellants.

/s/ Jared H. Beck
