

1 Subsequently, Plaintiff brought suit against Defendant. Plaintiff's precise claims are
2 unclear. It appears that he alleges that Defendant did not properly treat or diagnose Plaintiff
3 and that Defendant's alleged failure to fill out paperwork meant that Plaintiff lost a
4 vocational rehabilitation benefit he otherwise would have been entitled to.

5 II. ANALYSIS

6 Because "it is this court's duty to see that [its] jurisdiction, defined and limited by
7 statute, is not exceeded," Curtis v. Nevada Bonding Corp., 53 F.3d 1023, 1026 (9th Cir.
8 1995), the question of subject matter jurisdiction will be taken up first. Fed. R. Civ. P.
9 12(b)(1) allows a party to assert, by motion, the defense of lack of subject matter jurisdiction.
10 When deciding such a motion, "it is well-settled that the complaint will be construed broadly
11 and liberally, in conformity with the general principle set forth in Rule 8(f)." C. A. Wright,
12 et al., Federal Practice and Procedure § 1350 (2004). However, "once a factual attack is
13 made on the federal court's subject matter jurisdiction, the district judge is not obliged to
14 accept the plaintiff's allegations as true and may examine the evidence to the contrary and
15 reach his or her own conclusions on the matter." Id. See also, Trentacosta v. Frontier Pac.
16 Aircraft Indus., Inc., 813 F.2d 1553, 1558 (9th Cir. 1987). Defendant notes that Plaintiff fails
17 to set forth a "short and plain statement" of his claims and ground for jurisdiction pursuant
18 to Federal Rules of Civil Procedure 8(a).

19 "When subject matter jurisdiction is challenged under Federal Rule of Procedure
20 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion.
21 Tosco Corp. v. Communities for a Better Env't, 236 F.3d 495, 499 (9th Cir. 2001) (citing
22 Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1226 (9th Cir. 1989)). Courts
23 construe liberally complaints drafted by *pro se* plaintiffs. Wolfe v. Strankman, 392 F.3d 358,
24 363 (9th Cir. 2004). Accordingly, as Plaintiff has not stated the basis for jurisdiction, it is
25 appropriate to consider whether either diversity jurisdiction or federal question jurisdiction
26 exists based on the facts alleged in his Complaint.

27 28 A. Diversity Jurisdiction

1 Jurisdiction for reason of diversity of citizenship is vested by 28 U.S.C. § 1332 which
2 grants federal district courts original jurisdiction of all civil actions where the matter in
3 controversy exceeds the sum of \$75,000 and is between citizens of different states. Id.

4 Defendant states that he is an Arizona citizen. Horowitch Aff., Def. Ex. 1. Plaintiff
5 does not state his citizenship. However, he has an Arizona address and all actions that are
6 the basis of this suit (i.e., Plaintiff seeking and receiving medical treatment from Defendant)
7 took place in Arizona. Plaintiff's Complaint states that he was participating in a Vocational
8 Rehabilitation program based in Arizona and his exhibits show that he applied for disability
9 in Arizona, suggesting that he is a citizen of the state. Pl. Ex. 12. Nor does Plaintiff allege
10 that either he or Defendant is not an Arizona citizen in his response. Accordingly, there is
11 no basis to suggest that either Plaintiff or Defendant are non-Arizona citizens.

12 Further, Plaintiff does not make a specific monetary demand, meaning that there is no
13 way to determine whether the amount in controversy requirement is met. Therefore, on the
14 face of the complaint and the facts presented, this Court does not have jurisdiction through
15 diversity of citizenship.

16 B. Federal Question Jurisdiction

17 The district courts "have original jurisdiction of all civil actions arising under the
18 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "The presence or
19 absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,'
20 which provides that federal jurisdiction exists only when a federal question is presented on
21 the face of the plaintiff's properly pleaded complaint." Caterpillar, Inc. v. Williams, 482
22 U.S. 386, 392 (1987). "Jurisdiction may not be sustained on a theory that the plaintiff has
23 not advanced." Merrell Dow Pharmaceuticals, Inc. v. Thompson, 478 U.S. 804, 809, n. 6
24 (1986).

25 Here, Plaintiff makes no mention of any constitutional or statutory provision, nor
26 pleads the elements of any such claim. Insofar as he does present a specific claim against
27 Defendant, it appears to be a medical malpractice claim, or something akin to it. Such claims
28 are generally decided under state law. See, e.g., A.R.S. § 12-562 et seq.

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As such, Plaintiff has not meant his burden of proving jurisdiction.¹ Accordingly,
IT IS ORDERED Defendant's Motion (Doc. 16) is **GRANTED**. Plaintiff's suit is
DISMISSED.

DATED this 16th day of July, 2009.



Roslyn O. Silver
United States District Judge

¹ Plaintiff has several motions pending that seem, in effect, to be asking for a default judgment due to Defendant's alleged late response. However, a district court that lacks subject matter jurisdiction also lacks jurisdiction to enter a default judgment. See, e.g., In re Mystic Tank Lines Corp., 544 F.3d 524, 528 (3d Cir. 2008). Accordingly, upon finding that federal jurisdiction is lacking, the issue becomes moot.