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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 State of Arizona, ex rel Terry Goddard,) No. CV-09-1596-PHX-GMS

10 Plaintiff,) **ORDER**

11 vs.)

12 Albert Yun Szu Yeh, et al.,)

13 Defendants.)

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17 Pending before the Court is the State’s Motion to Remand to Arizona Superior Court
18 (Dkt. # 26). Also pending are Defendants’ Motion for Rule 60 Motion for Relief From
19 Seizure Warrant for Lack of Jurisdiction (Dkt. # 24), Motion for Return of Unconstitutionally
20 Seized Property (Dkt. # 25), Defendants’ Motion To Dismiss Party (Dkt. # 46) and Plaintiff’s
21 Motion For Extension of Time For Response To Defendants’ Motion to Dismiss (Dkt. # 52).
22 For the following reasons the State’s Motion to Remand to Arizona Superior Court (Dkt. #
23 26) is granted. In light of the remand, the remaining motions are denied as moot.

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BACKGROUND

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26 On July 6, 2009, the Maricopa County Superior Court signed a Seizure Warrant listing
27 as Defendants Dr. Albert Yun Szu Yeh, his wife Jennifer Wu; Taibra, LLC; Bryan Espinosa;
28 and Pain Wellness Management Center aka Pain Wellness Center. The State sought to seize
Defendants’ property based on Arizona statutes that authorize the State to seek the forfeiture

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1 of property involved in crimes of racketeering, the illegal use and sale of narcotic or
2 dangerous drugs, fraudulent schemes, money laundering, illegally participating in a criminal
3 enterprise and other criminal or fraudulent activities.

4 On August 3, 2009, Defendant Jennifer Wu filed a Notice of Removal of that action
5 to this Court (Dkt. # 1). Upon motion by the State, (Dkt. # 7), this Court remanded this
6 matter to Maricopa County Superior Court pending the initiation of a forfeiture proceeding.
7 (Dkt. # 11). The State initiated those proceedings by filing its Notice of Pending Forfeiture
8 on September 3, 2009 in Maricopa County Superior Court. Arizona Revised Statutes
9 (“A.R.S.”) § 13-2308 (B) (2001) (requiring the state to initiate forfeiture proceedings within
10 sixty days of property seizure by filing a notice of pending forfeiture).

11 On September 18, Defendant Jennifer Wu again filed a Notice of Removal (Dkt. #
12 12) after which the State again moved to remand this action to Superior Court.

13 ANALYSIS

14 Defendants assert that this case falls within the diversity jurisdiction of this Court.
15 Defendants acknowledge, however, the general rule that the state of Arizona is not itself the
16 citizen of any state, and is, thus, not subject to diversity jurisdiction. *Moor v. County of*
17 *Alameda*, 411 U.S. 693, 717 (1973). Further an agency of the state, acting as an arm of the
18 state, is similarly not subject to federal diversity jurisdiction. *Id.* Because the State through
19 its Attorney General is the Plaintiff here, there is presumptively no diversity jurisdiction that
20 would allow the Defendants to remove the pending forfeiture action. *Nuclear Eng’g Co. v.*
21 *Scott*, 660 F.2d 241, 250 (7th Cir. 1981) (holding that because the Illinois Attorney General
22 filed suit in “his official capacity on behalf of the State . . . the district court has no
23 jurisdiction” over the suit).

24 The Defendants assert that an exception to the general rule applies when the state is
25 acting on behalf of others and is only a nominal party. But, Defendants do not establish the
26 existence of such an exception to the general rule. Defendants mix and match cases
27 involving both diversity jurisdiction and Eleventh Amendment immunity with cases
28 involving the *parens patriae* doctrine to suggest that if the state is acting on behalf of others,

1 its inability to qualify for diversity jurisdiction should be ignored. But not only do
2 Defendants fail to convince the Court that such an exception exists or should exist, they fail
3 to establish that even if it did, the State was acting in a nominal capacity in exercising a
4 remedy given to it in enforcing state laws, or that Defendants have otherwise established
5 diversity jurisdiction in this case.

6 Defendants cite *Ford Motor Co. v. Dep't of Treasury of the State of Indiana*, 323 U.S.
7 459, 464 (1945) for the proposition that “if the state is not the real party of interest (sic) and
8 just a nominal party, . . . the state becomes a citizen for diversity jurisdiction purposes.” The
9 *Ford* case, however, stands for no such proposition. *Ford*, which at any rate has since been
10 overruled by the Supreme Court, did not involve whether a removed action against state
11 officials met the diversity jurisdiction requirements of the federal court. Rather, it examined
12 the scope of the Eleventh Amendment bar on suits brought against states in federal court.
13 The *Ford* Court held that a refund action brought by Ford Motor Company against the
14 Indiana Department of the Treasury and officers constituting the Treasury Board was barred
15 by the Eleventh Amendment because to the extent the officials and not the state were named
16 as the Defendants, the refund action was still against the State, and thus could not be pursued
17 in federal court. “We have previously held that the nature of a suit as one against the state
18 is to be determined by the essential nature and effect of the proceeding.” *Ford*, 323 U.S. at
19 464.

20 And, while courts frequently use similar considerations in determining whether the
21 state is actually a party for purposes of diversity jurisdiction, “a state, or its alter ego, may
22 waive its Eleventh Amendment privilege but cannot create diversity jurisdiction.” *Befitel v.*
23 *Global Horizons, Inc.*, 461 F. Supp.2d 1218, 1222 (D. Haw. 2006) citing *Fifty Associates v.*
24 *Prudential Insurance Co. Of America*, 446 F.2d 1187, 1192 (9th Cir. 1970). Thus, when the
25 state is a legitimate party to the suit, there can be no diversity jurisdiction in the federal court.

26 The other cases cited by the Defendants stand for the proposition that when suit is
27 brought by or against a state official or a state agency, the court must consider whether the
28 official or agency is acting as an arm of the state as it pertains to the action. If so, then

1 federal diversity jurisdiction does not exist. *See, e.g., Missouri, Kansas & Texas Railway Co.*
2 *v. Hickman*, 183 U.S. 53, 59 (1901) (holding that a suit brought by Missouri Railway
3 Commissioners could not be removed because the suit was brought by the Commissioners
4 in their official capacity and on behalf of the state); *Scott*, 600 F.2d at 250 (holding that suit
5 brought by Illinois Attorney General was brought on behalf of state and could not be
6 removed to federal court); *Befitel v. Global Horizona, Inc.*, 461 F.Supp.2d 1218 (D. Haw.
7 2006) (holding that agency director was suing on behalf of the state of Hawaii to obtain
8 unpaid unemployment assessments, thus action could not be removed to federal court.). If
9 the state official or agencies are not acting as an arm of the state, then their citizenship may
10 be considered for purposes of establishing diversity jurisdiction. *Cf. Streit v. County of Los*
11 *Angeles*, 236 F.3d 552, 566 (9th Cir. 2001) (holding that the Alameda County Sheriff was
12 not acting as an arm of the state for purposes of invoking Eleventh Amendment immunity
13 to action concerning the operation of county jails).

14 The Defendants intermingle the above cases with two cases discussing the right of a
15 state to bring a claim as *parens patriae*. Not only do those cases fail to discuss how a state’s
16 *parens patriae* status might affect federal diversity jurisdiction, they both suggest that a state
17 cannot pursue a *parens patriae* action without having some interest of its own at stake. In
18 other words, a state cannot pursue a *parens patriae* action in a purely nominal capacity.
19 *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 607 (1982) (“In order to maintain
20 such an action, the State must articulate an interest apart from the interests of particular
21 private parties, *i.e.*, the State must be more than a nominal party.”). To the extent then, that
22 the Defendants wish to suggest that the State is pursuing this action only on behalf of others
23 as a *parens patriae*, it is unavoidably acknowledging that the State has its own interests at
24 stake, which it demonstrably does. To the extent that the State is pursuing its own interest
25 in securing a civil remedy against criminal conduct provided by law, it cannot be considered
26 merely a nominal party that could be ignored for purposes of determining whether there is
27 federal diversity jurisdiction.

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