

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Tobias I. Baca,

9 Plaintiff,

10 v.

11 Robert N. Ewing; and Fremont, Industrial  
12 Indemnity, Cambridge,

13 Defendants.

No. CV-11-0883-PHX-DGC

**ORDER**

14  
15 This case has a difficult history. Plaintiff filed his pro se complaint on  
16 May 3, 2011. Doc. 1. Although the complaint is difficult to understand, Plaintiff appears  
17 to allege that he has been subjected against his will to various surgical procedures,  
18 including procedures to install remote control devices in his body. Plaintiff's complaint  
19 was accompanied by a document titled "Informal Brief," which attaches a Petition for  
20 Writ of Certiorari and other documents that exceed 100 pages. Doc. 2-1. The attached  
21 documents further explain Plaintiff's complaint that he has been subjected involuntarily  
22 to surgical procedures to implant devices in his body to control his mind and actions. *Id.*

23 When Plaintiff failed to serve the complaint within the time required by Federal  
24 Rule of Civil Procedure 4, the Court held a conference with Plaintiff on November 3,  
25 2011. Doc. 13. The Court gave Plaintiff until December 9, 2011 to complete service,  
26 stating that no further extensions would be granted. Doc. 12.

27 Plaintiff did not serve Defendant Ewing by December 9, 2011. *See* Doc. 16. As a  
28 result, the Court dismissed the claims against Defendant Ewing. Doc. 20.

1 Plaintiff did purport to serve Defendant Fremont by December 9, 2011. Doc. 16.  
2 When Defendant Fremont failed to respond, Plaintiff obtained the Clerk's entry of  
3 default. Doc. 19. Plaintiff then filed an application asking this Court to enter default  
4 judgment against Defendant Fremont. Doc. 18. The Court declined to enter default  
5 judgment. Considering the factors set forth in *Eitel v. McCool*, 782 F.2d 1470 (9th Cir.  
6 1986), the Court concluded that default judgment in the amount sought by Plaintiff –  
7 \$160,000,000 – was not warranted. Nor was a default judgment in any amount  
8 warranted. The Court noted that it could not clearly understand Plaintiff's complaint, that  
9 Plaintiff's claims appear to have been before at least two other judges of this Court, and  
10 that the Court could not conclude that Plaintiff's claims had merit. Doc. 20.

11 On April 9, 2012, Plaintiff filed another application for entry of default. Doc. 21.  
12 This document asked the Clerk to enter default against Defendants Fremont and Ewing,  
13 but default had already been entered by the Clerk against Defendant Fremont and the  
14 claims against Defendant Ewing had been dismissed.

15 On June 8, 2012, the Court entered an order requiring Plaintiff to file a status  
16 report concerning the case. Doc. 22. In response, Plaintiff filed another document the  
17 Court cannot understand. Doc. 23. Attached to the document was another motion for  
18 default judgment against Defendant Fremont, dated June 14, 2012, which has never been  
19 filed with the Court. Doc. 23 at 4.

20 On June 22, 2012, Plaintiff filed a motion for leave to proceed in forma pauperis.  
21 Doc. 24. Attached to the motion was another complaint, virtually identical to the  
22 complaint in this case, as well as various other documents and x-rays. Doc. 24.

23 A review of the Court's docket shows that Plaintiff has been asserting claims  
24 against Defendants Ewing and Fremont for some time. His previous cases include CV02-  
25 603, CV02-1479, CV05-439, and CV09-687. In addition, as noted above, Defendant  
26 apparently has presented his arguments to the United States Supreme Court and the Ninth  
27 Circuit Court of Appeals. Doc. 2.

28 The Court is thus left with a case where one Defendant has been dismissed, the

1 other Defendant has failed to respond, but the Court has concluded that it should not enter  
2 default judgment because Plaintiff's claims appear to lack merit. Moreover, Plaintiff is  
3 not prosecuting this case in a coherent fashion, but instead files documents that are  
4 difficult to understand and repeats the filing of documents previously presented to the  
5 Court.

6 As the Court has reviewed the docket and the complaint, a more fundamental  
7 problem has appeared. Contrary to Rule 8(a)(1), Plaintiff's complaint fails to identify the  
8 basis for this Court's jurisdiction. The Court has subject matter jurisdiction over cases  
9 "arising under" federal law, 28 U.S.C. § 1331, but Plaintiff's complaint does not appear  
10 to assert a federal claim. Rather, the complaint accuses Defendants of "wanton  
11 negligence" and "extreme departure from ordinary care." Doc. 1 at 2. The Court also  
12 has subject matter jurisdiction "where the matter in controversy exceeds the sum or value  
13 of \$75,000, exclusive of interest and costs, and is between . . . citizens of different  
14 states." 28 U.S.C. § 1332(a)(1). Plaintiff's complaint asserts that he is a resident of  
15 Arizona. Doc. 1. The various documents filed by Plaintiff in connection with his service  
16 attempts suggest that Defendants are also residents of Arizona. See Docs. 15, 16. Thus,  
17 it appears the Court does not have diversity jurisdiction.

18 A Court may, sua sponte, raise the question of subject matter jurisdiction at any  
19 time during the pendency of an action. *Nevada v. Bank of America Corp.*, 672 F.3d 661,  
20 673 (9th Cir. 2012). The Court accordingly will require Plaintiff, on or before **July 27,**  
21 **2012**, to show cause why this case should not be dismissed for lack of subject matter  
22 jurisdiction.

23 **IT IS ORDERED:**

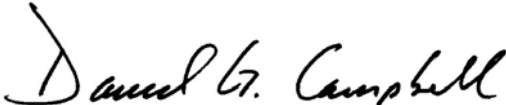
24 1. Plaintiff shall file a memorandum on or before **July 27, 2012**, explaining  
25 the basis for this Court's subject matter jurisdiction over this action. If Plaintiff fails to  
26 file a memorandum by that date, or fails to establish this Court's subject matter  
27 jurisdiction, this action will be dismissed.

28 2. The Clerk is directed to terminate this matter without further order if

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff fails to file a memorandum by **July 27, 2012**.

Dated this 12th day of July, 2012.



---

David G. Campbell  
United States District Judge