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

8 Tyrone Powell,

9 Plaintiff,

10 v.

11 Federal Home Loan Mortgage Corporation,
12 et al.,

13 Defendants.

No. CV12-1231 PHX DGC

ORDER

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15 On June 11, 2012, Plaintiff Tyrone Powell filed a complaint and a request for a
16 temporary restraining order (“TRO”). Doc. 1, 2, 5. He also asked the Court to appoint
17 counsel to represent him. Doc. 3. On the same day, Chief Judge Roslyn O. Silver denied
18 Plaintiff’s request for a TRO and motion to appoint counsel. Judge Silver noted that
19 Plaintiff had failed to satisfy the requirements of Federal Rule of Civil Procedure 65(b)
20 for issuance of a TRO without notice. Doc. 7.

21 **A. Motion for Reconsideration.**

22 Plaintiff has filed a motion to reconsider Judge Silver’s decision. Doc. 9. Courts
23 in this district have identified four circumstances where a motion for reconsideration will
24 be granted: (1) the moving party has discovered material differences in fact or law from
25 those presented to the Court at the time of its initial decision, and the party could not
26 previously have known of the factual or legal differences through the exercise of
27 reasonable diligence, (2) material factual events have occurred since the Court’s initial
28 decision, (3) there has been a material change in the law since the Court’s initial decision,

1 or (4) the moving party makes a convincing showing that the Court failed to consider
2 material facts that were presented to the Court at the time of its initial decision. *See, e.g.,*
3 *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz.
4 2003). Plaintiff has satisfied none of these standards.

5 Plaintiff's motion asserts that failure to grant a TRO will be a life-threatening
6 event and will place Plaintiff at risk of severe harm and danger. The motion does not
7 explain these assertions. Nor does the motion explain why notice to Defendants of
8 Plaintiff's request for a TRO would cause Plaintiff irreparable harm. Fed. R. Civ. P.
9 65(b). As a result, the Court concludes that Plaintiff has not provided grounds for
10 reconsideration of Chief Judge Silver's order.

11 **B. Motion to Proceed *In Forma Pauperis*.**

12 Although he has paid the filing fee for this case (Doc. 6), Plaintiff has filed a
13 motion to proceed *in forma pauperis* (Doc. 10). The Court presumes this is done to
14 secure service of his complaint by the United States Marshal. The Court has reviewed
15 the affidavit provided by Plaintiff and will grant his request to proceed *in forma pauperis*.
16 28 U.S.C. § 1915(a).

17 **C. Dismissal of Plaintiff's Complaint.**

18 28 U.S.C. § 1915 provides that the Court shall dismiss an *in forma pauperis* action
19 that fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).
20 The Court has reviewed Plaintiff's complaint (Doc. 1), and finds that it fails to state a
21 claim. The complaint asserts that Plaintiff has been the victim of identity theft and asks
22 the Court to enjoin Defendants from misusing Plaintiff's personal identification and
23 money. The complaint contains no explanation, however, as to how Defendants are using
24 this information, or how their use of the information is harming Plaintiff. The complaint
25 does not explain what actions are being taken with his personal information, how those
26 actions may harm him, or how they constitute a violation of law.

27 Other documents filed by Plaintiff obliquely suggest that he will lose his home if a
28 TRO is not entered. The documents do not explain what actions Defendants are taking to

1 cause Plaintiff to lose his home, how the allegedly stolen and falsified personal
2 information is part of any effort to take his home, or when any actions to take his home
3 are likely to occur. In short, the Court is unable to determine what Plaintiff is
4 complaining about.

5 Plaintiff's complaint also fails to state the legal basis for any claim and for this
6 Court's jurisdiction, and otherwise fails to comply with Rule 8 of the Federal Rules of
7 Civil Procedure. As a result, the Court will dismiss Plaintiff's complaint for failure to
8 state a claim upon which relief may be granted. The dismissal will be without prejudice.

9 Plaintiff has asked the Court to order the Marshal's Service to serve Defendants.
10 Doc. 11. Because Plaintiff's complaint is being dismissed without prejudice, this motion
11 will be denied.

12 **D. Leave to Amend.**

13 Within 30 days, Plaintiff may submit a first amended complaint to cure the
14 deficiencies outlined above. The complaint must comply with Rule 8 of the Federal
15 Rules of Civil Procedure. Plaintiff must clearly designate on the face of the document
16 that it is the "First Amended Complaint." The first amended complaint must be retyped
17 or rewritten in its entirety and may not incorporate any part of the original complaint by
18 reference.

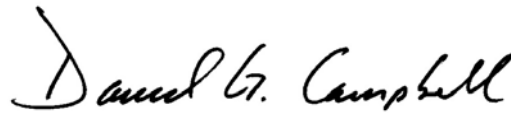
19 The amended complaint must contain (1) the legal basis for this Court's
20 jurisdiction over Plaintiff's claims, (2) the specific legal claims asserted by Plaintiff, set
21 forth in separate counts if there are more than one claim; (3) the names of the Defendants
22 against whom each claim is asserted; (4) exactly what each Defendant did or failed to do
23 to give rise to Plaintiff's claims; (5) what specific injury Plaintiff suffered because of that
24 Defendant's conduct. If Plaintiff fails to affirmatively link the conduct of each named
25 Defendant with the specific injury suffered by Plaintiff, the allegations against that
26 Defendant will be dismissed for failure to state a claim. Conclusory allegations that a
27 Defendant or group of Defendants have violated Plaintiff's legal rights are not acceptable
28 and will be dismissed.

1 A first amended complaint will supersede Plaintiff's original complaint. After
2 amendment, the Court will treat the original complaint as nonexistent.

3 **IT IS ORDERED:**

- 4 1. Plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. 10) is **granted**.
- 5 2. Plaintiff's motion for reconsideration (Doc. 9) is **denied**.
- 6 3. Plaintiff's motion for U.S. Marshal to Provide Service to Defendants
7 (Doc. 11) is **denied as moot**.
- 8 4. Plaintiff's motion for a Temporary Restraining Order (Doc. 12) is **denied**.
- 9 5. Plaintiff may file an amended complaint on or before **July 16, 2012**.

10 Dated this 15th day of June, 2012.

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14 David G. Campbell
15 United States District Judge
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