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

8 JoAn Ada Gividen,

9 Plaintiff,

10 v.

11 Dr. Luciano Fochesatto, M.D., *et al.*

12 Defendants.  
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No. CV-17-00118-TUC-JGZ (BGM)

**ORDER**

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15 On July 17, 2017, the Defendants filed a Motion to Dismiss (Doc. 12). The Ninth  
16 Circuit Court of Appeals requires the Court to provide *pro se* prisoners with notice of the  
17 requirements of Summary Judgment under Rule 56, Federal Rules of Civil Procedure.  
18 *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). Similarly, the Ninth Circuit has required  
19 notice be provided when a motion to dismiss has been filed. *See Stratton v. Buck*, 697  
20 F.3d 1004 (9th Cir. 2012). This Court provides notice to **all** *pro se* litigants, and as such  
21 notifies Plaintiff of his rights and responsibilities pursuant to *Stratton*.  
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23 Accordingly, the Court **NOTIFIES** Plaintiff as follows:

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25 1. The Defendants have filed a motion to dismiss pursuant to Rule 12(b)(1),  
26 Federal Rules of Civil Procedure, on the grounds that this Court lacks subject matter  
27 jurisdiction over Plaintiff's claims because there is not complete diversity of citizenship.  
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1 Defendants' motion (Doc. 12) is also made pursuant to Rule 12(b)(6), Federal Rules of  
2 Civil Procedure, on the grounds that the First Amended Complaint (Doc. 10) fails to state  
3 a medical malpractice claim. The motion will, if granted, result in the dismissal of your  
4 case. When a party you are suing makes a motion to dismiss for lack of subject matter  
5 jurisdiction and a failure to state a claim, and that motion is properly supported by  
6 declarations (or other sworn testimony) and/or documents, you may not simply rely on  
7 what your complaint says. Instead, you must set out specific facts in declarations,  
8 depositions, answers to interrogatories, or other documents, that contradict the facts  
9 shown in the Defendants' declarations and documents, and show that this Court does  
10 have jurisdiction over this case and that you have in fact stated a claim. If you do not  
11 submit your own evidence in opposition, the motion to dismiss, if appropriate, may be  
12 granted and the case dismissed. **If the court grants the motion to dismiss your case**  
13 **will be over and there will be no trial.**

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18 a. The declarations or other sworn testimony setting out your specific  
19 facts must be made on personal knowledge, must set forth such facts as  
20 would be admissible as evidence, and must affirmatively show that the  
21 affiant is competent to testify regarding the matters in the declaration or  
22 other sworn testimony.  
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25 b. If the Court determines that any of the declarations or other sworn  
26 testimony are made in bad faith, the Court may order the party employing  
27 the bad faith to pay the other party for costs associated with controverting  
28 that testimony, including the other party's attorney's fees.

1 c. If you do not submit your own evidence in opposition to the Motion,  
2 the moving party's evidence might be taken as truth and those claims  
3 addressed in the Motion to Dismiss will be dismissed without a trial. **If**  
4 **that occurs, there will be no trial on those claims.**

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6 2. **YOU HAVE THIRTY-THREE DAYS FROM JULY 21, 2017 TO**  
7 **RESPOND TO THE MOTION TO DISMISS.** See LRCiv. 12.1; LRCiv. 56.1(d); Fed.  
8 R. Civ. P. 6(e).<sup>1</sup> If you do not respond to the Motion to Dismiss, your failure to respond  
9 can be viewed by the Court as you agreeing with the Motion. See LRCiv. 7.2(i). **If that**  
10 **occurs, those claims addressed in the motion to dismiss will be dismissed, and there**  
11 **will be no trial on those claims.**

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14 3. **WARNINGS**

15 *a. Address Changes*

16 Plaintiff must file and serve a notice of a change of address in accordance with  
17 Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion  
18 for other relief with a notice of change of address. Failure to comply may result in  
19 dismissal of this action.

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22 *b. Copies*

23 Plaintiff must submit an additional copy of every filing for use by the Court. See  
24 LRCiv. 5.4. Failure to comply may result in the filing being stricken without further  
25 notice to Plaintiff.

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<sup>1</sup> The Local Rules of Civil Procedure ("LRCiv."), Rules of Practice of the U.S.  
28 District Court for the District of Arizona, are available on the Court's public website,  
<http://www.azd.uscourts.gov/>.

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*c. Possible Dismissal*

If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order of the Court).

Dated this 21st day of July, 2017.

  
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Honorable Bruce G. Macdonald  
United States Magistrate Judge