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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY \_\_\_\_\_ DEPUTY

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ANTHONY BRODZKI,

Plaintiff,

vs.

DEPARTMENT OF DEFENSE,

Defendant.

CASE NO. 10-cv-2212 BEN (POR)

ORDER DISMISSING CASE  
WITHOUT PREJUDICE AND  
DENYING PENDING MOTION AS  
MOOT

On October 25, 2010, Plaintiff filed a Complaint under 42 U.S.C. § 1983. The Complaint alleges that the Department of Defense and certain unnamed corporations were unjustly enriched from the use of Plaintiff in Operation Silent Talk. According to a June 2009 article attached to the Complaint, Operation Silent Talk is a program studying the potential use of telepathy by soldiers on the battlefield. Plaintiff also filed a motion to proceed in forma pauperis. (Docket No. 2.)

After conducting an initial review of the Complaint, the Court finds that the Complaint fails to state a basis for federal court subject matter jurisdiction and, therefore, must be dismissed sua sponte pursuant to Rule 12(h)(3) of the Federal Rules of Civil Procedure. *See Cal. Diversified Promotions, Inc. v. Musick*, 505 F.2d 278, 280 (9th Cir. 1974) (it is well settled that a court may dismiss a complaint sua sponte for lack of jurisdiction).

Rule 12(h)(3) provides,

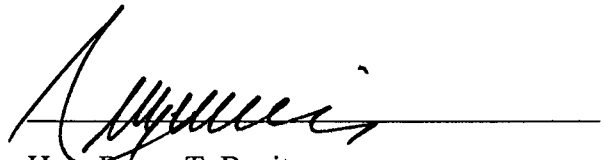
If the court determines at any time that it lacks subject-matter jurisdiction the court must dismiss the action.

1 Fed. R. Civ. P. 12(h)(3). Although Plaintiff cites 42 U.S.C. § 1983 as the basis of his claims, Plaintiff  
2 fails to state that his constitutional rights have been violated or that he has otherwise been deprived  
3 of "any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983; *see*  
4 *Easton v. Crossland Mortg. Corp.*, 114 F.3d 979, 982 (9th Cir. 1997) (federal question jurisdiction  
5 exists only where a well-pleaded complaint establishes either that federal law creates the cause of  
6 action or that the plaintiff's right to relief necessarily depends on a resolution of a substantial question  
7 of federal law). Based on the allegations set forth in Plaintiff's Complaint, the Court finds that federal  
8 subject matter jurisdiction is lacking.

9 In light of the above, this action is **DISMISSED** sua sponte for lack of subject matter  
10 jurisdiction pursuant to Federal Rule of Civil Procedure 12(h)(3). Plaintiff's motion to proceed in  
11 forma pauperis (Docket No. 2) is **DENIED** as moot.

12 **IT IS SO ORDERED.**

13 Date: <sup>Nov</sup>~~October~~ 1, 2010

  
Hon. Roger T. Benitez  
United States District Court Judge

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