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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Renee Pittman Mitchell,

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No. CV 09-1659-PHX-JAT

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Plaintiff,

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ORDER

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vs.

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National Security Agency; et al.,

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Defendants.

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On October 23, 2009, this Court denied Plaintiff’s various requests for equitable relief. On October 26, 2009, Plaintiff again moved for equitable relief. For the reasons stated in the October 23, 2009 order, that request is denied.

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In this case, Plaintiff sued at least 10 Defendants.¹ Of the identifiable Defendants, six have moved to dismiss. It is unclear whether the rest have been properly served. Among the motions to dismiss is the Department of Justice, Department of Homeland Security and National Security Agency’s (“United States Defendants”) motion to dismiss for lack of subject matter jurisdiction. Doc. #43. The Court will consider the jurisdictional motion first. *Belleville Catering Co. v. Champaign Market Place, L.L.C.*, 350 F.3d 691, 693 (7th Cir.

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¹ Plaintiff included a class of defendants of “unknown parties” including officials at NSA/CSS, Department of Homeland Security, FBI, DEA and local police departments.

1 2003) (“inquiring whether the court has jurisdiction is a federal judge’s first duty in every
2 case.”).

3 The United States Defendants move to dismiss for lack of subject matter jurisdiction
4 based on the substantiality doctrine. Under the substantiality doctrine, a federal court lacks
5 jurisdiction over claims that are so insubstantial that they are devoid of merit, or if the claims
6 are obviously frivolous. *See generally Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974),
7 *superseded by statute on other grounds as recognized in Page v. Bartels*, 248 F.3d 175 (3rd
8 Cir. 2001). In other words, “[U]nder the substantiality doctrine, the district court lacks
9 jurisdiction when the question presented is too insubstantial to consider.” *Cook v. Peter*
10 *Kiewit Sons Co.*, 775 F.2d 1030, 1035 (9th Cir. 1985). Further, as the United States
11 Defendants noted, because they are raising a factual attack to jurisdiction, Plaintiff, as the
12 party invoking this Court’s jurisdiction, must present evidence establishing subject matter
13 jurisdiction. *Thornhill Publishing Co. v. General Telephone & Electronics Corp.*, 594 F.2d
14 730, 733 (9th Cir. 1979). Further, this Court does not have to presume Plaintiff’s allegations
15 to be true and can resolve factual disputes. *Id.*

16 On October 23, 2009, this Court warned Plaintiff that if she did not respond to the
17 motions to dismiss, the Court would treat her failure to respond to be consent to the motions
18 being granted. On October 26, 2009, Plaintiff filed a document titled “response” to motion
19 to dismiss, which the Court has treated as a response to all the motions to dismiss.

20 Plaintiff’s response cites no cases and no statutes. It attaches no evidence. Instead,
21 it continues Plaintiff’s diary-like account of what she believes in happening in her life. For
22 example, she states, “There is nothing written to the Court that that [*sic*] is not view [*sic*]
23 beforehand by [Defendants’] use of the technology inside my residence as I type Court
24 documents on my laptop for submission to the Court. The scales of justice are not tilted in
25 my favor as a result of [Defendants’] previous viewing of all legal documents as they are
26 typed as these individuals blatantly disregard of [*sic*] my rights.” Doc. #51 at 5. These
27 allegations appear to be a continuation of Plaintiff’s allegations that some government
28 agency is using satellite or other technology to monitor Plaintiff in her home, and on her

1 phone, and to speak directly into her mind. Doc. #46 at 3-5. In her response, Plaintiff
2 continues that, “I stand by the fact that the Discovery process will reveal the dominant theme
3 of my complaint which is based on the personal intrusiveness and approved use of the
4 technology as directed at me.” Doc. #51 at 4.

5 The Court agrees with the United States Defendants that the claims in the complaint,
6 as continued in the request for injunctive relief (Doc. #46) and the response to the motion to
7 dismiss (Doc. #51) are wholly insubstantial. *See Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir.
8 1994) (claims are patently insubstantial if they are basically fictitious; for example, claims
9 of bizarre conspiracy theories, fantastic government manipulations of the plaintiff’s mind or
10 will, or any type of supernatural intervention.). Because the Court finds the entire complaint
11 in this case to be insubstantial, the Court will dismiss this entire case, for lack of subject
12 matter jurisdiction. *See Cook*, 775 F.2d at 1035.² Further, as to all other Defendants, the
13 Court will also dismiss the case, regardless of whether they have been served or moved to
14 dismiss on this basis, because the legal result as to all Defendants would be the same. *See*
15 *Abigninin v. AMVAC Chem. Corp.*, 545 F.3d 733, 743 (9th Cir. 2008) (“A [d]istrict [c]ourt
16 may properly on its own motion dismiss an action as to defendants who have not moved to
17 dismiss where such defendants are in a position similar to that of moving defendants.”).³

18 Therefore,

19 **IT IS ORDERED** that the motion for temporary restraining order (Doc. #51) is
20 denied.

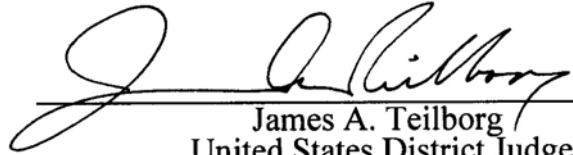
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23 ² Because the Court is dismissing the entire complaint based on the substantiality
24 doctrine, the Court has not considered the United States Defendants’ alternative arguments
25 for dismissal such as immunity and failure to exhaust administrative remedies.

26 ³ Additionally, because this dismissal is for lack of subject matter jurisdiction, and
27 not failure to state a claim, the Court will not grant Plaintiff leave to amend. *See Schreiber*
28 *Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (stating district
court must give leave to amend once under Federal Rule of Civil Procedure 15(a) if dismissal
is for failure to state a claim, unless amendment could not cure the deficiency).

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IT IS FURTHER ORDERED that the motion to dismiss (Doc. #43) is granted and this case is dismissed, with prejudice, for lack of subject matter jurisdiction under the substantiality doctrine as to all Defendants, and the Clerk of the Court shall enter judgment accordingly (all remaining motions to dismiss are denied as moot).

DATED this 18th day of December, 2009.


James A. Teilborg
United States District Judge