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

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9 Darrell James Hill,

) No. 09-cv-1958-PHX-JAT

10 Plaintiff,

) **ORDER**

11 vs.

12 Promise Hospital of Phoenix, Inc., Jane)
13 Doe 1-3; Secretary et al of the Treasury for)
14 the Internal Revenue Service;)
15 Commissioner et al for the Social Security)

16 Defendant.

17
18 The Secretary of the Treasury for the Internal Revenue Service and the Commissioner
19 of the Social Security Administration (“Federal Defendants”) submitted a Motion to Dismiss
20 for the Court’s disposition pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6). (Doc. #19). For
21 the reasons enumerated below, the Court grants Federal Defendants’ Motion to Dismiss.

22 **I. Background**

23 Plaintiff amended his complaint as a matter of right (“Amended Complaint”) on
24 February 8, 2010. (Doc. #7). In his Amended Complaint, Plaintiff argues that Defendant
25 Promise Hospital of Phoenix, Inc.¹ wrongfully failed to hire him because of Plaintiff’s refusal

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27 ¹ On March 1, 2010 the Court *sua sponte* dismissed Promise Hospital for failure to
28 timely serve. (Doc. # 13). The Court denied Plaintiff’s Motion to Reconsider that dismissal
on June 28, 2010. (Doc. #25).

1 to provide a social security number for employment purposes. (*Id.*). Plaintiff further asserts
2 that a social security number is a “mark of the beast” and any forced use of a social security
3 number is a violation of his constitutional rights and right to privacy. (*Id.*).

4 Plaintiff maintains that a social security number is an asset of a state sponsored
5 religion, which is prohibited by the Constitution. (*Id.*). Plaintiff requests that the Court issue
6 an injunction and mandamus preventing Federal Defendants from enforcing the federal laws
7 that require Plaintiff to obtain and use a social security number for employment. (*Id.*).
8 Plaintiff also requests the Court to order each of the Federal Defendants to pay damages to
9 the Plaintiff in the amount of \$500,000.00. (*Id.* at. 65-68).

10 Under federal law, employers are required to withhold certain income taxes and social
11 security taxes and make a report as to each individual employee to the Internal Revenue
12 Service (“IRS”). These reports require identification of the employee by the employee’s
13 social security number. *See* 26 U.S.C. § 6109, 26 C.F.R. § 301.6011(b)-2, 301.6109-1; *see*
14 *also Weber v. Leaseway Dedicated Logistics, Inc.*, 5 F. Supp. 2d 1219, 1222 (D. Kan. 1998),
15 *aff’d* by 166 F.3d 1223 (10th Cir. 1999) (quoting “the IRS requires every employee to have
16 a social security number”). Both employees and employers are subject to potential penalties
17 from the IRS for not reporting employees’ social security numbers. *See* 26 U.S.C. §§ 6721,
18 6722, and 6723.

19 **II. Discussion**

20 In support of their Motion to Dismiss, Federal Defendants make the following
21 arguments: Plaintiff’s suit is against the United States; Plaintiff’s action is barred by the
22 doctrine of sovereign immunity; Plaintiff’s action is expressly barred by the Anti-Injunction
23 Act and the Declaratory Judgment Act; the Court does not have jurisdiction under the
24 Mandamus Act; Plaintiff failed to state a claim under Rule 8; and granting Plaintiff relief
25 would require the employer to violate federal or state laws, which constitutes an “undue
26 hardship.” (Doc. #20). For reasons cited herein, the Court grants Federal Defendants’
27 Motion to Dismiss.

28

1 **A. Agents and Officers of the United States**

2 Plaintiff names the “Secretary of the Treasury for the Internal Revenue Service” and
3 the “Commissioner of the Social Security Administration” as Defendants in his Amended
4 Complaint. (Doc. #7). Federal Defendants argue that because Plaintiff’s claim is against the
5 individuals in their official capacities, Plaintiff’s claim is against the United States. (Doc.
6 #20 at 4-5). The Court agrees.

7 When a suit is against an agent or officer of the United States in her official capacity,
8 the suit is effectively against the United States. *Hutchinson v. U.S.*, 677 F.2d 1322, 1327 (9th
9 Cir. 1982). For example, the court in *Hutchinson* found that a suit against IRS employees
10 in their official capacities is essentially a suit against the United States. *Id.* If the rule were
11 otherwise, the administration of public affairs entrusted to the executive branch would be
12 seriously crippled due to potential lawsuits. *Spalding v. Vilas*, 161 U.S. 483, 498-99 (1896);
13 *see also Atkinson v. O’Neill*, 867 F.2d 589, 590 (10th Cir. 1989) (holding that when an action
14 is one against named individual defendants, but the acts complained of consist of actions
15 taken by defendants in their official capacity as agents of the United States, the action is in
16 fact one against the United States).

17 Because Plaintiff named Federal Defendants in their official capacities, Plaintiff’s
18 action is against the United States. In addition, any judgment would come out of public
19 funds, so Plaintiff’s suit must be considered against the United States.

20 **B. Sovereign Immunity**

21 In support of their Rule 12(b)(1) Motion to Dismiss for lack of subject matter
22 jurisdiction, Federal Defendants argue that sovereign immunity justifies dismissal. Federal
23 Defendants argue that there has not been a waiver of sovereign immunity.

24 However, Plaintiff seeks relief under Title VII and sovereign immunity has been
25 abrogated for purposes of Title VII actions against federal government employers.
26 Nevertheless, the Court finds that there is not a sufficient nexus between Federal Defendants
27 and Plaintiff’s employment opportunities to warrant subjecting the Federal Defendants to
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1 Title VII.

2 It is well settled that the United States, as a sovereign, may not be sued without its
3 consent, and that the terms of its consent define the court’s jurisdiction. *U.S. v. Dalm*, 494
4 U.S. 596, 608 (1990); *U.S. v. Sherwood*, 312 U.S. 584, 586-87 (1941) (holding that the
5 United States, as sovereign, is immune from suit except when the United States consents to
6 be sued, and the terms of its consent to be sued in any court define that court's jurisdiction
7 to entertain suit); *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). Where the
8 United States has not consented to suit, the court lacks jurisdiction over the subject matter
9 of the action and dismissal is required. *E.g., Hutchinson v. U.S.*, 677 F.2d 1322, 1327 (9th
10 Cir. 1982).

11 However, when Congress does waive the sovereign immunity of certain federal
12 entities through legislation that allows the federal entity to sue and be sued, these waivers are
13 to be construed liberally. *Loeffler v. Frank*, 486 U.S. 549, 555 (1988). When Congress
14 establishes an agency, authorizes it to engage in commercial and business transactions with
15 the public, and permits it to “sue and be sued,” it cannot be assumed that restrictions on that
16 authority are to be implied. *FHA v. Burr*, 309 U.S. 242, 245 (1940).

17
18 With regard to Title VII, Congress has abrogated sovereign immunity by allowing suit
19 to be brought against both private employers and federal employers. 42 U.S.C. § 2000e-16
20 (permitting suit against “all personnel actions affecting employees or applicants for
21 employment . . . in executive agencies as defined in section 105 of Title 5 . . .”). See also
22 5 U.S.C.A. § 105 (“For the purpose of this title, ‘Executive agency’ means an Executive
23 department . . .”); *Dothard v. Rawlinson*, 433 U.S. 321, 322 n. 14 (Title VII applies “to
24 governmental and private employers alike.”).

25 In *Loeffler v. Frank*, the Supreme Court held that prejudgment interest may be
26 awarded in a suit against the United States Postal Service brought under Title VII of the Civil
27 Rights Act of 1964. 486 U.S. 549. Plaintiff Loeffler claimed his discharge as a rural letter
28 carrier was based on sex discrimination. *Id.* at 551. The Court reasoned that by launching

1 a federal entity such as the Postal Service into the commercial world as an employer,
2 Congress “cast off the Service’s cloak of sovereignty.” *Id.* at 556. To hold otherwise would
3 contravene the purpose of Title VII since, “section 717 of the Civil Rights Act of 1964, as
4 amended, provides the exclusive judicial remedy for claims of discrimination in federal
5 employment” *E.g. Brown v. Gen. Serv. Admin.*, 425 U.S. 820, 835 (1976).

6 Title VII does not apply only to plaintiffs engaging in “direct employment
7 relationships” with governmental employers. *Assoc. of Mexican-Am. Educators (“AMAE”)*
8 *v. Cal.*, 231 F.3d 572 (9th Cir. 2000). In *AMAE*, the Ninth Circuit held that a direct
9 employment relationship is not a prerequisite to Title VII liability. *Id.* at 580. The court
10 went on to assert that “[a]lthough ‘there must be some connection with an employment
11 relationship for Title VII protections to apply,’ that ‘connection with employment need not
12 necessarily be direct.’” *Id.* (citing *Lutcher v. Musicians Union Loc. 47*, 633 F.2d 880, 883
13 (9th Cir. 1980)).

14 An entity may be indirectly liable under Title VII if it *interferes* with an individual’s
15 employment opportunities with another employer. *Id.* (emphasis added) (citing *Lutcher*, 633
16 F.2d at 883 n. 3). The Ninth Circuit has adopted the District of Columbia Circuit’s opinion
17 in *Sibley Mem. Hosp. v. Wilson*. *Id.* (citing *Sibley Mem. Hosp. v. Wilson*, 488 F.2d 1338,
18 1340-41 (D.C. Cir. 1973)).² In *Sibley*, the plaintiff was a male private-duty nurse who
19 received his income from individual patients. 488 F.2d at 1339-40. When a patient in
20 defendant hospital requested a private nurse, the hospital arranged for a private nurse through
21 a registry service. *Id.* Plaintiff claimed that defendant hospital only allowed male nurses like
22 him to attend male patients, but allowed female nurses to attend both male and female
23 patients. *Id.* The *Sibley* court found that although the defendant did not employ the plaintiff,
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25 ² Other cases following the “interference” model from *Sibley* include: *Charlton v.*
26 *Paramus Bd. of Educ.*, 25 F.3d 194, 202 (3d Cir. 1994); *Christopher v. Stouder Mem’l Hosp.*,
27 936 F.2d 870, 876-77 (6th Cir. 1991); *Pardazi v. Cullman Med. Ctr.*, 838 F.2d 1155, 1156
28 (11th Cir. 1988); and *Shehadeh v. Chesapeake & Potomac Tel. Co.*, 595 F.2d 711, 722 (D.C.
Cir. 1978).

1 it exercised considerable power over his ability to form employment relationships with third
2 parties, thereby “interfering” with his employment opportunities. Therefore, the court found
3 defendant liable under Title VII. *Id.* at 1341.

4 What constitutes “interference” depends on the facts of the case. In finding there was
5 “interference,” the *Sibley* court reasoned that the defendant’s control over the premises on
6 which the plaintiff provided his services, as well as its control over the plaintiff’s access to
7 patients, created a “highly visible nexus with the creation and continuance of direct
8 employment relationships between third parties.” *Id.* at 1342. This “highly visible nexus”
9 constituted interference that brought the defendant’s actions within the scope of Title VII.³
10 *Id.* By adopting the *Sibley* court’s reasoning, the *AMAE* court held that interference did exist
11 because defendants required, implemented, and administered the California Basic Education
12 Skills Test (“CBEST”), which effectively “interfered” with plaintiff’s employment
13 opportunities with local school districts in California. 231 F.3d at 581.

14 However, “interference” does not exist when there is not a highly visible nexus with
15 the creation and continuance of direct employment relationships between third parties.
16 *Sibley*, 488 F.2d at 1342. “Interference” also does not exist when the only connection among
17 a licensing agency, the plaintiff, and the universe of prospective employers is the agency’s
18 implementation of a general licensing examination. *AMAE*, 231 F.3d at 572 (citing *George*
19 *v. N.J. Bd. of Veterinary Med. Exam’rs*, 794 F.2d 113 (3d Cir. 1986)). If the third party is
20 not attempting to control the hiring practice of, or the performance of work for any specific
21 employer, the third party is not “interfering” with employment for the purposes of Title VII.
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24 ³ The D.C. Circuit’s holding in *Sibley* was rooted in the text of Title VII. *AMAE*, 231
25 F.3d at 580. The Court reasoned that, although Title VII applies to “employees,” Congress
26 extended the protections of the statute to “any individual” who suffers discrimination:
27 “nowhere are there words of limitation that restrict references in the Act to ‘any individual’
28 as comprehending only an employee of an employer.” *Id.* at 580-81 (citing *Sibley*, 488 F.2d
at 1342.). This interpretation is the proper one in view of “Congress’ directive to read Title
VII broadly so as to best effectuate its remedial purposes.” *Id.* (citing *Duffield v. Robertson*
Stephens & Co., 144 F.3d 1182, 1192 (9th Cir. 1998)).

1 *Id.* at 584 (explaining that because the CBEST does not apply across-the-board to all who
2 wish to teach in California, unlike a state-wide veterinary licensing examination, the CBEST
3 is an exercise of proprietary power that subjects the state to the coverage of Title VII).

4 Title VII has subjected the federal government to suit by waiving sovereign immunity
5 when the federal government is an employer, prospective employer, or “interferes” with
6 employment. *See AMAE*, 231 F.3d 572. Plaintiff did not apply for a job with the federal
7 government, so Federal Defendants would be subject to suit only if they interfered with his
8 employment. The Court holds that Federal Defendants’ actions did not constitute
9 “interference” with Plaintiff’s employment opportunities.

10 The present facts are distinguishable from *Sibley*. For example, Federal Defendants
11 do not exert control over the premises on which Plaintiff sought employment, nor do Federal
12 Defendants exert control over Plaintiff’s access to employment. The present facts are also
13 distinguishable from *AMAE*. Federal Defendants do not control one particular type of
14 employment. As such, Federal Defendants do not have the “highly visible nexus” with the
15 Plaintiff’s employment opportunities necessary to subject them to Title VII liability.

16 Federal Defendants were not attempting to control the hiring practices of, or the
17 performance of work for, any specific employer. Federal Defendants’ main initiative was
18 to institute an income tax structure based upon social security numbers as a means for
19 identifying individuals. Federal Defendants were not attempting to exert a proprietary power
20 over Plaintiff’s employment opportunities. Without the requisite “highly visible nexus,”
21 Federal Defendants have not “interfered” with Plaintiff’s employment for the purposes of
22 Title VII. Since the Federal Defendants are not subject to Title VII liability and Plaintiff has
23 not stated another basis for relief,⁴ Federal Defendants have immunity and the Court does not
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25 ⁴ Plaintiff does not allege any statute that specifically provides for suits against the
26 United States. Plaintiff maintains that the Court has jurisdiction pursuant to 28 U.S.C. §§
27 1331, 1343, 1361 and 42 U.S.C. §§ 1981a, 1983, 1985, 1986, 2000bb *et seq.* and 2000e *et*
28 *seq.* (Doc. #7 at 6-9). However, none of the other statutes cited by Plaintiff contains a waiver
of sovereign immunity.

1 have subject matter jurisdiction over Plaintiff’s claim against Federal Defendants.

2 **C. Equitable Tolling**

3 Even if the Court had subject matter jurisdiction, the Court notes that Plaintiff did not
4 file his complaint within the time frame allotted by the Equal Employment Opportunity
5 Commission (“EEOC”). Plaintiff filed an employment discrimination complaint with the
6 EEOC and was provided a right to sue letter on June 19, 2009, which included a caveat that
7 a lawsuit must be filed within 90 days. (Doc. #7, p. 49-51). Plaintiff filed his complaint on
8 September 18, 2009, missing the deadline by one day.⁵ (Doc. #1). Plaintiff has not provided
9 the Court with an explanation for his untimely filing.

10 In order to make a Title VII administrative claim, certain presentment requirements
11 must be met. 42 U.S.C. § 2000e-16(c); *Sommatino v. U.S.*, 255 F.3d 704 (9th Cir. 2001).
12 Chief among these is notifying the EEOC of your employment discrimination claim within
13 45 days of the alleged conduct. *Id.* See 29 C.F.R. § 1614.105 (pre-complaint processing);
14 29 C.F.R. § 1614.106 (individual complaints). Within ninety days of receipt of notice of
15 final action taken by the EEOC, an employee or applicant for employment may file a civil
16 action. 42 U.S.C. § 2000e-16(c). If a plaintiff does not substantially comply with the
17 presentment requirements, a district court does not have subject matter jurisdiction to
18 consider the Title VII claim. *Id.* at 706-09. See *Blank v. Donovan*, 780 F.2d 808, 809 (9th
19 Cir. 1986); *Scott v. Perry*, 569 F.2d 1064, 1065-66 (9th Cir. 1978). However, since
20 compliance only need be substantial, presentment requirements are subject to equitable
21 tolling. See *Irwin v. Dept. of Vet. Affairs*, 498 U.S. 89, 95 (1990). “Once Congress made a
22 waiver [of sovereign immunity], . . . the rule of equitable tolling became applicable to suits
23 against the Government.” See *id.*

24
25 Equitable tolling has been allowed in situations where the claimant has actively
26 pursued his judicial remedies by filing a defective pleading during the statutory period, or

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⁵Ninety days from June 19, 2009 is September 17, 2009.

1 where the complaint has been induced or tricked by the adversary's misconduct. *Id.* at 96.
2 However, courts are less forgiving in receiving late filings where the claimant failed to
3 exercise due diligence in preserving his legal rights. *Id.* (citing *Baldwin Co. Welcome Ctr.*
4 *v. Brown*, 466 U.S. 147, 151 (1984)). Although Congress did not expressly provide for
5 equitable tolling, limitation periods for suits against the Government are presumptively
6 subject to equitable tolling. *Id.* (J. White, concurring).

7 Plaintiff has not cited any reason for the delay in his moving papers. As a result, the
8 Court does not have an adequate basis for allowing equitable tolling of the 90-day deadline.
9 Although this factor is not determinative, it is another compelling reason justifying dismissal.

10 **D. Anti-Injunction Act and the Declaratory Judgment Act**

11 Plaintiff asks the Court to issue an injunction and mandamus preventing Federal
12 Defendants from enforcing the federal laws that require Plaintiff to obtain and use a social
13 security number for employment. (*Id.*). Plaintiff also requests the Court to order each of the
14 Federal Defendants to pay damages to the Plaintiff in the amount of \$500,000.00. (*Id.* at 65-
15 68).

16
17 First, Federal Defendants argue that the Anti-Injunction Act prohibits the Court from
18 issuing an injunction or a mandamus that prevents Federal Defendants from enforcing the
19 federal taxation laws. Second, Federal Defendants argue that the Declaratory Judgment Act
20 expressly precludes the Court from granting declaratory judgments with respect to federal
21 taxes.

22 The Anti-Injunction Act states:

23 Except as provided in [Internal Revenue Code] sections 6015(e), 6212(a) and
24 (c), 6213(a), 6625(b), 6246(b), 6330(e)(1), 6331(I), 6672(c), 7426(a) and
25 (b)(1), 7429(b) and 7436, no suit for the purpose of restraining the assessment
26 or collection of any tax shall be maintained in any court by any person,
whether or not such person is the person against whom such tax was assessed.⁶

27 ⁶Section 6015(e) of the Internal Revenue Code (26 U.S.C.) provides for the filing of
28 a petition for review in the United States Tax Court. Sections 6212 and 6213(a) relate to

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2 26 U.S.C. § 7421(a). The purpose of the Anti-Injunction Act is to protect the “Government’s
3 need to assess and collect taxes as expeditiously as possible with a minimum of pre-
4 enforcement judicial interference.” *Bob Jones U. v. Simon*, 416 U.S. 725, 736-37 (1974); *see*
5 *also S.C. v. Regan*, 465 U.S. 367, 374-75 (1984). The goal of the Anti-Injunction Act is to
6 prevent unauthorized interference with the collection of taxes. *Enoch v. Williams Packing*
7 *& Nav. Co.*, 370 U.S. 1, 8 (1962). Effectuating this goal generally prohibits injunctions
8 against all acts necessary or incidental to the assessment or collection of taxes. *See, e.g.*
9 *Elias v. Connect*, 908 F.2d 521, 523 (9th Cir. 1990); *Wyo. Trucking Ass’n v. Bentsen*, 82 F.3d
10 930 (10th Cir. 1996).

11 Granting any injunctive relief in Plaintiff’s case would require interfering with the
12 collection of taxes, which clearly contravenes the letter and spirit of the Anti-Injunction Act.
13 As such, even if the Court had jurisdiction, the Court would not grant injunctive relief to
14 Plaintiff.

15 Similarly, the Declaratory Judgment Act specifically excludes the authority to render
16 declaratory relief “with respect to Federal taxes” (subject to exceptions not relevant here).
17 *See Powelson v. U.S.*, 979 F.2d 141, 145 (9th Cir. 1992); *Hughes v. U.S.*, 953 F.2d 531, 536-
18 37 (9th Cir. 1992). Because the Declaratory Judgment Act does not allow relief here, the
19 Declaratory Judgment Act would bar Plaintiff’s claims even if the Court had jurisdiction. *See*

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22 assessments entered in violation of the deficiency procedures of the Code. Section 6225(a)
23 provides restrictions on assessment and collection attributable to a partnership. Section
24 6246(b) provides for an injunction against premature action with respect to a partnership
25 adjustment. Section 6330(e)(1) pertains to suspension of specified actions during the
26 pendency of a hearing before levy pursuant to Section 6330(a). Section 6330(i) provides for
27 an injunction notwithstanding Section 7421(a) for any unpaid divisible tax. Sections 6672(b)
28 and 6694(c) allow taxpayers to obtain stays of certain penalty collection proceedings if certain
requisites are met. Section 7426 permits the district courts to entertain civil actions by
persons other than the taxpayer under certain circumstances. Section 7429(b) relates to
district court review of jeopardy assessments. Section 7436 pertains to proceedings for
determination of employment status. None of these provisions are relevant here.

1 *id.*

2 **E. Mandamus Act**

3 Even if Plaintiff’s Amended Complaint is construed as a request for mandamus
4 pursuant to the Mandamus Act, 28 U.S.C. § 1361, Plaintiff cannot avail himself of relief
5 because the Court does not have subject matter jurisdiction.

6 The Mandamus Act confers jurisdiction on district courts to order an agent of the
7 United States to perform a duty owed to complainant. *Id.* The duty, however, must be
8 ministerial and mandated by law, not a discretionary agency function. *Pittston Coal Group*
9 *v. Sebben*, 488 U.S. 105, 121 (1988).

10 The Plaintiff has failed to set forth any clear, nondiscretionary duties owed to him by
11 any Federal Defendants that would warrant relief pursuant to the Mandamus Act. Absent a
12 “clear, nondiscretionary duty” owed to the plaintiff, the [c]ourt has no authority to issue a
13 writ of mandamus. *Heckler v. Ringer*, 466 U.S. 602, 616 (1984). As such, the Mandamus
14 Act does not confer subject matter jurisdiction on this Court.

15 **F. Failure to State a Claim Upon Which Relief Can Be Granted**

16 Federal Defendants maintain that even if the Court did have subject matter
17 jurisdiction, Plaintiff has failed to state a claim due to several pleading deficiencies. A
18 motion to dismiss for failure to state a claim should not be granted “unless it appears beyond
19 doubt that the plaintiff can prove no set of facts in support of his claim which would entitle
20 him to relief.” *Green v. Maraio*, 722 F.2d 1013, 1015-16 (2d Cir. 1983) (quoting *Conley v.*
21 *Gibson*, 355 U.S. 41, 45-46 (1957)). In the present action, Plaintiff cites statutes that are not
22 applicable. Moreover, Plaintiff’s claim for damages in the amount of \$500,000.00 is not
23 supported in law or by sufficient factual matter. More importantly, Plaintiff failed to allege
24 how he was damaged, what statute entitles him to damages, and the basis for the amount of
25 damages claimed. As a result, Plaintiff’s Amended Complaint fails to state a claim upon
26 which relief can be granted. The Court finds that this provides an alternative reason for
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1 dismissal.

2 **G. Undue Hardship**

3 Last, Federal Defendants maintain that mandating employers to usurp state and federal
4 social security and tax guidelines because of an employee’s religious affiliations constitutes
5 an “undue hardship.” See *Sutton v. Providence St. Joseph Med. Hosp. Ctr.*, 192 F.3d 826 (9th
6 Cir. 1999).

7
8 Federal courts have seen a number of challenges to the mandatory provision of social
9 security numbers by individuals who believe that social security numbers are the “mark of
10 the beast.” E.g. *Sutton*, 192 F.3d at 826; *Miller v. Reed*, 176 F.3d 1202 (9th Cir. 1999).
11 These individuals claim that employers or government agencies who require them to provide
12 a social security number infringe their rights to freely exercise their sincere religious beliefs
13 protected by the First Amendment Free Exercise Clause and by the Religious Freedom
14 Restoration Act of 1993, 42 U.S.C. §§ 2000bb through 2000bb-4 (“RFRA”). *Id.* None of
15 these challenges has been successful.

16 In *Sutton*, a prospective employee sued the hospital, after the hospital asked him to
17 provide his social security number during the hiring process, because he believed that a social
18 security number is the “mark of the beast” as prophesied in the Book of Revelations,
19 Chapters 13 and 14. *Sutton*, 193 F.3d at 830-31. The plaintiff sued the hospital claiming
20 violations of Title VII of the 1964 Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*,
21 the RFRA and the free speech guarantee of the First Amendment. *Id.* at 830. The Ninth
22 Circuit denied his claim reiterating that under federal law, all employers are required to
23 withhold certain income taxes and social security taxes and submit a report to the Internal
24 Revenue Service as to each individual employee. *Id.* Such reports require identification of
25 the employee by social security number. *Id.* at 831. The court held that an employer is not
26 liable under Title VII when accommodating an employee’s religious beliefs would require
27 the employer to violate federal or state laws. *Id.*

1 As in *Sutton*, Plaintiff claims that a social security number is a “mark of the beast” and
2 forcing him to use it would violate his rights under Title VII of the Civil Rights Act, 42
3 U.S.C. § 2000e, the RFRA, and the First Amendment. Here, Plaintiff requests the Court to
4 issue an injunction and mandamus preventing Federal Defendants from enforcing the federal
5 laws requiring Plaintiff to obtain and use a social security number for employment. By
6 requiring the hospital to accommodate the employee by waiving the mandatory provision of
7 the social security number, the hospital would violate federal and state laws. *See Sutton* at
8 830-31. As such, it would cause “undue hardship” as a matter of law.

9 **III. Conclusion**

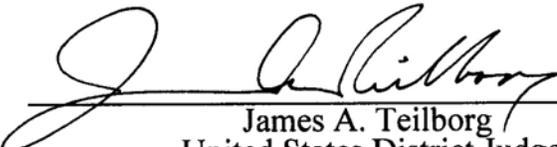
10 The Court grants Federal Defendants’ Motion to Dismiss for lack of subject matter
11 jurisdiction. Alternatively, the Court grants Federal Defendants’ Motion to Dismiss for
12 failure to state a claim.

13 Accordingly,

14 **IT IS ORDERED** Granting Federal Defendants’ Motion to Dismiss (Doc. #19).

15 **IT IS FURTHER ORDERED** dismissing this case in its entirety because the Court
16 previously dismissed the only other Defendant, Promise Hospital. (Doc. #13). The Clerk
17 therefore should enter judgment for Defendants and against Plaintiff.
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19 DATED this 7th day of July, 2010.

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24 James A. Teilborg
25 United States District Judge
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