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

8
9 Douglas E. Miller,

10 Plaintiff,

11 v.

12 United States Department of the Interior; et
13 al.,

14 Defendants.
15

No. CV-14-08240-PCT-NVW

ORDER

16
17 The Court previously dismissed Plaintiff's Complaint for failure to comply with
18 federal pleading requirements. The Complaint was not understandable. Instructions
19 were given how to comply. (Doc. 40 at 3-4.) Upon review of Plaintiff's Amended
20 Complaint (Doc. 41), the Court entered an order to show cause why the Amended
21 Complaint should not be dismissed too. (Doc. 46 at 2.) The Federal Defendants, all
22 agencies or officers sued in their official capacity, also filed a Motion to Dismiss. (Doc.
23 48.) (The Federal Defendants will collectively be referred to as "the Government"
24 because a suit against a federal officer in his official capacity is a suit against the
25 Government. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991).)

26 **1. Claims Against the Government**

27 The Amended Complaint still does not contain a "short and plain statement of the
28 claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). It is

1 considerably longer than the original Complaint and contains many new allegations the
2 relevance of which is not clear. Although the Amended Complaint has the benefit of
3 mostly chronological order, it still fails to explain which of the Government's actions
4 were illegal and why. It alleges that the Government issued certain Grazing Permits as
5 Plaintiff wished, and it never alleges that the Government revoked or limited these
6 Permits or that the Permits are different now compared to when they were first issued to
7 Plaintiff. There is no allegation that Plaintiff formally requested any change in the
8 Permits or that any such request was denied by final agency action. Indeed, there is no
9 allegation of any final agency action. Rather, the Amended Complaint alleges that the
10 Government failed to protect Plaintiff's Permits in state court litigation. Perhaps
11 Plaintiff's theory is that the Government had a duty to take over his private lawsuit and
12 win it for him. Even so, he does not allege that he ever asked the Government to protect
13 him or that the Government knew of the state court litigation.

14 None of this does or can state a claim against the Government. There is nothing
15 illegal about granting Plaintiff the Grazing Permits as requested and renewing them as
16 requested. The Secretary of the Interior has no duty to take over private litigation relating
17 to Permits after she has granted them. She has no duty to take sides in property litigation
18 between private parties that may affect the value of the Permits.

19 Plaintiff seeks two alternative forms of relief against the Government. The first
20 involves damages:

21 C. . . . that the Federal Defendants, specifically the BLM
22 [Bureau of Land Management], reassume BLM Lease
23 #06222, Arizona State Lands Lease #05-1618 and their
24 associated grazing preference and pay Miller damages for his
25 loss of business assets in the amount of not less than
\$850,000 plus interest or an amount to be determined at trial.

26 (Doc. 41 at 35-36.) The second involves declaratory judgment and transfer of property:

27 Alternatively:

28 . . .

1 G. A declaratory judgment reaffirming and declaring that
2 Miller owns, and has owned no later than 2001, all of the
3 Grazing Permit and Grazing Preference associated with
4 Allotment No. 06222.

5 ...

6 K. Order the Federal Defendants to effect and complete
7 actual deeded transfer to Miller of all the Range
8 Improvements, Co-operative Agreements and Water Rights
9 pertaining to the 209 head federal grazing preference.

10 (*Id.* at 36-37.)

11 To the extent Plaintiff requests money damages against the Government, the
12 request is barred by sovereign immunity. “To sustain a claim that the Government is
13 liable for awards of money damages, the waiver of sovereign immunity must extend
14 unambiguously to such monetary claims.” *Lane v. Pena*, 518 U.S. 187, 192 (1996).
15 Plaintiff does not allege any statutory authorization for a damages action against the
16 Government. Were Plaintiff alleging a breach of contract claim, which he is not, the
17 Tucker Act could not authorize this action for damages because the exclusive forum
18 would be the Claims Court, not this District Court. *See United States v. Hohri*, 482 U.S.
19 64, 66 n.1 (1987). Nor could the Federal Tort Claims Act authorize this action for
20 damages, because it only covers circumstances where private actors could be liable under
21 state law. *See United States v. Olson*, 546 U.S. 43, 45-46 (2005). To the extent Plaintiff
22 requests an order that the Government buy back the Permits, no wrong is alleged at all,
23 much less one for which the law gives that remedy. Because there is no statutory
24 authorization of that relief, such relief would also violate sovereign immunity. No
25 declaratory judgment can be given when there is no right or case or controversy alleged
26 against the Government.

27 Therefore the Government’s Motion to Dismiss will be granted, in part for failure
28 to state a claim upon which relief can be granted and in part for sovereign immunity. The
Federal Defendants will be dismissed.

1 **2. Claims Against Starcrest**

2 The Court originally dismissed Plaintiff’s claims against Defendant Starcrest
3 because Plaintiff’s rights against Starcrest had already been adjudicated in state court and
4 the adjudication was conclusive against Plaintiff’s Complaint as pled. (Doc. 40 at 2.)
5 Nevertheless, the Court’s dismissal order and subsequent order to show cause allowed
6 Plaintiff to file an amended complaint asserting any rights he may have against Starcrest
7 consistent with the state court judgment. (Doc. 40 at 3; Doc. 46 at 2.) Plaintiff has not
8 done so. Instead he continues to allege claims directly contrary to the state court
9 judgment or that could have been raised as defenses to the judgment.

10 The Amended Complaint does not explain why the prior state court judgment does
11 not bar this action. It merely alleges that the judgment is contrary to federal law. Even if
12 that were true, it was Plaintiff’s obligation (1) to present those federal law defenses in
13 state court and (2) to appeal the adverse decision if it violated federal law. It does not
14 appear that he ever presented his federal defenses in the state trial court. He did appeal,
15 but apparently did not present those federal issues. Even if those federal defenses were
16 presented in the trial court and the appellate court, they were necessarily rejected, as the
17 Court of Appeals’ Memorandum Decision is silent on them. *Starcrest, Inc. v. Miller*, No.
18 1 CA-CV 11-0395, 2012 WL 2469967 (Ariz. Ct. App. June 21, 2012).

19 The principle of *res judicata* bars a later court from overturning an earlier final
20 decision. In his prayer for relief, Plaintiff seeks a judgment from this Court contrary to
21 the state court adjudication of his dispute with Starcrest. (*See, e.g.*, Doc. 41 at 35, 36
22 (seeking damages “for all costs, expenses, and stress suffered as a result of the Superior
23 Court action”).) The rest of the relief sought against Starcrest is ancillary to this
24 requested judgment contrary to the state adjudication. Thus, the relief is barred by *res*
25 *judicata*.

26 Even if Plaintiff could indirectly attack the state court judgment, he has not
27 pleaded any error in the judgment. No violation of the Montana bankruptcy plan is
28 alleged, as it is not alleged that Starcrest was a creditor or that Plaintiff listed Starcrest as

1 a creditor. Plaintiff's muddled allegations do not establish any understandable right
2 concerning the Permits that Starcrest has violated. Nor does Plaintiff explain how
3 Starcrest's later sales of parcels to third parties violate his legal rights.

4 Therefore, pursuant to this Court's order to show cause (Doc. 46 at 2), this action
5 will be dismissed as against Starcrest also.

6 **3. Leave to Amend**

7 If the only thing wrong with the Amended Complaint were failure to comply with
8 the pleading requirements of Rule 8(a)(2), leave to amend further would be granted
9 without hesitation. But there are additional deficiencies here. It appears that no claim
10 against the Federal Defendants can be alleged. Similarly, the essence of Plaintiff's
11 grievances against Starcrest is that he has rights against Starcrest that were wrongly
12 denied by the state court's quiet title judgment. Thus, further amendment may be futile.

13 Nevertheless, because and only because Plaintiff lacks counsel, one further
14 opportunity will be granted to amend the complaint so as to state a claim upon which
15 relief can be granted. No further amendment and no extension of time will be granted.

16 IT IS THEREFORE ORDERED that the Federal Defendants' Motion to Dismiss
17 (Doc. 48) is granted.

18 IT IS FURTHER ORDERED, pursuant to the Court's order to show cause (Doc.
19 46 at 2), that Plaintiff's Amended Complaint (Doc. 41) is dismissed.

20 IT IS FURTHER ORDERED that Plaintiff has leave until April 29, 2016, to file
21 one further amended complaint. No further leave will be granted. If Plaintiff fails to file
22 a further amended complaint by then or if the further amended complaint fails to state a
23 claim upon which relief can be granted, this action will be dismissed with prejudice.

24 Dated this 6th day of April, 2016.

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26 
27 Neil V. Wake
28 United States District Judge