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**United States District Court
Central District of California**

NORMAN DOUGLAS DIAMOND

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case № 2:17-CV-06327-ODW (PJW)

**ORDER GRANTING
DEFENDANTS’ MOTION TO
DISMISS [23] AND DENYING
PLAINTIFF’S MOTION TO
TRANSFER [29]**

I. INTRODUCTION

On August 28, 2017, Plaintiff Norman Diamond filed a Complaint that asserted multiple claims for relief against Defendant United States of America related to his taxes and the unauthorized disclosure of tax return information. (*See generally* Compl., ECF No. 1.) On December 22, 2017, the United States moved to dismiss the Complaint due to improper venue, failure to state a claim, and lack of subject jurisdiction matter based on sovereign immunity. (Mot. to Dismiss (“MTD”), ECF No. 23.) Plaintiff opposed the MTD, filed a supplemental brief, and moved to transfer the case to the United States District Court for the District of Columbia. (ECF Nos. 24, 29, 30, 33.) The United States filed a Reply to Plaintiff’s Objection to the Motion to Dismiss. (ECF No. 35.) Plaintiff then filed a Sur-Reply. (ECF No. 38.) For the

1 following reasons, the Court **GRANTS** Defendant’s Motion to Dismiss and **DENIES**
2 Plaintiff’s Motion to Transfer. (ECF Nos. 23, 29.)¹

3 **II. FACTUAL BACKGROUND**

4 The Complaint is 54 pages and the accompanying exhibits total another 401
5 pages. As best the Court can understand, Plaintiff has three general claims for relief:
6 (1) refunds for various years that he overpaid his taxes, (2) return or abatement of
7 amounts the IRS wrongfully collected, withheld, or applied as penalties beyond those
8 authorized by law, and (3) the wrongful disclosure of his social security number. His
9 second claim is pleaded in the alternative as a violation of the Federal Tort Claims
10 Act, or as a *Bivens* claim. (Compl. ¶¶ 119–21.) He alleges that the United States
11 wrongfully disclosed his social security number in filings in his previous Tax Court
12 cases, as well as his case in the United States Court of Federal Claims. (*Id.* ¶¶ 124–
13 25.) Plaintiff has filed numerous cases with similar if not identical allegations against
14 the United States. *E.g.*, *Diamond v. United States*, 107 Fed. Cl. 702 (2012), *aff’d*, 530
15 Fed. App’x 943 (Fed. Cir. 2013), *cert. denied* 134 S.Ct. 1344 (2014); *Diamond v.*
16 *United States*, 115 Fed. Cl. 516 (2014), *aff’d*, 603 Fed. App’x 947 (Fed. Cir. 2015),
17 *cert. denied* 135 S.Ct. 1909 (2015); *Diamond v. United States*, No. CV 13-8042-GHK
18 AGR, 2015 WL 64805 (C.D. Cal. Jan. 5, 2015), *aff’d*, 688 F. App’x 429 (9th Cir.
19 2017); *Diamond v. I.R.S.*, No. CV 14-9196-GHK AGR, 2015 WL 3545046 (C.D. Cal.
20 June 4, 2015), *aff’d sub nom. Diamond v. United States*, 688 F. App’x 445 (9th Cir.
21 2017). Plaintiff is a resident of Japan. (Compl. ¶ 4.)

22 **III. LEGAL STANDARD**

23 **A. Motion to Dismiss for Improper Venue**

24 If an action is filed in the “wrong division or district” a court may dismiss the
25 action or, “if it be in the interest of justice” transfer the action to an appropriate district
26 or division. 28 U.S.C. § 1406(a). In federal courts, determining the appropriate venue

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28 ¹ After considering the papers filed in connection with the Motions, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 “is governed entirely by statute.” *Zumba Fitness, LLC v. Brage*, No. CV 11-5361-
2 GHK, 2011 WL 4732812, at *1 (C.D. Cal. Oct. 6, 2011) (citing *Leroy v. Great W.*
3 *United Corp.*, 443 U.S. 173, 181 (1979)). When deciding a motion to dismiss for
4 improper venue, unlike a Rule 12(b)(6) motion, the Court need not accept the
5 pleadings as true and may consider facts outside the pleadings. See *R.A. Argueta v.*
6 *Banco Mexicano, S.A.*, 87 F.3d 320, 324 (9th Cir. 1996). Once a defendant raises an
7 objection to venue, the plaintiff bears the burden of establishing that the selected
8 venue is proper. *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1019 (9th
9 Cir. 2002).

10 **B. Motion to Dismiss for Failure to State a Claim**

11 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
12 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
13 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To
14 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
15 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
16 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
17 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550
18 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,
19 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
20 *Iqbal*, 556 U.S. 662, 678 (2009).

21 The determination whether a complaint satisfies the plausibility standard is a
22 “context-specific task that requires the reviewing court to draw on its judicial
23 experience and common sense.” *Id.* at 679. A court is generally limited to the
24 pleadings and must construe all “factual allegations set forth in the complaint . . . as
25 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of L.A.*, 250 F.3d
26 668, 688 (9th Cir. 2001). But a court need not blindly accept conclusory allegations,
27 unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden*
28 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). However, for a pro se plaintiff,

1 like Diamond, the complaint is to be liberally construed and “must be held to less
2 stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*,
3 551 U.S. 89, 94 (2007).

4 Where a district court grants a motion to dismiss, it should provide leave to amend
5 unless it is clear that the complaint could not be saved by any amendment. *Manzarek*
6 *v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (“Dismissal
7 without leave to amend is improper unless it is clear, upon de novo review, that the
8 complaint could not be saved by any amendment.”). Leave to amend, however, “is
9 properly denied . . . if amendment would be futile.” *Carrico v. City and Cnty. of San*
10 *Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

11 IV. DISCUSSION

12 A. Improper Venue

13 The United States asks the Court to dismiss for improper venue Plaintiff’s
14 claims for federal tax refunds, unauthorized collection actions, and wrongful
15 disclosures in the Court of Federal Claims. (MTD 6–8 (citing 28 U.S.C. § 1391(e)(1),
16 1402).) 28 U.S.C. § 1402(a)(1) provides that any action filed in district court against
17 the United States may be prosecuted only . . . in the district where the plaintiff
18 resides.” As a resident of Japan, Plaintiff does not reside in any judicial district.
19 *Topsnik v. United States*, 554 F. App’x 630, 631 (9th Cir. 2014) (unpublished) (citing
20 28 U.S.C. § 1402(a)(1)). As a foreign resident, Plaintiff’s claims for refunds and
21 wrongful collections must be pursued exclusively in the United States Court of
22 Federal Claims. *Id.* Plaintiff’s remaining claims for unauthorized disclosure of
23 personal information, as well as his alternative Federal Torts Claims Act and *Bivens*
24 claims can be brought in any district where the acts or omissions complained of
25 occurred. 28 U.S.C. §§ 1391(e)(1), 1402(b). However, the only events in the
26 Complaint that occurred in Los Angeles are Plaintiff’s claims for unauthorized
27 disclosure of his personal information related to his cases before the United States Tax
28

1 Court, which were heard in Los Angeles. (MTD 7.) For all of his other claims, venue
2 in this Court is improper.

3 Plaintiff agrees that this Court is not the proper venue for his claims, and has
4 filed his own Motion to Transfer to the District Court for the District of Columbia.
5 (Opp'n 2, ECF No. 24; Pl.'s Mot. to Transfer, ECF No. 29.) However, that Motion
6 must be denied because at least two of Plaintiff's claims, his claims for refunds and
7 wrongful collections, must be pursued exclusively in the Court of Federal Claims. To
8 be clear, the Court does not opine on the jurisdiction of the Court of Federal Claims or
9 whether it is the appropriate venue for Plaintiff's other claims. Additionally, this
10 Court cannot transfer a case to the Court of Federal Claims because of venue defects.
11 *Topsnik*, 554 F. App'x at 631 (citing *Fisherman's Harvest, Inc. v. PBS & J*, 490 F.3d
12 1371, 1378 (Fed. Cir. 2007)).

13 All of Plaintiff's claims, except his claim for unauthorized disclosure of
14 personal information related to Tax Court cases in Los Angeles, must be dismissed
15 due to improper venue.

16 **B. Plaintiff's Claim for Unauthorized Disclosure in the Tax Court Case**

17 The United States concedes that Plaintiff's claims for unauthorized disclosure
18 of his social security number that arise from his Tax Court cases in this district are
19 appropriately brought in this district. (MTD 7.) Plaintiff brings these claims under 26
20 USC §§7431, 6103, and alternatively 5 U.S.C. § 552a. (Compl. ¶ 122.) However,
21 Plaintiff brought identical claims in a previous lawsuit, and those claims were rejected
22 on their merits by the Ninth Circuit. *Diamond v. United States*, 688 F. App'x 429,
23 430 (9th Cir. 2017). As the Ninth Circuit explained, the government cannot be held
24 liable for disclosures that were expressly authorized by statute. *Id.* Plaintiff's claims
25 for unauthorized disclosure in the Tax Court are thus prohibited by the plain terms of
26 26 U.S.C. § 6103(h)(4)(A). Because Plaintiff has already filed a lawsuit over these
27 exact same claims against the United States that was dismissed on the merits, these
28 claims are also barred by the doctrine of claim preclusion. *See Stewart v. U.S.*

1 *Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002). These claims must therefore be
2 dismissed with prejudice because leave to amend would be futile.

3 **V. CONCLUSION**

4 For the reasons discussed above, the Court **GRANTS** Defendant's Motion to
5 Dismiss for improper venue and **DISMISSES WITHOUT PREJUDICE** Plaintiff's
6 claims related to (1) refunds for various years that he overpaid his taxes and (2) return
7 or abatement of amounts the IRS wrongfully collected, withheld, or applied as
8 penalties beyond those authorized by law. (ECF No. 23.) Additionally, the Court
9 **GRANTS** Defendant's Motion to Dismiss Plaintiff's claims for unauthorized
10 disclosures that occurred in Los Angeles for failure to state a claim and **DISMISSES**
11 those claims **WITH PREJUDICE**. (ECF No. 23.) Plaintiff's Motion to Transfer is
12 **DENIED**. (ECF No. 29.) The Clerk of the Court shall close the case.

13 **IT IS SO ORDERED.**

14
15 February 15, 2018

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18 **OTIS D. WRIGHT, II**
19 **UNITED STATES DISTRICT JUDGE**