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

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11 CLAYTON UTTERBACK,

12 Plaintiff,

13 v.

14 UNITED STATES,

15 Defendant.

Case No.: 2:19-cv-00646-ODW (GJSx)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS [11]**

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17 **I. INTRODUCTION**

18 Presently before the Court is Defendant United States of America's (the
19 "United States") Motion to Dismiss ("Motion") pro se Plaintiff Clayton Utterback's
20 ("Utterback") Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6) and
21 12(b)(1). (Mot., ECF No. 11.) For the reasons discussed below, the Court **GRANTS**
22 the United States's Motion and **DISMISSES PLAINTIFF'S COMPLAINT WITH**
23 **PREJUDICE.**¹

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28 ¹ Having carefully considered the papers filed in connection to the instant Motion, 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 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 On January 28, 2019, Utterback initiated this action by filing what he entitled
3 “Bill of Equity and Restitution Complaint” (hereinafter, “Complaint”). (ECF No. 1.)
4 Although not entirely comprehensible or intelligible, Utterback appears to have filed
5 this lawsuit “seeking a verification of assets, accounting of funds, and in rem
6 attachment of property admitted owed, and the disbursement of the trust res to the
7 beneficiaries.” (Compl. 1.) Specifically, Utterback sets forth what appears to be
8 thirteen causes of action. (Compl. 40–53.) It appears that Utterback is alleging that
9 he is entitled to (1) recover money in connection with the Troubled Asset Relief
10 Program (TARP), which the federal government created in 2008 to address the
11 subprime mortgage crisis, and (2) an offset related to a 2012 federal tax lien.
12 (Compl. 58; *see also* Mot. 1.)

13 On April 1, 2019, the United States moved to dismiss the Complaint. On April
14 16, 2016, Utterback filed his “Response and Objections to Dismissal Motion”
15 (hereinafter, “Opposition”). (Opp’n, ECF No. 13.) Utterback’s Opposition did not
16 dispute the United States’s assertion that his Complaint sought to recover money
17 pursuant to TARP and an offset of his 2012 tax lien. Instead, Utterback asserted an
18 objection pursuant to the Fifth Amendment that “[d]ismissal does not end the
19 controversy therefore the matter cannot be dismissed,” and, although the relevance is
20 not entirely clear to the Court, references various federal regulations, agencies, and
21 statutes. (Opp’n 2–7.)

22 **III. LEGAL STANDARD**

23 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
24 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
25 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). “To
26 survive a motion to dismiss . . . under Rule 12(b)(6), a complaint generally must
27 satisfy only the minimal notice pleading requirements of Rule 8(a)(2)”—a short and
28 plain statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003); *see*

1 also Fed. R. Civ. P. 8(a)(2). The “[f]actual allegations must be enough to raise a right
2 to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
3 (2007). The “complaint must contain sufficient factual matter, accepted as true, to
4 state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662,
5 678 (2009) (internal quotation marks omitted). “A pleading that offers ‘labels and
6 conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not
7 do.’” *Id.* (citing *Twombly*, 550 U.S. at 555).

8 Whether a complaint satisfies the plausibility standard is a “context-specific
9 task that requires the reviewing court to draw on its judicial experience and common
10 sense.” *Id.* at 679. A court is generally limited to the pleadings and must construe all
11 “factual allegations set forth in the complaint . . . as true and . . . in the light most
12 favorable” to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir.
13 2001). But a court need not blindly accept conclusory allegations, unwarranted
14 deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*,
15 266 F.3d 979, 988 (9th Cir. 2001). Accusations of fraud require a plaintiff to plead
16 with particularity the circumstances constituting fraud. *See* Fed. R. Civ. P. 9(b). Rule
17 9(b) requires that the complaint identify the “who, what, when, where, and how” of
18 the fraudulent activity, “as well as what is false or misleading about” it, and why it is
19 false. *United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,
20 1055 (9th Cir. 2011) (internal quotation marks omitted).

21 Where a district court grants a motion to dismiss, it should generally provide
22 leave to amend unless it is clear the complaint could not be saved by any amendment.
23 *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
24 1025, 1031 (9th Cir. 2008).

25 IV. DISCUSSION

26 A. Troubled Asset Relief Program (TARP)

27 On November 11, 2009, Utterback sued the Secretary of the United States
28 Treasury, the Queen of England, and anonymous defendants in the United States

1 District Court for the District of Columbia (“D.C. Action”) related to the 2008
2 Emergency Economic Stabilization Act, which enabled the TARP program. *See*
3 *Utterback v. Geithner*, 754 F. Supp. 2d 52, 55 (D.D.C. 2010). The court granted the
4 United States Treasury’s motion to dismiss, concluding that Utterback failed “present
5 a claim on which the Court can grant relief or that would suffice to give the defendant
6 fair notice.” *Id.* at 56. Moreover, the court noted that the complaint and Utterback’s
7 proposed amended complaint contained “disjointed, mostly incoherent, allegations.”
8 *Id.* at 55. The D.C. Circuit granted a motion for summary affirmance of the district
9 court’s dismissal in the D.C. Action. *Utterback v. Geithner*, No. 10-5426, 2011 WL
10 2148689, at *1 (D.C. Cir. May 10, 2011). The D.C. Circuit noted that “[t]he district
11 court properly dismissed appellant’s amended complaint on the ground that appellant
12 failed to state a facially plausible claim for relief.” *Id.* Utterback petitioned for a writ
13 of certiorari to the U.S. Supreme Court, which was denied. *Utterback v. Geithner*,
14 565 U.S. 1115 (2012).

15 Much like Utterback’s case in the D.C. Action, his current complaint also
16 consists of “70 pages of . . . rambling assertions on various topics that fail to shed any
17 . . . light on the basis of [Utterback’s] claims.” *Utterback v. Geithner*, 754 F. Supp. 2d
18 at 56 (“[T]he motion [for leave to amend] consists of little more than a garbled
19 recitation of [Utterback’s] understanding of various legal standards.”). Utterback fails
20 to state a claim related to the TARP program. Simply identifying a federal program
21 and claiming that he is entitled to funds from that program does not state a plausible
22 claim. Moreover, from what the Court can discern from Utterback’s Complaint,
23 Utterback already litigated his TARP claim in the D.C. Action. Unsatisfied with the
24 results, Utterback attempts to revive his TARP claim nearly ten years later. Just like
25 with his claim in the D.C. Action, Utterback has not stated a claim for relief.

26 **B. IRS Tax Lien**

27 On May 26, 2014, the IRS assessed a civil penalty against Utterback “for the
28 submission of a frivolous tax return . . . for the 2012 taxable year.” (Mot. Ex. 1 (“Tax

1 Court Order”), at 2.) On April 21, 2015, the IRS sent Utterback a letter advising him
2 of a lien filed against him in the amount of \$15,003. (*Id.*) In response, Utterback
3 submitted a request for a collection due process or equivalent hearing (“CDP
4 hearing”). (*Id.*) In addition to the hearing request, Utterback referred to a trust held
5 by the “Secretary of State” for \$166 billion. (*Id.* at 2–3.)

6 On March 16, 2016, the IRS held a hearing. (*Id.* at 4.) During the hearing,
7 Utterback did not contest the lien, but instead argued that “he did not receive the lien
8 notice. In response, [the settlement officer] asked [Utterback] how he knew to prepare
9 and timely submit his CDP hearing request, to which [Utterback] provided no reply.”
10 (*Id.*) Ultimately, the reviewing settlement officer from the Internal Revenue Service
11 Office of Appeals sustained the tax lien. (*Id.* at 4.)

12 On June 27, 2016, Utterback filed a petition for review with the U.S. Tax Court.
13 (*Id.* at 6.) Again, Utterback did not “challenge the existence or amount of his
14 underlying liability (i.e. the civil penalty liability) for 2012.” (*Id.* at 7.) The court
15 ultimately concluded that the IRS could proceed with the collection of Utterback’s
16 unpaid civil penalty. (*Id.* at 10.) Utterback appealed to the Ninth Circuit, which
17 dismissed his appeal as frivolous. *Utterback v. Comm’r*, No. 18-72477, 2018 U.S.
18 App. LEXIS 35463, at *1 (9th Cir. Dec. 18, 2018) (“[W]e conclude this appeal is
19 frivolous.”).

20 Utterback appears to be making the same claims in this action that were
21 previously raised and adjudicated in both the Tax Court and Ninth Circuit.
22 Regardless, this Court does not have jurisdiction to review the Tax Court’s ruling or
23 the Ninth Circuit’s ruling deeming Utterback’s appeal as frivolous. *See Estate of*
24 *Quirk v. Comm’r of Internal Revenue*, 521 F.2d 723, 724 (9th Cir. 1975) (“The
25 taxpayer may not confer jurisdiction on the district court to review a Tax Court
26 action . . .”).

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1 **C. Leave to Amend**

2 As a general rule, a court should freely give leave to amend a complaint that has
3 been dismissed. Fed. R. Civ. P. 15(a). But a court may deny leave to amend when
4 “the court determines that the allegation of other facts consistent with the challenged
5 pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*
6 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *see Lopez v. Smith*, 203 F.3d
7 1122, 1127 (9th Cir. 2000). “Courts are not required to grant leave to amend if a
8 complaint lacks merit entirely.” *Lopez*, 203 F.3d at 1129.

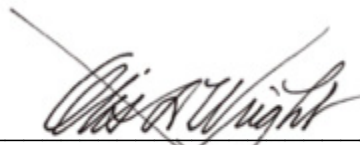
9 Here, Utterback has not requested leave to amend. Instead, Utterback
10 improperly requests that the Court submit this case to arbitration without any support
11 or basis for doing so. (Opp’n 26.) Leave to amend is not warranted. Utterback does
12 not dispute that he previously had an opportunity to, and did in fact, adjudicate his
13 TARP claim and tax lien. Utterback also does not identify any facts that could cure
14 the fatal defects to his Complaint. Accordingly, leave to amend is not proper.

15 **V. CONCLUSION**

16 For the reasons set forth above, the Court **GRANTS** the United States’s Motion
17 to Dismiss (ECF No. 11). Utterback’s Complaint is hereby **DISMISSED WITH**
18 **PREJUDICE**. The Clerk of Court shall close the case.

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20 **IT IS SO ORDERED.**

21
22 August 9, 2019

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26 **OTIS D. WRIGHT, II**
27 **UNITED STATES DISTRICT JUDGE**
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