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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 THERESA K. PULL,
12 Plaintiff,
13 v.
14 INTERNAL REVENUE SERVICE, et al.,
15 Defendants.

Case No. 1:14-cv-02020-LJO-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF’S
COMPLAINT BE DISMISSED, WITHOUT
LEAVE TO AMEND

OBJECTIONS DUE WITHIN THIRTY (30)
DAYS

On January 7, 2015, the Court issued an order screening Plaintiff Theresa K. Pull’s (“Plaintiff”) and dismissing it, with leave to amend. (ECF No. 2.) On March 19, 2015, Plaintiff filed an “Opposition of Court’s Intention to Dismiss and Amendment to Complaint.” (ECF No. 5.)

For the reasons set forth below, the Court construes Plaintiff’s March 19, 2015 filing as an amendment to her complaint and recommends that Plaintiff’s complaint be dismissed without leave to amend.

I.
BACKGROUND

Plaintiff filed the original complaint in this matter on December 19, 2014. (ECF No. 1.) Although unclear, it appeared that Plaintiff’s complaint challenged the Internal Revenue Service’s decision to deny Plaintiff’s claim for an income tax refund from her 2003 taxes.

1 Plaintiff did not file a claim until 2012, but contended that any untimeliness was excused because
2 of her financial disability. Plaintiff disputes the IRS's finding that Plaintiff's claim was untimely
3 and that Plaintiff did not qualify as having a financial disability.

4 The Court found that Plaintiff's original complaint failed to state any cognizable claims.
5 The Court identified several deficiencies regarding Plaintiff's complaint. The Court found that
6 Plaintiff failed to allege facts which plausibly supported the conclusion that Plaintiff filed a
7 valid, timely claim with the IRS.

8 First, the Court found Plaintiff's allegations regarding financial disability to be
9 unbelievable because Plaintiff was married and did not allege that Plaintiff's spouse was
10 financially disabled. Plaintiff's allegations that Plaintiff was both financially disabled and that
11 Plaintiff was solely responsible for handling the financial affairs of the household were
12 implausible because the fact that she was allegedly appointed as the person responsible for
13 financial affairs in the household, as opposed to her spouse, showed that she was not financially
14 disabled.

15 Second, the Court found that the allegations did not plausibly support the conclusion that
16 Plaintiff's spouse lacked all authority to manage the household's financial affairs. The Court
17 noted that Plaintiff had merely alleged that Plaintiff's spouse was not actively managing the
18 household's financial affairs. The Court noted the legal distinction between not managing
19 finances and not having authority to manage finances.

20 Third, the Court found that Plaintiff's complaint did not plausibly support the conclusion
21 that Plaintiff provided the IRS with sufficient proof of the existence of a financial disability
22 under 26 U.S.C. § 6511. The Court noted that Plaintiff acknowledged the absence of evidence of
23 disability for the period preceding 2008.

24 The Court granted Plaintiff leave to file an amended complaint addressing the
25 deficiencies identified above. Instead of filing an amended complaint, Plaintiff filed what
26 appears to be a brief in opposition to dismissal, which the Court considers below.

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1 **II.**

2 **LEGAL STANDARDS**

3 District courts may dismiss a claim sua sponte under Federal Rule of Civil Procedure
4 12(b)(6) if the Court gives notice of its intention to dismiss and afford plaintiffs an opportunity to
5 at least submit a written memorandum in opposition to such motion. Lee v. City of Los Angeles,
6 250 F.3d 668, 683 n.7 (9th Cir. 2001) (quoting Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991
7 (9th Cir. 1987); Wong v. Bell, 642 F.2d 359, 362 (9th Cir. 1981)). Under Rule 8(a), a complaint
8 must contain “a short and plain statement of the claim showing that the pleader is entitled to
9 relief.” Fed. R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require
10 ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-
11 harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic
12 Corp. v. Twombly, 550 U.S. 544, 555 (2007)). “[A] complaint must contain sufficient factual
13 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting
14 Twombly, 550 U.S. at 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’
15 a defendant’s liability . . . ‘stops short of the line between possibility and plausibility of
16 entitlement to relief.’” Id. (quoting Twombly, 550 U.S. at 557). Further, although a court must
17 accept as true all factual allegations contained in a complaint, a court need not accept a plaintiff’s
18 legal conclusions as true. Id. “Threadbare recitals of the elements of a cause of action,
19 supported by mere conclusory statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at
20 555).

21 **III.**

22 **DISCUSSION**

23 **A. Plaintiff’s Claims**

24 The Court notes that Plaintiff was ordered to file an amended complaint addressing the
25 deficiencies identified in the Court’s prior order. Instead of filing an amended complaint,
26 Plaintiff filed a brief arguing why Plaintiff’s claims are viable. Since pro se litigants are entitled
27 to certain liberalities in the manner in which the Court construes their filings, the Court will
28 consider Plaintiff’s brief as setting forth the new and different allegations Plaintiff would have

1 included in a properly drafted and filed amended complaint. However, for the reasons set forth
2 below, the Court finds that Plaintiff's arguments and allegations do not cure the deficiencies
3 found by the Court in its prior order and will therefore recommend that this action be dismissed.

4 "In order for a district court to have subject matter jurisdiction over a tax refund suit, the
5 plaintiff must meet five conditions imposed by 28 U.S.C. § 1346(a)(1), I.R.C. § 7422(a), and
6 judicial precedent: 1) full payment of the tax; 2) a valid credit claim filed with the IRS; 3) action
7 on the claim by the IRS; 4) the suit for refund must be brought within two years of the IRS'
8 denial; and 5) the suit for refund must have the same basis as the claim originally filed with the
9 IRS." King v. U.S., 949 F. Supp. 787, 789 (E.D. Wash. 1996). "No suit or proceeding shall be
10 maintained in any court for the recovery of any internal revenue tax alleged to have been
11 erroneously or illegally assessed or collected ... until a claim for refund or credit has been **duly**
12 **filed** with the Secretary, **according to the provisions of law in that regard**, and the regulations
13 of the Secretary established in pursuance thereof." 26 U.S.C. § 7422(a) (emphasis added).

14 The Court found that Plaintiff failed to state a cognizable claim because she had not
15 alleged facts which plausibly support the conclusion that she filed a duly filed, **valid** claim for a
16 refund with the IRS. The complaint appeared to allege that Plaintiff's claim for refund was
17 **invalid** because it was untimely. The additional facts and arguments presented in Plaintiff's
18 March 19, 2015 brief only reinforce the Court's interpretation of Plaintiff's complaint.

19 Plaintiff claims that her claim with the IRS was timely because the limitations period
20 should have tolled because she is "financially disabled" within the meaning of the Internal
21 Revenue Code. Under 26 U.S.C. § 6511(h), the limitations period for filing a claim for a credit
22 or refund with the IRS is "suspended during any period of such individual's life that such
23 individual is financially disabled."

24 However, the Court originally noted that, in order to suspend the limitations period for
25 filing a timely claim with the IRS on the basis of a financial disability, Plaintiff must herself be
26 financially disabled **and** must not have a spouse or other person who was authorized to act on
27 her behalf in financial matters. Section 6511 defines financial disability as:

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1 **(2) Financially disabled.—**

2 **A. In general.**—For purposes of paragraph (1), an individual is
3 financially disabled if such individual is unable to manage his
4 financial affairs by reason of a medically determinable physical or
5 mental impairment of the individual which can be expected to
6 result in death or which has lasted or can be expected to last for a
7 continuous period of not less than 12 months. An individual shall
8 not be considered to have such an impairment unless proof of the
9 existence thereof is furnished in such form and manner as the
10 Secretary may require.

11 26 U.S.C. § 6511(h)(2). Subsection 6511(h)(2)(B) provides the exception to financial disability
12 where the individual has a spouse or other person who is authorized to act on the individual's
13 behalf:

14 **B. Exception where individual has guardian, etc.**—An
15 individual shall not be treated as financially disabled during any
16 period that such individual's spouse or any other person is
17 authorized to act on behalf of such individual in financial matters.

18 26 U.S.C. § 6511(h)(2)(B).

19 The Court found Plaintiff's allegations regarding financial disability to be disingenuous
20 and implausible because Plaintiff alleged that she was unable to manage her own financial affairs
21 by reason of a disability, yet at the same time, Plaintiff was actually managing her own financial
22 affairs instead of her husband. To put it plainly, it appeared that Plaintiff was deceitfully
23 mischaracterizing how her household's finances were managed in an attempt to qualify for
24 tolling under Section 6511. If Plaintiff was unable to manage her own financial affairs, one
25 would presume that she would have delegated such duties to her non-financially disabled
26 husband. If Plaintiff and her husband made the voluntary decision to have Plaintiff manage their
27 household's financial affairs, one would presume that Plaintiff was competent to do so and,
28 therefore, not financially disabled. Plaintiff would have the Court believe that Plaintiff and her
husband chose to have Plaintiff manage the household's finances even though she was incapable
of doing so. The Court finds this to be implausible.

 Moreover, even if Plaintiff's implausible allegations were true, Plaintiff would still not
qualify for tolling. Plaintiff is under the mistaken belief that a husband and wife can manipulate
the system to give themselves an infinite amount of time to file a claim for a tax refund if one

1 spouse is “financially disabled” and the other spouse is perfectly competent and the couple
2 voluntarily designates the “financially disabled” spouse to handle the household’s finances.
3 Section 6511(h)(2)(B) was enacted precisely to avoid such manipulation of the rules.

4 In its prior order, the Court noted that “it is a person’s authority to manage a taxpayer’s
5 financial matters, and not the exercise of that authority, that is relevant to determining whether a
6 taxpayer may claim financial disability....” Plati v. U.S., 99 Fed. Cl. 634, 639 (2011). In
7 Plaintiff’s brief, Plaintiff states that she “cannot make sense out of what is being said” by this
8 proposition. The meaning is quite simple. Plati states that the tolling provisions of Section
9 6511(h) cannot be manipulated in the manner attempted by Plaintiff by a couple consisting of
10 one financially disabled spouse and another non-disabled spouse. Plati recognizes the difference
11 between not **possessing** authority and not **exercising** authority. To illustrate, a husband and wife
12 may both **possess** authority to manage the household’s finances even though the couple
13 designates the wife to **exercise** that authority. Even if the husband is not actively managing the
14 finances at any given time, he still **possesses** the authority to do so. The decision not to exercise
15 authority does not equate to lack of authority.

16 If Plaintiff’s spouse **could have** managed the household finances, Plaintiff is not
17 considered financially disabled. If Plaintiff’s husband had authority to manage the finances,
18 Plaintiff does not receive the benefit of tolling simply because Plaintiff’s husband decided not to
19 exercise that authority. The text of the statute quite clearly supports this interpretation: Section
20 6511(h)(2)(B) states that tolling does not occur if “such individual’s spouse or any other person
21 is authorized to act on behalf of such individual in financial matters.” The controlling question is
22 whether someone else “**is** authorized,” not whether someone else “**exercised authority.**”

23 The facts and arguments presented in Plaintiff’s complaint and the more recent brief filed
24 by Plaintiff clearly demonstrate that Plaintiff’s husband possessed the authority to manage the
25 household’s finances, but decided to allow Plaintiff to manage the finances in his stead. As an
26 initial matter, Plaintiff admits that she “does not know if her spouse is or is not financially
27 disabled” because her husband has never sought medical treatment for any condition which
28 would have caused financial disability. (Opp’n to Court’s Intention to Dismiss and Amendment

1 to Complaint 7:19-21.) Plaintiff never made any attempt to argue to the IRS that her spouse was
2 financially disabled.

3 Furthermore, Plaintiff admits that her spouse possessed authority to act on behalf of their
4 household's financial matters. Plaintiff admits that "Plaintiff's spouse was not stripped of
5 authority to manage the household financial affairs...." (Opp'n to Court's Intention to Dismiss
6 and Amendment to Complaint 8:15-18.) Plaintiff goes as far as to admit that her spouse
7 exercised authority to act on behalf of the household's financial matters "[a]t some time between
8 2005 and 2009..."¹ (Opp'n to Court's Intention to Dismiss and Amendment to Complaint 5:16-
9 18.)

10 Furthermore, Plaintiff's brief reveals that not only did Plaintiff's husband possess and
11 sometimes exercise authority to manage the household's finances, Plaintiff retained the services
12 of a certified public accountant which would qualify as a third person with authority to act on
13 behalf of Plaintiff in financial matters. (See Opp'n to Court's Intention to Dismiss and
14 Amendment to Complaint, at pg. 5:24-26 ("When Plaintiff married her spouse, she automatically
15 took on the role of filing tax returns and then, later, preparing the information for filing through
16 [a] Certified Public Accountant's services."). Plaintiff also admits that her daughters were
17 available "to help with financial matters, such as bill paying and the organization and preparation
18 of information for tax returns." (See Opp'n to Court's Intention to Dismiss and Amendment to
19 Complaint, at pg. 6:1-4.) Section 6511 does not afford Plaintiff extra time to file her taxes when
20 she is evidently surrounded by competent people with authority to help Plaintiff file her taxes on
21 time.

22 Plaintiff's attempt to qualify as financially disabled despite the existence of other persons
23 who could have managed her household's financial affairs is strikingly similar to the factual
24 scenario rejected in Plati. In Plati, the plaintiff's son possessed authority to manage the
25 plaintiff's financial affairs and the court rejected the plaintiff's contention that she was

26 ¹ Plaintiff informs that Court that she became "anxious and distressed" over her spouse's handling of the bills
27 because he "paid one bill twice," "did not list some checks in the check register," "did not reference the account
28 numbers on some of the checks" and "did not note payment details on the statements/bills." (Opp'n to Court's
Intention to Dismiss and Amendment to Complaint 5:16-22.) Plaintiff does not identify any actual harm suffered
during this time and the Court does not consider these issues as substantial impediments to managing finances.

1 financially disabled because she stubbornly “insist[ed] on keeping control” and “did not let [him]
2 have control or authority to act for her.” Plati, 99 Fed. Cl. at 640 (internal quotations omitted).
3 Similarly, here, Plaintiff’s spouse and CPA possessed authority to manage the household’s
4 affairs, but for reasons unknown, Plaintiff insisted on keeping control despite her alleged
5 financial disability. Under Section 6511 and Plati, on these facts, Plaintiff does not qualify for
6 tolling based on financial disability.

7 Finally, the Court notes that, in its prior order, it found that Plaintiff failed to allege facts
8 which plausibly support her claims because she admitted that she lacked evidence to establish
9 financial disability during any period preceding 2008 and the limitations period for claiming a
10 refund expired on April 15, 2007. Section 6511(h)(2)(B) states that Plaintiff is not considered to
11 have a financial disability “unless proof of the existence thereof is furnished in such form and
12 manner as the Secretary may require.” Plaintiff goes to great lengths to argue that her clinical
13 psychologist’s report should be sufficient evidence to establish Plaintiff’s financial disability, but
14 ignores the fact that, even if the clinical psychologist’s report was accepted, it only established
15 financial disability from 2008 onwards, which would not make Plaintiff’s claim timely. Plaintiff
16 fails to address this point in her brief.

17 The facts alleged in Plaintiff’s complaint show that Plaintiff did not file a valid, timely
18 claim with the IRS concerning the income tax refund she is allegedly owed. Accordingly,
19 Plaintiff fails to state a cognizable claim for a refund. See King v. U.S., 949 F. Supp. 787, 789
20 (E.D. Wash. 1996).

21 **B. Leave to Amend**

22 “Generally, Rule 15 advises the court that ‘leave [to amend the complaint] shall be freely
23 given when justice so requires.’ This policy is ‘to be applied with extreme liberality.’”
24 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v.
25 Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). The factors the Court
26 should consider in deciding whether to grant leave to amend include undue delay, bad faith or
27 dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments
28 previously allowed, undue prejudice to the opposing party by virtue of allowance of the

1 amendment, and futility of the amendment. Id. at 1052.

2 The Court finds that any further leave to amend would be futile. The Court previously
3 informed Plaintiff of the deficiencies in her complaint and her amendment filed in response to
4 the Court's order does not cure those deficiencies. The facts and arguments presented in
5 Plaintiff's amendment show that her claim for a tax refund is not cognizable. The Court will
6 recommend that Plaintiff's complaint be dismissed without leave to amend.

7 **IV.**

8 **CONCLUSION AND RECOMMENDATION**

9 Based upon the foregoing, the Court finds that Plaintiff's complaint fails to state any
10 cognizable claims and that the deficiencies in Plaintiff's claims cannot be cured with further
11 leave to amend.

12 Accordingly, it is HEREBY RECOMMENDED that Plaintiff's complaint be
13 DISMISSED, without leave to amend.

14 These findings and recommendations are submitted to the district judge assigned to this
15 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)
16 days of service of this recommendation, any party may file written objections to these findings
17 and recommendations with the Court and serve a copy on all parties. Such a document should be
18 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district
19 judge will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §
20 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may
21 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
22 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23 IT IS SO ORDERED.

24 Dated: March 26, 2015

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26 _____
27 UNITED STATES MAGISTRATE JUDGE
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