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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH ADAM ZYSKOWSKI,
Plaintiff,
v.
NEIL T. SCHOONMAKER,
Defendant.

Case No. 1:23-cv-00433-ADA-EPG

ORDER GRANTING MOTION TO
WITHDRAW FILING FROM FURTHER
CONSIDERATION

(ECF No. 9)

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION BE
DISMISSED, WITHOUT PREJUDICE, FOR
LACK OF SUBJECT-MATTER
JURISDICTION

(ECF No. 10)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

I. INTRODUCTION

Plaintiff Joseph Adam Zyskowski sues an IRS employee, Defendant Neil T. Schoonmaker, over a dispute as to whether Plaintiff owes penalties from allegedly filing a frivolous tax return. Upon review of the initial complaint on May 1, 2023, the Court issued an order for Plaintiff to show cause why this case should not be dismissed for lack of subject-matter jurisdiction. (ECF No. 6). Generally, the Court noted that Plaintiff had failed to identify any cognizable federal claim and had not sufficiently alleged diversity of citizenship among the parties or the amount in controversy. Within the order, the Court advised Plaintiff of the standards governing a tax-refund action and permitted Plaintiff to file an amended complaint adequately

1 alleging jurisdiction.

2 On May 17, 2023, Plaintiff timely responded, filing the following documents: (1) a
3 motion to withdraw a filing included with his initial complaint, titled “Rules of the Joseph Adam
4 Zyskowski Court,”¹ that purported to set procedural and substantive rules for how this case would
5 proceed (ECF No. 9); (2) a response to the order to show cause, asserting that the Court has
6 diversity jurisdiction over this case (ECF No. 7); and (3) an amended complaint (ECF No. 10).²

7 After review of the filings, the Court (1) will grant Plaintiff’s motion to withdraw the
8 filing titled “Rules of the Joseph Adam Zyskowski Court” from further consideration and (2) will
9 recommend that this action be dismissed, without prejudice, for lack of subject-matter
10 jurisdiction.

11 **II. SUMMARY OF THE AMENDED COMPLAINT**

12 Plaintiff’s amended complaint is very similar to his initial complaint. He states that he
13 “claim[s] the private sector, non-federal, non-privileged earnings” that are his property. In 2020,
14 he sent an amended 2017 tax return to the IRS to receive a tax refund. After no indication that his
15 return had been received, he sent another amended 2017 tax return. Ultimately, he received a
16 refund check of \$91,235.61.

17 However, in October 2021, he received a letter from the IRS’s “Return Integrity
18 Verification Ops,” where Defendant is a “director,” accusing him of filing a “frivolous” tax return
19 for 2017 and stating that he needed to correct the return or he would be charged a \$5,000
20 “frivolous return penalty.” Plaintiff received “a bill dated April 11, 2022, for a \$5,000 debt, in the
21 guise of a ‘frivolous return penalty.’” Later, Plaintiff received “another bill, dated June 6, 2022,
22 which included the previous \$5,000 purported debt plus \$30.78 in interest, and three (3)
23 additional \$5,000 purported debts, for a total amount of \$20,030.78.”

24 Based on these allegations, Plaintiff asserts claims for “trespass by way of barratry”³ and

25 ¹ For readability, the Court has made some alterations, such as changing capitalization, to Plaintiff’s
26 quotes, without indicating each change.

27 ² Plaintiff also filed a “notice of reservation of rights and status as a man,” generally indicating that he
28 believes he should be referred to as something other than “Plaintiff” in this case, such as “the man seeking
remedy.” (ECF No. 8). Because this “notice” filing does not seek a court order, *see* Fed. R. Civ. P. 7(b),
the Court does not consider it a motion and will not address it as such. However, to the extent that Plaintiff
seeks any relief, his request is denied.

³ Black’s Law Dictionary provides multiple definitions for barratry, but one is as follows: “Vexatious

1 “trespass by way of debt.” As for relief, Plaintiff seeks “\$100,000 for each of five instances of
2 trespass by way of barratry and debt, plus \$1 per minute any trespass continue[s], from midnight
3 of May 19, 2022.”

4 **III. SUBJECT-MATTER JURISDICTION**

5 **A. Generally**

6 A court’s subject-matter jurisdiction over a case “refers to a tribunal’s power to hear [the]
7 case, a matter that can never be forfeited or waived.” *Union Pac. R. Co. v. Bhd. of Locomotive*
8 *Engineers & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 81 (2009)
9 (quotation marks and citation omitted). “Moreover, courts . . . have an independent obligation to
10 determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any
11 party.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). Under Federal Rule of Civil Procedure
12 12(h)(3), “[i]f the [C]ourt determines at any time that it lacks subject-matter jurisdiction, the
13 [C]ourt must dismiss the action.”

14 “Federal courts are courts of limited jurisdiction. They possess only that power authorized
15 by Constitution and statute It is to be presumed that a cause lies outside this limited
16 jurisdiction, and the burden of establishing the contrary rests upon the party asserting
17 jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citation
18 omitted). There are two main bases to establish subject-matter jurisdiction in a case.

19 First, 28 U.S.C. § 1331 provides that “district courts have original jurisdiction of all civil
20 actions arising under the Constitution, laws, or treaties of the United States.” Under the “‘well-
21 pleaded complaint rule’ . . . federal jurisdiction exists only when a federal question is presented
22 on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S.
23 386, 392 (1987). Second, 28 U.S.C. § 1332(a) provides that “district courts shall have original
24 jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of
25 \$75,000, exclusive of interest and costs,” and involves “citizens of different States.” The
26 citizenship of an individual is “determined by her state of domicile, not her state of residence,”
with a domicile being the individual’s “permanent home, where she resides with the intention to

27 incitement to litigation, esp. by soliciting potential legal clients. There must typically be a showing that the
28 resulting lawsuit was utterly baseless.” BARRATRY, Black’s Law Dictionary (11th ed. 2019). Here, there
is no allegation that Defendant has vexatiously incited a lawsuit.

1 remain or to which she intends to return.” *Kanter v. Warner-Lamber Co.*, 265 F.3d 853, 857 (9th
2 Cir. 2001).

3 **B. Analysis**

4 The complaint indicates, and Plaintiff’s response to the show cause order specifically
5 states, that jurisdiction is based on diversity of citizenship.⁴ (ECF No. 7, p. 1; ECF No. 10, p. 1).
6 Specifically, the complaint alleges that Plaintiff is a citizen of Nevada, that Defendant is a citizen
7 of California, and that the amount in controversy exceeds the value of \$75,000.

8 As an initial matter, the Court notes that Plaintiff identifies no legal authority authorizing
9 his trespass claims. But even assuming Plaintiff had identified a cognizable cause of action, he
10 fails to adequately assert that the amount in controversy exceeds \$75,000. The amount in
11 controversy generally includes damages, the cost of complying with an injunction, and attorney
12 fees, but excludes interests and costs. *Gonzales v. CarMax Auto Superstores, LLC*, 840 F.3d 644,
13 648-49 (9th Cir. 2016) (defining the amount in controversy for diversity jurisdiction). “The
14 amount in controversy alleged by the proponent of federal jurisdiction . . . controls so long as the
15 claim is made in good faith.” *Geographic Expeditions, Inc. v. Est. of Lhotka ex rel. Lhotka*, 599
16 F.3d 1102, 1106 (9th Cir. 2010).

17 Here, while Plaintiff asserts a total amount in controversy over \$75,000, only
18 approximately \$20,000 of the amount at issue in this case concerns the frivolous return penalties.
19 The rest of what Plaintiff claims comes from his unexplained request for \$100,000 for each of the
20 five instances of trespass and \$1 per minute so long as any trespass continues. While these figures
21 presumably represent damages, he cites no facts supporting these amounts and provides no legal
22 authority suggesting that he could recover them. Given Plaintiff’s failure to make a good faith
23 estimate of the amount recoverable, the Court concludes that it lacks subject-matter jurisdiction
24 over this case. *See Russell v. Access Securepak, Inc.*, No. CIV S-07-0373 RRB GGH PS, 2007
25 WL 4170756, at *2 (E.D. Cal. Nov. 20, 2007) (recommending dismissal for lack of subject-
26 matter jurisdiction where the plaintiffs failed to allege the amount in controversy).

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28 ⁴ Plaintiff does not assert federal question jurisdiction, and the Court does not find any cognizable federal claim based on Plaintiff’s “trespass” allegations.

1 **IV. CONCLUSION, ORDER, AND RECOMMENDATIONS**

2 In the order to show cause, the Court noted the deficiencies in Plaintiff’s jurisdictional
3 allegations, advised him of potentially relevant legal standards for a tax-refund action, and
4 permitted Plaintiff to file an amended complaint. However, Plaintiff filed a substantially similar
5 complaint, failing to sufficiently allege the Court’s subject-matter jurisdiction over this case.
6 Based on these circumstances, any further leave to amend is not warranted. *See Saul v. United*
7 *States*, 928 F.2d 829, 843 (9th Cir. 1991) (“A district court does not err in denying leave to amend
8 where the amendment would be futile . . . or where the amended complaint would be subject to
9 dismissal.”) (citations omitted). However, the Court will recommend that the dismissal be without
10 prejudice should Plaintiff be able to reassert his claims in a proper court in the future. *See*
11 *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (“In general, dismissal for
12 lack of subject matter jurisdiction is without prejudice.”).

13 Accordingly, IT IS ORDERED that Plaintiff’s motion to withdraw (ECF No. 9) the filing
14 titled “Rules of the Joseph Adam Zyskowski Court” from further consideration is granted.

15 Further, IT IS RECOMMENDED as follows:

- 16 1. This action be dismissed, without prejudice, based on Plaintiff’s failure to establish the
17 Court’s subject-matter jurisdiction over this case.
18 2. The Clerk of Court be directed to close the case.

19 These findings and recommendations will be submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
21 (14) days after being served with these findings and recommendations, Plaintiff may file written
22 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
23 Findings and Recommendations.”

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: May 22, 2023

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE