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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALARIC SCOTT, JR.,  
Plaintiff,  
v.  
MONICA MCKENNA,  
Defendant.

No. 2:16-cv-1839-MCE-KJN PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff Alaric Scott, Jr., who proceeds in this action without counsel,<sup>1</sup> has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)<sup>2</sup> Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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<sup>1</sup> This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

<sup>2</sup> Plaintiff, who claims to be a member of the “Moorish National Republic; Moorish Divine and National Movement of the World,” and an authorized representative of the person (spelled in all capital letters) ALARIC SCOTT JR., did not fully complete the affidavit regarding financial ability. Nevertheless, in light of the recommended disposition in this case, the issue of plaintiff’s financial status is moot.

1 For the reasons discussed below, the court concludes that it lacks subject matter  
2 jurisdiction over the action. Accordingly, the court recommends that the action be dismissed and  
3 that plaintiff's application to proceed *in forma pauperis* in this court be denied as moot.

4 A federal court has an independent duty to assess whether federal subject matter  
5 jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v.  
6 Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004) (stating that "the district court had a duty  
7 to establish subject matter jurisdiction over the removed action *sua sponte*, whether the parties  
8 raised the issue or not"); accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996).  
9 The court must *sua sponte* dismiss the case if, at any time, it determines that it lacks subject  
10 matter jurisdiction. Fed. R. Civ. P. 12(h)(3).

11 Here, plaintiff alleges that defendant Monica McKenna, a revenue agent with the Internal  
12 Revenue Service ("IRS"), made an erroneous, gross administrative oversight, which resulted in  
13 the illegal assessment of taxes, the unauthorized assessment of a penalty, and the placement of a  
14 multi-million dollar lien on plaintiff's property, thereby preventing plaintiff from conducting  
15 commerce legally. Liberally construed, plaintiff alleges that defendant's actions violated the  
16 Internal Revenue Laws and plaintiff's constitutional rights. Plaintiff seeks actual damages in the  
17 amount of \$1,000,000.00 by cashier's check, as well as injunctive relief (removal of the tax lien  
18 from all of plaintiff's property). (See generally ECF No. 1.)

19 The court lacks subject matter jurisdiction over plaintiff's claim for injunctive relief  
20 (removal of the tax lien).

21 "It is well settled that the United States is a sovereign, and, as such, is immune from suit  
22 unless it has expressly waived such immunity and consented to be sued. Such waiver cannot be  
23 implied, but must be unequivocally expressed. Where a suit has not been consented to by the  
24 United States, dismissal of the action is required." Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th  
25 Cir. 1985) (internal citations omitted). Furthermore, it "has long been the rule that the bar of  
26 sovereign immunity cannot be avoided by naming officers and employees of the United States as  
27 defendants. Thus, a suit against IRS employees in their official capacity is essentially a suit  
28 against the United States." Id. In this case, although plaintiff has named defendant in her

1 individual capacity, plaintiff's claim for injunctive relief can only be conceivably asserted against  
2 defendant in her official capacity (i.e., as a claim against the United States), because potential  
3 success on that claim would compel the United States, and not defendant individually, to remove  
4 the lien. See Krieg v. Mills, 117 F. Supp. 2d 964, 967 (N.D. Cal. 2000) (collecting cases).  
5 Because there has been no proper showing that the United States has waived its sovereign  
6 immunity with respect to plaintiff's claim for injunctive relief, the court lacks subject matter  
7 jurisdiction over that claim. Id.; Gilbert, 756 F.2d at 1458-59. Moreover, the Anti-Injunction Act  
8 also generally withdraws jurisdiction from state and federal courts over any actions seeking  
9 injunctions prohibiting the collection of federal taxes. See 26 U.S.C. § 7421(a); Krieg, 117 F.  
10 Supp. 2d at 967-68.

11 Additionally, the court lacks subject matter jurisdiction over plaintiff's damages claim.  
12 To be sure, sovereign immunity does not bar actions for damages against a federal official in her  
13 individual capacity for violations of an individual's statutory or constitutional rights. See Bivens  
14 v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971); Gilbert,  
15 756 F.2d at 1459. Such claims are commonly referred to as Bivens claims. However, courts have  
16 consistently held that taxpayers are barred from bringing Bivens claims for damages against  
17 individual employees of the IRS. See Wages v. IRS, 915 F.2d 1230, 1235 (9th Cir. 1990)  
18 (holding that "the remedies provided by Congress, particularly the right to sue the government for  
19 a refund of taxes improperly collected, foreclose a damage action under *Bivens* in this situation").

20 Accordingly, IT IS HEREBY RECOMMENDED that:

- 21 1. The action be dismissed for lack of subject matter jurisdiction.
- 22 2. Plaintiff's motion to proceed *in forma pauperis* in this court (ECF No. 2) be denied as  
23 moot.
- 24 3. The Clerk of Court be directed to close this case.

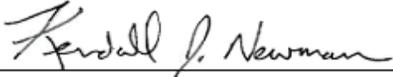
25 In light of these recommendations, IT IS ALSO HEREBY ORDERED that all pleading,  
26 discovery, and motion practice in this action are stayed pending resolution of these findings and  
27 recommendations. Other than objections to the findings and recommendations or non-frivolous  
28 motions for emergency relief, the court will not entertain or respond to any pleadings or motions

1 until the findings and recommendations are resolved.

2           These findings and recommendations are submitted to the United States District Judge  
3 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
4 days after being served with these findings and recommendations, any party may file written  
5 objections with the court and serve a copy on all parties. Such a document should be captioned  
6 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
7 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
8 objections. The parties are advised that failure to file objections within the specified time may  
9 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
10 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

11           IT IS SO ORDERED AND RECOMMENDED.

12 Dated: September 20, 2016

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15 KENDALL J. NEWMAN  
16 UNITED STATES MAGISTRATE JUDGE  
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