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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALVIN HENNINGTON, JR.
Plaintiff,
v.
FEDERAL BUREAU OF INVESTIGATION,
Defendant.

Civil No.08cv1033 JAH (LSP)
**ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS [Doc. No. 11]**

BACKGROUND

Plaintiff originally filed a complaint in Superior Court of California, County of San Diego on March 3, 2008 against the Federal Bureau of Investigation. On June 10, 2008, the matter was removed to federal court and later transferred to this Court pursuant to the low number rule. Plaintiff filed a motion for entry of default judgment, which the Court denied as premature and unwarranted. See Order (Doc. No. 10).

On August 11, 2008, Defendant filed a motion to dismiss. Plaintiff did not file a timely response. Instead, Plaintiff filed numerous motions for default judgment that were either denied or rejected by this Court as improper. See Doc. Nos. 12, 13, 14, 15, 16, 17, 18. Defendant’s motion was set for hearing on September 15, 2008, but was taken under submission without oral argument. On September 29, 2008, Plaintiff filed a request for counsel and on October 24, 3008, submitted an untitled document asking the Court to deny Defendant’s motion to dismiss. On December 22, 2008, Plaintiff filed another

1 motion for entry of default judgment.

2 DISCUSSION

3 Defendant moves to dismiss under Federal Rules of Civil Procedure 8, 12(b)(1) and
4 12(b)(6). Defendant argues the complaint fails to comply with the pleading requirements
5 of Rule 8, Plaintiff failed to comply with the Federal Tort Claims Act’s administrative
6 claims requirement and improperly named the FBI as a defendant.

7 Plaintiff argues the motion should be denied “on the grounds that you have to show
8 presedence [sic] and legal grounds in order to dismiss case that is already in default.”
9 Response at 1 (Doc. No. 28). There is no record of a default in this action. In fact, this
10 Court has repeatedly denied Plaintiff’s various motions for entry of default judgment, as
11 premature and unwarranted, because Plaintiff failed to obtain entry of default from the
12 Clerk of Court and Defendant responded timely to the complaint by filing the pending
13 motion to dismiss. Additionally, as discussed further below, Defendant provides sufficient
14 grounds for dismissal.

15 I. Legal Standards

16 A. Rule 8

17 Under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint “shall contain
18 (1) a short and plain statement of the grounds upon which the court’s jurisdiction depends
19 . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to
20 relief, and (3) a demand for judgment for the relief the pleader seeks.” Fed.R.Civ.P. 8(a).
21 Similarly, Rule 8(d) requires that “each averment of a pleading shall be simple, concise and
22 direct.” Rule 8 is designed to provide defendants with fair notice of the claims against
23 them and the grounds on which those claims rest. McKeever v. Block, 932 F.2d 795, 798
24 (9th Cir. 1991); see McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996).

25 B. Rule 12(b)(1)

26 Under Federal Rule of Civil Procedure 12(b)(1), a defendant may seek to dismiss
27 a complaint for “lack of jurisdiction over the subject matter.” Fed.R.Civ.P. 12(b)(1). “A
28 motion to dismiss for lack of subject matter jurisdiction may either attack the allegations

1 of the complaint or may be made as a ‘speaking motion’ attacking the existence of subject
2 matter jurisdiction in fact.” Thornhill Publishing Co. v. General Telephone Corp., 594
3 F.2d 730, 733 (9th Cir.1979).

4 Defendant argues Plaintiff failed to meet the jurisdictional requirement for
5 maintaining a tort claim against the federal government by filing an administrative claim.
6 28 U.S.C. § 2675(a) provides in relevant part that “[a]n action shall not be instituted
7 upon a claim against the United States for money damages . . . unless the claimant shall
8 have first presented the claim to the appropriate Federal agency and his claim shall have
9 been finally denied by the agency in writing.” A plaintiff’s filing of an administrative claim
10 is jurisdictional, and must be adhered to strictly. Brady v. United States, 211 F.3d 499,
11 502 (9th Cir. 2000).

12 C. Rule 12(b)(6)

13 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
14 sufficiency of the complaint. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001).
15 Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal
16 theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9th Cir. 1984); see
17 Neitzke v. Williams, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to
18 dismiss a claim on the basis of a dispositive issue of law.”). Alternatively, a complaint may
19 be dismissed where it presents a cognizable legal theory yet fails to plead essential facts
20 under that theory. Robertson, 749 F.2d at 534. While a plaintiff need not give “detailed
21 factual allegations,” he must plead sufficient facts that, if true, “raise a right to relief above
22 the speculative level.” Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007).

23 II. Analysis

24 The Court has reviewed the complaint. Plaintiff appears to assert claims for
25 “conflict of interest [sic]”, harassment, slander, “psychological [sic] torture”, sodomy, rape,
26 invasion of privacy and medical malpractice, and seeks fifty million dollars. See
27 Complaint (Doc. No. 1). Plaintiff’s complaint alleges he was harassed and tortured and
28 received death threats, hypnosis and thought implantation in an attempt to “blow”

1 Plaintiff's case for 2.5 million dollars that "went into default." According to the
2 allegations of the complaint, all the acts were committed by police officers. The complaint
3 is devoid of any allegations against Defendant FBI and therefore fails to state a claim
4 against the FBI. Furthermore, Plaintiff fails to demonstrate he filed an administrative claim
5 as required. Therefore, the complaint is subject to dismissal.

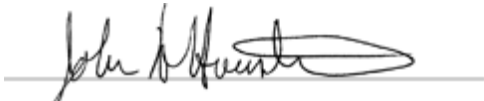
6 The Court also finds, to the extent Plaintiff is asserting a tort claim against
7 Defendant FBI, the FBI is not a proper defendant. The Federal Tort Claims Act ("FTCA")
8 "is the exclusive remedy for tort actions against a federal agency" and the United States
9 is the only proper defendant for claims arising under the FTCA. Kennedy v. U.S. Postal
10 Serv., 145 F.3d 1077 (9th Cir. 1998).

11 **CONCLUSION AND ORDER**

12 Based on the foregoing, IT IS HEREBY ORDERED:

- 13 1. Defendant's motion to dismiss is **GRANTED**. The complaint is dismissed
14 without prejudice.
- 15 2. Plaintiff's motion for counsel (Doc. No. 23) is **DENIED as moot**.
- 16 3. Plaintiff's motion for entry of court judgment is **DENIED as moot**.

17 DATED: January 7, 2009

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19 JOHN A. HOUSTON
20 United States District Judge

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