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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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AARON GEORGE ZEEMAN,)	CV 14-00328 RSWL
)	
Plaintiff,)	
)	
v.)	ORDER re: DEFENDANTS'
)	MOTION TO DISMISS
)	PURSUANT TO FED. R. CIV.
)	P. 12 [42]
UNITED STATES DISTRICT)	
COURT DISTRICT OF HAWAII)	
PROBATION OFFICE, et al.,)	
)	
Defendants.)	

Currently before the Court is Defendants' Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(B) ("Motion") [42]. The present Motion arises from an action brought by Plaintiff Aaron George Zeeman ("Plaintiff") against Defendant United States District Court District of Hawaii Probation Office ("Probation Office"), and various Probation Office employees, Defendants Felix S. Mata ("Mata"), Johnathan K. Skedelski ("Skedelski"), and Keola Jenkins ("Jenkins") (collectively, "Defendants"). Plaintiff alleges violations to his constitutional rights and other violations of federal law stemming from Plaintiff's probation conditions.

1 I. BACKGROUND

2 A. Factual Background

3 On June 18, 2014, Plaintiff entered a guilty plea
4 to four counts of Distribution of Marijuana, in
5 violation of 21 U.S.C. §§ 841(a)(1) and 941(b)(1)(D),
6 before the Honorable Leslie E. Kobayashi ("Judge
7 Kobayashi") of the United States District Court,
8 District of Hawaii. See Judgment in Criminal Case in
9 the matter of U.S. v. Aaron George Zeeman, dated
10 7/18/2014, Defs.' Mot. to Dismiss ("Mot.") Ex. A.
11 (hereinafter "July 18 Judgment"), ECF No. 42-3.
12 Plaintiff was sentenced to two years of probation for
13 each of the four counts, to run concurrently. Id. at
14 p. 3.

15 As a general condition of probation, Judge
16 Kobayashi ordered in pertinent part:

17 That the defendant shall not unlawfully possess a
18 controlled substance. The defendant shall refrain
19 from any unlawful use of a controlled substance.
20 The defendant shall submit to one drug test within
21 15 days of commencement on supervision and at least
22 two periodic drug tests thereafter, but not more
23 than 8 valid drug tests per month during the term
24 of probation. Id.

25 Additionally, as Special Condition No. 3 of
26 Plaintiff's probation, Judge Kobayashi ordered:

27 The defendant is prohibited from using marijuana,
28 synthetic marijuana, any products containing

1 tetrahydrocannabinol (THC), or any other products
2 derived from a marijuana plant, including for
3 medicinal or business purposes, without the prior
4 approval of the Probation Office. Id. at p. 4.

5 Plaintiff alleges in his AC that “[a]t all times
6 relevant herein, Plaintiff was under a Medical Doctor’s
7 care for his debilitating medical condition (Parasitic
8 Meningitis), which includes neuropathy and chronic
9 pain.” AC ¶ 15, ECF No. 38. Plaintiff further alleges
10 that, at all relevant times, he held a valid
11 prescription for Cesament, Marinol¹, and Medical
12 Cannabis from a “Medical Doctor” to manage his pain, as
13 well as a valid Hawaii Medical Marijuana Certification.
14 Id. at ¶¶ 17-19.

15 Plaintiff alleges that Defendants would not consent
16 to Plaintiff’s use of marijuana or Marinol during his
17 period of probation, as is required by Special
18 Instruction No. 3. Plaintiff alleges that the
19 Defendants’ decision to withhold consent for Plaintiff
20 to use Marinol or medical marijuana violates his
21 constitutional rights under the Fourth Amendment, Fifth
22 Amendment, Eighth Amendment, and Fourteenth Amendment.
23 Plaintiff further alleges that Defendants’ withholding
24 of consent constituted discrimination in violation of
25 the Americans with Disabilities Act of 1990 (“ADA”),

27 ¹Marinol is a synthetic prescription drug which contains
28 THC, the active ingredient in marijuana. Raich v. Gonzales, 500
F.3d 850, 871 n. 2 (9th Cir. 2007)(dissenting opinion).

1 breach of privacy under the Health Insurance
2 Portability and Accountability Act ("HIPPA"), fraud,
3 unlawful detention, and a breach of Defendants' oath of
4 office. Plaintiff seeks compensatory and punitive
5 damages, as well as injunctive relief ordering the
6 Defendants to authorize the use of Marinol and medical
7 marijuana wherever prescribed, and requiring the
8 Department of Justice and Probation to "cease and
9 desist arrests and/or prosecutions of probations or
10 defendants on 'pre-trial' use, possession, growing or
11 sales of state legally sanctioned medical marijuana
12 when such law exists and is current." AC ¶¶ 8, 11,
13 142.

14 On October 20, 2014, in Plaintiff's criminal case,
15 Judge Kobayashi conducted a hearing to adjudicate
16 certain violations of Plaintiff's probation conditions,
17 in particular, Plaintiff's use of marijuana and Marinol
18 in June, July, and August 2014. See Judgment in
19 Criminal Case in the matter of U.S. v. Aaron George
20 Zeeman, dated 10/20/2014, Declaration of Michael F.
21 Albanese ("Albanese Decl.") Ex. A. (hereinafter
22 "October 20 Judgment"), ECF No. 42-3. At this hearing,
23 Plaintiff admitted guilt to nine violations of his
24 probation conditions, seven of which included
25 violations of Special Condition No. 3, the specific
26 prohibition against the use of marijuana and other
27 products containing THC. Id. at p. 2. As a result of
28 Plaintiff's admission of guilt, Judge Kobayashi re-

1 sentenced Plaintiff to three months of incarceration
2 for each of the four original felony counts, to be
3 served consecutively, for a total of twelve (12) months
4 incarceration. Id. at p. 3.

5 **B. Procedural Background**

6 Plaintiff filed his Complaint on July 22, 2014.
7 See Compl., ECF No. 1. Defendants filed an Answer to
8 the original Complaint on January 22, 2015, and filed a
9 motion for judgment on the pleadings pursuant to
10 Federal Rules of Civil Procedure Rule 12(c). Before
11 that motion could be decided, Plaintiff requested an
12 extension of time to file an amended complaint until
13 September 24, 2015. The Court granted Plaintiff's
14 request on May 13, 2015, and the pending motion for
15 judgment on the pleadings was rendered moot [34]. On
16 September 24, 2015, Plaintiff filed his AC. Defendants
17 now file the instant Motion, seeking dismissal of
18 Plaintiff's AC with prejudice.

19 **II. DISCUSSION**

20 **A. Legal Standards**

21 1. Motion to Dismiss Pursuant to FRCP 12(b)(1) -
22 Lack of Subject Matter Jurisdiction

23 Article III of the United States Constitution
24 requires a case or controversy in order for federal
25 courts to have subject matter jurisdiction. U.S.
26 Const. Art. 3, § 2. Federal Rule of Civil Procedure
27 12(b)(1) authorizes a court to dismiss claims over
28 which it lacks proper subject matter jurisdiction. A

1 court is free to determine jurisdiction on a motion to
2 dismiss for lack of jurisdiction under Rule 12(b)(1)
3 "unless the jurisdictional issue is inextricable from
4 the merits of a case." Kingman Reef Atoll Invs.,
5 L.L.C. v. United States, 541 F.3d 1189, 1195 (9th Cir.
6 2008) (citing Roberts v. Corrothers, 812 F.2d 1173,
7 1177 (9th Cir. 1987)). A defendant may challenge a
8 plaintiff's standing in a motion to dismiss under
9 F.R.C.P. 12(b)(1) for "lack of subject-matter
10 jurisdiction." White v. Lee, 227 F.3d 1214, 1242 (9th
11 Cir. 2000).

12 The standing doctrine eliminates claims that fail
13 to create a case or controversy. Summers v. Earth
14 Island Inst., 555 U.S. 488, 493 (2009); Cetacean Cmty.
15 v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004). Standing
16 is a jurisdictional requirement that precedes analysis
17 of the merits. Krottner v. Starbucks Corp., 628 F.3d
18 1139, 1141 (9th Cir. 2010). The party seeking to
19 invoke the jurisdiction of the federal courts has the
20 burden of alleging specific facts to satisfy the three
21 elements of constitutional standing. Schmier v. U.S.
22 Court of Appeals for the Ninth Cir., 279 F.3d 817, 821
23 (9th Cir. 2002). The plaintiff must establish (1) a
24 legally recognized injury, (2) caused by the named
25 defendant that is (3) capable of legal or equitable
26 redress. Id. "Injury in fact," as required for
27 federal standing, is an invasion of a legally protected
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1 interest which is (a) concrete and particularized, and
2 (b) actual or imminent, not "conjectural" or
3 "hypothetical," where "particularized" means simply
4 that the injury must affect the plaintiff in a personal
5 and individual way. U.S. Const. Art. 3, § 2, cl. 1.

6 "The party asserting subject matter jurisdiction
7 has the burden of proving its existence." Hancock v.
8 Kulana Partners, LLC, 992 F.Supp.2d 1053, 1057 (D. Haw.
9 2014) (quoting Robinson v. United States, 586 F.3d 683,
10 685 (9th Cir. 2009)); see also Kokkenen v. Guardian
11 Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

12 The Court may dismiss a matter for lack of subject
13 matter jurisdiction if, accepting the plaintiff's
14 allegations as true and drawing all reasonable
15 inferences in the plaintiff's favor, the court
16 determines that the allegations are insufficient to
17 establish the Court's jurisdiction. Bartholomew v.
18 Burger King Corp., 21 F.Supp.3d 1089, 1094 (D. Haw.
19 2014) (citing Pride v. Correa, 719 F.3d 1130, 1133 (9th
20 Cir. 2013)). Dismissal for lack of subject matter
21 jurisdiction is appropriate if the claim (1) does not
22 arise under the Constitution, law, or treaties of the
23 United States; (2) is not a case or controversy within
24 the meaning of the Constitution; or (3) is not one
25 described by any jurisdiction statute. Baker v. Carr,
26 369 U.S. 186, 198 (1962).

27 //

1 (2007) (internal citation omitted). A complaint must
2 "contain sufficient factual matter, accepted as true,
3 to state a claim to relief that is plausible on its
4 face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
5 (internal quotation marks omitted).

6 **B. Analysis**

7 Federal courts have no subject matter jurisdiction
8 to hear a claim against the United States, absent a
9 clear waiver of sovereign immunity. FDIC v. Meyer, 510
10 U.S. 471, 475 (1994) ("Absent a waiver, sovereign
11 immunity shields the Federal Government and its
12 agencies from suit."). "A waiver of sovereign immunity
13 cannot be implied but must be unequivocally expressed"
14 in the text of a statute. United States v. Mitchell,
15 455 U.S. 535, 538 (1980)(citation omitted).

16 This immunity extends to officials acting in their
17 official capacity. See Daly-Murphy v. Winston, 837
18 F.2d 348, 355 (9th Cir. 1987). In fact, the District
19 of Hawaii has held that sovereign immunity extends in
20 particular to civil rights cases brought pursuant to
21 Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S.
22 388 (1971), like the present matter.² See Jones v.

24 ²The Court discusses the implications of section 1983 suits
25 and Bivens actions interchangeably. The caselaw applicable to a
26 section 1983 action against state actors is equally applicable to
27 a Bivens action against federal actors. The Ninth Circuit has
28 held that actions under section 1983 and Bivens are identical
except for the exchange of state and federal actors. See Van
Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991).

1 Shinn, No. CV-14-00231-LEK, 2014 WL 3663769 at *2 (D.
2 Haw. July 21, 2014) (“Bivens does not authorize suits
3 against the government or its agencies for monetary
4 relief.”) (citing FDIC v. Meyer, 510 U.S. 471, 486
5 (1994); Ibrahim v. Dept. of Homeland Sec., 538 F.3d 1250,
6 1257 (9th Cir. 2008)). Furthermore, many circuit
7 courts have held that Bivens will not support an action
8 against federal officials sued in their official
9 capacity only. See Daly-Murphy, 837 F.2d at 355;
10 Berger v. Pierce, 933 F.2d 393, 397 (6th Cir. 1991).
11 Rather, Bivens actions are “against federal officials
12 individually.” Randall v. U.S., 95 F.3d 339, 345 (4th
13 Cir. 1996). Significantly, a plaintiff cannot have a
14 valid basis for a claim under section 1983 if the
15 plaintiff is suing federal officials “acting under
16 color of federal law.” Daly-Murphy, 837 F.2d at 355.

17 Finally, circuit courts have held that sovereign
18 immunity applies specifically to the U.S. Probation
19 Office and its agents when those agents are sued in
20 their official capacities for actions taken under color
21 of federal law. See e.g. Humphrey v. U.S. Prob. Dep’t,
22 221 F.3d 1334 (6th Cir. 2000) (holding that group of
23 federal defendants which included the U.S. Probation
24 Department and probation officials sued in their
25 official capacities are protected by sovereign
26 immunity); Fuller-Avent v. U.S. Prob. Office, 226 F.
27 App’x 1, 4 (D.C. Cir. 2006).

1 This Court finds that to the extent Plaintiff has
2 asserted constitutional claims against the Probation
3 Office directly, these claims are foreclosed by FDIC v.
4 Meyer, 510 U.S. 471, 484-86 (1994) (rejecting extension
5 of Bivens v. Six Unknown Named Agents of Federal Bureau
6 of Narcotics, 403 U.S. 388 (1971) to suits against
7 federal agencies). There is no indication that the
8 Probation Office expressly waived sovereign immunity,
9 and thus the Court finds Plaintiff did not state a
10 viable cause of action against the Probation Office.
11 Daly-Murphy, 837 F.2d at 355. The Court thus **GRANTS**
12 Defendants' Motion to Dismiss [42] as to Plaintiff's
13 claims against the Probation Office.

14 This Court further finds Plaintiff does not state
15 viable claims against the individual defendants, U.S.
16 Probation Officers Mata, Skedelski, and Jenkins.
17 On two occasions, June 24, 2014 and July 3, 2014,
18 Plaintiff alleges Jenkins told Plaintiff that she would
19 not give approval for Plaintiff to use marijuana or
20 Marinol. AC ¶¶ 24-25, ECF No. 38. Plaintiff's claims
21 against Jenkins arise from this conduct. Although
22 Plaintiff claims he is suing each defendant
23 "individually and in [their] official capacity," AC ¶¶
24 2-5, the Court should find that Jenkins was acting
25 solely in her official capacity as probation officer
26 when she allegedly denied Plaintiff access to marijuana
27 and Marinol. Plaintiff has no valid basis for section

1 1983 claims against Jenkins as Jenkins is a federal
2 official and was acting under color of federal law when
3 she committed the acts that gave rise to Plaintiff's
4 claims. There is no indication that Jenkins waived her
5 immunity to these section 1983 claims. Accordingly,
6 this Court **GRANTS** Defendants' Motion to Dismiss [42] as
7 to Plaintiff's claims against Jenkins.

8 Finally, Plaintiff's AC contains no allegations
9 about the conduct of Defendant Skedeleski or Defendant
10 Mata, except that during the relevant time period,
11 Skedeleski and Mata were employed, respectively, as
12 Deputy Chief and Chief U.S. Probation Officers at the
13 Probation Office. Id. at ¶¶ 3-4. As such, this Court
14 finds that Plaintiff fails to allege sufficient facts
15 to adequately state a claim for relief against
16 Defendants Skedeleski and Mata, pursuant to Federal
17 Rule of Civil Procedure 12(b)(6). This Court **GRANTS**
18 Defendants' Motion to Dismiss [42] as to Plaintiff's
19 claims against Skedeleski and Mata.

20 The Court **GRANTS** Defendants' Motion in its
21 entirety, with prejudice, as this Court notes Plaintiff
22 cannot amend or modify these claims such as to overcome
23 Defendants' sovereign immunity.

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