IN THE UNITED STATES DIDTRICT COURT FOR THE DISTRICT OF IDAHO

Clifford L. Noll,)
Plaintiff, pro se)
Vs.) Case No CIV _____
JOHN PETERSON,)
BETTY YOUNG,)
KEITH FARRAR,)
MS. CASE, employee #0469545905,) COMPLAINT FOR DECLARITORY
MS. SIMMONS, employee #04695248333,) RELIEF AND DAMAGES
MR. PARIZEK, 29-61699,)
ONE, OR MORE, UNKNOWN I.R.S.)
COMPUTER DATA ENTRY PERSON(S),)
Defendant(s).)

STATUS OF PLAINTIFF

Plaintiff is a natural born citizen living in Idaho engaging in occupations of common right.

Plaintiff did not, and does not, deal in any federally regulated business activity(s).

Plaintiff is a lawful non-taxpayer in relationship to Federal Tax Regulations.

Plaintiff is claiming civil rights and property rights guaranteed to him under the 4th and 5th Amendments of the Constitution of the United States of America.

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STATUS OF DEFENDANT(S)

Defendant(s) are agents for Internal Revenue Service (IRS) who have been, and are continuing to act without authority to circumvent the requirements of the Federal Debt Collections Procedures Act (Title 28 USC, Ch. 176, §§3001-3308) thereby denying rights guaranteed to the Plaintiff under the 4th and 5th Amendments to the Constitution of the United States of America.

FACTS

A lawful tax assessment must be supported with four foundational facts:

1. There must be a Taxing Act of Congress that is applicable.
2. The person making the assessment must have statutory authority from the Secretary of the Treasury to make the assessment.
3. The assessment must be signed under penalty of perjury by the maker to be valid.
4. The assessment must be made within the time specified by the statute of limitations.

Defendant(s) Peterson, Young, Farrar, Case, Simmons, Parizek, and Unknown Computer Data Entry Person(s) lack all four foundational elements and have resorted to computer generated fraud to produce colored documents in an attempt to circumvent the Federal Debt Collections Procedures Act, Title 28 USC, Ch. 176, §§3001-3308, thereby denying Plaintiff due process in violation of the 4th and 5th Amendments.

On November 10, 1988, Defendant Unknown IRS Computer Data Entry Person(s) entered a colorable debt of $221,233.56 ($125,916.80 from Plaintiff plus $95,317.76 from Plaintiff's wife) into the computer data system of the United States against the Plaintiff , without an assessment, reference to any taxing Act, regulations, canceled checks or other factual supporting documents, defaming his character in a way to target him for further civil rights abuses in violation of the 4th and 5th Amendments and Title 28 U.S.C., Ch. 176, Federal Debt Collection Procedures Act, §§3001-3308.

Defendant(s) contacted the Office of the U.S. Attorney General seeking to have Noll, the Plaintiff, sued to obtain a lawful tax lien, levy, and/or warrant of distraint. The Attorney General declined to file a complaint against Noll. At a later date Defendants Young and Farrar filed a colorable computer generated "Notice of Federal Tax Lien", in the County Recorder's Office in Shoshone County and Kootenai County, Idaho, without an assessment or court order, all in violation of the 4th and 5th Amendments and the requirements of Title 28 U.S.C., Ch. 176, Federal Debt Collections Procedure Act, §§3001-3308.

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In 1994, Defendant Peterson, brandishing the fraudulent computer generated "lien", garnished Plaintiff's rents from privately held real estate in Idaho and followed by seizing and selling Plaintiff's real estate, without an assessment or a court order, all in violation of the 4th and 5th Amendments; Title 28 USC, Ch. 176, Federal Debt Collections Procedure Act, §§3001-3308; and the U.S. Supreme Court ruling in James Daniel Good Real Property v. U.S. (1993).

Defendant, Unknown Computer Data Entry Person(s) sent a colorable "Notice of Levy" to Plaintiff's bank seizing more than $3,000.00 without an assessment, court order or opportunity for Plaintiff to be heard in violation of the 4th and 5th Amendments; Title 28 USC, Ch. 176, Federal Debt Collections Procedure, §§3001-3308; and the U.S. Supreme Court ruling in James Daniel Good Real Property v. U.S. (1993).

None of the money and/or property unlawfully seized from the Plaintiff has been credited against any taxes claimed to have been owed by the Plaintiff, in violation of the 4th and 5th Amendments and Title 28 USC, Ch. 176, Federal Debt Collections Procedure Act, §§3001-3308.

Ms. Case, Ms. Simmons and Mr. Parizek continue, to this day, without regard for Plaintiff's request to show their authority, make colorable demands for payment, attempt to borrow authority from Title 27 C.F.R., Part 70, for what they insinuate is a Title 26 C.F.R. Part 1 tax, when, in fact, like in all of the prior claims; there is no applicable taxing Act; there is no lawful assessment; they are devoid of assessment authority; they have falsified entries into the Federal Government's computer system to generate colored documents to cover their unlawful actions, all in an attempt to avoid the requirements of the Federal Debt Collections Procedures Act and the 4th and 5th Amendments to the Constitution of the United States of America.

The actions of the Defendant have damaged, and are continuing to damage, the Plaintiff's reputation and economic standing.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays the court enter Declaratory Judgment:

1.) Finding that Defendant(s) did violate Plaintiff's 4th and 5th Amendment rights.
2.) Compelling the Defendant(s) to delete the corrupted Individual Master File(s) regarding Plaintiff and replacing them with the proper codification affirming that Plaintiff is a non-taxpayer.

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3.) Finding that all documents titled "Notice of Federal Tax Lien", which have been filed in the County Recorder's Office in and for Shoshone County and Kootenai County, Idaho are, in fact, fraudulent and without legal merit.

4.) Finding that the garnishment of rents and seizure and sale of plaintiff's property was not based on a lawful assessment, fraudulent, lacked the required court order and is without legal merit.

5.) Finding that the seizure of Plaintiff's bank account without a court order was fraudulent and without legal merit.

6.) Finding that all other claims of tax debt owed to the United States by the Plaintiff for the years 1974 through 2008 are fraudulent and without legal merit.

Plaintiff further prays that the court award reasonable compensation for damages, court costs and attorney fees in an amount to be decided by the court.

Clifford L. Noll Date March 19, 2012

Plaintiff

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IN THE 9TH CIRCUIT COURT OF APPEALS

FROM THE U.S. DISTRICT COURT FOR IDAHO

Clifford L. Noll,	)	
Plaintiff/Appellant, pro se	)	
Vs.	)	Case No _____
JOHN PETERSON,	)	U.S. District Court Case Number
BETTY YOUNG,	)	2:12—cv-00138-BLW
KEITH FARRAR,	)	
MS. CASE, employee #0469545905,	)	APPEAL FOR JUDICIAL ERROR
MS. SIMMONS, employee #04695248333,	)	and
MR. PARIZEK, 29-61699,	)	RETURN TO THE U.S. DISTRICT
ONE, OR MORE, UNKNOWN I.R.S.	)	COURT FOR DECLARATORY
COMPUTER DATA ENTRY PERSON(S),	)	JUDGEMENT & COMPENSATION
Defendant(s)/Appellee.	)	

INTRODUCTION

The U.S. District Court for the District of Idaho has erred, reversibly, in arbitrarily granting the government's Motion to Dismiss.

The Plaintiff alleged that the named IRS agents have, on behalf of the U.S. Government, seized and sold his real estate and private bank accounts without Congressional authority, an assessment, a summons, a complaint, an opportunity to face his accusers, or a court order in violation of rights guaranteed to him by the 4th and 5th Amendments to the Constitution of the United States of America.

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These confiscations have forced the Plaintiff below the poverty level and force him to file his Complaint, and now Appeal, as a "PRO SE" litigant. The Plaintiff is not a lawyer. A pro se petitioner's arguments must be liberally construed on appeal. US. v. Eatinger, 902 F2d 1383 (9th Cir. 1990). Issue may be heard for the first time on appeal when plain error has occurred and injustice might result. Snyder v. Summer, 960 F2d 1448 (9th Cir. 1992)

THERE ARE 7 APPEALABLE ERRORS MADE BY THE U.S. DISTRICT COURT.

1. **Complaint alleges Constitutional due process deprivation; not tax matters.**
2. **Reasons for dismissal were based on previous complaints; not the complaint at hand.**
3. **The court states that it must accept the Plaintiff's allegations as true, but it does not.**
4. **The Court lacks authority to change the subject matter stated in the Complaint.**
5. **Case was dismissed without regard for the natural hierarchy of law.**
6. **The judge failed to do his duty as an Article III U.S. District Court Judge.**
7. **The named agents are co-defendants along with the U.S. Government.**

1. THE COMPLAINT ALLEGES CONSTITUTIONAL VIOLATIONS; NOT TAX MATTERS.

The primary error of the court is that the case before it deals solely with an unlawful seizure of the Plaintiff's private property and sale of his real estate without the required Constitutional due process. The question before the court is, "Did a Constitutional violation occur?" See: James Daniel Good Real Property vs. U.S. 114 S. Ct. 492 (1993)(9th Cir.); Sodal v. Cook County, 113 S.Ct. 538, 548; Gertsein v. Pugh, 420 U.S. 103; Calero-Toledo v. Pearson Yacht Leasing Co., 416US 663, 94 S.Ct. 2080; Fuentes v. Shevin, 407 U.S. 67; U.S. v. Karo, 468 US 705; U.S. v. $8,850, 461 U.S. 555, 562. It would seem that the District Court would have the same subject matter jurisdiction in this instant case as it did for all of the above cited cases.

THE COURT ERRONEOUSLY DISMISSED THE CASE WITHOUT ANSWERING THE QUESTION BEFORE IT.

2. THE REASONS FOR DISMISSAL WERE BASED ON PREVIOUS COMPLAINTS; NOT THE COMPLAINT AT HAND.

In all of the prior complaints that the Noll's have filed they sought a judicial review of the purported taxing Act and the purported assessment. See: Botta v. Scanlon, 288 F2d 504, 508 (2nd Cir. 1961). They were asking the court to require the government to show the applicable

taxing Act, when notice had been given and when liability occurred, to produce the assessment documents, produce receipts and canceled checks, etc. and to question the unidentified assessing officer. The U.S. District Court has always dismissed their complaints, without judicial review of the purported government documents, based on some flaw(s) in Noll's pro se pleadings. In dismissing their complaint(s) the U.S. District Court has always inferred, without clearly stating, that the U.S. Tax Court has subject matter jurisdiction to hear all questions regarding taxation, where conversely, the U.S. District Court does not. However, that claim is directly opposed to the U.S. Supreme Court's decision in US v. Interstate Commerce Commission, 337 US 426, which states that the aggrieved party has a right to elect between entering an administrative court or a judicial one. In the administrative Tax Court the burden of proof would be upon the Noll's show that they did not earn a million dollars, and therefore, did not owe $221,233.56 in taxes; in an Article III judicial court the burden of proof is upon the government to establish that: a) Noll's did, in fact, earn a million dollars; b) that the money was derived from a source that Congress had taxed; c) that the assessing officer had authority from the Secretary of the Treasury to assess the tax; and d) that the assessed amount was valid. The U.S. Government has always inferred that a "lawful assessment" and a "Demand for Payment" are one and the same; rather than, that a lawful assessment must exist before a demand for payment is authorized.

The U.S. District Court for the District of Idaho seems to be saying that when the words "federal income tax" is used in a complaint, or the brief for the complaint, by a Citizen of Idaho, the U.S. District Court has always denied the Citizen access to his/her 4th and 5th Amendment rights and it is not going to hear such cases until the 9th Circuit Court specifically instructs it to do so.

The U.S. District Court has always accepted the Government's hypothesis as true and dismissed the Plaintiff's complaints without a judicial review of the Government's assertions. The only reason that the Plaintiff/Appellant brings up that the court has repeatedly denied the Plaintiff/Appellant access to his Constitutional guarantees is because of the following appeals court ruling. See: *It may be appropriate for Court of Appeals to address an issue raised for the first time on appeal if such issue concerns a pure question of law or if proper resolution of the issue is beyond doubt.* State of Texas v. US, 730 F.2d 339 (1984).

This instant Complaint is completely different. It deals solely with a Constitutional due process question regarding the seizure and sale of privately owned property and real estate, for ownership purposes, by the U.S. Government.

There are no sections in Title 26 CFR or Title 26 USC that authorizes the administrative seizure and sale of real estate or other forms of private property by the U.S. Government for ***any***

reason. The sections of the Code that do allow administrative seizure and sale of "property" (not real estate) is strictly limited to specific "property *subject* to levy" regarding taxes "collected by stamp" under Title 27 USC. The seizure and sale of property ***not subject to levy*** by the U.S. Government, without a court order, denies the Plaintiff Constitutional due process.

Of all of the tens, upon tens, upon tens of thousands of dollars that the government has taken from the Plaintiff/Appellant in the form of rents from a residence located at 103 Lewiston Ave., Pinehurst, Idaho , and it's sale; from the sale of a residence located at Elizabeth Park, Kellogg, Idaho; the sale of a residence at 107 Lewiston Ave., Pinehurst, Idaho; or the seizure of his bank account, the **government has not given one thin dime of credit**, nor has there been an accounting of the amounts of money taken. Each time the government took money from Mr. Noll the government's "Demand for Payment" increased because there is no assessment account, nor court account, for the money seized to be credited against.

The U.S. Tax Court does not have subject matter jurisdiction to hear a Constitutional question. The U.S. Article I Administrative Court does not have subject matter jurisdiction to hear a Constitutional question. The U.S. Admiralty Court does not have subject matter jurisdiction to hear a Constitutional question. The Courts of the State of Idaho does not have subject matter jurisdiction to hear a U.S. Constitutional question. Only the Article III U.S. District Court has subject matter jurisdiction to hear the Constitutional Due Process deprivation complaint against government agents whose actions were entirely arbitrary and capricious. Therefore, the U.S. District Court erred in dismissing ***this*** Complaint.

3. THE COURT ERRED BY DISMISSING THE CASE WITHOUT REGARD FOR THE NATURAL HEIERARCHY OF LAW.

1. The Constitution of the United States is the primary "Law of the Land" and, therefore, must be considered first.
2. All of those Titles of the Code of Federal Regulations and the corresponding rules of the United States Code which have been given the force of "Positive Law of the United States" by the Speaker of the House are secondary in natural order.
3. All Titles not specified as Positive Law, which includes Title 26, are reduced to prima facie law and tertiary in the natural hierarchy for judicial due process.

The U.S. District Court attempts to apply law in a *reverse* order. It wants to start with a hypothecation that it can somehow ignore the 4th and 5th Amendments of the Constitution, ignore the tax collection requirements of the Federal Debt Collection Procedures Act, 28 USC,

Ch. 176, which is Positive Law of the United States and is the vehicle that Congress has provided for the government to collect taxes in situations where there was a revenue taxable activity but not a voluntarily assessment by the person made liable to pay the tax.

Instead, the Court wants to address the prima facie law first and take the concepts of "Sovereign Immunity" and the "Anti-injunction Act" out of context and dismiss the case without cognizance of the superior laws. Prima facie law only applies in certain very specific circumstances and only after Constitutional Law and Positive Law have been reckoned with. Reversing the order of law to the detriment of Constitutional due process and Positive Law due process creates a "conflict of law" and another reversible error. See:

When the Congress has laid down guidelines to be followed in carrying out its mandate in a specific area, there should be some procedure whereby those who are injured by the arbitrary or capricious action of a governmental agency or official in ignoring these procedures can vindicate their very real interests, while at the same time furthering the public interest. These are the people who will really have the incentive to bring suit against illegal government action, and they are precisely the plaintiffs to insure a genuine adversary case or controversy. Scanwell Labratories Inc. v. Shaffer, 424 F2d 864 (1970)

4. THE COURT STATES THAT IT MUST ACCEPT THE PLAINTIFF'S ALLEGATIONS AS TRUE, BUT CLEARLY, IT DOES NOT.

The Plaintiff has alleged that his private property and real estate has been seized and sold by the Defendants, who are acting on behalf of the U.S. Government, without a judicial summons, complaint, opportunity to be heard, or court ordered Warrant of Distraint in violation of the Plaintiff's 4th and 5th Amendment rights and the requirements of the Federal Debt Collection Procedures Act. If the District Court, in fact, accepted the allegation as true, it does have subject matter jurisdiction and a fiduciary responsibility to rely on it's own records in determining if the U.S. Government had, in fact, filed a suit and obtained judgment. When the Court discovered that it had not authorized liens, levies or seizures on behalf of the U.S. Government, the Court had a fiduciary responsibility to grant immediate relief. The failure of the court to accept the plaintiff's allegations as "true" and review its own records is another reversible error.

5. THE COURT LACKS AUTHORITY TO CHANGE THE SUBJECT MATTER STATED IN THE COMPLAINT.

The court lacks authority to change the subject matter stated in the Complaint to something that is more agreeable to its unsupported beliefs and then simply dismiss the complaint based on the court's hypothecations and cites of inapplicable statutes and irrelevant case law by the government's attorney. Under the "Absolute Rights Doctrine" federal courts have an obligation to hear cases that legitimately come before it. Estrella v. V&G Management Corp., 158 F.R.D. 575, 578. In dismissing the Complaint the court hints that there are, or were, other remedies at law which Noll was obliged to proceed under but doesn't disclose what they are. Changing the subject matter of the complaint is a further denial of Constitutional due process and creates a reversible error.

6. THE COURT ERRED WHEN THE ARTICLE III JUDGE FAILED TO UPHOLD, PROTECT SND DEFEND THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

When the Plaintiff's Complaint came before the U.S. District Court alleging that his real estate and other forms of private property, located in Idaho, had been seized and sold by U.S. Government agents, without a summons, complaint or court order, the Article III U.S. District Court Judge for the District of Idaho, had a fiduciary responsibility to review the U.S. District Court records to ascertain whether the U.S. Government had filed suit, received judgment, and that the U.S. District Court authorized liens along with the necessary court ordered Warrant of Distraint before the seizure and sale of the real estate and other private property, in question, took place.

Upon finding that no such judicial action had taken place, the court had a fiduciary responsibility to grant immediate Declaratory Judgment to the Plaintiff and order full compensation for the real estate, its rents, cash from his bank account, along with interest and punitive damages pursuant to the Laws of Idaho.

The duty of an Article III U.S. District Court Judge is to uphold, protect and defend the Constitution of the United States of America for the benefit of the State of Idaho and the people of Idaho, as contrasted with a Federal Magistrate, whose job is protecting the U.S. government. Failure to uphold, protect and defend the Constitution by the Article III court created another reversible error.

7. THE NAMED AGENTS ARE CO-DEFENDANTS ALONG WITH THE U.S. GOVERNMENT

The Complaint alleges that the Defendants, acting on behalf of the U.S. Government, violated rights guaranteed to the Plaintiff by the 4th and 5th Amendments of the Constitution of the United States of America and are also in violation of the "IRS Restructuring and Reform Act (1998). Section 1203 of that Act is titled "Termination of Employment for Misconduct". Paragraphs A and B-3 requires that an agent's employment be terminated when "any court" finds that the named agent has violated rights guaranteed to their victim by the Constitution of the United States of America. Paragraph B-4 requires termination of employment for falsifying records or destroying evidence. The IRS Restructuring and Reform Act does not allow the court to hold the agent financially liable for damages to his victim because financial liability is borne by the U.S. Government; it merely created a way for the U.S. District Court to purge the agency of rogue agents and send a message to their co-workers that violation of Constitutional guarantees and the Laws of the United States will not be judicially tolerated.

The U.S. District Court is correct that naming government agents as defendants is a suit against the U.S. Government, but then it erroneously assumes that because the U.S. Government is a proper party to the suit that the named agents have absolute immunity from being brought before the court as co-defendants. This error sends a message to the agents that they are "above the law" no matter what unauthorized activities they engage in with their computers. Davis v. Passman, 442 U.S. 228; Butz v. Economou, 438 US 478.

CONCLUSION

The U.S. District Court for the District of Idaho ***did*** have subject matter jurisdiction under 28 USC §1346(b), the 4th and 5th Amendments, and the IRS Restructuring and Reform Act to hear the complaint and a fiduciary responsibility to grant Declaratory Judgment and order the U.S. Government to pay compensation for actual damages and punitive damages pursuant to the Laws of Idaho which will reach some $5.6 million dollars.

The U.S. District Court for the District of Idaho also had subject matter jurisdiction under the IRS Restructuring and Reform Act to determine if the named agents have denied the Plaintiff rights guaranteed to him by the Constitution and Laws of the United States of America, and/or has falsified documents, and order termination of their employment upon an affirmative finding by the court.

REQUEST FOR IMMEDIATE DECLARATORY RELIEF

The Plaintiff-Appellant requests that the 9th Circuit Court of Appeals issue immediate Declaratory Judgment along with actual damages plus punitive damages, pursuant to the Laws of Idaho, to the Plaintiff. The real estate and bank accounts that were unlawfully seized and sold is property exclusively subject the Laws of the State of Idaho; therefore, punitive compensation is subject to those same Idaho laws at three times actual damages with no limits.

REQUEST FOR 9th CIRCUIT COURT INSTRUCTION TO THE U.S. DISTRUCT COURTS

1. To instruct the U.S. District Courts that when a private citizen files a complaint alleging that IRS agents are demanding payment without a lawful assessment that the court has subject matter jurisdiction and must require the government to produce the applicable taxing Act, document when and how notice was given, when liability was incurred (U.S. v. Batchhelder, 422 US 114) and require the assessing officer to appear and produce his authority to levy the tax along with all supporting documentation so that the Article III U.S. District Court Judge can hold a hearing for judicial review and accept testimony from the Plaintiff before deciding the matter and that the Anti-Injunction Act does not prevent suits for judicial review. See: *A failure to comply with the statutory requirements as to the mode and manner or making of a levy invalidates the tax; and there must be strict compliance with mandatory procedures...no tax can be sustained as valid unless it is levied in accordance to the letter of the statute.* Hough v. North Adams, 82 N.E. 46, 196 Mass. 290.

2. To instruct the District Courts that, for the purposes of Title 26 CFR, Part 1-Individual Income Taxes, that the Secretary of the Treasury has not granted administrative assessment authority to any assessment office. Therefore, if the government wants to pursue assessment and collection of any individual income tax, which has not been voluntarily self-assessed by the taxpayer, it must file suit, naming the individual made liable to pay the tax as the Defendant and follow the requirements of the Federal Debt Collection Procedures Act to obtain lawful assessment, liens, levies and seizures in order to protect the individual's rights to privacy and due process.

3. To instruct the District Courts that neither the Anti-Injunction Act, nor "Sovereign Immunity", can be used by the government as a bar to prevent the suit when a citizen files a complaint alleging that his private property and/or real estate has been liened, seized or sold by a government agent/agency for the purposes of collecting a "debt", as such term is defined in the Federal Debt Collection Procedures Act, 28 USC, Ch. 176, which specifically includes ...taxes...penalties...interest..., without the required suit by the United States and judgment of the court. And that if the U.S. District Court finds that the government has failed to comply with the FDCPA the court must immediately issue Declaratory Relief and order that the aggrieving agent's employment be terminated for misconduct and order the U.S. Government to pay actual damages and punitive damages pursuant to the laws of the State wherein the property was located in order to uphold the Plaintiff's Constitutional right to privacy and due process.

Respectfully submitted,

Clifford L. Noll Date Oct 31, 2012

Clifford L. Noll, Plaintiff-Appellant, pro se

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

CLIFFORD L. NOLL,

Plaintiff,

v.

JOHN PETERSON, et al.,

Defendant.

Case No. 2:12--cv-00138-BLW

MEMORANDUM DECISION AND ORDER

INTRODUCTION

The Court has before it Defendant's Motion to Dismiss (Dkt 5), and Noll's Motion to Strike (Dkt 9), which is essentially a second response to the motion to dismiss. For the reasons explained below, the Court will grant the motion to dismiss and deny the motion to strike.

BACKGROUND

1. Noll's Past Claims

In the past, Noll and his wife have filed several complaints against the IRS and it's employees, with similar allegations to those made in this case. The previous complaints by

the Nolls challenged the authority of the IRS and it's employees to assess and collect taxes. *Noll v. I.R.S.*, 1996 WL 84671, at *1 (D. Idaho 1996); *Noll v. United States*, 1998 WL 823413, at *1 (9th Cir. 1998); *Noll v. U.S. Gov't*, 1999 WL 1816896, at *2 (D. Idaho 1999). On one occasion, the Nolls tried to invoked the Freedom of Information Act to obtain documents from the IRS. *Noll v. I.R.S., U.S. Dept. of Treasury*, 1994 WL 745184, at *1 (D. Idaho 1994). The Nolls have also brought claims against individual IRS employees for fraud, embezzlement, and constitutional violations, based on the employees' attempts to collect unpaid taxes from them. *Noll v. Peterson*, 2001 WL 721733 (D. Idaho 2001) report and recommendation adopted at 2001 WL 846493 (D. Idaho 2001).

Each of the previous complaints were dismissed. Several of them were dismissed for lack of subject-matter jurisdiction under the doctrine of sovereign immunity. *Noll v. I.R.S*, 1996 WL 84671, at *3 (D. Idaho 1996); *Noll v. United States*, 1998 WL 823413, at *1 (9th Cir. 1998); *Noll v. U.S. Gov't*, 1999 WL 1816896, at *2 (D. Idaho 1999). The Nolls' constitutional claims against IRS employees were dismissed because the courts have not recognized constitutional claims arising from the collection of taxes. *Noll v. Peterson*, 2001 WL 721733, at *3-4 (D. Idaho 2001) report and recommendation adopted 2001 WL 846493 (D. Idaho 2001). Such constitutional claims are unavailable because Congress has already provided sufficient remedies to protect taxpayers against improperly collected taxes. *Id.* Lastly, the Nolls' complaint invoking the Freedom of Information Act was dismissed because they failed to exhaust their administrative remedies before bringing suit. *Noll v. I.R.S., U.S. Dept. of Treasury*, 1994 WL 745184, at *2 (D. Idaho 1994).

2. Noll's Current Claim

Noll's current Complaint and motion to strike are somewhat difficult to understand. Moreover, the current claims appear quite similar the allegations in the Nolls' previous complaints. Based upon a thorough review of the Complaint, the Court will dismiss the Complaint for the reasons explained below.

In his Complaint, the following defendants are listed: John Peterson; Betty Young; Keith Farrar; Ms. Case, employee #0469545905; Ms. Simmons, employee #04695248333; Mr. Parizek, 29-61699; and one, or more, unknown IRS Computer Data Entry Persons ("Defendants"). (Dkt. 1). The Complaint does not specifically list the IRS as a defendant. (Dkt. 1). However, the Ninth Circuit Court of Appeals has held that when a suit is brought against IRS employees in their official capacity, it is virtually a suit against the United States. *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985). Therefore, the Complaint will be construed as asserting claims against the IRS and against the individual defendants in their official capacity and individual capacity.

Noll's first claim appears to challenge the authority of the IRS and the individual defendants to assess and collect taxes from him and his wife. Noll asserts that on November 10, 1988, Defendant Unknown IRS Computer Data Entry Persons(s) wrongfully entered a debt of $221,233.56 against him and his wife. (Dkt. 1 at 2). Noll claims it was wrongful because he and his wife were not subject to a federal tax. (Dkt. 1 at 2). Specifically, Noll believes that he is a "lawful non-taxpayer in relationship to Federal Tax Regulation." (Dkt. 1 at 1). Thus, as stated above, it appears that Noll is challenging the IRS's authority and the individual defendant's authority to assess and

collect taxes from him and his wife.

Noll's second claim appears to assert that the individual defendants violated his constitutional rights. Noll asserts that in 1994 Defendants wrongfully generated a lien against his property and assets. (Dkt. 1 at 3). He also asserts Defendants wrongfully seized money from him and his wife's bank account after placing a levy on it. (Dkt. 1 at 3). Moreover, Noll claims that the Defendants have, and still are, making wrongful demands for payment in regard to an outstanding tax debt. (Dkt. 1 at 3). The Court understands Noll to be asserting that the Defendants use of lien, levy, or the seizing of his property and assets, violated his Fourth and Fifth Amendments to the Constitution. (Dkt. 1 at 3).

LEGAL STANDARD

The government asks the Court to dismiss Noll's Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedures, and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.[1] The Supreme Court has stated that Federal Courts are of limited jurisdiction and possess only the power given by the United States Constitution and statute. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

[1] Along with its arguments that the Court lacks subject matter jurisdiction and that Noll has failed to state a claim upon which relief can be granted, The government asserts that Nolls claims should be dismissed based upon res judicata and insufficient service of process. (Dkt. 5 at 13-14). Although both arguments appear to merit dismissal, the Court will not address them because it is clear the Complaint should be dismissed based upon a finding that the Court lacks subject matter jurisdiction and because Noll has failed to state a claim upon which relief can be granted.

Such authority can not be expanded by judicial decree. *Id*. The party asserting subject matter jurisdiction bears the burden of establishing such jurisdiction. *Id*. In determining whether to dismiss a claim under Rule 12(b)(1), a court is not limited to the pleadings, "but may review any evidence, such as affidavit and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988).

As for the failure to state a claim argument, Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While a complaint attacked by a Rule 12(b)(6) motion to dismiss "does not need detailed factual allegations," it must set forth "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id*. at 555. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id*. at 570. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id*. at 556. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id*. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id*. at 557.

In a more recent case, the Supreme Court identified two "working principles" that underlie Twombly. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Id. "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id*. at 678-679. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id. at 679. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*.

Providing too much in the complaint may also be fatal to a plaintiff. Dismissal may be appropriate when the plaintiff has included sufficient allegations disclosing some absolute defense or bar to recovery. *See Weisbuch v. County of L.A.*, 119 F.3d 778, 783, n. 1 (9th Cir. 1997) (stating that "[i]f the pleadings establish facts compelling a decision one way, that is as good as if depositions and other . . . evidence on summary judgment establishes the identical facts").

A dismissal without leave to amend is improper unless it is beyond doubt that the complaint "could not be saved by any amendment." *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009)(issued 2 months after Iqbal).[2] The Ninth Circuit has held that "in

[2] The Court has some concern about the continued vitality of the liberal amendment policy adopted in Harris v. Amgen, based as it is on language in Conley v. Gibson, 355 U.S. 41, 45-46 (1957), suggesting that "a complaint should not be dismissed for failure to state a claim unless it appears beyond

dismissals for failure to state a claim, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Cook, Perkiss and Liehe, Inc. v. Northern California Collection Service, Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). The issue is not whether plaintiff will prevail but whether he "is entitled to offer evidence to support the claims." *Diaz v. Int'l Longshore and Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007)(citations omitted).

Under Rule 12(b)(6), the Court may consider matters that are subject to judicial notice. *Mullis v. United States Bank*, 828 F.2d 1385, 1388 (9th Cir. 1987). The Court may take judicial notice "of the records of state agencies and other undisputed matters of public record" without transforming the motions to dismiss into motions for summary judgment. *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 (9th Cir. 2004). The Court may also examine documents referred to in the complaint, although not attached thereto, without transforming the motion to dismiss into a motion for summary judgment. *See Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). In a pro se complaint, allegations are generally held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519 (1972).

ANALYSIS

1. Sovereign Immunity

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doubt that the plaintiff can prove no set of facts in support of his claim. . .." Given Twombly and Iqbal's rejection of the liberal pleading standards adopted by Conley, it is uncertain whether the language in Harris v. Amgen has much of a life expectancy.

Noll's first claim challenges both the IRS's authority and the individual defendants authority to assess and collect taxes from him and his wife. (Dkt 1 at 1-2). The Court finds that it lacks subject-matter jurisdiction under the doctrine of sovereign immunity.

The United States, as a sovereign, may not be sued in federal court without its consent. *United States v. Testan*, 424 U.S. 392, 399 (1976); *Gilbert*,756 F.2d at 1458-1459. In *Gilbert*, the Ninth Circuit Court of Appeals explained that the United States is a sovereign, and therefore it is immune from suit unless it provides an expressed waiver to such immunity and consents to be sued. *Gilbert*, 756 F.2d at 1458-1459. If the United States does not unequivocally express a waiver, thereby consenting to the suit, the suit must be dismissed. *Id*. Additionally, the "party bringing a cause of action against the federal government bears the burden of showing an unequivocal waiver of immunity." *Baker v. United States*, 817 F.2d 560, 562 (9th Cir.1987).

Furthermore, as already mentioned, the Ninth Circuit Court of Appeals has held that a suit filed against IRS employees in their official capacity is, for all intents and purposes, a suit against the United States. *Gilbert*, 756 F.2d at 1458-1459. In *Gilbert*, the plaintiff argued that by naming three IRS employees as defendants, in their official capacity, the suit was not against the United States and therefore not barred by the doctrine of sovereign immunity. *Id*. The court disagreed, finding that the doctrine of sovereign immunity cannot be avoided simply by naming United States employees as defendants. *Id*. Therefore, the court dismissed all claims against the IRS and individual defendants who where acting in their official capacity, under the doctrine of sovereign

immunity. *Id*.

In this case, Noll attempts to avoid the doctrine of sovereign immunity by naming IRS employees as defendants in a similar way as the plaintiff did in *Gilbert*. Noll's attempt fails. As stated above, a suit filed against IRS employees in their official capacity is a suit against the United States. *Id.* Therefore, Noll's claim challenging the authority of the IRS and individual defendants to assess and collect taxes is a claim against the United States, and is subject to the doctrine of sovereign immunity. *Id*. Accordingly, Noll has the burden of showing that the United States waived it sovereign immunity and consented to the suit. *Baker*, 817 F.2d at 562.

Noll has failed to show that the United States waived its sovereign immunity. He has not produced any evidence of an expressed, statutory waiver by the United States. In fact, he has made no real attempt to do so. (Dkt. 1; Dkt 9). Thus, Noll is unable to produce an expressed waiver and consent by the United States, and his suit is barred by the doctrine of sovereign immunity. *Testan*, 424 U.S. at 399 (1976); *Gilbert*,756 F.2d at 1458-1459. Accordingly, this Court holds that it does not have subject-matter jurisdiction, and Noll's claims against the IRS and individual defendants in their official capacity must be dismissed. *Id.*

2. Fourth and Fifth Amendment Rights

Noll's second claim appears to be asserted against the individual defendants in their individual capacity. Specifically, Noll seems to allege that these individual defendants violated his Fourth and Fifth Amendments by using a lien, a levy, and by

seizing his property and assets. (Dkt 1).

The United States Supreme Court has recognized that the doctrine of sovereign immunity does not bar all actions against federal officials in their individual capacities for alleged violations of an individual's constitutional rights. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). However, this right to sue a federal official in their individual capacity for violation of constitutional rights under *Bivens* is qualified, and is not absolute. *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004)

The Supreme Court has provided general instruction describing when actions under *Bivens* are unavailable. *Schweiker v. Chilicky*, 487 U.S. 412, 423, (1988):"When the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional *Bivens* remedies." *Id*. Based on this instruction, the Ninth Circuit has held that claims against IRS auditors and officials under *Bivens* are unavailable because the Internal Revenue Code gives the plaintiff taxpayer the appropriate protections against wrongful tax assessments and collections. *Adams v. Johnson*, 355 F.3d 1179, 1186 (9th Cir. 2004); *Wages v. Internal Revenue Service*, 915 F.2d 1230, 1235 (9th Cir. 1990).

In *Wages*, the plaintiff alleged several constitutional violations against individual employees of the IRS for depriving her of her liberty and property through extortion, theft, fraud, and coercion. *Wages*, 915 F.2d at 1232. In that case, the court dismissed the plaintiff's constitutional claims under *Bivens* because the remedies provided by Congress

were sufficient to protect an injured taxpayer. *Id*. at 1235. Thus, the plaintiff failed to state grounds upon which relief could be granted. *Id*.

In this case, Noll is asserting similar claims. Noll argues that his Fourth and Fifth Amendment rights were violated by the individual defendants' conduct in assessing and collecting taxes. (Dkt 1). Noll claims that the individual defendants placed a lien and a levy on certain property and assets. (Dkt. 1). However, this conduct – using a lien or levy to collect taxes – has been provided for under Title 26 of the Internal Revenue Code, Chapter 64, entitled Collections. 26 U.S.C.A. § 6320; 26 U.S.C.A. § 6330. These sections of the Internal Revenue Code outline the procedures required by the government in using a lien or levy. *Id*. Noll has not asserted any conduct by the individual defendants which would be outside the scope of their responsibilities in assessing and collecting taxes. (Dkt 1). Clear precedent indicates that Noll's constitutional claim against IRS auditors and officials are unavailable because the Internal Revenue Code provides Noll the appropriate protections against wrongful tax assessments and collections. *Adams*, 355 F.3d at 1186; *Wages,* 915 F.2d at 1235. Therefore, the Court will dismiss Noll's constitutional claims based upon the Fourth and Fifth Amendments of the Constitution.

As noted above, dismissal without leave to amend is improper unless it is beyond doubt that the complaint "could not be saved by any amendment." *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009)(issued 2 months after Iqbal). The Ninth Circuit has held that "in dismissals for failure to state a claim, a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the

pleading could not possibly be cured by the allegation of other facts." *Cook, Perkiss and Liehe, Inc. v. Northern California Collection Service, Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

Here, the Court finds that Noll's pleading could not possibly be cured. Noll's claims are almost identical to the several claims he has filed in past years, all of which have been dismissed. Moreover, the orders dismissing Noll's claims which were appealed to the Ninth Circuit were affirmed. Accordingly, the Court finds that it is beyond doubt that the complaint "could not be saved by any amendment." *Harris v. Amgen, Inc.*, 573 F.3d 728, 737 (9th Cir. 2009)

ORDER

IT IS ORDERED:

1. Defendant's Motion to Dismiss (Dkt 5) is **GRANTED**.
2. Noll's Motion to Strike (Dkt 9) is **DENIED**.
3. The Court will enter a separate judgment in accordance with Fed. R. Civ. P. 58.

DATED: **October 5, 2012**

B. LYNN WINMILL
Chief U.S. District Court Judge

FILED

MAR 28 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLIFFORD L. NOLL, Plaintiff - Appellant, v. JOHN PETERSON; et al., Defendants - Appellees.	No. 12-35903 D.C. No. 2:12-cv-00138-BLW U.S. District Court for Idaho, Boise ORDER

Before: PREGERSON, GRABER, and BEA, Circuit Judges.

Appellant seeks review of the district court's dismissal of his complaint asserting claims against various employees at the Internal Revenue Service. Appellees' motion to dismiss is granted because appellant has failed to pay the sanctions imposed by this court in appeal No. 98-35396. *See Hymes v. United States*, 993 F.2d 701, 702 (9th Cir. 1993) (order) (dismissing appellant's appeal for failure to pay previously imposed sanctions).

No motions for reconsideration, clarification, or modification of this order will be entertained.

DISMISSED.

KN/MOATT

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 15, 2013

Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: Clifford L. Noll
v. John Peterson, et al.
No. 13-5793
(Your No. 12-35903)

Dear Clerk:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

Scott S. Harris, Clerk