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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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10 V.F. LIPTAK,

11 Plaintiff,

12 v.

13 ALLY BANK, *et al.*,

14 Defendants.

Case No. 2:12-CV-00882-KJD-GWF

ORDER

15

16 Presently before the Court is Defendant IRS/United States' Motion to Dismiss (#28).

17 Plaintiff filed a response in opposition (#31) to which Defendant replied (#32).

18 **I. Background**

19 On May 24, 2012, Plaintiff filed suit against Defendant IRS/United States. Plaintiff's
20 allegations against Defendant are scattered throughout the sixty-six page complaint. Plaintiff alleges
21 on page thirteen that the IRS and "their agents . . . engaged in a pattern of violation of Liptak's . . .
22 rights . . . per 1st, 5th, 7th, & 14th Amendments[.]" As evidence of these violations, Plaintiff asserts on
23 page thirty-three that the Defendant failed to "produce such documents they filed" during a recent
24 Texas state court case.

25 Plaintiff's complaint also alleges on page eight that the Attorney General had a duty to
26 represent Plaintiff in the Texas state court case. On page sixteen, Plaintiff asserts that the Texas state

1 court judgment confirmed the Attorney General’s duty and breach when it “**admit[ted] by silence no**
2 **notice to an attorney** [sic] **General, who by statute and common law is the only party to**
3 **represent the interests of** [Plaintiff.]” Plaintiff states on page twenty-two that the Attorney General
4 “crafted policies for or authorized facially the unconstitutional actions and the foreseeable
5 consequences of [the Texas state court.]” Plaintiff continues on page twenty-six, affirming that when
6 the Attorney General allowed the Texas state court judgment to occur, he “breached [his] fiduciary
7 and ministerial duties and thereby fostered and acceded to the illegal acts akin to a *Ponzi-Madoff*
8 scheme where they take from the people and give to the rich, but without a remedy.”

9 Plaintiff later asserts on page forty-seven that the Texas state court judgment is evidence of
10 RICO: “Defendants overtly engaged in [RICO] and consciously agreed . . . as partially if not fully
11 **proven by the attached** [Texas state court judgment], showing an overt agreement or meeting of
12 **the minds, to multiply excess takings** by pretext of law[.]” On page fifty-four, Plaintiff finally
13 alleges a tort under 18 U.S.C. § 1961 for “bad acts and omissions of government employees while
14 acting within the scope of their office or employment as developed by the foregoing facts which . . .
15 are hereby adopted as proof.” Plaintiff states that such actions grant an entitlement to “damages
16 described above and blow, which are incalculable now, exceeding many \$Millions and continuing to
17 grow, without any foreseeable remedy save a *status quo* injunction ordered immediately by this
18 court.” Defendant then filed the present motion to dismiss on November 16, 2012.

19 II. Legal Standard for a Motion to Dismiss

20 Federal Rule of Civil Procedure (“Rule”) 41(b) states that if a plaintiff “fails to . . . comply
21 with these rules . . . a defendant may move to dismiss the action or any claim against it.” When a
22 motion to dismiss is made, the Court must construe it in the light most favorable to the non-moving
23 party. Wyer Summit Partnership v. Turner Broadcasting System, Inc., 135 F.3d 658, 661 (9th Cir.
24 1998). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
25 as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937,
26 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Plausibility, in the

1 context of a motion to dismiss, means that a plaintiff has pleaded facts which allow “the court to
2 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id.

3 The Iqbal evaluation illustrates a two prong analysis. First, the Court identifies “the
4 allegations in the complaint that are not entitled to the assumption of truth,” that is, those allegations
5 which are legal conclusions, bare assertions, or merely conclusory. Id. at 1949-51. Second, the
6 Court considers the factual allegations “to determine if they plausibly suggest an entitlement to
7 relief.” Id. at 1951. If the allegations state plausible claims for relief, such claims survive the motion
8 to dismiss. Id. at 1950.

9 The pleading rules are not meant to put a large burden on a plaintiff, “[b]ut it should not
10 prove burdensome for a plaintiff who has suffered an economic loss to provide a defendant with
11 some indication of the loss and the causal connection that the plaintiff has in mind.” Dura Pharms.,
12 Inc. v. Broudo, 544 U.S. 336, 347 (U.S. 2005). These requirements serve an additional practical
13 purpose of preventing “a plaintiff ‘with a largely groundless claim to simply take up the time of a
14 number of other people, with the right to do so representing an *in terrorem* increment of the
15 settlement value, rather than a reasonably founded hope that the [discovery] process will reveal
16 relevant evidence.’” Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 347 (U.S. 2005) (quoting Blue
17 Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 741 (U.S. 1975)).

18 III. Analysis

19 Defendant’s motion to dismiss for lack of subject matter jurisdiction must be granted because
20 Plaintiff’s claims are barred by sovereign immunity. “The United States, as sovereign, is immune
21 from suit save as it consents to be sued[.]” United States v. Sherwood, 312 U.S. 584, 586 (U.S.
22 1941). When bringing a case against the federal government, a plaintiff bears the burden of showing
23 an unequivocal waiver of sovereign immunity. Baker v. United States, 817 F.2d 560, 562 (9th Cir.
24 1987). The waiver of sovereign immunity must be express and not implied. United States v.
25 Mitchell, 445 U.S. 535, 538 (U.S. 1980). In order to succeed, a suit must be brought into strict
26 compliance with the statute abrogating sovereign immunity. Sherwood, 312 U.S. at 590. Agents and

1 officers of the United States also benefit from immunity in their official duties if reasonable grounds
2 exist for the belief that their actions were appropriate and they acted in good faith. Hutchinson v.
3 United States, 677 F.2d 1322, 1328 (9th Cir. 1982). Additionally, when judgment is demanded
4 against federal agents and officers in their official capacities and the judgment would come out of the
5 public fisc, the suit is considered to be against the United States and not the agents or officers.
6 Demery v. Kupperman, 735 F. 2d 1139, 1145-46 (9th Cir. 1984).

7 Plaintiff raises the current suit against the IRS and the Attorney General. The suit against the
8 Attorney General concerns an alleged breach of official duty and judgment would come out of the
9 public fisc. The suit, therefore, is considered to be against the United States. Id. Both the United
10 States and the IRS are protected through sovereign immunity. Mitchell, 312 U.S. at 586; Hutchinson,
11 677 F.2d at 1328. The burden thus falls to Plaintiff to show that Defendant has abrogated sovereign
12 immunity. Baker, 817 F.2d at 562.

13 Plaintiff's general reference to 28 U.S.C. § 1346 as proof that sovereign immunity is waived
14 in the present case is unpersuasive. Although 28 U.S.C. § 1346 provides a limited waiver of
15 sovereign immunity, Plaintiff has failed to show the necessary elements each subsection requires.
16 Plaintiff does not specify a particular tax that has been illegally assessed or collected to qualify under
17 28 U.S.C. § 1346(a)(1). Plaintiff's demand for \$100 million in remedies exceeds the \$10,000 limit of
18 28 U.S.C. § 1346(a)(2). 28 U.S.C. § 1346(b)(1) is subject to the provisions of chapter 171, and
19 Plaintiff failed to show how Defendant's actions are not a protected execution of statute, regulation,
20 or discretionary function according to 28 U.S.C. § 2680(a). The remaining subsections are similarly
21 inapplicable to Plaintiff's case. Accordingly, the Court rejects Plaintiff's argument that 28 U.S.C. §
22 1346 abrogates sovereign immunity in the present case.

23 The Federal Tort Claims Act ("FTCA") allegations are similarly unpersuasive. The FTCA
24 spans 28 U.S.C. §§ 1346(b), 2671-2680 and provides a restricted waiver of sovereign immunity. 28
25 U.S.C. § 1346(b) states that the United States will only be liable for the torts of its employees "if a
26 private person, would be liable to the claimant in accordance with the law of the place where the act

1 or omission occurred.” 28 U.S.C. § 2674 clarifies that the United States will only be liable for a tort
2 claim “in the same manner and to the same extent as a private individual under like circumstances[.]”
3 Plaintiff, therefore, may only bring a tort claim against the United States when it would be
4 appropriate to bring a similar case against an individual. Additionally, Plaintiff is held to the same
5 standards of pleading and procedure as in a typical tort case, unless otherwise stated in 28 U.S.C. §§
6 1346(b), 2671-2680. Plaintiff does not meet this requirement because the complaint fails to state a
7 claim or plead facts that would support a tort claim. Instead, Plaintiff appears to mistake a tort claim
8 with the burden, work, and investment associated with Plaintiff’s voluntary *pro se* representation
9 and recent unfavorable Texas judgment. As an example, Plaintiff states on page two of the response
10 that Defendant’s seven-page motion to dismiss (filed after receiving Plaintiff’s sixty-six page
11 complaint) was “an experiment in torture” because it demanded “he reiterate hundreds of pages of
12 evidence (by illegal procedural pretext to disparately treat . . . plaintiffs) for unjust benefit of such
13 actors, with 90 days to file said false motion leaving [Plaintiff] without counsel a few business days
14 (on Thanksgiving) to reply. . . being Slavery or Unusual Penalty[.]” (original brackets replaced with
15 parentheticals). Such assertions are common in both the complaint and response. Although Plaintiff
16 finds the requirements of *pro se* representation burdensome and the difficulties of an unfavorable
17 judgment severe, they do not establish a tort claim by themselves. The Court consequently rejects
18 Plaintiff’s allegation that the FTCA waives sovereign immunity.

19 It is clear in the present case that Plaintiff has failed to show how sovereign immunity is
20 unequivocally abrogated under 28 U.S.C. § 1346 or the FTCA. In light of the above, Defendant’s
21 motion to dismiss under sovereign immunity is therefore granted.

22 Even when construing Plaintiff’s *pro se* pleadings liberally, Plaintiff fails to state a claim
23 against Defendant; therefore, the Court would alternatively dismiss Plaintiff’s complaint under Rule
24 12(b)(6). First, Plaintiff makes vague allegations that Defendant has engaged in a pattern of
25 infringing on constitutional rights. To state a claim, *Iqbal* requires a plaintiff to make nonconclusory
26 factual allegations that plausibly suggest an entitlement to relief. 129 S. Ct. at 1949-51. Plaintiff’s

1 rambling discourse about kings, neo-conservatives, slavery, corruption, and treason does not state a
2 claim as outlined by Iqbal. Id. The only specific claim for which Plaintiff asserts facts is that
3 Defendant failed to “produce documents” and is responsible for the policies surrounding Plaintiff’s
4 unfavorable judgment from the Texas state court. However, Plaintiff fails to show how not producing
5 unspecified documents and receiving an unfavorable judgment are violations of constitutional rights
6 and plausibly suggest an entitlement to relief.

7 Plaintiff additionally asserts that the Attorney General had a duty to represent Plaintiff in the
8 recent Texas state court case, but again fails to state a claim. Plaintiff’s allegations concerning the
9 Attorney General in the complaint are bald, conclusory statements as defined under Iqbal. Id. at
10 1949-51. Conclusory statements may provide the framework of a complaint, but must be supported
11 by factual allegations. Id. at 1949. Plaintiff’s belief that the Texas state court judgment fulfills this
12 requirement is incorrect; the document does not establish a duty for the Attorney General, but merely
13 describes the Texas state court’s judgment against Plaintiff. Plaintiff’s dissatisfaction with the Texas
14 state court judgment and proceedings does not constitute a breach of duty by the Attorney General.
15 The duties and office of the Attorney General are enumerated by statute 28 U.S.C. §§ 501–530D.
16 Plaintiff’s allegations fail to show how the Attorney General breached an enumerated duty and how it
17 plausibly suggests an entitlement to relief.

18 Although Plaintiff states Defendant violated RICO, the RICO allegations are unsuccessful
19 because Defendant is a government entity, which cannot form the malicious intent required.
20 Lancaster Community Hosp. v. Antelope Valley Hosp. Dist., 940 F.2d 397, 404 (9th Cir. 1991). The
21 reasoning behind this holding is partially to prevent taxpayers, an innocent party, from being exposed
22 to the treble damages that RICO requires. See Id. Congress enacted the Racketeer Influenced and
23 Corrupt Organizations Act (“RICO”) with the specific intent to “combat organized crime, not to
24 provide a federal cause of action and treble damages to every tort plaintiff.” Oscar v. Univ. Students
25 Co-Operative Assn., 965 F.2d 783, 786 (9th Cir. 1992). Plaintiff declares that the mere existence of
26 the unfavorable judgment from the Texas state court is proof of Defendant’s RICO violations. Not

1 only is Plaintiff's conclusory allegation insufficient without additional facts, but it is inappropriate
2 under Lancaster. 940 F.2d at 404.

3 Plaintiff has failed to state a claim regarding Defendant's failure to produce documents
4 during the Texas state court trial, the Attorney General's alleged duty towards Plaintiff, and
5 Plaintiff's RICO allegations. As a result, the Court would alternatively grant the motion to dismiss
6 under Rule 12(b)(6).

7 To the extent that this suit can be construed to be against the Attorney General in an
8 individual capacity, the court would alternatively dismiss the case for insufficient service of process
9 under Rule 12(b)(5). Rule 4(e) outlines the service of process for individuals and requires a person to
10 serve an individual either (1) in accordance with state law, (2) by serving the individual personally,
11 (3) by serving a person of reasonable discretion and age at the individual's dwelling or place of
12 abode, or (4) by serving an agent authorized by appointment or law. Nevada state law, found in
13 Nevada Rules of Civil Procedure 4(d)(6), does not state any additional appropriate methods of
14 service. Plaintiff has failed to serve the Attorney General in a suitable manner. The Court, therefore,
15 would dismiss the claims against the Attorney General in an individual capacity in accordance with
16 Rule 4(e).

17 IV. Conclusion

18 Accordingly, IT IS HEREBY ORDERED that Defendant IRS/United States' Motion to
19 Dismiss (#28) is **GRANTED**; IT IS FURTHER ORDERED that the Clerk of the Court enter
20 **JUDGMENT** for Defendants IRS, United States, and Public Legal Education Associates, LC
21 and against Plaintiff.

22 DATED this 28th day of May 2013.

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26 Kent J. Dawson
United States District Judge