

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

CASE NO. C18-712 RSM

10 Plaintiff,

ORDER

11 v.

12 CAROL L. ENGEN, et al.,

13 Defendants.

14 **I. INTRODUCTION**

15 This matter is before the Court on Defendant’s Motion to Dismiss. Dkt. #27. Defendant’s
16 Motion seeks dismissal based on all seven defenses listed in Federal Rule of Civil Procedure
17 12(b). Plaintiff opposes the Motion, maintaining that its action is proper. Dkt. #32. Plaintiff has
18 responded (Dkt. #39) and has made several additional filings (Dkts. #37, #38, and #40) that the
19 Court addresses in this Order. For the reasons below, the Court denies Defendant’s Motion.

20 **II. BACKGROUND**

21 Plaintiff alleges that Defendant Carol L. Engen (“Ms. Engen” or “Defendant”) filed
22 insufficient tax returns “for the federal income tax years 2004 to 2008.” Dkt. #1 at ¶ 14. As a
23 result, “a duly authorized delegate of the Secretary of the Treasure made timely assessments
24 against [Ms. Engen] for unpaid federal income taxes . . . , civil penalties . . . , penalties, interest,

1 and other statutory additions.” *Id.* at ¶ 15. As of the filing of this action, those assessments
2 amounted to \$250,880.66. *Id.* at ¶¶ 15, 19. Ms. Engen was provided notice of these assessments,
3 but failed to pay. *Id.* at ¶¶ 17–19.

4 On or around April 19, 2017, Ms. Engen acquired “a parcel of real property commonly
5 described as 16423 NE 15th Street, Bellevue, WA 98008 (“Subject Property”)” after her husband
6 passed away. *Id.* at ¶¶ 8–13. Ms. Engen executed and subsequently recorded an “Affidavit Re:
7 Will and Transfer on Death Deed.” *Id.* at ¶ 13. On November 9, 2017, the United States Internal
8 Revenue Service (“IRS”) recorded, against the Subject Property, “a Notice of Federal Tax Lien
9 (“NFTL”) against [Ms. Engen] with respect to unpaid federal income tax liabilities” for the
10 applicable periods. *Id.* at ¶ 24.

11 On May 15, 2018, Plaintiff initiated this action “to: (i) reduce to judgment the outstanding
12 federal tax assessments against Defendant Carol L. Engen; and (ii) foreclose federal tax liens on”
13 the Subject Property. *Id.* at ¶ 1. Ms. Engen shortly thereafter filed for bankruptcy, causing this
14 Court to stay the matter pending resolution of Ms. Engen’s bankruptcy proceedings. Dkts. #5
15 and #6. After Ms. Engen’s bankruptcy action was dismissed, the Court lifted the stay and Ms.
16 Engen’s Motion to Dismiss followed shortly thereafter. Dkts. #12, #16, and #27.

17 III. DISCUSSION

18 A. Motion to Dismiss

19 The Court has thoroughly reviewed the issues raised by Defendant in her Motion to
20 Dismiss but finds that they do not warrant lengthy discussion. The Court applies the law as it is
21 not as Defendant believes it should be. While imaginative, Defendant’s arguments lack a basis
22 in the law.

23 Defendant first claims that this Court lacks subject matter jurisdiction, warranting
24 dismissal under Federal Rule of Civil Procedure 12(b)(1). But Plaintiff’s Complaint plainly

1 invokes federal law and provides Defendant several bases upon which to verify that this action
2 falls within this Court’s subject matter jurisdiction. *See* Dkt. #1 at ¶ 2–3 (citing federal statutes
3 including 26 U.S.C. §§ 7401 and 7403). Unsurprisingly, a Westlaw search for cases citing 26
4 U.S.C. § 7401 yields 910 cases in federal courts and 12 cases in state courts. Likewise, a Westlaw
5 search for cases citing 26 U.S.C. § 7403 yields 2,015 cases in federal courts and 19 cases in state
6 courts. The Court is satisfied that it has subject matter jurisdiction.

7 Defendant then claims that this Court lacks personal jurisdiction over Defendant under
8 Rule 12(b)(2). But there is no question that Plaintiff’s Complaint contains sufficient allegations
9 establishing this Court’s personal jurisdiction (Dkt. #1 at ¶¶ 1, 4–5) and Defendant herself
10 indicates she is a “native and inhabitant of Washington” (Dkt. #27 at 7, 9). More specifically,
11 the Complaint makes clear that the Subject Property is within the District and alleges that
12 Defendant resides at the Subject Property. Dkt. #1 at ¶¶ 1, 4–5. Defendant does not establish
13 that this action should be dismissed for a lack of personal jurisdiction.

14 Defendant next claims that dismissal is warranted because this Court is not the proper
15 venue under Rule 12(b)(3). However, Plaintiff’s Complaint makes clear that venue is proper in
16 the “judicial district in which a substantial part of the events or omissions giving rise to the claim
17 occurred, or a substantial part of property that is the subject of the action is situated.” 28 U.S.C.
18 § 1391(b)(2) (cited at Dkt. #1 at ¶ 4). Likewise, venue is proper “in the district of the taxpayer’s
19 residence.” 28 U.S.C. § 1396 (cited at Dkt. #1 at ¶ 4); *see also* 28 U.S.C. § 1391(b)(1) (venue
20 proper in the “judicial district in which any defendant resides” where, as appears to be the case
21 here, “all defendants are residents of the State in which the district is located”). Plaintiff chose
22 an appropriate venue.

23 Defendant also claims that the process itself was deficient and that process was
24 improperly served upon her, warranting dismissal under Rules 12(b)(4) and (5). *See Wasson v.*

1 *Riverside Cty.*, 237 F.R.D. 423, 424 (C.D. Cal. 2006) (comparing focus of Rule 12(b)(4) and
2 12(b)(5)). Defendant’s primary argument, repeated throughout her briefing, is that there is some
3 legal distinction to be drawn between “Carol Lynn Engen” and “Carol L. Engen.” Dkt. #27 at
4 4–5. Defendant argues that her name is Carol Lynn Engen and that the summons and complaint
5 refer to “Carol L. Engen.” But this argument is wholly without legal support and Plaintiff
6 establishes why the distinction is not legally significant.¹ Beyond this “name theory,” Defendant
7 does not point to any error in the process issued or in the service of that process upon her.
8 Dismissal under either subsection is not appropriate.

9 Defendant then argues that the Complaint is deficient as it fails to adequately allege a
10 claim upon which relief can be granted, warranting dismissal under Rule 12(b)(6). This argument
11 is similarly baseless. Rule 8 requires only that a pleading “contain: (1) a short and plain statement
12 of the grounds for the court’s jurisdiction . . . ; (2) a short and plain statement of the claim showing
13 that the pleader is entitled to relief; and (3) a demand for the relief sought.” FED. R. CIV. P. 8(a).
14 Even a cursory review of Plaintiff’s Complaint reveals that Rule 8 is satisfied.

15 Further, Plaintiff satisfies Rule 12(b)(6). Under that rule, a plaintiff must plead “factual
16 content that allows the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*
18 *Twombly*, 550 U.S. 544, 555 (2007)). In considering the issue, a plaintiff further enjoys the
19 benefit of the court accepting all facts alleged in the complaint as true and drawing all inferences
20 in the light most favorable to the non-moving party. *Baker v. Riverside County Office of Educ.*,
21 584 F.3d 821, 824 (9th Cir. 2009) (citations omitted). Observing these guidelines, the Court
22

23 ¹ The Court notes as well that Defendant’s hyper focus on use of the proper name is undercut by
24 her own use of both “Carol Lynn Engen” and “Carol L. Engen” in identifying and signing her
filings. *See e.g.*, Dkt. #27 at 1, 17.

1 again has no difficulty determining that dismissal pursuant to Rule 12(b)(6) is not warranted in
2 this case.

3 Lastly, Defendant does not establish that Plaintiff has failed to join a party under Rule 19
4 such that dismissal is appropriate under Rule 12(b)(7). Defendant maintains that the United
5 States, the IRS, and “Carol Lynn Engen” are necessary parties to this action. Dkt. #27 at 9–17.
6 But the Court is sufficiently satisfied that Defendant United States of America may maintain this
7 action and does not see any legal distinction between Plaintiff proceeding as the “United States
8 of America” or the “United States” or between Defendant being named as “Carol L. Engen” or
9 “Carol Lynn Engen.” Defendant’s arguments fail.

10 Overall, Defendant’s Motion to Dismiss reads like historical fiction or an ill-conceived
11 threequel to the *National Treasure*² film franchise. Defendant builds her arguments on a winding
12 path of historical statutes, presumed intents, and perceived mistakes. The Court does not entirely
13 discount Defendant’s arguments, but many of them would be better suited for a later junction
14 with an adequate factual record. *N. Star Int’l v. Arizona Corp. Comm’n*, 720 F.2d 578, 581 (9th
15 Cir. 1983) (“The purpose of a motion to dismiss under rule 12(b)(6) is to test the legal sufficiency
16 of the complaint.”) (citing *Peck v. Hoff*, 660 F.2d 371, 374 (8th Cir. 1981)). “[A] case should be
17 tried on the proofs rather than the pleadings.” *Rennie & Laughlin, Inc. v. Chrysler Corp.*, 242
18 F.2d 208, 213 (9th Cir. 1957) (citation omitted); *Von Saher v. Norton Simon Museum of Art at*
19 *Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (basis for dismissal must be clear on the face of the
20 complaint).

21 Plaintiff similarly recognizes that Defendant’s arguments are “nonsensical tax defier
22 rhetoric that should be summarily rejected” Dkt. #32 at 2 (citing *Crain v. Commissioner*, 737 F.

24 ² See [https://en.wikipedia.org/wiki/National_Treasure_\(film_series\)](https://en.wikipedia.org/wiki/National_Treasure_(film_series)).

1 2d 1417 (5th Cir. 1984) (“We perceive no need to refute these arguments with somber reasoning
2 and copious citation to precedent; to do so might suggest that these arguments have some
3 colorable merit.”)). However, unable to risk reliance on such generalities, Plaintiff methodically
4 addresses Defendant’s arguments and establishes that each is contrary to the law. *See* Dkt. #32.
5 Defendant does not attempt to respond to Plaintiff’s arguments on reply. *See generally* Dkt. #39.
6 For the reasons above and the numerous reasons set forth by Plaintiff and adopted by the Court,
7 Defendant’s Motion to Dismiss is denied.

8 **B. Defendant’s Additional Filings**


9 The Court briefly addresses Defendants additional filings. *See* Dkts. #37, #38; and #40.
10 These filings oscillate wildly. Defendant objects to the Court’s prior decision to treat one of her
11 filings as a request for recusal. Dkt. #37. At the same time, Defendant indicates that she has not
12 sought “the recusal of any officer of this court,” was merely seeking “proper administration of
13 justice and review [of] evidence,” and requests that the Court consider her matter fairly. Dkt. #38
14 at 1–2). Yet Defendant then again reverses course and alleges that “Judge Ricardo S. Martinez
15 abandoned his judicial capacity and assumed a personal capacity” and must “cleanse the Record
16 of his unauthorized filings” or “resign as judge” and obtain private counsel. Dkt. #40 at 1–2.
17 The Court is unable to discern Defendant’s request. To the extent Defendant informs the Court
18 of her desire for a fair hearing, she is afforded a fair hearing without needing to seek relief from
19 the Court. The Court therefore denies “Defendant’s Motion for a Fair and Impartial Hearing
20 Docket No. 34” (Dkt. #38) as moot and disregards Defendant’s additional filings (Dkts. #37 and
21 #40).

22 **IV. CONCLUSION**

23 Having reviewed Defendant’s Motion and filings, the briefing of the parties, the
24 supporting declarations and exhibits, and the remainder of the record, the Court ORDERS that

1 Defendant's Motion to Dismiss (Dkt. #27) is DENIED and "Defendant's Motion for a Fair and
2 Impartial Hearing Docket No. 34" is DENIED as moot.

3 Dated this 14th day of May, 2020.

4
5 

6 RICARDO S. MARTINEZ
7 CHIEF UNITED STATES DISTRICT JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24