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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 STEVEN C. NAGY, et al.,

13 Defendants.

CASE NO. C11-5066BHS

ORDER DENYING  
DEFENDANTS' SEPARATE  
MOTIONS TO DISMISS

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15 This matter comes before the Court on Defendants' ("Mr Nagy" and Ms. Nagy")<sup>1</sup>  
16 separate motions to dismiss (Dkts. 5, 6). The Court has considered the pleadings filed in  
17 support of and in opposition to the motions and the remainder of the file and hereby  
18 denies the motions for the reasons stated herein.

19 **I. PROCEDURAL HISTORY & FACTUAL BACKGROUND**

20 This action arises out of unpaid tax assessments that the United States seeks to  
21 have reduced to judgment; the United States also seeks to foreclose on the Nagys' real  
22 property. *See* Complaint (Dkt. 1). On March 24, 2011, Mr. and Ms. Nagy filed separate  
23 motions to dismiss Plaintiff's (the "United States") complaint to reduce federal tax  
24 assessments to judgment. Dkts. 5, 6. On March 10, 2011, the United States responded in  
25 opposition to both motions to dismiss. Dkts. 7, 8. The Nagys did not reply.

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27 <sup>1</sup>Mr. Nagy and Ms. Nagy are husband and wife, *see, e.g.*, Complaint (Dkt. 1). However,  
28 at this point they are filing separately. *See, e.g.*, Dkts. 5, 6 (separate motions to dismiss).

1 **II. DISCUSSION**

2 To begin with, the Nagy’s separate motions to dismiss and the United States’  
3 responses in opposition are nearly identical in every respect. One key difference between  
4 Mr. and Ms. Nagy is that Ms. Nagy claims to be an innocent spouse. *See* Dkt. 6 at 2.  
5 Because neither motion differs from the other in any material respect for purposes of  
6 determining the merits of their motions, the Court will address both motions in this order.  
7 Unless the Court specifies otherwise, what is stated herein applies to both motions  
8 equally.

9 **A. Rule 12 Standard**

10 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a  
11 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal  
12 theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990).  
13 Material allegations in the complaint are taken as admitted and the complaint is construed  
14 in a plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). “While a  
15 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual  
16 allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief  
17 requires more than labels and conclusions, and a formulaic recitation of the elements of a  
18 cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65  
19 (2007) (internal citations omitted). “Factual allegations must be enough to raise a right to  
20 relief above the speculative level, on the assumption that all the allegations in the  
21 complaint are true (even if doubtful in fact).” *Id.* at 1965. Plaintiffs must allege “enough  
22 facts to state a claim to relief that is plausible on its face.” *Id.* at 1974.

23 **B. The Nagys’ Motions to Dismiss**

24 The Nagys move to dismiss the United States’ complaint on the basis that (1) the  
25 United States failed to produce sufficient evidence on which to support its claim; (2) the  
26 statute of limitations has expired on the United States’ action against the Nagys; and (3)  
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1 the United States failed to perfect their tax liens against the Nagys' real property (the  
2 "subject property"). Additionally, the Nagys request early settlement, in the event the  
3 Court grants their motions to dismiss. *See* Dkts. 5, 6.

#### 4 **1. Pleading Deficiency**

5 The Nagys have not established that the United States' complaint is deficient. *See*  
6 Fed. R. Civ. P. 8 (requiring only a short and plain statement upon which relief can be  
7 granted). Taking the facts alleged as true, which the Court must, the Complaint (Dkt. 1)  
8 sufficiently alleges claims upon which relief could be granted, presuming the United  
9 States ultimately prevails in this action.

10 To the extent the Nagys base their motions to dismiss on the basis that the United  
11 States has failed to proffer evidentiary proof of the validity of their claims, such argument  
12 cannot form the basis of their motions to dismiss. At the pleading stage, a party need not  
13 supply evidence to support its complaint nor establish that it will ultimately prevail on the  
14 claims alleged. *See, e.g.,* Fed. R. Civ. P. 8; *Twombly*, 550 U.S. at 555-557 (2007).

15 Therefore, the Court denies the Nagys' motions to dismiss on this issue.

#### 16 **2. Statute of Limitations**

17 The IRS (Internal Revenue Service) "generally has ten years from the assessment  
18 of a tax to collect the outstanding liability." *Severo v. C.I.R.*, 586 F.3d 1213, 1215 (9th  
19 Cir. 2009) (citing U.S.C. § 6502(a)(1)). Here, the IRS issued its earliest, relevant tax  
20 assessment to Mr. Nagy on February 19, 2001, and the United States filed the instant suit  
21 on behalf of the IRS on January 25, 2011. Because, the United States commenced this  
22 action within the 10-year limitations period, its action against the Nagys is not barred by  
23 the statute of limitations.

24 Therefore, the Court denies the Nagys' motions to dismiss on this issue.  
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