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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
CHRISTOPHER M. HANSEN,
Defendant.

Civil No. 05cv0921-L(NLS)

**ORDER DENYING DEFENDANT'S
MOTION TO DISMISS**

[Docket Nos. 7, 9]

This matter comes before the Court on Defendant's motion to dismiss. The Court finds the motion suitable for disposition on the papers and without oral argument in accordance with Civil Local Rule 7.1(d)(1).

BACKGROUND

Defendant Christopher M. Hansen sells how-to guides filed with forms, instructions, and tactics to help customers evade paying federal taxes. (Compl. ¶ 7.) Hansen also sells sample form response letters for customers to use when they receive specific correspondence from the Internal Revenue Service ("IRS"). *Id.* ¶ 8. These letters are designed to disrupt or hinder the enforcement of the internal revenue laws. *Id.* ¶¶ 8, 9. Hansen also advises his customers to assert frivolous positions and engage in disruptive and abusive tactics to obstruct an audit by the IRS. *Id.* ¶ 10.

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1 If his customers file income tax returns, Hansen advises and assists them to file returns
2 showing only one cent of income and requesting a refund for payments made or taxes previously
3 withheld. *Id.* ¶ 14. Hansen promotes the view that federal tax withholding applies only to
4 elected or appointed officers of the United States government, and incites and assists his
5 customers to file false IRS W-4 Forms (Employee's Withholding Allowance Certificate) and W-
6 8 Forms (Certificate of Foreign Status) so employers will stop withholding taxes from the
7 customers' paychecks. *Id.* ¶¶ 16, 17.

8 In addition to his other programs, Hansen markets a program to assist customers to give
9 up their "U.S. citizenship" but retain or claim "American National citizenship." *Id.* ¶ 18.
10 Hansen informs customers this results in their not being liable for federal income taxes and puts
11 them outside the scope of federal jurisdiction. *Id.*

12 For a fee, Hansen meets with customers for administrative or consulting services and
13 prepares their documents for them. *Id.* ¶ 19. He also provides his customers with opinion letters
14 to support their belief they do not have to pay income taxes. *Id.* ¶ 20.

15 Hansen markets his programs through word of mouth, at seminars, and on the Internet,
16 including on his websites www.famguardian.org and www.sedm.org. *Id.* ¶ 21.

17 On May 2, 2005, the United States filed this action seeking to enjoin Hansen from:
18 promoting programs that advise or encourage customers to violate the tax laws and evade
19 assessment or collection of their federal tax liabilities; making false or fraudulent statements
20 about the securing of any tax benefit by reason of participating in any plan or arrangement;
21 engaging in conduct subject to penalty under 26 U.S.C. §§ 6700 and 6701; engaging in conduct
22 that interferes with the administration and enforcement of the internal revenue laws; and
23 engaging in any activity subject to penalty under the Internal Revenue Code ("IRC").

24 On June 9, 2005, Hansen filed an Answer and a Motion to Dismiss for Failure to State a
25 Claim Upon Which Relief Can Be Granted and Other Matters. The motion was scheduled for
26 hearing on July 25, 2005. The United States filed a response on June 21, 2005. As of the date of
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1 this order, Hansen did not file a reply nor request an extension of time in which to file a reply.¹

2 DISCUSSION

3 Hansen' motion to dismiss argues this Court does not have subject matter jurisdiction
4 over this action or personal jurisdiction over Hansen. In addition, the motion requests several
5 forms of relief. First, the motion requests the Magistrate Judge assigned from this case be
6 dismissed. Second, that the Complaint be dismissed for failure to state a claim. Third, the
7 motion requests "Substitution of Alleged Defendant with Proper Party." Fourth, Hansen
8 requests dismissal as the Plaintiff. Fifth, the motion requests "Monetary relief in connection
9 with involuntary servitude responding to vexatious legal harassment" under Federal Rule of
10 Civil Procedure 11(c). The motion's final request is to admit evidence and petition to respect
11 contractual limitations upon stipulated admitted evidence.

12 **I. Subject Matter Jurisdiction**

13 Hansen's motion argues this Court has no subject matter jurisdiction over this action.
14 However, in his Answer, Hansen contends this Court has jurisdiction over this matter because of
15 diversity of citizenship, because he is a "non-citizen national of California" which is a "foreign
16 state" while the United States is a "citizen and national of the United States." (Answer at 8.)
17 This Court has subject matter jurisdiction, but not on the basis Hansen claims.

18 Under 28 U.S.C. § 1340, this Court has jurisdiction to hear civil actions "arising under
19 any Act of Congress providing for internal revenue." 28 U.S.C. § 1340. This Court also has
20 subject matter jurisdiction over this case because the United States Government is a plaintiff. 28
21 U.S.C. § 1345. In addition, §§ 7402(a) and 7408 of the Internal Revenue Code of 1986 allow
22 actions brought under those statutes to be brought in federal courts. 26 U.S.C. §§ 7402(a), 7408.

23 **II. Personal Jurisdiction**

24 Hansen contends this Court does not have personal jurisdiction over him because he
25 declares his domicile to be Heaven. The Court is not persuaded by these arguments.

27 ¹ Under Civil Local Rule 7.1(e)(3), Hansen's reply should have been filed and served no
28 later than July 18, 2005. See Civ. L. R. 7.1(e)(3) (stating that reply memoranda of points and
authorities are due five court days prior to the day for which the matter is noticed).

1 Hansen's Answer effectively admits he is a citizen of California. (Answer at 8, stating he
2 is a "non-citizen national of California.") Personal jurisdiction over Hansen is proper on that
3 basis. *See Milliken v. Meyer*, 311 U.S. 457, 462-63 (1940). This Court can also exercise
4 personal jurisdiction over Hansen because he was personally served while in California. (Doc.
5 No. 4.); *see Burnham v. Superior Court*, 495 U.S. 604, 610-12 (1990) (holding that a defendant
6 served while voluntarily present in the forum state is subject to personal jurisdiction there
7 "without regard to whether the defendant was only briefly in the State or whether the cause of
8 action was related to his activities there.").

9 Hansen also argues this Court does not have jurisdiction to enforce the criminal or civil
10 laws of the United States for offenses committed outside of the District of Columbia, Puerto
11 Rico, and the territories and insular possessions of the United States. Numerous courts have
12 rejected this argument as meritless. *E.g., In re Becraft*, 885 F.2d 547, 549 n.2 (9th Cir. 1989);
13 *United States v. Ward*, 833 F.2d 1538, 1539 (11th Cir. 1987); *see also United States v. Gerads*,
14 999 F.2d 1255, 1256 (8th Cir. 1993) (rejecting defendants' contention that they were "not
15 citizens of the United States, but rather 'Free Citizens of the Republic of Minnesota'").

16 Accordingly, the Court finds it has personal jurisdiction over Hansen.

17 **III. Request for Dismissal of Magistrate Judge**

18 In accordance with the Civil Local Rules, this action was assigned a magistrate judge in
19 addition to a district judge. Hansen requests the magistrate judge be dismissed from this case
20 and be replaced with an Article III judge who meets certain criteria. He argues that under 28
21 U.S.C. § 636, magistrate judges preside only by consent of both parties and he does not consent.
22 This argument is unavailing.

23 Consent by the parties is required for magistrate judges to conduct all pretrial and post
24 trial proceedings, enter judgment, and rule on dispositive motions. 28 U.S.C. §§ 636(c); Civ. L.
25 R. 72.1(g). Consent is not required, however, for a magistrate judge to perform duties set forth
26 in 28 U.S.C. § 636(b)(1)(A); those are conferred by the statute itself. 28 U.S.C. § 636(b)(1)(A);
27 Civ. L. R. 72.1(b). Accordingly, notwithstanding Hansen's refusal to consent, the magistrate
28 judge assigned to this action is authorized to hear and determine any pretrial motions including

1 discovery motions, other than dispositive motions specified in 28 U.S.C. § 636(b)(1)(A). 28
2 U.S.C. § 636(b); Civ. L. R. 72.1. Relevant to this civil action, the magistrate judge assigned to
3 this case will also conduct settlement conferences and case management conferences. Civ. L. R.
4 72.1(h), 72.2. Hansen’s request for dismissal of the magistrate judge is therefore **DENIED**.

5 **IV. Motion to Dismiss for Failure to State a Claim**

6 **A. Applicable Law**

7 A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the complaint. *Navarro*
8 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal of a claim under this Rule is appropriate
9 only where “it appears beyond doubt that the plaintiff can prove no set of facts in support of his
10 claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);
11 *Navarro*, 250 F.3d at 732. Dismissal is warranted under Rule 12(b)(6) when the complaint lacks
12 a cognizable legal theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir.
13 1984); *see Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to
14 dismiss a claim on the basis of a dispositive issue of law.”). Alternatively, a complaint may be
15 dismissed where it presents a cognizable legal theory yet fails to plead essential facts under that
16 theory. *Robertson*, 749 F.2d at 534.

17 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the truth of
18 all factual allegations and must construe them in the light most favorable to the nonmoving
19 party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002); *Cahill v. Liberty Mut. Ins. Co.*, 80
20 F.3d 336, 337-38 (9th Cir. 1996). However, legal conclusions need not be taken as true merely
21 because they are cast in the form of factual allegations. *Roberts v. Corrothers*, 812 F.2d 1173,
22 1177 (9th Cir. 1987); *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). When
23 ruling on a motion to dismiss, the court may consider the facts alleged in the complaint,
24 documents attached to the complaint, documents incorporated by reference in the complaint, and
25 matters of which the Court takes judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th
26 Cir. 2003); *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998).

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1 **B. Whether the Complaint Must be Dismissed**

2 Hansen argues the statements made in the Complaint are without any foundation, not
3 taken under oath or penalty of perjury, and not provided in the proper form under Civil Local
4 Rule 7.1(f). This argument does not persuade the Court to dismiss the Complaint.

5 As noted above, a motion to dismiss for failure to state a claim requires the court to
6 assume the allegations of the Complaint are true and view them in a light most favorable to the
7 plaintiff. *Thompson*, 295 F.3d at 895; *Cahill*, 80 F.3d at 337-38. So construed, the court
8 determines whether they state a cognizable claim. It is not the United States' burden to present
9 evidence in the Complaint. Instead, Federal Rule of Civil Procedures simply require "a short
10 and plain statement of the claim." Fed. R. Civ. P. 8(a). "Such a statement must simply 'give the
11 defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'"
12 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley*, 355 U.S. at 47).
13 Accordingly, when evaluating the sufficiency of a complaint, the court's role "is necessarily a
14 limited one," confined to determining "not whether a plaintiff will ultimately prevail but whether
15 the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S.
16 232, 236 (1974), *abrogated on other grounds*, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).
17 Having reviewed the Complaint, the Court finds its allegations sufficient to withstand a motion
18 to dismiss.

19 **1. First Cause of Action**

20 The first cause of action is under IRC §§ 7408, 6700, and 6701. Section 7408 authorizes
21 an action to enjoin promoters of abusive tax programs from further engaging in conduct subject
22 to penalty under section 6700 (relating to penalty for promoting abusive tax shelters or plans) or
23 section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

24 *a. IRC §§ 6700 and 7408*

25 To state a claim for violation of IRC § 6700 warranting an injunction under IRC § 7408,
26 the United States must allege: (1) the defendant organized or sold, or participated in the
27 organization or sale of an entity, plan, or arrangement; (2) the defendant made or caused to be
28 made false or fraudulent statements concerning the tax benefits to be derived from the entity,

1 plan or arrangement; (3) the defendant knew or had reason to know that the statements were
2 false or fraudulent; (4) the false or fraudulent statements pertained to a material matter; and
3 (5) an injunction is necessary to prevent recurrence of this conduct. *See United States v. Estate*
4 *Pres. Servs.*, 202 F.3d 1093, 1098 (9th Cir. 2000).

5 The Complaint properly alleges facts to support each of these elements. First, the
6 Complaint details the various programs offered by Hansen that encourage and assist customers
7 to evade paying federal income taxes. (Compl. ¶¶ 7-10, 18, 21, 30.) Second, the Complaint
8 alleges “Hansen is aware that courts have rejected his positions relating to the federal tax laws.”
9 *Id.* ¶ 23. Third, the Complaint alleges Hansen’s statements are material because they “result in
10 customers’ illegally failing to file appropriate federal income tax returns, failing to have the
11 proper amount of federal income taxes withheld from wages, and failing to pay their federal
12 liabilities.” *Id.* ¶ 22; *see United States v. Schiff*, 269 F. Supp. 2d 1262 (D. Nev. 2003) (“If a
13 particular statement has a substantial impact on the decision-making process or produces a
14 substantial tax benefit to a taxpayer, the matter is properly regarded as ‘material’ within the
15 meaning of § 6700.”), *aff’d*, 379 F.3d 621 (9th Cir. 2004). Finally, the Complaint alleges an
16 injunction is necessary to prevent recurrence because “Hansen has continued to market his
17 programs and interfere with the administration and enforcement of the federal tax laws” even
18 after the IRS notified him his program was under investigation. (Compl. ¶ 24.).

19 *b. IRC §§ 6701 and 7408*

20 To state a claim for violation of IRC § 6701 warranting an injunction under IRC § 7408,
21 the United States must allege: (1) the defendant prepares, assists in, procures, or advises the
22 preparation of any portion of a return, affidavit, claim, or other document; (2) the defendant
23 knows (or has reason to believe) that such portion will be used in connection with any material
24 matter arising under the internal revenue laws; (3) the defendant knows that such portion (if so
25 used) would result in an understatement of the liability for tax of another person; and (4) an
26 injunction is necessary prevent a recurrence of this conduct. 26 U.S.C. §§ 6701, 7408. The
27 Complaint adequately alleges each of these elements.

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1 First, the Complaint avers Hansen has prepared and assisted customers with tax returns
2 and other tax forms and documents. (Compl. ¶¶ 12, 14-17, 20, 31.) The United States also
3 alleges Hansen knows or has reason to believe that the documents he prepares and assists in
4 preparing will be used in connection with a material matter under the Internal Revenue Code —
5 the assessment of federal income tax liability. *Id.* ¶ 31. The Complaint also alleges Hansen
6 knows his assessment will result in an understatement of another’s tax liability. *Id.* ¶¶ 14, 31.
7 Finally, the Complaint alleges an injunction is necessary to prevent recurrence because Hansen
8 has continued “to interfere with the administration and enforcement of the federal tax laws” even
9 after the IRS notified him his program was under investigation. *Id.* ¶ 24.

10 In summary, the Complaint adequately pleads facts to support the United States’ first
11 cause of action.

12 2. Second Cause of Action

13 The second cause of action seeks injunctive relief under IRC § 7402, which authorizes
14 district courts to issue injunctions as may be necessary or appropriate for the enforcement of
15 internal revenue laws. 26 U.S.C. § 7402(a); *United States v. Ernst & Whinney*, 735 F.2d 1296,
16 1300 (11th Cir. 1984). The Complaint adequately alleges facts to support this cause of action.
17 As discussed above, the Complaint alleges Hansen promotes tax fraud schemes and assists
18 customers in preparing fraudulent tax returns. The Complaint further avers these actions have
19 interfered substantially with the administration and enforcement of the internal revenue laws.
20 The United States also alleges unless Hansen is enjoined, he “is likely to continue to obstruct and
21 interfere with the enforcement of the internal revenue laws.” (Compl. ¶ 37.) These allegations
22 sufficiently state a claim for relief under IRC § 7402 to withstand a motion to dismiss.

23 V. Relief Relating to Hansen’s Copyright/Software Licensing Agreement

24 The Complaint quotes portions of Hansen’s materials to support its allegations. Hansen
25 argues his materials are covered by the Copyright/Software License Agreement attached as
26 exhibit 3 to his Answer. Hansen contends that one of the terms of his Copyright/Software
27 License Agreement is that whoever initiates a lawsuit against him for any materials or activities
28 related to the author or his website agrees to substitute himself or herself as the adjudged party.

1 On this basis, he requests the Department of Justice attorney who signed the Complaint to be
2 substituted in as the Defendant in this case. Hansen also argues that another of the conditions of
3 the Copyright/Software License Agreement is that the United States agrees that a limited power
4 of attorney be granted to Hansen. Hansen argues the limited power of attorney authorizes him to
5 request dismissal of this case. Both arguments are unavailing.

6 Hansen's assertion the United States or its counsel entered into a contract by virtue of
7 quoting portions of his materials in the Complaint is unsupported by any authority. "An
8 essential element of any contract is the consent of the parties, or mutual assent." *Donovan v.*
9 *RRL Corp.*, 26 Cal. 4th 261, 270 (2001); Cal. Civ. Code § 1550. The Court does not find
10 selective quotations from Hansen's materials suggest the United States or its counsel consented
11 to be bound by the terms in the Copyright/Software License Agreement that Hansen asserts.
12 Accordingly, Hansen's requests for Substitution of Alleged Defendant with Proper Party and
13 Petition for Dismissal as the Plaintiff are **DENIED**.

14 **VI. Request for Monetary Relief**

15 Hansen requests the Court grant him monetary relief under Federal Rule of Civil
16 Procedure 11, to compensate him for being subjected to involuntary servitude, and as damages
17 for violation of his Copyright/Software License Agreement. Each of these requests for relief is
18 denied.

19 **A. Rule 11**

20 Hansen requests the Court sanction Department of Justice attorney Martin Shoemaker,
21 United States Attorney Carol Lam, and Assistant United States Attorney Robert Plaxico under
22 Rule 11 for submitting "false, libelous, unwarranted, and baseless pleadings" in this action. He
23 further argues monetary sanctions are proper because those attorneys are: attempting to abuse
24 this Court for political rather than legitimate Constitutional purposes; establishing a religion by
25 attempting to proceed without any evidence; enslaving Hansen by requiring him to respond to
26 baseless charges.

27 Rule 11 sanctions apply only to pleadings, written motions and other papers filed with the
28 court. Fed. R. Civ. P. 11(b); *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1131 (9th Cir. 2002).

1 Rule 11 contains a mandatory “safe harbor” provision requiring the moving party to serve a
2 motion for Rule 11 sanctions at least 21 days before filing it with the court. Fed. R. Civ. P.
3 11(c)(1)(A). There is no indication in the record Hansen has complied with this requirement.
4 Nor has Hansen complied with the requirement that a request for Rule 11 sanctions be brought
5 as a separate motion. *See id.* Further, as this Court found above, the Complaint properly alleges
6 claims under IRC §§ 6700, 6701, 7402, and 7408 and therefore does not subject the United
7 States nor its counsel to Rule 11 sanctions. Hansen’s request for relief under Rule 11 is
8 therefore **DENIED**.

9 **B. Involuntary Servitude**

10 The Thirteenth Amendment and its enforcing statute, 18 U.S.C. § 1584, prohibit
11 involuntary servitude. Involuntary servitude is defined as “a condition of servitude in which the
12 victim is forced to work for the defendant by the use or threat of physical restraint or physical
13 injury, or by the use or threat of coercion through law or the legal process.” *United States v.*
14 *Kozminski*, 487 U.S. 931, 952 (1988). “It is an action by the master that causes the servant to
15 have, or to believe he has, no way to avoid continued service or confinement, of a ‘superior and
16 overpowering force, constantly present and threatening.’” *Ramirez-De Leon v. Mujica-Cotto*,
17 345 F. Supp. 2d 174, 192 (D.P.R. 2004) (quoting *Hodges v. United States*, 203 U.S. 1, 34
18 (1906)).

19 That Hansen has had to defend against this action is not a form of involuntary servitude
20 proscribed by the Thirteenth Amendment. That amendment was intended “‘to cover those forms
21 of compulsory labor akin to African slavery which in practical operation would tend to produce
22 like undesirable results.’” *Kozminski*, 487 U.S. at 942 (quoting *Butler v. Perry*, 240 U.S. 328,
23 332 (1916)). Having to defend against a lawsuit is not compulsory labor. A defendant is not
24 obligated to defend a lawsuit; he may forego a defense and allow a default judgment to be
25 entered against him. *Cf. Id.* at 938, 950 (stating that involuntary servitude “is not a situation
26 where the servant knows he has a choice between continued service and freedom, even if the
27 master has led him to believe that the choice may entail consequences that are exceedingly
28 bad.”). Further, involuntary servitude requires that an individual be required to perform labor or

1 a service for the benefit of another. That is not the case here. By defending himself in this
2 action Hansen is representing his own interests, not performing any labor or service for the
3 benefit of the Government. Accordingly, Hansen's request for compensation as a result of his
4 involuntary servitude is **DENIED**.

5 **C. Damages Under Hansen's Copyright/Software License Agreement**

6 Finally, Hansen's request for relief under the Copyright/Software License Agreement is
7 denied because the record does not support a finding it constitutes a binding, enforceable
8 contract between Hansen and the United States or its attorneys. Hansen's request for damages in
9 accordance with his Copyright/Software License Agreement is therefore **DENIED**.

10 **VII. Request to Admit Evidence**

11 In the event his motion to dismiss is denied, Hansen requests the Court to admit into
12 evidence certain documents for use in all future proceedings. The documents Hansen seeks to be
13 admitted are part of the record because they have been attached as exhibits to his Answer.
14 Insofar as he requests the Court to have them admitted as evidence to substantiate his defenses to
15 this action, the request is premature. With the exception of Hansen's challenges to this Court's
16 subject matter and personal jurisdiction, this motion does not lend itself to consideration of
17 evidence outside of the Complaint. As discussed above, a Rule 12(b)(6) motion only concerns
18 the allegations of the Complaint. The Court has also found the other relief Hansen seeks is
19 unavailable as a matter of law. Accordingly, Hansen's petition to admit evidence is **DENIED**
20 **AS PREMATURE**.

21 **CONCLUSION**

22 Having reviewed the record and applicable law, **IT IS HEREBY ORDERED**
23 Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted
24 and Other Matters is **DENIED**.

25 **IT IS SO ORDERED.**

26 Dated: 7/25/05

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28 M. JAMES LORENZ
UNITED STATES DISTRICT JUDGE

1 COPY TO:
2 HON. NITA L. STORMES
3 UNITED STATES MAGISTRATE JUDGE
4 ALL PARTIES/COUNSEL
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