

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**SNYDER & ASSOCIATES
ACQUISITIONS LLC and TOTAL
TAX PREPARATIONS, INC.,**

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No.: SACV 14-01350-CJC(JCGx)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

I. INTRODUCTION

Plaintiffs Snyder & Associates Acquisitions LLC (“Snyder”) and Total Tax Preparations, Inc. (“TTP”) (together, “Plaintiffs”) bring this action against Defendant United States of America (the “Government”) under the Federal Torts Claim Act

1 (“FTCA”), 28 U.S.C. § 1346 *et seq.* Plaintiffs allege that the Government and, more
2 specifically, the Internal Revenue Service (“IRS”) and the Department of Treasury
3 negligently and wrongfully utilized Plaintiffs’ property in furtherance of a government
4 investigation of individuals filing fraudulent tax returns. Before the Court is the
5 Government’s motion to dismiss under Rules 12(b)(1) and 12(b)(6) and 28 U.S.C.
6 § 2680. (Dkt. No. 14 [“Def.’s Mot.”].) In the alternative, the Government asks the Court
7 to stay the action, in light of Plaintiffs’ concurrently-pending case in the United States
8 Court of Federal Claims. (*Id.*) For the following reasons, the Government’s motion to
9 dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) is GRANTED.

11 **II. BACKGROUND**

12
13 According to the Complaint, Snyder is a licensed financial lender in California.
14 (Dkt. No. 1 [“Compl.”] ¶ 10.) As part of its business, Snyder provides Refund
15 Anticipation Loans (“RAL”) to taxpayers, whereby Snyder lends money to taxpayers
16 based on their expected refund, as specified in a prepared tax return. (Compl. ¶¶ 10–11.)
17 The RAL recipient then instructs the IRS to send the tax refund proceeds directly to
18 Snyder for repayment of the RAL. (Compl. ¶ 11.) Snyder obtained referrals from TTP, a
19 tax preparation business. (Compl. ¶¶ 8, 12.) If TTP had a prospective client that wanted
20 a RAL, TTP or its affiliated preparers would refer the RAL to Snyder; Snyder would then
21 issue RALs to those referred individuals. (Compl. ¶¶ 12–13.)

22
23 In 2010, Plaintiffs allegedly did business with an independent tax preparer, Nancy
24 Hilton, who also submitted requests to Snyder to fund RALs for her clients. (Compl.
25 ¶ 17.) On February 22, 2010, Snyder allegedly issued a RAL to a taxpayer based on a
26 return prepared by Ms. Hilton and discovered that the taxpayer had used a fraudulent
27 identity. (Compl. ¶ 19.) Plaintiffs immediately issued a “stop payment” on the loan
28 check and on all other checks issued to Ms. Hilton’s referred clients. (Compl. ¶¶ 19–20.)

1 When Plaintiffs approached Ms. Hilton about the fraudulent taxpayer, she revealed that
2 she was working with IRS Criminal Investigations Special Agent Matt Daniels in an
3 undercover sting operation to identify instances of fraudulent tax returns. (Compl. ¶ 20.)
4 Special Agent Daniels also confirmed the ongoing investigation and requested that
5 Plaintiffs cancel the “stop payment” order and allow the checks to clear, so as not to
6 interfere with the federal investigation. (Compl. ¶ 21.) Upon Special Agent Daniels’s
7 express assurances that Plaintiffs would not suffer any losses as a result of the IRS’s
8 investigation, Plaintiffs issued new checks to replace each of the stopped checks.
9 (Compl. ¶¶ 22–24.)

10
11 Despite the IRS’s representations, the IRS allegedly failed to pay refunds on the
12 RAL loans issued to Ms. Hilton’s clients and did not offer any other form of
13 compensation for these losses. (Compl. ¶ 28.) On December 16, 2011, Plaintiffs
14 submitted claims for \$2,608,078.00 to the Department of Treasury, which were rejected
15 in February 2014. (Compl. ¶ 36.) Plaintiffs also filed the currently-pending action
16 *Snyder & Associates Acquisitions, LLC, et al. v. United States of America*, Case No. 1:14-
17 cv-00736-TCW, in the United States Court of Federal Claims. (Compl. ¶ 3.) Plaintiffs
18 subsequently filed this Complaint with this Court, alleging (1) negligence; (2) failure to
19 restore things wrongfully acquired; (3) conversion; and (4) abuse of process. (*See*
20 Compl.)

21 22 **III. ANALYSIS**

23
24 A defendant may move to dismiss an action for lack of subject matter jurisdiction
25 under Federal Rule of Civil Procedure 12(b)(1). Sovereign immunity is a jurisdictional
26 bar to a suit against the United States and its agencies. *See FDIC v. Meyer*, 510 U.S. 471,
27 475 (1994). A court has subject matter jurisdiction to entertain a suit for damages
28 brought against the United States only if the United States has explicitly waived its

1 sovereign immunity. *See McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir.1988);
2 *see also Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1088 (9th Cir. 2007)
3 (“Where a suit has not been [expressly] consented to by the United States, dismissal of
4 the action is required . . . because the existence of such consent is a prerequisite for
5 jurisdiction.”). The plaintiff has the burden to prove the applicability of a waiver. *Dunn*
6 *& Black*, 492 F.3d at 1088.

7
8 The FTCA was designed primarily to remove the traditional sovereign immunity of
9 the United States from suits in tort and to render the Government liable in tort as a private
10 individual would be under like circumstances. *Richards v. United States*, 369 U.S. 1, 6
11 (1962); 28 U.S.C. § 1346(b). This waiver of immunity, however, is subject to certain
12 exceptions, including the 13 specifically-enumerated exceptions set forth in § 2680. *See*
13 28 U.S.C. § 2680(a)–(n) (listing exceptions to § 1346(b)). If a plaintiff’s tort claim falls
14 within one of the exceptions, the district court lacks subject matter jurisdiction. *Morris v.*
15 *United States*, 521 F.2d 872, 874 (9th Cir. 1975). Although the plaintiff has the burden
16 of establishing subject matter jurisdiction, the Ninth Circuit has held that “the United
17 States bears the burden of proving the applicability of one of the exceptions to the
18 FTCA’s general waiver of immunity.” *Prescott v. United States*, 973 F.2d 696, 702 (9th
19 Cir. 1992). Here, the Government has met its burden in demonstrating that Plaintiffs’
20 claims fall within the statutory exception under § 2680(c), requiring dismissal of this case
21 for lack of jurisdiction.

22
23 Section 2680(c) provides that the United States has not waived its immunity with
24 regard to “[a]ny claim arising in respect of the assessment or collection of any tax”
25 This language has been construed broadly to “encompass any activities of an IRS agent
26 even remotely related to his or her official duties.” *Capozzoli v. Tracey*, 663 F.2d 654,
27 658 (5th Cir. 1981) (affirming applicability of § 2860(c) where IRS agent allegedly
28 photographed the plaintiff in her nightclothes in the course of investigating casualty loss

1 claim); *see also Smith v. Brady*, 972 F.2d 1095, 1100 (9th Cir. 1992) (explaining that
2 § 2680(c) contemplates “a broad range of activity by the IRS [as arising] in connection
3 with the determination of tax liability”). The exception “applies not only to actions by
4 persons against whom the tax collection efforts are directed, but also to actions by third
5 parties injured by tax collection efforts.” *Perkins v. United States*, 55 F.3d 910, 913 (4th
6 Cir. 1995) (affirming applicability of § 2680(c) where plaintiff’s husband died of
7 asphyxiation in coal mine while recovering delinquent taxpayer’s equipment pursuant to
8 an IRS seizure order).

9
10 Here, Plaintiffs’ claims fall within the exception. According to Plaintiffs’ own
11 Complaint, the IRS was engaged in the investigation of individuals who were suspected
12 of defrauding the Government through “fraudulent tax returns with bogus claims for
13 refunds” and thus evading the proper payment of taxes owed to the Government. (*See*
14 *Compl. ¶ 20.*) Accordingly, the IRS’s efforts in identifying such individuals were “in
15 furtherance of the IRS’s duty to investigate, assess, and attempt to collect outstanding
16 federal tax obligations.” *See Simon v. Muschell*, No. 1:09 CV 301, 2015 WL 773038, at
17 *6 (N.D. Ind. Feb. 24, 2015) (internal citation and quotation marks omitted) (concluding
18 that the IRS’s criminal investigation of plaintiffs suspected of evading taxes that were
19 owed to the Government fell within the meaning of § 2680(c)). And although Plaintiffs
20 here were not the targets of the investigation, this is not a requirement to fall within the
21 purview of § 2860(c). *See Perkins*, 55 F.3d at 913; *Velez v. Mohiuddin*, No. CV 98-8859
22 SVW(RNBX), 1999 WL 810418, at *2 (C.D. Cal. Aug. 27, 1999) (“Section 2680(c)
23 applies to claims by the taxpayer and by third parties injured by tax collection efforts.”).

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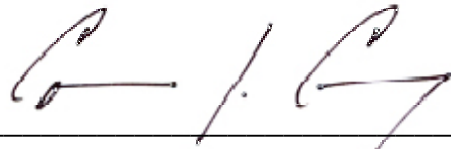
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1 **IV. CONCLUSION**

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3 Accordingly, the Government's motion to dismiss for lack of subject matter
4 jurisdiction is GRANTED.

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9 DATED: June 2, 2015



10
11 CORMAC J. CARNEY
12 UNITED STATES DISTRICT JUDGE
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