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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Martin Kirk,	)	No. CIV 00-851-PCT-EHC
Plaintiff,	)	<b>ORDER</b>
vs.	)	
IRS,	)	
Defendant.	)	
_____		

On September 7, 2000 the Defendant filed a Motion to Dismiss. (Dkt. 18). On September 12, 2000 the Court granted the Defendant's Motion to Dismiss with prejudice (Dkt. 20) and final Judgment was entered that same day (Dkt. 21). Because the Defendant's Motion to Dismiss was granted before the time had expired for the Plaintiff to respond, this Court will vacate the Order granting the Defendant's Motion to Dismiss (Dkt. 20) and the Judgment entered (Dkt. 21) in this case. Accordingly, the Defendant's Motion to dismiss (Dkt. 18) is now pending.

Following the entry of Judgment, the Plaintiff filed a Response to the Defendant's Motion to Dismiss. (Dkt. 22). Defendant asserts that the Plaintiff's claim against the United States is barred and should be dismissed because the Plaintiff has failed to meet his burden of demonstrating a waiver of immunity. See Graham v. Federal Emergency Management Agency, 149 F.3d 997 (9th Cir. 1998)(stating that in suits against the United States, the Plaintiff bears the burden of demonstrating an unequivocal waiver of immunity). In Plaintiff's First Amended Complaint and his Response to Defendant's Motion to dismiss,

1 Plaintiff has only asserted that waiver “is nullified by Article 1 Section 8 U.S. Code.” (Dkt. 2). This  
2 reference to the powers of congress as established by the Constitution do not indicate any waiver of  
3 immunity for actions brought against the United States. Therefore, because the Plaintiff has not  
4 demonstrated an unequivocal waiver of immunity, the Court will grant the Defendant's Motion to Dismiss  
5 for lack of subject matter jurisdiction<sup>1</sup>.

6 Next, Plaintiff has filed a Motion for a hearing (Dkt. 23), a Motion for Summary Judgment (Dkt.  
7 24), and a second amended Complaint (Dkt. 25). The Court will dismiss the Motions for hearing and for  
8 Summary Judgment as moot based on the Court's granting of the Defendant's Motion to Dismiss as  
9 discussed above and will strike the second amended Complaint for failure to comply with the Federal Rules  
10 of Civil Procedure 15 (a).

11 Rule 15 (a) of the Federal Rules of Civil Procedure allows a Plaintiff to amend an original complaint  
12 once as a matter of right before any responsive pleading is filed, otherwise, a party may amend the pleading  
13 only by leave of court or written consent of the adverse party. Plaintiff has already filed one amended  
14 complaint in this case (Dkt. 2) and has not sought leave of the court to file any additional complaints.<sup>2</sup>  
15 Accordingly, the Court will strike the Plaintiff's second amended Complaint.

16 Additionally, the Court notes that the allegations and claims in this case are indistinguishable from  
17 the allegations and claims already adjudicated in this and the prior two cases filed by the Plaintiff against  
18 the Defendants. See Martin Edwin Kirk v. United States, No. CIV 97-648-PCT-SMM; Martin Edwin  
19 Kirk v. United States, No. CIV 96-1415-PXH-SMM. If Plaintiff continues to file actions alleging the same  
20 causes of action and based on the same set of facts, Plaintiff faces sanctions pursuant to Rule 11 of the  
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22 <sup>1</sup> Although Court's are required to construe a pro se litigant's pleadings and papers liberally,  
23 McGuckin v. Smith, 974 F.2d 1050, 1055 (9th Cir. 1992), Pro se litigants are held to the same legal  
24 standards as other litigants, See King v. Atiyeh, 814 F.2d 565, 567 (9<sup>th</sup> Cir. 1987)(applying the same  
25 standards for summary judgment to pro se litigants as those applied to other litigants).

26 <sup>2</sup> Even if the Plaintiff had sought leave to amend, and assuming the Court would have granted  
27 leave to amend, the second amended complaint does not cure the defects of the prior two Complaints; it  
28 fails to demonstrate any waiver of immunity. In addition, the Plaintiff has been directed to consult the  
Federal Rules of Civil Procedure and the Rules of Practice for the District Court of Arizona on numerous  
occasions. See Martin Edwin Kirk v. United States, No. CIV 96-1415-PXH-SMM (Dkt. 75).

1 Federal Rules of Civil Procedure which provides that sanctions may be imposed for submission of motions  
2 or other papers to the Court by an attorney or unrepresented party which the Court determines were  
3 presented for an improper purpose or without a reasonable inquiry under the circumstances.

4 The Court being fully advised,

5 **IT IS ORDERED** vacating the Order granting the Defendant's Motion to Dismiss. (Dkt. 20) and  
6 vacating the Judgment (Dkt. 21).

7 **IT IS FURTHER ORDERED** granting the Defendant's Motion to Dismiss. (Dkt. 18). The  
8 clerk shall enter judgment accordingly.

9 **IT IS FURTHER ORDERED** striking the Plaintiff's Amended Complaint (Dkt. 25), for failure  
10 to comply with Federal Rule of Civil Procedure 15, and dismissing the Plaintiff's Motion for a hearing (Dkt.  
11 23), and Motion for Summary Judgment (Dkt. 24) as moot.

12 **IT IS FURTHER ORDERED** that any documents submitted by Plaintiff after the date of this  
13 order be placed on the left side of the Court's file without being docketed with the exception of appeal  
14 denominated as a "Notice of Appeal."

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16 DATED this \_\_\_\_\_ day of October, 2000.

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20 Earl H. Carroll  
21 United States District Judge  
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