

# The United States Court of Federal Claims

No: 06-357 C

July 19, 2006

**Not for Publication**

**JOHNNY L. HARRIS,**

*Plaintiff,*

v.

**THE UNITED STATES OF AMERICA,**

*Defendant.*

## **OPINION and ORDER**

Before this court is the defendant United States' motion pursuant to Rule 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims ("RCFC") seeking dismissal of plaintiff's complaint. Defendant argues that plaintiff makes frivolous allegations of facts which fail to establish the existence of a contract between the Federal Bureau of Investigation ("FBI") and plaintiff. Def.'s Mot. 4. Defendant also argues plaintiff fails to identify any private property taken by the government under the Fifth Amendment. Def.'s Mot. 4. Defendant requests that plaintiff's complaint be dismissed for lack of jurisdiction, or in the alternative for failure to state a claim upon which relief can be granted. Def.'s Mot. 4. As explained below, this court in part agrees and dismisses the complaint for lack of subject matter jurisdiction.

## **I. INTRODUCTION**

On May 4, 2006, plaintiff filed a complaint with this court "seeking an award of unpaid salaries, fringe benefits, sick time, holiday time, vacation time, sick leave, and just compensation under the Fifth Amendment to the Constitution of the United States for the value or property, and services owned by Petitioner which has been taken and or withheld by the United States through action by FBI."<sup>1</sup> Plaintiff alleges that he accepted an offer from "the Agent in Charge of the Houston Division" of the FBI for a "Top Secret Assignment." Pl. Comp. ¶ 11. Under this offer, plaintiff was to be a special agent with the FBI "and assigned a case which when everything else failed that was lawful to do" he could make arrests. Pl. Comp. ¶ 12. While plaintiff does not indicate when this alleged offer was made, he is specific enough to indicate that the offer of employment was communicated to him "by way of office intercom," Pl. Comp. ¶ 13, and that his oath of service was taken "with his index finger raised." Pl. Comp. ¶ 8.

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<sup>1</sup> The limited facts presented to the court are drawn from plaintiff's Complaint, page 2.

Although plaintiff did not inform the court of his specific assignments, in the course of his service as a special agent, he alleges that he “was compelled to trouble shoot in other federal departmental areas of law which he did while observing the departmental constitutional, and congressional limitations placed on the FBI.” Pl. Comp. ¶ 16. Though difficult to determine from the complaint, plaintiff apparently claims to have been investigating something regarding telecommunications. He makes a nonsensical claim that “Electrophysiological slavery, and Mann Act as well as color coded secret ranks became prosecutable.” Pl. Comp. ¶ 17. Plaintiff claims that in the performance of his duties he filed a “complaint for warrant of arrest and affidavits for search and seizure of the properties of the potential and prospective Defendants among which was their properties pertaining to the scientific atrocities done with telecommunication.” Pl. Comp. ¶ 18. Plaintiff also claims to have sought indictments when a number of potential and prospective witnesses became “tied to [the] Prono Film Industry.” Pl. Comp. ¶ 19. Plaintiff failed, however, to explain these terms or allegations in any manner that the court could understand.

For his alleged service to the FBI, plaintiff seeks: (1) unpaid compensation in the amount \$999,591.60; (2) interest on that amount; (3) “return” of his “International FBI Intelligence Shield of authority and credentials;” (4) an “a class action award” to all of the plaintiff’s witnesses since “the FCC did in fact place [Plaintiff] on their thought patterns, and as such provided sexual communications between the class and [plaintiff];” (5) “a way to mask his thought pattern cloaking shielding him from intrusion of other federal agencies;” (6) the right “to attend any and all execution[s] of the nature of death decided upon” in certain named courts; (7) a change of any Veteran Administration records that indicate he is mentally ill; and (8) “aspungment [sic] of his criminal trespass records compiled by the University of Houston.” Pl. Comp. p. 8-11.

On June 5, 2006, defendant filed its motion to dismiss plaintiff’s complaint for lack of jurisdiction pursuant to RCFC 12(b)(1) or for failure to state a claim pursuant 12(b)(6). Defendant argues that plaintiff’s allegations of fact cannot support any cause of action over which this court has jurisdiction and, alternatively, the complaint fails to state a claim for which relief can be granted. Def.’s Mot. 4.

## II. DISCUSSION

It is a truism that *pro se* litigants are afforded great leeway in presenting their issues to the court. *See, e.g., Forshey v. Principi*, 284 F.3d 1335, 1357-58 (Fed. Cir. 2002). “An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims.” *Hughes v. Rowe*, 449 U.S. 5, 15 (1980). Nevertheless, this broad latitude extended to *pro se* litigants cannot trump this court’s limited subject matter jurisdiction. *Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (noting that the fact a litigant “acted *pro se* in the drafting of his complaint may explain its ambiguities, but it does not excuse its failures”).

To be sure, subject matter jurisdiction may be challenged at any time by the parties or by the court, *sua sponte*, *see Folden v. United States*, 379 F.3d 1344, 1354 (Fed. Cir. 2004), and this court “obviously has jurisdiction to determine whether it has jurisdiction over a particular matter.” *Moyer v. United States*, 190 F.3d 1314, 1318 (Fed. Cir. 1999). This court’s jurisdiction is defined by the Tucker Act. 28 U.S.C. § 1491; *see Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005). The Tucker Act vests in the Court of Federal Claims jurisdiction over “any claim against the United

States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States” provided that the damages claim does not sound in tort. 28 U.S.C. § 1491(a)(1).

While plaintiff’s allegation that the FBI’s failure to pay his salary and benefits amounts to a violation of the Takings Clause of the Fifth Amendment, Pl. Compl. ¶ 3, the better view is to treat this allegation as a breach of contract or of an implied-in-fact contract. See *Hughes Commc’ns Galaxy, Inc. v. United States*, 271 F.3d 1060, 1070 (Fed. Cir. 2001) (cautioning against commingling takings compensation and contract damages because “the concept of a taking as a compensable claim theory has limited application to the relative rights of party litigants when those rights have been voluntarily created by contract,” quoting *Sun Oil Co. v. United States*, 572 F.2d 786, 818 (Ct. Cl. 1978)); *Janowsky v. United States*, 133 F.3d 888 (Fed. Cir. 1998) (viewing business owners’ claim that the FBI promised to compensate them for using the business as a front for an investigation as a claim for a breach of an implied-in-fact contract). See also *Adams v. United States*, 391 F.3d 1212 (2004) (affirming prior holdings that an obligation to pay does not fall under the protection of the Takings Clause).

Notwithstanding the breach of contract contentions, however, “where the factual allegations of a complaint are ‘patently insubstantial’ the complaint may be dismissed for lack of subject matter jurisdiction.”<sup>2</sup> *Neitzke v. Williams*, 490 U.S. 319, 327 (1989); *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974) (“Over the years this Court has repeatedly held that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit, wholly insubstantial, obviously frivolous, plainly unsubstantial, or no longer open to discussion.”) (citation omitted); *Kroll v. Finnerty*, 242 F.3d 1359, 1362 (Fed. Cir. 2001) (“A court must dismiss a complaint for lack of subject matter jurisdiction when the alleged basis for exercising federal jurisdiction is so attenuated and unsubstantial as to be absolutely devoid of merit.”).

The factual allegations forming the basis of plaintiff’s claim of his work with the FBI simply defy any recognized standards of logic or belief, exceeding the mere “subtle factual deficiencies” that would normally require judicial forbearance in favor of plaintiff, as a *pro se* litigant. *Hughes*, 449 U.S. at 15. “Unwarranted inferences of fact do not suffice to support a claim.” *Bradley v. Chiron Corp.*, 136 F.3d 1317, 1322 (Fed. Cir. 1998). The court considers the idea that the FBI would employ plaintiff for approximately 18 years in investigations concerning mind control via radio wave frequencies as “absolutely devoid of merit” and “wholly insubstantial.” *Hagans*, 415 U.S. at 537. It is not the place of federal courts to enlist the litigation process in the vain speculation of science fiction or the metaphysics of the incredible. Since plaintiff fails to make any meaningful allegations of facts to support his claim that he actually worked for the FBI, the court has no choice but to conclude that it lacks subject matter jurisdiction to hear plaintiff’s claim. *Hagans*, 415 U.S. at 536-37; *Thomas*, 56 Fed. Cl. 115.

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<sup>2</sup> Dismissal for failure to state a claim for which relief can be granted under Rule 12(b)(6) generally should not be granted “based on a judge’s disbelief of a complaint’s factual allegations.” *Neitzke*, 490 U.S. at 327.

### III. CONCLUSION

The only proper course of action is for the court to dismiss the complaint for lack of subject matter jurisdiction. Accordingly, the complaint is dismissed for lack of subject matter jurisdiction and the Clerk of the Court is directed to take appropriate action.

**IT IS SO ORDERED.**

*s/ Lawrence J. Block*

**Lawrence J. Block**

**Judge**