

**In the United States Court of Federal Claims**

**No. 09-209C**  
**(Filed: October 30, 2009)**  
(Not for Publication)

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**PATRICK LORNE FARRELL,**

**Plaintiff,**

**v.**

**THE UNITED STATES,**

**Defendant.**

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**ORDER OF DISMISSAL**

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Plaintiff brings this action alleging a host of claims, stemming from the enactment of the Commodity Futures Modernization Act of 2000 (“CFMA”), Pub. L. No. 106-554, 114 Stat. 2763, the Emergency Economic Stabilization Act of 2008 (“EESA”), Pub. L. No. 110-343, 122 Stat. 3765, and a foreclosure action relating to his home in Cape Coral, Florida. Among the Defendants named in Plaintiff’s complaint are the United States Congress, individual members of both the United States House and Senate, and the United States Treasury Department and its officers. Compl. ¶¶ 13-18. Plaintiff alleges that various governmental agents conspired to pass these statutes in order to destroy the housing market and deliver a windfall bailout to various financial institutions which participated in the conspiracy. Plaintiff further alleges that this conspiracy allowed a private mortgage lender to extend to him a predatory home loan and subsequently institute a foreclosure sale of his property, for which he seeks \$1 million in damages. Id. ¶ 4.

This matter comes before the Court on Defendant’s motion to dismiss for lack of subject matter jurisdiction or failure to state a claim upon which relief can be granted pursuant to Rules 12(b)(1) and (b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). For the reasons stated below, Defendant’s motion is granted, and Plaintiff’s complaint is dismissed.

## **Background**<sup>1</sup>

Plaintiff alleges a broad conspiracy by various government agents and private financial institutions to perpetrate a fraud against him and others like him through the adoption of the CFMA and the EESA, resulting in acts of trespass, breach of contract, money laundering, racketeering, and fraud. See id. ¶ 20-27. According to Plaintiff, the CFMA was passed in 2000 without any debate in either house of Congress, allowing banks to “write bogus loans” and convert them into mortgage-backed security (“MBS”) instruments. Id. ¶¶ 32-36, 39-40. Plaintiff characterizes this enactment as an “act of gross deception, fraud, negligence, and the proximate cause” of Plaintiff’s damages, as the CMFA was “buried” in an omnibus bill “10,000 pages long.” Id. ¶ 94. Plaintiff further alleges that each member of Congress had formed a contract with Plaintiff by taking their oaths of office to “support the Constitution and protect citizens from foreign and domestic enemies,” and breached those contracts by voting for the bill. Id. ¶ 79-80.

Plaintiff claims that several investment firms, such as Lehman Brothers and Bear-Stearns, were party to this “national fraud” by knowingly buying the inflated MBS instruments that Congress had allowed, and then selling them to investors, “knowing they would fail.” Id. ¶ 44. Plaintiff alleges that this resulted in illegal lending practices and that Congress had knowledge that the law would result in the “failure of the housing market and resulting foreclosures.” Id. ¶ 45.

In 2004, Plaintiff received a mortgage to purchase a home in Florida through GMAC, which he claims was obtained through illegal lending practices and fraud. Id. ¶¶ 48-49. Plaintiff alleges that his mortgage was securitized as an MBS and sold to Wells Fargo Bank, N.A., (“Wells Fargo”) and that the MBS was “intentionally overrated . . . but was junk.” Id. ¶¶ 50-51. In 2007, foreclosure proceedings were commenced against Plaintiff by Wells Fargo, which caused him to lose his home. Id. ¶ 56. On Nov. 14, 2007, Plaintiff filed suit against GMAC and other financial institutions for fraud, a case currently pending before the Lee County Court in Florida’s 20<sup>th</sup> Judicial Circuit, Farrell v. GMAC, No. 07-CA-14942 (filed Nov. 14, 2007).

In 2008, the EESA was passed, which according to Plaintiff was the result of another conspiracy to defraud the public, entered into by Congress, the Treasury Department, and various banking firms, resulting in billions of dollars of taxpayer money being given to various financial institutions that had participated in the conspiracy. Id. ¶¶ 70-71. As a result of the alleged breaches of contract by individual members of Congress and the conspiracy between Congress, the Treasury Department, and the various financial institutions, Plaintiff claims he suffered denial of due process under the Fifth Amendment, a taking of his property, and the foreclosure stemming from an unconstitutional “bill of attainder.” Id. ¶ 81.

On April 7, 2009, Plaintiff filed this suit for damages seeking \$1,000,000, an amount he claims is available to him and all other citizens by virtue of his birth certificate being a “bond”

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<sup>1</sup> These factual allegations are taken from Plaintiff’s complaint filed April 7, 2009.

held by the United States Department of Commerce. Id. ¶ 118-21.

### **Standard of Review**

Defendant moves for dismissal for lack of subject matter jurisdiction and for Plaintiff's failure to state a claim upon which relief may be granted. Subject matter jurisdiction must be established before the Court may proceed to the merits of the action. BearingPoint, Inc. v. United States, 77 Fed. Cl. 189, 193 (2007) (citing Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 88-89 (1998)). When a party seeks a Rule 12(b)(1) dismissal based on the sufficiency of the complaint's allegations on their face, those allegations are presumed to be true and are construed in a light most favorable to the complainant. Cedars-Sinai Med. Ctr. v. Watkins, 11 F.3d 1573, 1584 (Fed.Cir. 1993) (citing Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)). The Plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. Thomson v. Gaskill, 315 U.S. 442, 446 (1942).

The Tucker Act restricts the jurisdiction of this Court to claims against the government "not sounding in tort." 28 U.S.C. § 1491(a)(1); Keene Corp. v. United States, 508 U.S. 200, 214 (1993). Furthermore, the Tucker Act does not create any substantive rights of recovery for money damages, but rather the Plaintiff must allege a "money-mandating" source of law to bring the matter within the Court's jurisdiction. United States v. Mitchell, 463 U.S. 206, 217 (1983); United States v. Testan, 424 U.S. 392, 398 (1976). This court may only render judgment for money when the violation of a constitutional provision, statute, or regulation independently mandates payment of money damages by the United States. See Khan v. United States, 201 F.3d 1375, 1377-78 (Fed.Cir. 2000).

When a motion to dismiss is based upon the complainant's failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6), all of the allegations in the complaint are assumed to be true, but they must consist of "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). If the complaint fails to "raise a right to relief above the speculative level," the action will be dismissed. Id.

### **Discussion**

Plaintiff asserts that the various defendants engaged in the following acts in violation of the law: trespass, conspiracy, money laundering, racketeering, fraud, negligence, breach of contract, unconstitutional taking, violations of due process, and issuing a bill of attainder. Compl. ¶¶ 20-27, 79-81. See Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam). Complaints drafted by pro se litigants are held to "less stringent standards than formal pleadings drafted by lawyers." Naskar v. United States, 82 Fed. Cl. 319, 320 (2008) (quoting Haines, 404 U.S. at 520). However, this latitude does not allow a pro se plaintiff to avoid the Court's jurisdictional requirements. See Henke v. United States, 60 F.3d 795, 799 (Fed. Cir. 1995).

### Government Officials

Plaintiff maintains that the government officials mentioned in his complaint are “sued in their individual capacities.” See Compl. ¶¶ 18, 97. However, this Court does not possess jurisdiction to hear claims against members of Congress or members of the Treasury Department, either in their official or individual capacities. Brown v. United States, 105 F.3d 621, 624 (Fed. Cir. 1997) (“The Tucker Act grants the Court of Federal Claims jurisdiction over suits against the United States, not against individual federal officials”).

### Torts and Crimes

The claims of trespass, conspiracy, money laundering, racketeering, fraud, negligence, treason, copyright infringement, and securities fraud are torts or crimes which are outside of the jurisdiction of the Court. See 28 U.S.C. § 1491(a); Keene Corp, 508 U.S. at 214; Joshua v. United States, 17 F.3d 378, 379 (Fed. Cir. 1994).

### Breach of Contract

Although this Court has subject matter jurisdiction over breach of contract claims, if “the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve [the court’s jurisdiction],” then it will be dismissed for lack of subject matter jurisdiction. Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83, 89 (1998) (quoting Oneida Indian Nation of N.Y. v. County of Oneida, 414 U.S. 661, 666 (1974)). In this case, Plaintiff alleges various breaches of contract by members of Congress for failing to abide by their oaths of office in supporting and enacting the CFMA and the EESA. However, even assuming Plaintiff’s allegations are true, an oath of office of the United States is not an express or implied contract with any individual citizen, and therefore an action for breach cannot be maintained on these facts. Specifically, Plaintiff’s complaint does not allege the presence of “a mutual intent to contract including an offer, an acceptance, and consideration.” Trauma Serv. Group v. United States, 104 F.3d 1321, 1325 (Fed. Cir.1997). If anything, violation of an oath of office is a tort, not a breach of contract, which, as previously discussed, is outside this Court’s jurisdiction. See Nalette v. United States, 72 Fed. Cl. 198, 202 (2006); FDIC v. Dawson, 4 F.3d 1303 (5th Cir. 1993) (holding that a violation of an oath of office sounds in tort).

Additionally, claims against members of Congress are barred by the Speech or Debate Clause of the United States Constitution, which grants legislators immunity from suits arising out of the passage of legislation. U.S. CONST. art. I, § 6, cl. 1; Gravel v. United States, 408 U.S. 606, 617 (1972) (legislative immunity includes “acts of voting”).

### Fifth Amendment Taking

The claim for an unconstitutional taking likewise lies within the jurisdiction granted this Court by the Tucker Act, but fails to state a claim upon which relief can be granted. Plaintiff alleges that the “taking” occurred when Wells Fargo foreclosed upon his mortgaged property,

and that this was made possible by the enactment of the CFMA and EESA. Compl. ¶ 56. As previously discussed, suits against private parties may not be heard in this Court. See 28 USC 1491(a). A private party may be considered an instrumentality of the federal government if the party is operating under the authority of or pursuant to an order issued by the Federal Government. See Preseault v. United States, 100 F.3d 1525, 1551 (Fed. Cir.1996). However, here, Plaintiff alleges no facts suggesting that Wells Fargo was acting pursuant to any order or authority of the federal government when it foreclosed on Plaintiff's property.

#### Fifth Amendment Due Process

To the extent that Plaintiff alleges violations of his due process rights, these claims are not premised on a money-mandating Constitutional provision, and therefore also lie outside this Court's jurisdiction. "This Court's jurisdiction only extends to those provisions of the Constitution which are money-mandating and does not include claims based on the First Amendment, the Due Process Clause, the Eighth Amendment, or the Equal Protection Clause." Cosma-Nelms v. United States, 72 Fed. Cl. 170, 172 (2006); accord LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir.1995).

#### Bill of Attainder

The claim that the foreclosure proceeding constituted a "bill of attainder" is entirely unfounded and likewise beyond the jurisdiction of this Court. Bills of attainder are "legislative acts . . . that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial" and are prohibited by the Constitution. United States v. Brown, 381 U.S. 437, 448-49 (1965) (quoting United States v. Lovett, 328 U.S. 303, 315-16 (1946)). Here, neither the CMFA nor the EESA targeted Plaintiff or others like him for punishment without a trial, but rather concerned the management and activities of financial institutions. See generally 114 Stat. 2763; 122 Stat. 3765. Furthermore, the United States government did not institute the foreclosure proceedings against his property; a private bank, Wells Fargo, did. Compl. ¶ 56.

#### Conclusion

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED**, and Plaintiff's complaint is **DISMISSED** with prejudice.

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**MARY ELLEN COSTER WILLIAMS**  
Judge