

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civil No. 07-1298 JNE/JJG

CHRISTOPHER ROLLER, )  
 )  
 Plaintiff, )  
 )  
 v. ) **FEDERAL DEFENDANT'S**  
 ) **MEMORANDUM OF POINTS AND**  
 CENTRAL INTELLIGENCE AGENCY, ) **AUTHORITIES IN SUPPORT OF**  
 ) **MOTION TO DISMISS**  
 )  
 Defendant. )

**INTRODUCTION**

On or about February 23, 2007, plaintiff Roller filed his case against the Central Intelligence Agency (CIA). C.D. 1.<sup>1</sup>

By this complaint, plaintiff purports to sue the CIA for conspiracy against him under 42 U.S.C. §1985 and 18 U.S.C. §241. Roller also states in his original complaint that he filed a tort claim on June 30, 2006.<sup>2</sup>

On or about March 29, 2007 Roller filed an amended complaint. C.D. 3. According to the amended complaint, it

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<sup>1</sup>See Clerk's Docket, which is referred to herein as C.D. followed by an appropriate docket entry.

<sup>2</sup>Although it does not mention it in his complaint, his tort claim was denied on January 4, 2007. Because plaintiff's tort claim (and his patent application, also attached) was incorporated into his complaint, this court may consider it without converting this motion to dismiss to one for summary judgment. See Mattes v. ABC Plastics Inc., 323 F.3d695, 698 n.4 (8th Cir. 2003). Ex. 1 and 2.

was "added to the original complaint, "in it's entirety." [sic] Am. Compl., Para. 2 (emphasis in original). By this amended complaint, plaintiff attempts to turn the case into a class action suit per Rule 23, F.R.Civ.P. In the Amended Complaint, plaintiff also appears to allege a patent infringement claim. A reading of the complaint and the amended complaint, reveals that the gravaman of Roller's allegations against the CIA is that the CIA watches him instead of coming forward and "inform[ing] everyone" that he is "indeed god". Compl.

Roller suggests that by forcing answers to the allegations in his complaint, he can prove he is god. In his amended complaint, Roller expands upon his theory about others infringing on an alleged patent relative to "godly powers". Am. Compl., pg. 2, para. 3. He sues for patent infringement based on this theory.

The federal defendant requests this court dismiss plaintiff's allegations for lack of jurisdiction and failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(1), 12(b)(2), and 12(b)(6), F.R.Civ.P.

### STANDARD OF REVIEW

Defendant moves to dismiss the complaint and amended complaint (hereinafter jointly referred to as the complaint) for failure to set forth a jurisdictional basis pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2). Federal Rule of Civil Procedure 12(b) states: "The following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person". A Rule 12(b)(1) motion permits a defendant to challenge the complaint on its face, or the defendant may contest the truthfulness of the alleged facts. Osborn v. United States, 918 F. 2d 724, 729 n. 6 (8th Cir. 1990).

The CIA also moves to dismiss the complaint for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6). A cause of action may be dismissed for failure to state a claim when it appears beyond doubt that the plaintiff cannot prove any set of facts in support of [his] claim that would entitle [him] to relief. Schaller Tel. Co. v. Golden Sky Sys., Inc., 298 F. 3d 736, 740 (8th Cir. 2002). In analyzing the adequacy of a complaint under Rule 12(b)(6), the court must construe the complaint liberally and afford the plaintiff all reasonable inferences to be drawn

from those facts. See Turner v. Holbrook, 278 F. 3d 754, 757 (8th Cir. 2002). For the purpose of a motion to dismiss, facts in the complaint are assumed to be true. In re Navarre Corp., Sec. Litig., 299 F. 3d 735, 738 (8th Cir. 2002).

#### **LEGAL ANALYSIS**

Plaintiff purports to sue the CIA under the Federal Tort Claims Act, (FTCA), 28 U.S.C. §§ 1346(b) and 2671 through 2680. He also alleges "possible" conspiracy; 18 U.S.C. § 241, 1985 patent infringement;<sup>3</sup> and that he is proceeding through a class action. All claims must be dismissed.

#### **A. Plaintiff's Claims Must Be Dismissed As There Is No Jurisdictional Basis for the Court to Entertain Any Claim Against the CIA**

A complaint must be dismissed if the plaintiff fails to set forth a cognizable jurisdictional basis to allow the district court to entertain plaintiff's claims. F.R.Civ.P. 12(b)(1). In addition, a federal defendant is protected by the doctrine of sovereign immunity, and cannot be sued if sovereign immunity has not been waived. Whenever it appears by suggestion of the parties or otherwise that the court lacks matter jurisdiction, the court must dismiss the action.

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<sup>3</sup>While plaintiff purports to bring his patent infringement claim under 35 U.S.C. § 27, the correct citation is 35 U.S.C. § 271.

F.R.Civ.P. 12(h)(3). The person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation. See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189, (1936).

"It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction." United States v. Mitchell, 463 U.S. 202, 212 (1983).

To avoid dismissal, a complaint must allege facts sufficient to state a claim as a matter of law and not merely legal conclusions. Springdale Educ. Ass'n. v. Springdale Sch. Dist., 133 F.3d 649, 651 (8th Cir. 1998). Pro se pleadings should be liberally construed, and are held to a less stringent standard when challenged by motions to dismiss. See Haines v. Kerner, 404 U.S. 519, 520 (1972); Horsev v. Asher, 741 F.2d 209, 211 n.3 (8th Cir. 1984). Although it is to be liberally construed, a pro se complaint must still contain specific facts to support its conclusions. Kaylor v. Fields, 661 F. 2d 1177, 1183 (8th Cir. 1981).

#### **1. Federal Tort Claim**

In the present case the plaintiff has not named a proper

party for suit under the FTCA, nor properly pleaded an FTCA claim.<sup>4</sup> FDIC v. Meyer, 510 U.S. 471 (1994).

In order to plead an FTCA claim, the claim must be: 1) against the United States, 2) for money damages, 3) for injury or loss of property, or personal injury or death, 4) caused by the negligent or wrongful act or omission of any employee of the Government, 5) while acting within the scope of his office or employment, 6) under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. FDIC v. Meyer, 510 U.S. at 477. Here, plaintiff has failed to meet the requirements for properly alleging an FTCA claim. First, plaintiff's claim is brought against the CIA, and not against the United States. In addition, plaintiff has not alleged a claim for money damages, and makes a claim only for conspiracy and patent infringement, and not for injury, loss of property, personal injury, or death. Further, a review of plaintiff's FTCA claim shows that the alleged basis of his claim is conspiracy by the CIA. Plaintiff's conspiracy claim is not cognizable under the FTCA; under Minnesota law (where plaintiff appears to allege that the act in question occurred), a conspiracy claim must be supported by an

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<sup>4</sup>Although plaintiff did not allege an FTCA Claim in his complaint, the CIA will construe it as such. Plaintiff's administrative claim was denied January 4, 2007 he was notified that he could file suit. Ex. 1

underlying tort, which plaintiff has not alleged here. D.A.B. v. Brown, 570 N.W. 2d 168, 172 (Minn. App. 1997). Thus, because a private person would not be liable to plaintiff for conspiracy, plaintiff cannot maintain a claim against the CIA under the FTCA for conspiracy. Accordingly, plaintiff's FTCA claim cannot proceed against the CIA, and must be dismissed.

## **2. Conspiracy**

Plaintiff's conspiracy claim must also face dismissal for lack of ripeness. He sues the CIA for "possible" conspiracy against him pursuant to "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." Texas v. U.S., 523 U.S. 296, 300 (1998) (internal quotation marks omitted). Here, where plaintiff's claim is still hypothetical, and against the CIA only for "possible" conspiracy, it is not ripe for review. and seeks to test the defendant via his complaint to prove the conspiracy. In addition 42 U.S.C. §1985 prohibits:

two or more persons in any State or Territory [from] conspir[ing] or go[ing] in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws...

42 U.S.C. §1985(3).

In order to state a claim under 42 U.S.C. § 1985(3), a plaintiff must plead 1) a conspiracy; 2) for the purpose of

depriving a person or class of persons of equal protection of the laws; 3) an act in furtherance of the alleged conspiracy; and 4) an injury to person or property, or the deprivation of a legal right. Federer v. Gephardt, 363 F.3d 754, 757 (8th Cir. 2004). The "purpose" element of a claim under § 1985(3) also requires proof of a "class-based 'invidiously discriminatory animus.'" Larson v. Miller, 76 F.3d 1446, 1454 (8th Cir. 1996). Further, because § 1985 provides a remedy but grants no substantive stand-alone rights, the source of the right or laws violated must be found elsewhere. Federer, 363 F.3d at 757. Here, plaintiff has not alleged a class-based animus; his claims are based on actions allegedly taken by the CIA against him alone. As a result, he has failed to properly allege at least the purpose element of a conspiracy. In addition, because all of plaintiff's claims in addition to his § 1985 claim must be dismissed as well, and because § 1985 grants no substantive stand-alone rights, plaintiff's § 1985(3) claim must be dismissed.

18 U.S.C. §241 prohibits:

Two or more persons [from] conspir[ing] to injure, oppress, threaten, or intimidate Any person in any State, Territory, Commonwealth, Possession, or District in the Free exercise or enjoyment of any right or Privilege secured to him by the Constitution

Or laws of the United States, or because of his having so exercised the same.

18 U.S.C. §241. Even a liberal reading of plaintiff's complaint fails to make out a viable claim of conspiracy under § 1985.

18 U.S.C. §241 confers no private right of action. U.S. v Wadena, 152 F. 3d 831, 846 (8th Cir. 1998). See in dicta, "Courts have repeatedly held there is no private right of action under §241 even though the statute allows federal authorities to pursue criminal charges". (Cites omitted). As a result, plaintiff's 18 U.S.C. § 241 claim must be dismissed as well.

### **3. Patent Claim**

Plaintiff appears to allege that he has a patent on "godly powers". A public record search shows that plaintiff thus far has only a patent application; a patent has not been granted. See [www.uspto.gov](http://www.uspto.gov). (Click search aids; existing patents and published applications. Put in the number 20070035812; shown only as an application). See Ex. 2 Patent App. Consequently, plaintiff's claim is not ripe, as there is no patent to infringe. Id. Moreover, plaintiff's patent infringement claim must be presented to the Court of Federal Claims (for redress) as plaintiff acknowledges in his

complaint. See 28 U.S.C. 1498; see also, Lockridge v. U.S., 218 Ct. Cl. 687, \*2 n. 2 (1978) (noting that 28 U.S.C. §1338 does not waive the sovereign immunity of the United States, citing Truton v. U.S., 212 F. 2d 344-355 (6th Cir. 1954).

#### **4. Class Action Allegations**

While plaintiff purports to bring a class action in his amended complaint, plaintiff fails to properly allege any of the required elements for a class action. In order to maintain a class action, plaintiff must allege 1) that the class is so numerous that joinder of all members is impracticable, 2) there are questions of law or fact common to the class, 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and 4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). While plaintiff has asserted that his class consists of "perspective students that couldn't pass the [LSAT] because they had no godly powers," he has failed to explain why joinder of all members would be impracticable, how his claims would be typical of the claims or defenses of the class, or how he would fairly and adequately protect the interests of the class. Indeed, because he is asserting that he in fact *has* godly powers, it is unlikely that plaintiff could properly represent a class of individuals *without* godly powers. As a result, plaintiff's class action allegations should be dismissed as well.

Plaintiff's claims cannot survive scrutiny under the jurisdictional challenges. Consequently this court must dismiss plaintiff's claims.

**B. Plaintiff's Claims Must Be Dismissed for Failure to State A Claim Upon Which Relief May Be Granted**

Dismissal under Rule 12(b)(6) is appropriate and serves to eliminate actions which are fatally flawed in their legal premises and deigned to fail, thereby sparing litigants the burden of unnecessary pretrial and trial activity. Neitzke v. Williams, 490 U.S. 319, 326-327 (1989).

Dismissal of a claim is appropriate where it is clear no relief can be granted under any set of facts that are consistent with the allegations of the complaint. See F.R.Civ. P. 12(b)(6). When considering a motion to dismiss pursuant to Rule 12(b)(6), a "district court must construe the complaint liberally". Turner v. Holbrook, 278 F.3d 754,757 (8th Cir. 2002). However, 12(b)(6) serves to eliminate actions which are fatally flawed in their legal premises. In re Navarre Corp. Sec. Litig., 299 F.3d 735, 738 (8th Cir. 2002). The plaintiff's claims in the instant case are fatally flawed, as shown in part A, above. Either the statutes are not relevant; the facts are patently and demonstrably untrue on their face, (there is no patent), or jurisdiction has not

and cannot be established. A liberal reading of the entirety of plaintiff's claims show that the claims are legally insufficient and must be dismissed.

**CONCLUSION**

Based upon a full review of all the facts and records in this case, the plaintiff's claims must be dismissed with prejudice in their entirety.

Dated: April 30, 2007

RACHEL K. PAULOSE  
United States Attorney

s/Patricia R. Cangemi  
Patricia R. Cangemi  
Attorney ID Number 153527  
Attorney for Defendant  
United States Attorney's Office  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
Telephone: (612) 664-5600  
Fax: (612) 664-5788