UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 29 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GEORGE C. CHATMAN, Plaintiff-Appellant, v. ARROWHEAD CREDIT UNION, Defendant-Appellee.	No. 20-55135 D.C. No. 5:19-cv-02173-JGB-KK Central District of California, Riverside ORDER

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Upon a review of the record, the response to the court's February 24, 2020 order, and the opening brief received on March 11, 2020, we conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov Message-Id:<29150461@cacd.uscourts.gov>Subject:Activity in Case 5:19-cv-02173-JGB-KK George C. Chatman v. Arrowhead Credit Union Order on Motion to Dismiss Content-Type: text/html

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing
The following transaction was entered on 1/24/2020 at 8:32 AM PST and filed on 1/24/2020

Case Name: George C. Chatman v. Arrowhead Credit Union

Case Number: 5:19-cv-02173-JGB-KK

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WARNING: CASE CLOSED on 01/24/2020

Document Number: 20

Docket Text:
MINUTES (IN CHAMBERS) by Judge Jesus G. Bernal: Order (1) GRANTING Defendants Motion to Dismiss (Dkt. No. [9]); and (2) VACATING the January 27, 2020 Hearing. Plaintiffs claims are DISMISSED WITH PREJUDICE. (MD JS-6. Case Terminated) (twdb)

5:19-cv-02173-JGB-KK Notice has been electronically mailed to:
Colleen A Deziel cad@amclaw.com, ema@amclaw.com, amc@amclaw.com
George G Romain ggr@amclaw.com, gromain@romainlaw.net
5:19-cv-02173-JGB-KK Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :
George C. Chatman
2350 Osbun Street Unit 15
San Bernardino CA 92404

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	EDCV 19-2173 JGB (KKx)	Date	January 24, 2020
Title	*George C. Chatman v. Arrowhead Credit Union*		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: Order (1) GRANTING Defendant's Motion to Dismiss (Dkt. No. 9); and (2) VACATING the January 27, 2020 Hearing (IN CHAMBERS)

Before the Court is a Motion to Dismiss Plaintiff's Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(5), and 12(b)(6) filed by Defendant Arrowhead Credit Union. ("Motion," Dkt. No. 9.) The Court finds the Motion appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motion, the Court GRANTS the Motion. The Court VACATES the hearing set for January 27, 2020.

I. BACKGROUND

Plaintiff George C. Chatman filed his complaint on November 2, 2019. ("Complaint," Dkt. No. 1.) The Complaint alleges three causes of action: (1) trespass of law[1] and invalid judgment, (2) return of Plaintiff's social security with interest, (3) intentional infliction of emotional distress. (Complaint at 5–6.) Defendant filed this Motion on December 16, 2019.[2] (Motion.) In support of the Motion, Defendant filed the Declaration of Colleen A. Deziel, the

[1] Plaintiff alleges that Defendant violated 42 U.S.C. section 407(a), Article 1 section 9 of the United States Constitution, 42 U.S.C. section 1983, and the 14th Amendment of the United States Constitution. (Complaint at 5.)

[2] The Motion lacked a table of contents and a table of authorities in violation of L.R. 11-8. (See Dkt. No. 10.) Defendant filed a corrected memorandum of points and authorities on December 19, 2019. (Dkt. No. 12.)

Declaration of George G. Romain, and a Request for Judicial Notice. ("Deziel Declaration," Dkt. No. 9-2; "Romain Declaration," Dkt. No. 9-3; "Request for Judicial Notice," Dkt. No. 9-4.) Plaintiff opposed the Motion on December 26, 2019. ("Opposition," Dkt. No. 15.) In support of the Opposition, Plaintiff filed the Declaration of George C. Chatman. ("Chatman Declaration," Dkt. No. 16.) Defendant replied on January 13, 2020. ("Reply," Dkt. No. 19.)

II. REQUEST FOR JUDICIAL NOTICE

Defendant requests judicial notice of several documents from George Chatman v. Arrowhead Credit Union, Case No. CIVDS1413324, ("State Case") a case filed in the Superior Court of the State of California for the County of San Bernardino, and related appeals. (See Request for Judicial Notice.) Plaintiff also submits documents from the State Case. (See Opposition.) A court may take judicial notice of an adjudicative fact not subject to "reasonable dispute," either because it is "generally known within the territorial jurisdiction of the trial court," or it is capable of accurate and ready determination by resort to sources whose "accuracy cannot reasonably be questioned." Fed. R. Evid. 201. Proceedings of other courts, including orders and filings, are also the proper subject of judicial notice when directly related to the case. See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (stating that courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") The State Case is relevant to this case: the same parties dispute the legality of the same conduct, specifically Defendant's removal of funds from Plaintiff's credit account. (Compare Complaint at 2 with Request for Judicial Notice at 6.) Accordingly, the Court GRANTS Defendant's Request for Judicial Notice and takes judicial notice of the state court documents appended to the Opposition.

III. LEGAL STANDARD

Defendant moves to dismiss the Complaint pursuant to Rules 12(b)(1), 12(b)(5), and 12(b)(6) of the Federal Rules of Civil Procedure.

A. Rule 12(b)(1)

A Rule 12(b)(1) motion challenges the court's subject matter jurisdiction, without which, a federal district court cannot adjudicate the case before it. See Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375 (1994). Pursuant to Rule 12(b)(1), a party may seek dismissal of an action for lack of subject matter jurisdiction "either on the face of the pleadings or by presenting extrinsic evidence." Sierra v. Dep't. of Family and Children Servs., 2016 WL 3751954, at *3 (C.D. Cal. Feb. 26, 2016) (quoting Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003)). Thus, a jurisdictional challenge can be either facial or factual. White v. Lee, 227 F.3d 1214–42 (9th Cir. 2000). In a facial attack, the moving party asserts that the allegations contained in the complaint are insufficient on their face to invoke federal jurisdiction. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). When evaluating a facial attack, the court must accept the factual allegations in the plaintiff's complaint as true. Comm. for

Immigrant Rights of Sonoma Cty. v. Cty. of Sonoma, 644 F. Supp. 2d 1177, 1189 (N.D. Cal. 2009).

"By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Safe Air for Everyone, 373 F.3d at 1039. In resolving a factual challenge, the court "need not presume the truthfulness of the plaintiff's allegations" and "may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment." White, 227 F.3d at 1242. "Where jurisdiction is intertwined with the merits, [the Court] must 'assume the truth of the allegations in the complaint . . . unless controverted by undisputed facts in the record.'" Warren, 328 F.3d at 1139 (quoting Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)).

B. Rule 12(b)(5)

A motion to dismiss under Rule 12(b)(5) for insufficient service of process is governed by the requirements of Federal Rule of Civil Procedure 4. In pertinent part, Rule 4(e) permits an individual in the United States to be served with the summons and complaint (1) pursuant to the state law in the state where the district court is located or (2) by personal delivery, leaving a copy at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there, or delivering a copy to an authorized agent. Fed. R. Civ. P. 4(e). California law allows an individual to be served in lieu of personal delivery by leaving a copy at the person's usual mailing address in the presence of a competent member of the household and by mailing a copy to the same address thereafter. Cal. Civ. Code. P. § 415.20. Substituted service can also be effected by leaving a copy of process with the person who is apparently in charge of the office of the person to be served during usual office hours and thereafter mailing a copy to that address. Id.

C. Rule 12(b)(6)

Under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"), a party may bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) must be read in conjunction with Federal Rule of Civil Procedure 8(a), which requires a "short and plain statement of the claim showing that a pleader is entitled to relief," in order to give the defendant "fair notice of what the claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see Horosny v. Burlington Coat Factory, Inc., No. 15-05005, 2015 WL 12532178, at *3 (C.D. Cal. Oct. 26, 2015). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint—as well as any reasonable inferences to be drawn from them—as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief'

requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

IV. DISCUSSION

Defendant argues that Plaintiff's claims are jurisdictionally barred by the Rooker-Feldman doctrine. (Motion at 9–14.) The Rooker-Feldman doctrine prevents a federal district court from exercising jurisdiction over a direct appeal from the final judgment of a state court. Noel v. Hall, 341 F.3d 1148, 1154 (9th Cir. 2003). It applies to "de facto appeals"—where a party is (1) asserting as her legal injury legal error by the state court and (2) seeks as her remedy relief from the state court judgment. Kougasian v. TMSL, Inc., 359 F.3d 1136, 1140 (9th Cir. 2004). When a plaintiff brings a de facto appeal, the doctrine also precludes district court jurisdiction over any issue that is "inextricably intertwined" with the state court's judgment. Cooper v. Ramos, 704 F.3d 772, 777 (9th Cir. 2012). A claim is "inextricably intertwined" with a state court judgment "if the general claim succeeds only to the extent that the state court wrongly decided the issues before it." Id. at 778 (quoting Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25 (1987)).

Plaintiff's first cause of action seeks to overturn the judgment in the State Case, which Plaintiff alleges is void for legal error.[3] (Complaint at 5.) This is a de facto appeal: Plaintiff alleges that the California state court injured him when it misapplied state law, and he seeks to overturn that decision. (See, e.g., Complaint at 3 ("The jury verdict in collaboration with the judgment of the state court is an intentional violation of federal law and the U.S. Constitution, it is a direct attack to disregard the Plaintiff's federal constitutional statutory right known as Oppression[.]")) But under Rooker-Feldman, this Court lacks authority "to review the final determinations of a state court in judicial proceedings." See Worldwide Church of God v. McNair, 805 F.2d 888, 890 (9th Cir. 1986); see also Atlantic Coast Line R. Co. v. Locomotive

[3] Plaintiff's first claim also alleges "trespass of law" for Defendant's violation of the same federal statutes at issue in the state case. (Complaint at 5.)

Engineers, 398 U.S. 281, 296 (1970) (lower federal courts may not sit in review of state courts' decisions); Rooker v. Fidelity Trust Co., 263 U. S. 413, 415–16 (1923) (district courts may not exercise appellate jurisdiction over state courts). To the extent that Plaintiff believes that the state court misapplied federal law, the appropriate forum for review is the United States Supreme Court—not federal district court. See 28 U.S.C. § 1257. Accordingly, the Court lacks jurisdiction to hear Plaintiff's first claim.

Defendant argues that Plaintiff's second and third claims are also precluded under Rooker-Feldman because they are inextricably intertwined with the de facto appeal. (Motion at 12-14.) "A claim is inextricably intertwined with a state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it or if the relief requested in the federal action would effectively reverse the state court decision or void its ruling." Fontana Empire Ctr., LLC v. City of Fontana, 307 F.3d 987, 992 (9th Cir. 2002) (internal quotations omitted).

Plaintiff's second cause of action seeks return of the funds that Defendant took from his account on June 9, 2014. (Complaint at 6.) In the State Case, the jury found that George Chatman did not have a right to possess the funds contained in his savings account with Arrowhead Credit Union as of June 9, 2014. (Request for Judicial Notice at 89.) Because Plaintiff's second cause of action seeks the return of those same funds, it only succeeds if the jury finding was wrong. Plaintiff's second claim, therefore, is inextricably intertwined with the state court judgment.

Plaintiff's third cause of action is for intentional infliction of emotional distress stemming from "Defendant[']s Reprehensible conduct[, which included] refusing to release [] Plaintiff's social security and [holding] it for 14 days." (Complaint at 6.) Plaintiff can only succeed on his intentional infliction of emotional distress claim based upon the taking up the funds if the taking of the funds was somehow wrongful. But, as explained above, the jury found that Plaintiff did not have a right to possess the funds. Plaintiff's third claim, therefore, also succeeds only if the jury finding on his right to possess the funds was wrong—making it likewise inextricably intertwined with the state court judgement.

Plaintiff's first claim is a de facto appeal, and his second and third claims are inextricably intertwined with that de facto appeal. Accordingly, under Rooker-Feldman, this Court lacks jurisdiction to hear any of Plaintiff's claims. No amendment could cure these jurisdictional defects. Granting leave to amend, therefore, would be futile.

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V. CONCLUSION

For the reasons above, the Court GRANTS Defendant's Motion. Plaintiff's claims are DISMISSED WITH PREJUDICE. The January 27, 2020 hearing is VACATED. The Clerk is directed to close the case.

IT IS SO ORDERED.

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Attorneys for Defendant Arrowhead Credit Union

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

George C. Chatman,

Plaintiff,

vs.

Arrowhead Credit Union,

Defendant.

Case No. 5:19-cv-02173-JGB-KKx

JUDGMENT IN FAVOR OF ARROWHEAD CREDIT UNION AND AGAINST GEORGE C. CHATMAN

Assigned to Hon. Judge Jesus G. Bernal

Complaint Filed: November 12, 2019

Defendant Arrowhead Credit Union filed its Motion to Dismiss the plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(5) and 12 (b)(6) along with reply papers (Dkt. Nos. 9, 12 and 19), which was opposed by the plaintiff (Dkt. Nos. 15 and 16). The Court having reviewed all papers in support of and in opposition to Defendant Arrowhead Credit Union's Motion to Dismiss in Chambers on January 24, 2020 determined the motion appropriate for resolution without a hearing.

After consideration of the moving and responding parties' Memoranda of Points and Authorities, the Court granted the Motion in its entirety and ordered the case Dismissed with Prejudice. Therefore, and for the reasons set forth in this Court's order granting the Motion:

IT IS HEREBY ORDERED ADJUDGED AND DECREED that judgment be, and hereby is, granted to Defendant Arrowhead Credit Union against plaintiff George C. Chatman on all causes of action alleged in the plaintiff's Complaint and that plaintiff George C. Chatman take

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nothing by way of his complaint against Arrowhead Credit Union; and

2. **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that, as the prevailing party in this action, defendant Arrowhead Credit Union shall recover from plaintiff George C. Chatman its costs of suit in accordance with Rule 3.1700 of the California Rules of Court, in an amount to be determined upon submission of a Memorandum of Costs by defendant Arrowhead Credit Union and entered by the Court.

DATED: February 3, 2020

JESUS G. BERNAL
United States District Court Judge

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Supreme Court of California

JORGE E. NAVARRETE
CLERK AND EXECUTIVE OFFICER
OF THE SUPREME COURT

October 22, 2019

George C. Chatman
2350 Osbun Street, Unit 15
San Bernardino, CA 92404

Re: **S257774 — Chatman v. Arrowhead Credit Union**

Dear Mr. Chatman:

We hereby return unfiled your letter, dated October 18, 2019. The opinion in the above-referenced case was filed on August 12, 2019. This court lost jurisdiction to act on any petition for review after October 11, 2019. Without this jurisdiction, this court is unable to consider your request for legal relief.

Very truly yours,

JORGE E. NAVARRETE
Clerk and
Executive Officer of the Supreme Court

By: F. Castuera, Deputy Clerk

cc: Rec.

George C. Chatman
2350 Osbun Street Unit 15
San Bernardino, California 92404
Tel. No. 909-882-1693
Pro-Per

October 18, 2019

In The

Supreme Court of the State of California

George C. Chatman Plaintiff/Appellant v. Arrowhead Credit Union Defendant/Appellee	Case No. E 070413 Motion to File Out of Time For a Petition for Review of the 4th Appellate District Court Division 2 Opinions Dated; August 12, 2019, March 9, 2016.

George C. Chatman Appellant in Pro Per hereby file this motion requesting the Honorable Court to a late filing of a petition for review for financial reasons, and also I did wrongfully filed a certificate of certiorari without your ruling. I wish to file a petition for review on November 18, 2019 if this honorable court will permit the petitioner, so I can also work on my brief.

Respectfully Submitted By:
George C. Chatman

George C. Chatman
2350 Osbun Street Unit 15
San Bernardino, California 92404
Tel No. 909-882-1693

October 28, 2019

In The Court of Appeal

4th Appellate District Court Division 2

George C. Chatman
Appellant
v.
Arrowhead Credit Union
Appellee

Case NO. E 070413

Motion To Reopen the Date of the Judgment filed on August 12, 2019.

George C. Chatman in Pro-Per filed this motion to reopen the date of judgment on the grounds that according to the California Rules of Court 8. 5000(e), a petition for review must be filed within 10 days after the judgment becomes final to that court. The copy of the judgment was mailed to the Appellant on August 28, 2019 and was received on August 29, 2019 that exceeded the 10 days period, to file my petition for review. There is no e-mail the Appellant receive of a copy of the Judgment on August 12, 2019.

Respectfully Submitted By:

George C. Chatman

Pro-Per

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Attorneys for Defendant ARROWHEAD CREDIT UNION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO – SAN BERNARDINO JUSTICE CENTER

GEORGE C. CHATMAN, Plaintiff, vs. ARROWHEAD CREDIT UNION, AND DOES 1-10 INCLUSIVE, Defendants.	Case No. CIVDS 1413324 Assigned to Hon. Thomas S. Garza, Dept. S27 Action Filed: September 5, 2014 **NOTICE OF ENTRY OF JUDGMENT ON JURY VERDICT** Trial Date: February 20, 2018

TO PLAINTIFF *IN PRO PER* GEORGE CHATMAN:

PLEASE TAKE NOTICE that a Judgment on Jury Verdict in favor of defendant Arrowhead Credit Union and against plaintiff *in pro per* George C. Chatman was entered by the Honorable Thomas S. Garza on April 2, 2018. A copy of the Judgment is attached hereto as Exhibit A and hereby incorporated by reference.

DATED: April 10, 2018

ANDERSON, McPHARLIN & CONNERS LLP

By: _____
Colleen A. Déziel
Leila M. Rossetti
Attorneys for Defendant ARROWHEAD CREDIT UNION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO – SAN BERNARDINO JUSTICE CENTER

GEORGE C. CHATMAN, Plaintiff, vs. ARROWHEAD CREDIT UNION, AND DOES 1-10 INCLUSIVE, Defendants.	Case No. CIVDS 1413324 Assigned to Hon. Thomas S. Garza, Dept. S27 Action Filed: September 5, 2014 ~~[PROPOSED]~~ JUDGMENT ON JURY VERDICT

This action came on regularly for trial on March 6, 2018 in Department S27 of the Superior Court, the Honorable Thomas Garza presiding. Plaintiff George Chatman appeared *in pro per* and defendant Arrowhead Credit Union appeared by attorney Leila Rossetti of Anderson McPharlin & Conners LLP.

A jury of twelve persons, and one alternate, was regularly impaneled and sworn. Witnesses were sworn and testified. After hearing the evidence and arguments of counsel and plaintiff *in pro per*, the jury was duly instructed by the Court and the cause was submitted to the jury with directions to return a verdict on special issues. The jury deliberated and thereafter returned to court with its verdict as follows:

We answer the questions submitted to us as follows:

1. Did Arrowhead Credit Union's compliance with the Order to Withhold Personal Income Tax served by the Franchise Tax Board on June 6, 2014 regarding the accounts of plaintiff

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George Chatman constitute state action?

____Yes __X__No

If you answered yes to question 1, then answer question 2. If you answered no to question 1, put a checkmark next to item numbers 2 and 4 on page 4 of this form, and skip ahead to question 4.

2. Did defendant Arrowhead Credit Union provide plaintiff George Chatman with written notice of its intention to comply with the Order to Withhold Personal Income Tax served by the Franchise Tax Board on June 6, 2014?

____Yes ____No

If you answered yes to question 2, then answer question 3. If you answered no to question 2, put a checkmark next to item number 1 on page 4 of this form, and then move on to question 4.

3. Did Arrowhead's written notice to George Chatman regarding its intention to comply with the Order to Withhold Personal Income Tax served by the Franchise Tax Board on June 6, 2014 provide plaintiff George Chatman with information regarding what steps he could take if he had any objection to the Order to Withhold served by the Franchise Tax Board?

____Yes ____No

If you answered yes to question 3, put a checkmark next to item numbers 2 and 4 on page 4 of this form, and answer question number 4.

If you answered no to question 3, put a checkmark next to item numbers 1 and 3 on page 4 of this form, and then answer question 4.

4. Did George Chatman have a right to possess the funds contained in his savings account with Arrowhead Credit Union as of June 9, 2014?

____Yes __X__No

If you answered yes to question 4, answer question number 5.

If you answered no to question 4, put a checkmark next to item number 6 on page 4 of this form, and then move on to question 9.

5. Did Arrowhead Credit Union substantially interfere with George Chatman's property by knowingly or intentionally sending George Chatman's protected social security

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benefits to the Franchise Tax Board in compliance with the June 6, 2014 Order to Withhold Personal Income Tax?

____Yes ____No

If you answered yes to question 5, answer question number 6.

If you answered no to question 5, put a checkmark next to item number 6 on page 4 of this form, and then move on to question 9.

6. Did George Chatman consent?

____Yes ____No

If you answered no to question 6, answer question number 7.

If you answered yes to question 6, put a checkmark next to item number 6 on page 4 of this form, and then move on to question 9.

7. Was George Chatman harmed?

____Yes ____No

If you answered yes to question 7, answer question number 8.

If you answered no to question 7, put a checkmark next to item number 6 on page 4 of this form, and then move on to question 9.

8. Was Arrowhead Credit Union's conduct a substantial factor in causing George Chatman's harm?

____Yes ____No

If you answered yes to question 8, answer question number 9.

If you answered no to question 8, put a checkmark next to item number 6 on page 4 of this form, and then move on to question 9.

9. Did Arrowhead Credit Union act with malice, oppression or fraud by complying with the Order to Withhold Personal Income Tax served by the Franchise Tax Board on June 6, 2014 regarding the accounts of George Chatman?

____Yes __X__No

If you answered yes to question 9, put a checkmark next to item number 7 on page 4 of this form and answer question 10.

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If you answered no to question 9, put a checkmark next to item number 8 on page 4 of this form and answer question 10.

10. Did you find in favor of George Chatman on his claims for Violation of Due Process, Violation of 42 U.S.C. §1983 or Conversion on page 4 of this form (i.e., did you put a checkmark next to item numbers 1, 3 or 5 on page 4)?

____Yes ____No

If you answered yes to question 10, then answer question 11. If you answered no to question 10, have the presiding juror sign and date the form at the bottom and notify the courtroom attendant that you are ready to present your verdict in the courtroom.

11. What are George Chatman's total damages (please do not include any damages to punish Arrowhead Credit Union – if appropriate, such damages will be addressed separately)?

Economic Damages: $_____

Non-economic damages: $_____

For each claim, select one of the two options listed.

On George Chatman's claim for violation of due process:

1. ____ we find in favor of George Chatman and against Arrowhead Credit Union.

2. _X_ we find in favor of Arrowhead Credit Union and against George Chatman.

On George Chatman's claim for violation of 42 U.S.C §1983:

3. ____ we find in favor of George Chatman and against Arrowhead Credit Union.

4. _X_ we find in favor of Arrowhead Credit Union and against George Chatman.

On George Chatman's claim for wrongful conversion of property:

5. ____ we find in favor of George Chatman and against Arrowhead Credit Union.

6. _X_ we find in favor of Arrowhead Credit Union and against George Chatman.

On George Chatman's request for punitive damages:

7. ____ we find that George Chatman IS entitled to recover punitive damages from Arrowhead Credit Union.

8. _X_ we find that George Chatman IS NOT entitled to recover punitive damages from Arrowhead Credit Union.

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The presiding juror signed and dated the form on March 13, 2018.

It appearing by reason of said verdict that defendant Arrowhead Credit Union is entitled to judgment against plaintiff George Chatman,

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that judgment shall be entered in favor of defendant Arrowhead Credit Union and against plaintiff George Chatman. This Court shall retain jurisdiction in order to determine the amount of costs of suit to be awarded upon the filing of a Memorandum of Costs.

IT IS SO ORDERED.

DATED: APR 02 2018

THOMAS GARZA

Hon. Thomas S. Garza
Judge of the Superior Court

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 707 Wilshire Boulevard, Suite 4000, Los Angeles, California 90017-3623.

On April 10, 2018, I served the following document(s) described as **NOTICE OF ENTRY OF JUDGMENT ON JURY VERDICT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

George C. Chatman — Plaintiff in Pro Per
2350 Osbun Street, Unit 15
San Bernardino, CA 92404
Telephone: (909) 882-1693

BY MAIL: I am "readily familiar" with Anderson, McPharlin & Conners' practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 10, 2018, at Los Angeles, California.

Lorraine Andujo

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Filed 8/12/19 Chatman v. Arrowhead Credit Union CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GEORGE C. CHATMAN, Plaintiff and Appellant, v. ARROWHEAD CREDIT UNION, Defendant and Respondent.	E070413 (Super.Ct.No. CIVDS1413324) OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza, Judge. Affirmed

George C. Chatman, Plaintiff and Appellant in pro. per.

Anderson, McPharlin & Conners, Colleen A. Déziel, and Leila M. Rossetti for Defendant and Appellant.

Since 2010, George Chatman has refused to pay income tax. As a result, in 2014, pursuant to an order of the Franchise Tax Board (Board), Arrowhead Credit Union (Arrowhead) took $390.01 from Chatman's savings account and turned it over to the Board. Later, the Board determined that $364.34 of this was traceable to Social Security

benefits, which are protected, by federal statute, from seizure by creditors. The Board sent Chatman a check for this amount, but he refused to accept it because it did not include interest.

In this action, Chatman asserts claims against Arrowhead for violation of civil rights (42 U.S.C. § 1983 [section 1983]) and violation of due process. He seeks $364.34, with interest at 23 percent per day (not per year), $850,000 for emotional distress, and $8 million in punitive damages.

After a full trial, a jury found against Chatman and in favor of Arrowhead. Chatman appeals. However, he has shown no error. Hence, we will affirm.

I

FACTUAL BACKGROUND

Chatman stopped filing federal and state income tax returns in 2010. He believes he is not obligated to pay income tax, primarily because, as he understands it, wages are not "income."

The Board sent Chatman a series of notices of the amount of tax due and of his right to contest the obligation (as we will discuss in more detail in parts IV.C and IV.E, *post*). Finally, on June 6, 2014, the Board served Arrowhead with an "Order to Withhold Personal Income Tax" (Order). (See Rev. & Tax. Code, § 18670.) The Order directed Arrowhead to take as much as $4,441.19 from Chatman's accounts and to forward it to the Board. Under state law, if Arrowhead did not comply, it would become liable for the full amount due. (Rev. & Tax. Code, §§ 18670, subd. (d), 18672.)

Arrowhead reviewed Chatman's checking and savings account to determine whether any Social Security benefits had been direct-deposited into them. Some of the money in his checking account was direct-deposited Social Security benefits. Arrowhead therefore did not remove any money from that account. However, no Social Security benefits had been direct-deposited into his savings account.

The balance in the savings account was $425.01. On June 9, 2014, Arrowhead deducted its $30 fee and the $5 minimum necessary to keep the savings account open and placed a 10-day hold on the remaining $390.01. Also on June 9, 2014, it served the Order, together with a "Notice to Consumer Named in Process," on Chatman. The Order advised him: "To request reimbursement, you must write to [the Board] within 90 days . . . ." After the 10-day hold expired, Arrowhead turned the $390.01 over to the Board.

Chatman protested to Arrowhead, in person and in writing; however, he did not assert, at that time, that the money included Social Security benefits. Arrowhead responded by advising him to contact the Board. Chatman admitted that he did not protest to the Board in writing within 90 days, as directed.

Sometime after this action was filed, Chatman asserted for the first time that the money included Social Security benefits. After reviewing his bank statements, the Board determined that $364.34 of the $390.01 was traceable to Social Security benefits. Accordingly, on March 28, 2017, it sent Chatman a check for $364.34. He returned the check to the Board, asserting that the amount was insufficient because it did not include interest.

Under applicable federal regulations, a financial institution must review a garnishee's accounts to determine whether any Social Security benefits were deposited into them during the preceding 60 days. However, "[t]he financial institution shall perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution *shall not* trace the movement of funds between accounts by attempting to associate funds from a benefit payment deposited into one account with amounts subsequently transferred to another account." (31 C.F.R. § 212.5(f), italics added.)

Tracing requires a "very complicated and complex analysis." It depends on certain assumptions (e.g., "first in, first out" as opposed to "last in, first out"). Tracing would be "outside [Arrowhead's] expertise and knowledge" and would take an "unreasonable" amount of time.

An expert witness confirmed that Arrowhead was not required to determine whether any money in the accounts was indirectly traceable to Social Security benefits. He also testified that Arrowhead's handling of the Order was consistent with applicable statues and regulations, with industry custom and practice, and with Arrowhead's own policies and procedures.

II

PROCEDURAL BACKGROUND

Chatman filed this action against Arrowhead in 2014. The operative (third amended) complaint was arguably uncertain. By stipulation, however, Chatman went to the jury on causes of action for violation of due process, violation of section 1983, and conversion.

In 2018, after a full trial, a jury returned a special verdict finding against Chatman and in favor of Arrowhead on all issues. The trial court entered judgment accordingly.

III

APPELLATE FUNDAMENTALS

We begin with some of the fundamentals of appellate law.

First, an appellate brief must "support each point by argument and, if possible, by citation of authority . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "One cannot simply say the court erred, and leave it up to the appellate court to figure out why. [Citation.]" (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.) "'We are not bound to develop appellants' argument[s] for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat [a] contention as waived.' [Citation.]" (*Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 964.)

Second, an appellate brief also must "[s]tate each point under a separate heading or subheading summarizing the point . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).)

"Arguments not raised by a separate heading in an opening brief will be deemed waived. [Citations.]" (*Winslett v. 1811 27th Avenue, LLC* (2018) 26 Cal.App.5th 239, 248, fn. 6.)

Chatman has not provided us with headings that summarize his arguments.[1] He makes some assertions repeatedly but randomly throughout his brief (e.g., that the jury must have been biased). He makes others only once, in the midst of an unrelated discussion (e.g., that he is not obligated to pay income taxes).[2] This makes it unreasonably difficult to tell which assertions he is actually relying on as grounds for reversal. We therefore conclude that he has forfeited any arguments whatsoever.

Nevertheless, we discuss his assertions — we do not call them "arguments," because we cannot be sure that is what they are — but only to develop alternative grounds for rejecting them.

IV

THE MERITS OF CHAPMAN'S CLAIMS

A. *State Action.*

Chatman asserts that the jury erred by finding that Arrowhead was not a state actor.

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1 The only even arguable exception is "Prejudicial Exclusion of Evidence." We discuss the multiple assertions raised under this heading in part V, *post*.

2 Confusingly, Chatman also assures us that "paying income taxes" is not an issue.

He does not explain why this was error. He merely cites our prior opinion in this case. (*Chatman v. Arrowhead Credit Union* (March 9, 2016, E063264) 2016 Cal.App. Unpub. LEXIS 1724.) There, we held, in the context of a demurrer, that Chatman had adequately alleged that Arrowhead was a state actor. This does not necessarily mean that he proved it after a full trial.

Regarding state action, the jury was instructed: "[I]n order to demonstrate that the acts of Arrowhead . . . constituted state action, George Chatman must establish more than the mere fact that Arrowhead . . . complied with an order from a government agency. He must also prove an additional connection between Arrowhead . . . and the . . . Board, such as a conspiracy between the two parties for the benefit of Arrowhead . . . ." (CT6 **1532**; see also RT2 521 }

Chatman does not argue that this instruction was erroneous. Accordingly, "the adequacy of the evidence must be measured against the instructions given the jury." (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1535.) Because there was no evidence of a conspiracy nor of any other connection between the Board and Arrowhead, the jury quite properly found no state action.

B. *Prohibited Taking of Social Security Benefits.*

Chatman asserts that Arrowhead took his Social Security benefits in violation of 42 United States Code section 407(a) (section 407(a)), which provides that Social Security benefits are not "subject to execution, levy, attachment, garnishment, or other legal process . . . ."

It has been repeatedly held that there is no private right of action under section 407(a). (*Jones v. Comm'r of Soc. Sec.* (W.D.N.Y., Dec. 11, 2017, No. 17-CV-6558 CJS) 2017 U.S. Dist. LEXIS 203907, at pp. *20-*21; *Jordan v. Chase Manhattan Bank* (S.D.N.Y. 2015) 91 F.Supp.3d 491, 501-502; *Strine v. Genesee Valley Federal Credit Union* (W.D.N.Y., Jan. 29, 2013, No. 11CV633A) 2013 U.S. Dist. LEXIS 24627 at pp. *4-*7; *Walton v. U.S. Bank* (D. Utah, Oct. 4, 2010, No. 2:09-CV-931) 2010 U.S. Dist. LEXIS 105974 at pp. *8-*13; *Alexander v. Bank of America* (W.D. Mo., Oct. 17, 2007, No. 07-4039-CV-C-NKL) 2007 U.S. Dist. LEXIS 77368 at pp. *5-*6.) We are not aware of any case holding that there is.

A debtor can assert section 407(a) as a defense to a creditor's collection efforts. (*Townsel v. DISH Network L.L.C.* (7th Cir. 2012) 668 F.3d 967, 969; see, e.g., *Bennett v. Arkansas* (1988) 485 U.S. 395, 397-398.) Also, at least arguably, an action under section 1983 can be premised on a violation of section 407(a) — but only if the defendant is a state actor. (*London v. RBS Citizens, N.A.* (7th Cir. 2010) 600 F.3d 742, 745-747; *Walton v. U.S. Bank*, *supra*, at pp. *6-*7.) As discussed in part III.A, *ante*, the jury properly found no state action.

C. *Violation of Due Process.*

Chatman asserts that Arrowhead violated due process.

In this instance, he does cite some minimal authority; however — with one exception, which we discuss below — he does not explain how the cited cases apply here.

In particular, he cites *Sniadach v. Family Finance Corp. of Bay View* (1969) 395 U.S. 337 and *Randone v. Appellate Department* (1971) 5 Cal.3d 536. These stand for the principle that, except in extraordinary situations, due process requires notice and an opportunity to be heard before the state may deprive an individual of a significant property interest. Chatman does not discuss how this applies to these facts.

Chatman did receive repeated notices that the Board was claiming that he owed specified amounts of tax; the notices also told him that he could contest the obligation. In 2012, the Board sent him a "Final Notice Before Levy," which warned him: "We can . . . begin involuntary collection action, without further notice to you, which may include . . . contacting third parties, seizing deposit accounts . . . ." It added, "If you do not think you owe this amount, call us . . . ." It sent him a similar notice in April 2014, before it issued the Order in June 2014. Chatman does not specify any way in which this fell short of the requirements of *Sniadach* and *Randone*.

Admittedly, the Board's procedures gave Chatman only a few days' notice of the *particular* property to be taken, and it did not give him any preseizure opportunity to be heard on his claim that that particular property included Social Security benefits. However, the notice and opportunity to be heard that due process requires relate to the *merits* of the creditor's claim. Preventing a debtor from claiming that particular property is exempt until after that property has already been seized does not violate due process. (7 Witkin, Summary of Cal. Law (11th ed. 2018) Const. Law § 715, pp. 1092-1093.) In *Phillips v. Bartolomie* (1975) 46 Cal.App.3d 346, the court specifically held that

preventing a debtor from asserting a claim that the property seized consists of Social Security benefits until after the seizure does not violate due process. (*Id.* at pp. 349-354.)

Chatman also asserts that Arrowhead could not legally take his property in the absence of a warrant (or similar order of a neutral judicial officer).[3] He has forfeited this particular assertion by failing to cite authority for it.

We reject it in any event. A taxing authority can seize property without a warrant, at least when, as here, the seizure involves no invasion of privacy. (*G.M. Leasing Corp. v. United States* (1977) 429 U.S. 338, 351-352; see also *United States v. National Bank of Commerce* (1985) 472 U.S. 713, 720-721.)

D. *Violation of Section 1983.*

Chatman asserts that Arrowhead was liable under section 1983. Because he had not shown any violation of any federal statutory or constitutional right, it follows that he also has not shown any section 1983 violation.

E. *Liability for Income Tax.*

Chatman asserts that he is not liable for income tax. This assertion is frivolous. (*Cheek v. United States* (1991) 498 U.S. 192, 204-205; *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 461; see also *United States v. Cooper* (7th Cir. 1999) 170 F.3d 691, 691 ["These arguments, frivolous when first made, have

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[3] This would seem to assert a violation of the Fourth Amendment, not due process. Even if so, however, Chatman can raise it as part of his section 1983 cause of action.

been rejected in countless cases. They are no longer merely frivolous; they are frivolous squared."].)

We also note that the Board sent Chatman notices of proposed assessment for 2010 and 2011. Those warned him that, if he believed the notices were incorrect, he had to file a timely protest in accordance with specified procedures. He failed to do so.[4] As a result, he forfeited any contention that the tax was not due. (Rev. & Tax. Code, § 19042.)

F. *Jury Bias.*

Chatman asserts that the jury verdict was the product of "prejudice[e], bias, and discrimination." His only argument to this effect, however, is that the verdict supposedly is not supported by the law or the evidence; he concludes that the jury must have been biased. As we have already held, however, he has not shown that the verdict was erroneous in any way.

V

EVIDENTIARY ISSUES

A. *Exclusion of Our Prior Opinion.*

Chatman asserts that the trial court erred by excluding our opinion in his prior appeal.

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[4] After the second notice, he did send a letter to the Board, but it notified him that his letter did not comply with the prescribed protest procedures. He does not argue otherwise.

Arrowhead filed a motion in limine to exclude evidence of "the procedural history of this case," as irrelevant, more prejudicial than probative, and hearsay. Chatman responded that this court's prior opinion was relevant and admissible to show Arrowhead's "conduct or character." The trial court granted the motion and excluded the opinion.

Chatman's only argument about this ruling on appeal is that it violated the supremacy clause. He has forfeited this argument by failing to explain how the supremacy clause was violated and by failing to cite relevant authority. The exclusion of evidence that is offered to prove the violation of a federal right does not necessarily violate that same federal right (cf. *People v. Mickel* (2016) 2 Cal.5th 181, 218 ["'As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.'"]) — all the more so if the evidence is irrelevant.

Our prior opinion was, in fact, irrelevant, because it arose on a demurrer; hence, it could not and it did not determine what actually occurred. Moreover, Chatman was offering it for the truth of any assertions in it about Arrowhead's conduct; as such, it was inadmissible hearsay. (See *People v. Woodell* (1998) 17 Cal.4th 448, 458-459.)

B. *Exclusion of Three Exhibits.*

Chatman asserts that the trial court erred by excluding the following three exhibits:

1. Exhibit 37: A publication of the Board explaining the difference between the corporate franchise tax and the corporate income tax.

2. Exhibit 38: This exhibit is not in the record; however, it was described as another publication of the Board.

3. Exhibit 39: The declaration of Ann Wadagnolo, an Arrowhead officer.[5]

He has forfeited this assertion by failing to support it with reasoned argument and relevant authority.

Separately and alternatively, we also reject it on the merits.

The trial court excluded Exhibit 37 as irrelevant, hearsay, and unauthenticated. Each of these reasons was valid. The exhibit was authenticated only as a "Franchise Tax Board document" that "deals with corporation franchise or income tax." This case involved personal income tax, so the corporate franchise tax and the corporate income tax were irrelevant. (Evid. Code, § 350.) The document was an out-of-court statement by the Board — a nonparty — and it was not shown to be within the prior consistent statement exception (*id.*, § 1236), the prior inconsistent statement exception (*id.*, § 1237), the business records exception (*id.*, § 1271), or any other exception to the hearsay rule. (*Id.*, § 1200.)

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[5] Arrowhead seems to think the fact that an exhibit is in the clerk's transcript means it was admitted; it complains that Exhibit 37 and 39 were not admitted and thus were "mistakenly included." Actually, the clerk's transcript can include "[a]ny exhibit admitted in evidence, refused, or lodged . . . ." (Cal. Rules of Court, rule 8.122(b)(3)(B).)

The place to look to see whether an exhibit was admitted or excluded is supposed to be the reporter's transcript. (Cal. Rules of Court, rule 8.144(b)(5)(B)(ii).) Here, however, the reporter's transcript inexplicably omits the required index of exhibits. Thus, the only way to tell which exhibits were admitted is to comb through the entire transcript of the trial.

Chatman moved to admit Exhibit 38 before there had been any testimony about it. The trial court allowed him to try to lay a foundation for it, but he did not do so. He also did not move to admit it again before he rested. Thus, clearly the trial court did not err. Moreover, because Exhibit 38 is not in the record, Chatman cannot show that it was even potentially admissible.

Chatman similarly did not move to admit Exhibit 39 before he rested. During his closing argument, he did belatedly move to admit it, but the trial court refused. This was not an abuse of discretion, because otherwise, Arrowhead would have been deprived of the opportunity to counter the exhibit.

Finally, Chatman has not shown that the exclusion of these exhibits, individually or collectively, was prejudicial. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; Evid. Code, § 354.)

VI

DISPOSITION

The judgment is affirmed. Arrowhead is awarded costs on appeal against Chatman.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.

Additional material from this filing is available in the Clerk's Office.