FILED
United States Court of Appeals
Tenth Circuit

July 29, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JEFFREY T. MAEHR,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 19-1335
(D.C. No. 1:18-CV-02273-PAB-NRN)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BRISCOE, MATHESON,** and **CARSON,** Circuit Judges.

Jeffrey Maehr, appearing pro se, appeals from the district court's dismissal of his tax-related suit for lack of subject matter jurisdiction and its rejection of his requests for related relief. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I. Background

Maehr "has continuously utilized the judicial system . . . to try to avoid paying his . . . tax liabilities [for tax years 2003–2006] even though the courts have

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

repeatedly concluded that his claims are without merit." *Maehr v. Comm'r*, 641 F. App'x 813, 816 (10th Cir. 2016). This appeal stems from Maehr's attempt to re-litigate the amount of his 2003–2006 tax liabilities.

Maehr first opposed the IRS's calculation of his liabilities for those years in 2011 by filing a petition with the United States Tax Court under Tax Court Rule 34. The Tax Court dismissed Maehr's petition. He appealed the dismissal to this court. We affirmed, and the Supreme Court denied his petitions for certiorari and rehearing. *Maehr v. Comm'r*, 480 F. App'x 921, 923 (10th Cir. 2012), *cert. denied*, 568 U.S. 1232, *and reh'g denied*, 569 U.S. 990 (2013).

Maehr then brought this action in the district court in 2018 "to challenge the [IRS's] tax assessments against him for tax years 2003, 2004, 2005, and 2006." Aplt. Reply Br. at 1–2.

Early in the case, Maehr filed a motion seeking the appointment of counsel. The district court denied the motion without prejudice, reasoning that the issues were not yet sufficiently developed to warrant granting the request at that time. But thereafter the court issued an order sua sponte appointing pro bono counsel to represent Maehr. Maehr's appointed counsel later withdrew, and Maehr proceeded pro se.

Maehr also filed a motion seeking the empanelment of a grand jury to investigate alleged misdeeds committed by the IRS and others. Acting on the magistrate judge's recommendation, the district court denied the motion, noting that

Maehr "failed to establish that he has standing to initiate criminal proceedings or that the Court has authority to do so." R. at 272.

Maehr further filed a motion for a preliminary injunction to enjoin the IRS from taking any enforcement action against him. Before ruling on this motion, the district court adopted the magistrate judge's recommendation that the suit be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). It reasoned that 26 U.S.C. § 6512(a) operated as a jurisdictional bar because Maehr elected to dispute his liabilities for the years in question in the Tax Court in the first instance. The court then denied Maehr's request for a preliminary injunction as moot.

II. Discussion

A. Failure to Appoint Replacement Counsel

Maehr observes that after his appointed counsel withdrew, "[n]o further counsel for this instant case was provided despite being requested, and [that he] feels this . . . diminished his effectiveness in the court's eyes as pro se alone." Aplt. Opening Br. at 16. But he does not provide any record citation to support his contention that he requested replacement counsel and does not articulate a reasoned argument that the district court erred by failing to appoint replacement counsel.

Because Maehr appears pro se, we construe his filings liberally but do not serve as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). "An appellant's opening brief must identify 'appellant's contentions and the reasons for them, with citations to the authorities and parts of the

record on which the appellant relies.'" *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007) (quoting Fed. R. App. P. 28(a)(8)(A)). "The court will not consider issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation." *Armstrong v. Arcanum Grp., Inc.*, 897 F.3d 1283, 1291 (10th Cir. 2018) (alteration and internal quotation marks omitted); *see also Garrett*, 425 F.3d at 841 ("Under Rule 28, which applies equally to pro se litigants, a brief must contain more than a generalized assertion of error, with citations to supporting authority." (alteration and internal quotation marks omitted)). We decline to address Maehr's claim of error related to the appointment of counsel.

B. Denial of Motion to Empanel a Grand Jury

The district court noted that Maehr "cite[d] no authority that permits the [c]ourt, in [a] civil case, to [e]mpanel a grand jury to investigate alleged criminal acts" and concluded that Maehr could not "initiate a criminal investigation by filing a motion to [e]mpanel a grand jury." R. at 270.

Maehr's opening brief does not advance a reasoned argument challenging the district court's rationale or its conclusion. In his reply brief, Maehr claims the district court erred because "there obviously must be a mechanism through which Americans can access the grand jury and present evidence for alleged crimes." Aplt. Reply Br. at 17. And he cites *United States v. Williams*, 504 U.S. 36 (1992), in support of this proposition. But that case addressed "whether a district court may dismiss an otherwise valid indictment because the Government failed to disclose to the grand jury 'substantial exculpatory evidence' in its possession." *Id.* at 37–38.

The case did not authorize civil plaintiffs or courts in civil cases to empanel grand juries.[1] We affirm the district court's order denying Maehr's request to empanel a grand jury.

C. Rule 12(b)(1) Dismissal

We review de novo a dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). *Chance v. Zinke*, 898 F.3d 1025, 1028 (10th Cir. 2018). "[W]e review the district court's findings of jurisdictional facts for clear error." *Ingram v. Faruque*, 728 F.3d 1239, 1243 (10th Cir. 2013) (alterations and internal quotation marks omitted).

Maehr does not dispute that he first challenged his tax liabilities for 2003–2006 in the Tax Court. Under 26 U.S.C. § 6512(a), "if the taxpayer files a petition with the Tax Court . . . no suit by the taxpayer for the recovery of any part of the tax shall be instituted in any court."[2] The statute's bar is jurisdictional. *See, e.g.*, *Solitron Devices, Inc. v. United States*, 862 F.2d 846, 848 (11th Cir. 1989) (per curiam); *First Nat'l Bank of Chicago v. United States*, 792 F.2d 954, 955–56 (9th Cir.

[1] To the extent Maehr argues that the district court erred because it failed to consider that his motion "was based on 18 [U.S.C. §] 4," Aplt. Reply Br. at 17, we reject his argument. That section provides that "[w]hoever, having knowledge of the actual commission of a felony . . . conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States," commits a crime. 18 U.S.C. § 4. It does not address grand juries or the process for empaneling them.

[2] This provision is subject to six enumerated exceptions, *see* 26 U.S.C. § 6512(a)(1)–(6), but Maehr does not argue that any of these exceptions applies.

1986). The district court properly dismissed Maehr's action for lack of subject matter jurisdiction.

D. Denial of Motion for Preliminary Injunction

"We review the decision to deny a motion for a preliminary injunction for abuse of discretion." *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005).

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Once the district court dismissed the case, that purpose could no longer be served. The district court did not abuse its discretion in denying Maehr's motion for a preliminary injunction as moot after dismissing the case. *See, e.g., Baker v. Bray*, 701 F.2d 119, 122 (10th Cir. 1983) ("[T]he claim upon which the request for a preliminary injunction was based . . . was dismissed by the district court, and this action certainly mooted" any consideration of whether the preliminary injunction should have been granted).

III. Conclusion

We affirm the district court's denial of Maehr's motion seeking the empanelment of a grand jury, its dismissal of this action, and its denial of Maehr's request for a preliminary injunction. We grant Maehr's motion to proceed *in forma pauperis* on appeal.

Entered for the Court

Joel M. Carson III
Circuit Judge

FILED
United States Court of Appeals
Tenth Circuit

October 9, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JEFFREY T. MAEHR,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 19-1335
(D.C. No. 1:18-CV-02273-PAB-NRN)
(D. Colo.)

ORDER

Before **BRISCOE**, **MATHESON**, and **CARSON**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

Exhibit B1

IRS mission statements:

1.2.1.2.1 (Approved 12-18-1993)
P-1-1

1. Mission of the Service: Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

2. Tax matters will be handled in a manner that will promote public confidence: All tax matters between taxpayers and the Internal Revenue Service are to be resolved within established administrative and judicial channels. Service employees, in handling such matters in their official relations with taxpayers or the public, will conduct themselves in a manner that will promote public confidence in themselves and the Service. Employees will be impartial and will not use methods which are threatening or harassing in their dealings with the public.

4.10.7.2 (05-14-1999)
Researching Tax Law

1. Conclusions reached by examiners must reflect correct application of the law, regulations, court cases, revenue rulings, etc. Examiners must correctly determine the meaning of statutory provisions and not adopt strained interpretation.

1.2.1.6.2 (Approved 11-26-1979)
P-6-10

1. The public impact of clarity, consistency, and impartiality in dealing with tax problems must be given high priority: In dealing with the taxpaying public, Service officials and employees will explain the position of the Service clearly and take action in a way that will enhance voluntary compliance. Internal Revenue Service officials and employees must bear in mind that the public impact of their official actions can have an effect on respect for tax law and on voluntary compliance far beyond the limits of a particular case or issue.

1.2.1.6.4 (Approved 03-14-1991)
P-6-12

1. Timeliness and Quality of Taxpayer Correspondence: The Service will issue quality responses to all taxpayer correspondence.

2. Taxpayer correspondence is defined as all written communication from a

Exhibit B2

taxpayer or his/her representative, excluding tax returns, whether solicited or unsolicited. This includes taxpayer requests for information, as well as that which may accompany a tax return; responses to IRS requests for information; and annotated notice responses.

3. A quality response is timely, accurate, professional in tone, responsive to taxpayer needs (i.e., resolves all issues without further contact).

1.2.1.6.7 (Approved 11-04-1977)
P-6-20

1. Information provided taxpayers on the application of the tax law: The Service will develop and conduct effective programs to make available to all taxpayers comprehensive, accurate, and timely information on the requirements of tax law and regulations.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Civil Action No. 18-cv-02273-PAB-NRN

JEFFREY T. MAEHR,

Plaintiff,

v.

UNITED STATES,

Defendant.

ORDER

This matter is before the Court on the magistrate judge's Report and Recommendation on Plaintiff's Opposed Motion for Preliminary Injunction (Dkt. #45) and Defendant's Renewed Motion to Dismiss (Dkt. #82) [Docket No. 94] entered on August 1, 2019. Magistrate Judge N. Reid Neureiter recommends that plaintiff's motion for a preliminary injunction [Docket No. 45] be denied and defendant's motion to dismiss [Docket No. 82] be granted. Docket No. 94 at 1. Plaintiff filed Objections to Recommendations [Docket No. 96] on August 12, 2019. Defendant responded on August 26, 2019. Docket No. 99.

I. BACKGROUND

The background facts and procedural history in this case are set out in the magistrate judge's recommendation and will not be repeated unless necessary for purposes of this order. For the last several years, plaintiff has attempted many times to challenge the IRS's implementation of tax assessments against him for the 2003-06 tax

years. *See Maehr v. United States*, 137 Fed. Cl. 805, 807 (2018) (setting out some of plaintiff's prior court proceedings). Plaintiff has now filed another lawsuit challenging defendant's ability to garnish his social security payments to pay for his tax delinquencies. *See* Docket No. 70 at 5-6, ¶¶ 17-20. He appears to seek compensatory and punitive damages, fees, and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and fair compensation for the deprivation of his rights. Docket No. 70 at 8, ¶ 27; at 9, ¶¶ 29-30. Plaintiff also seeks a preliminary injunction ordering "the immediate stay of garnishment of all social security funds." Docket No. 45 at 2. Defendant filed a motion to dismiss plaintiff's claims. Docket No. 82.

Magistrate Judge Neureiter recommends that defendant's motion to dismiss be granted, the preliminary injunction motion be denied, and the case be dismissed without prejudice. Docket No. 94 at 13. Plaintiff objects to the magistrate judge's recommendations. Docket No. 96.

II. STANDARD OF REVIEW

The Court must "determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). An objection is "proper" if it is both timely and specific. *United States v. One Parcel of Real Property Known as 2121 East 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996). A specific objection "enables the district judge to focus attention on those issues – factual and legal – that are at the heart of the parties' dispute." *Id.* In the absence of a proper objection, the Court reviews the magistrate judge's recommendation to satisfy itself that there is "no clear

error on the face of the record."[1] Fed. R. Civ. P. 72(b), Advisory Committee Notes. Because plaintiff is proceeding pro se, the Court will construe his objection and pleadings liberally without serving as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).

III. ANALYSIS

A. Defendant's Motion to Dismiss

The magistrate judge recommends that the Court dismiss plaintiff's claims without prejudice for lack of subject matter jurisdiction. Docket No. 94 at 9. The magistrate judge found that plaintiff's lawsuit is an improper collateral attack on a final judgment issued by the Tax Court, and that plaintiff cannot now relitigate in district court the issues already adjudicated. *Id.* at 8-9. Specifically, the magistrate judge found that plaintiff's suit is precluded by 26 U.S.C. § 6512(a), which "bars a suit for refund involving a tax year for which a Tax Court petition contesting a deficiency determination has been filed." *Smith v. United States*, 495 F. App'x 44, 48 (10th Cir. 2012) (unpublished); *see also* Docket No. 94 at 7. On May 9, 2011, plaintiff filed a petition in Tax Court challenging his tax assessments for the years 2003-06. Docket No. 82-1 at 2-3. The Tax Court made findings as to plaintiff's tax deficiencies for those years and dismissed his petition for failure to state a claim. *Id.* at 3. The Tax Court's decision was affirmed by the Tenth Circuit. *Maehr v. C.I.R.*, 480 F. App'x 921 (10th Cir. 2012) (unpublished).

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[1]This standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a de novo review. Fed. R. Civ. P. 72(b).

Plaintiff raises several objections to the magistrate judge's recommendation. *See* Docket No. 96. He argues that (1) there is no indication that any of the evidence he submitted in his past cases challenging the tax assessments was "actually adjudicated" and there was no evidence presented that he actually owed a debt, *id.* at 1-2, 3; (2) the court judgments referenced by the magistrate judge are void due to fraud on the courts, *id.* at 2-3; and (3) defendant has not presented evidence that, in his prior cases, plaintiff received due process of law or that the "courts even had Plaintiff's evidence in their court at all," *id.* at 3.

These objections are without merit. To the extent that plaintiff attempts to challenge the sufficiency of the evidence in judgments rendered in other court cases, this is an improper ground on which to base his objection to the magistrate judge's recommendation. Such an argument should have been made to the Tax Court or on appeal of that court's decision. *See Michelson v. United States*, 1993 WL 313229, at *2 (D.N.M. May 3, 1993) (finding that the plaintiff's "claims that . . . the Tax Court proceedings violated his Constitutional rights . . . should have [been] raised . . . in the Tax Court itself or with the Court of Appeals"); *Springer v. Shern*, 2011 WL 2971172, at *3 (N.D. Okla. July 20, 2011) ("In the tax context, a final decision of the Tax Court is *res judicata* as to the tax liability determined by that court, and is not subject to collateral attack in a later proceeding."); *see also Maehr v. C.I.R.*, 480 F. App'x at 923 (stating that plaintiff's "petition raises no genuine challenge to the notices of deficiency because [his] arguments have been repeatedly rejected by this court").

Insofar as plaintiff argues that these court judgments are void due to a "violation

of due process of law, general fraud, and fraud on the court itself," Docket No. 96 at 4, this argument is conclusory, insufficiently specific, and points to no clear error on the face of the record. There is no basis to find that the court judgments are void. *See Jenkins v. Duffy Crane and Hauling, Inc.*, No. 13-cv-00327-CMA-KLM, 2013 WL 6728892, at *3 (D. Colo. Dec. 20, 2013) (quoting *O'Leary v. Liberty Mut. Ins. Co.*, 923 F.2d 1062, 1066 (3d Cir. 1991) ("A judgment is 'valid' when it has been rendered by a court of competent subject matter jurisdiction and the party against whom judgment is rendered either has submitted to the jurisdiction of the court or has been afforded adequate notice.")). Plaintiff has not alleged that the prior courts lacked subject matter jurisdiction or alleged that he was not afforded adequate notice in those cases. Any challenge to the validity of the numerous court judgments confirming plaintiff's tax liabilities is unavailing.

Finally, plaintiff's focus on whether defendant proved he received due process in his other court proceedings or whether those courts considered plaintiff's evidence is misplaced. Even if plaintiff could raise arguments here as to alleged due process violations in other cases, it is plaintiff's burden to identify and prove the existence of the rights that he alleges the defendant violated – not defendant's. *Tonkovich v. Kansas Bd. of Regents*, 159 F.3d 504, 527 (10th Cir. 1998).

The district court is not an appellate court and it is improper for plaintiff to collaterally attack those judgments by initiating yet another court proceeding. To the extent that plaintiff raises claims of error in unrelated court proceedings, his objections are overruled.

Plaintiff also objects to the recommendation on the basis that the magistrate

judge failed to address some of the arguments he had raised. He asserts that (1) the magistrate judge failed to address his argument regarding whether the taxes at issued were properly assessed against "income," Docket No. 96 at 13; (2) the magistrate judge did not address his argument that the IRS had violated its mission statement, *id.*; and (3) the magistrate judge did not address two exhibits he submitted and whether they demonstrated that a fraudulent assessment had occurred. *Id.* at 14. These are not proper bases for an objection. The magistrate judge ruled that the Court does not have jurisdiction over plaintiff's lawsuit because plaintiff elected to challenge the assessments in Tax Court, which bars him from challenging those same assessments here. Docket No. 94 at 9. Because the magistrate judge found no subject matter jurisdiction, it was proper for him to decline to reach the merits of plaintiff's arguments. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 575 (1999) (citing *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998) (generally, a federal court must "satisfy itself of its subject-matter jurisdiction before it considers the merits of a case.")).[2]

Finally, plaintiff objects to the magistrate judge's denial of his Motion for Delay of Ruling Until FOIA Response is Received [Docket No. 92], which was denied, not in the magistrate judge's Report and Recommendation, but in a separate minute order.

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[2]Moreover, as to plaintiff's argument regarding the magistrate judge's failure to consider certain exhibits that "show prima facie evidence of a fraudulent assessment," Docket No. 96 at 14 (referencing Docket No. 70 at 16-17), plaintiff provides no explanation as to how these documents evidence a "fraudulent assessment" or why consideration of the documents would impact the jurisdictional ruling on defendant's motion to dismiss. Plaintiff's submission of purportedly new evidence will not permit him to circumvent the procedural bar put in place by 26 U.S.C. § 6512(a).

Docket No. 95. In this motion, plaintiff sought a "delay of ruling" until he received an answer on his FOIA request for "'pre-assessment' documents." Docket No. 92 at 1. The magistrate judge denied plaintiff's motion on the basis that the information plaintiff sought to obtain in his FOIA request was irrelevant to the disposition of the motion to dismiss, as his claims were barred by 26 U.S.C. § 6512(a) regardless of the information plaintiff might receive as a result of his FOIA request. Docket No. 95.

Although contained in plaintiff's objections to the magistrate judge's recommendation, this objection challenges a non-dispositive order. When reviewing a party's objection to a magistrate judge's order on a non-dispositive matter, the Court "must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); *Hutchinson v. Pfeil*, 105 F.3d 562, 566 (10th Cir. 1997). The clearly erroneous standard "requires that the reviewing court affirm unless it 'on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Ocelot Oil Corp. v. Sparrow Industries*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 365, 395 (1948)).

Plaintiff objects to the magistrate judge's ruling on the basis that the FOIA documents he seeks are, in fact, relevant to this matter. Docket No. 96 at 14. Plaintiff, however, makes no argument why these documents, if received, would permit him to circumvent the provision under 26 U.S.C. § 6512(a) that "filing a petition to the Tax Court to challenge an asserted deficiency bars the taxpayer from bringing a suit in any other court for the recovery of any part of the tax for that taxable year." *Hook v. United*

States, 624 F. App'x 972, 978 (10th Cir. 2015) (unpublished). Regardless of the information plaintiff may receive from his FOIA request, plaintiff is procedurally barred from, once again, challenging the IRS's tax assessments in district court. The magistrate judge's ruling on the motion to delay was not clearly erroneous or contrary to law.

B. Plaintiff's Motion for a Preliminary Injunction

On February 25, 2019, plaintiff filed a motion for a preliminary injunction seeking an order "stay[ing] any and all present and future defendant actions against him, including the immediate stay of garnishment of all social security funds until all possible adjudication has been completed." Docket No. 45 at 2. The magistrate judge recommends that the Court deny plaintiff's motion on the basis that it is barred by the Anti-Injunction Act, 26 U.S.C. § 7421. Docket No. 94 at 10. The Anti-Injunction Act provides that, absent certain exceptions, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). Finding that neither exception applied in this case, the magistrate judge determined that plaintiff was not entitled to injunctive relief. Docket No. 94 at 13.

Plaintiff raises several objections to the magistrate judge's order. *See* Docket No. 96 at 4-14. The Court declines to address these objections, however, because due to the Court's ruling on defendant's motion to dismiss, the motion for a preliminary injunction is now moot. "[A] preliminary injunction is intended to preserve the status quo until the Court has an opportunity to reach the merits." *Rainey v. Thorstad*, No. 12-cv-

00945-CMA-MEH, 2012 WL 4481457, at *1 (D. Colo. Sept. 12, 2012). The Court has determined that it cannot reach the merits of plaintiff's claims for lack of subject matter jurisdiction. *Ruhrgas*, 526 U.S. at 575. Because the underlying claims will be dismissed, the motion for a preliminary injunction must be denied as moot. *Cf. Debardeleben v. Pugh*, 56 F. App'x 464, 465 (10th Cir. 2003) (unpublished) (appeal from denial of motion for preliminary injunction became moot when district court dismissed the underlying complaint); *see also Colorado Press Ass'n, Inc. v. Brohl*, No. 14-cv-00370-MSK-MJW, 2015 WL 13612122, at *7 (D. Colo. Mar. 13, 2015) (denying motion for preliminary injunction as moot in light of dismissal for lack of subject matter jurisdiction); *Edmond v. Raemisch*, No. 11-cv-00248-RBJ-KLM, 2013 WL 5443938, at *6 (D. Colo. Sept. 30, 2013) (denying motion for preliminary injunction as moot and declining to review the magistrate judge's recommendation on motion for summary judgment or plaintiff's objection to that recommendation because "they too ha[d] been mooted by dismissal of the remaining claims").

IV. CONCLUSION

For these reasons, it is

ORDERED that plaintiff's Objections to Recommendations [Docket No. 96] are **OVERRULED**. It is further

ORDERED that the Report and Recommendation on Plaintiff's Opposed Motion for Preliminary Injunction (Dkt. #45) and Defendant's Renewed Motion to Dismiss (Dkt. #82) [Docket No. 94] is **ACCEPTED IN PART**. It is further

ORDERED that Defendant's Renewed Motion to Dismiss [Docket No. 82] is

GRANTED. It is further

ORDERED that Plaintiff's Opposed Motion for Preliminary Injunction [Docket No. 45] is **DENIED AS MOOT**. It is further

ORDERED that plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**. It is further

ORDERED that, within 14 days of the entry of this order, defendant may have its costs by filing a Bill of Costs with the Clerk of the Court. It is further

ORDERED that this case is closed.

DATED September 3, 2019.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-02273-PAB-NRN

JEFFREY T. MAEHR,

Plaintiff,

v.

UNITED STATES,

Defendant.

REPORT AND RECOMMENDATION ON
PLAINTIFF'S OPPOSED MOTION FOR PRELIMINARY INJUNCTION (DKT. #45)
and
DEFENDANT'S RENEWED MOTION TO DISMISS (DKT. #82)

N. Reid Neureiter
United State Magistrate Judge

This case is before the Court pursuant to Orders (Dkt. #46 & #83) issued by Chief Judge Philip A. Brimmer referring Plaintiff Jeffrey T. Maehr's Opposed Motion for Preliminary Injunction (Dkt. #45) and Defendant United States' Renewed Motion to Dismiss. (Dkt. #82.) The Court has carefully considered the motions, responses (Dkt. #54 & #84), replies (Dkt. #80 & #85), and the United States' sur-reply. (Dkt. #89.) On July 22, 2019, the Court heard argument on the subject motions. (*See* Dkt. #90.) The Court has taken judicial notice of the Court's file, considered the applicable Federal Rules of Civil Procedure and case law, and recommends Plaintiff's Opposed Motion for Preliminary Injunction (Dkt. #45) be denied and Defendant's Renewed Motion to Dismiss (Dkt. #82) be granted.

I. BACKGROUND

a. Procedural History

Mr. Maehr, proceeding pro se,[1] initiated this lawsuit against the Internal Revenue Service ("IRS") on September 4, 2018. (Dkt. #1.) On September 7, 2018, Magistrate Judge Gordon P. Gallagher identified various pleading deficiencies and ordered Mr. Maehr to file an amended complaint (Dkt. #5), which Mr. Maehr did on December 3, 2018. (Dkt. #8.) The First Amended Complaint was also deemed deficient (Dkt. #10), but Mr. Maehr's Second Amended Complaint (Dkt. #14) was drawn to Chief Judge Brimmer and me. (Dkt. #15.)

On February 28, 2019, Mr. Maehr filed the subject preliminary injunction motion. (Dkt. #45.) On March 11, 2019, the United States moved to dismiss the Second Amended Complaint. (Dkt. #51.) Mr. Maehr was given leave to further amend his complaint (*see* Dkt. #77), and the United States renewed the subject motion (Dkt. #82) to dismiss the Third Amended Complaint ("TAC"). (Dkt. #70.) On May 17, 2019, Mr. Maehr filed, without leave of Court, an "Addendum to Amended Brief" (the "Addendum"). (Dkt. #78.) The United States construed the two filings as a single pleading and as the operative complaint, and addressed both in its motion to dismiss.

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[1] The Court must construe liberally the filings of pro se litigants. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the pro se litigant's advocate, nor should the Court "supply additional factual allegations to round out [the pro se litigant's] complaint or construct a legal theory on [his] behalf." *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997) (citing *Hall*, 935 F.2d at 1110). In addition, pro se litigants must follow the same procedural rules that govern other litigants. *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).

For the sake of completeness and convenience, the Court will do likewise. Each parties' motion is now ripe for review.

b. Mr. Maehr's Allegations

Mr. Maehr has been litigating the validity of his tax liability for many years, and before many different courts. (*See* Dkt. #82 at 1 n.1 (collecting cases).) In this lawsuit, Mr. Maehr challenges the IRS's tax assessment for the 2003–06 tax years. He alleges that the assessment "is erroneous due to [the IRS] manufacturing frivolous assessment figures which have conflicted over the years," and that he "has firsthand knowledge of personal bank business, social security administration, and other asset records to dispute the original egregious and unconscionable assessment." (Dkt. #70 ¶ 3) (emphases omitted.) Although Mr. Maehr concedes that he "brought, eventually over several years, multiple suits challenging the assessment," he claims that he was "continually" denied due process. (*Id.* ¶¶ 8-9.)

Mr. Maehr asserts four claims for relief. First, he alleges that he has been denied "pre-assessment third party summonsed documents" in the IRS's possession during past proceedings, including the government's garnishment of Mr. Maehr's Social Security payments. (*Id.* ¶¶ 14-18.) Accordingly, he requests that the Court order the United States to "produce the simple, pre-assessment documents it claims it has and claims it used to assess" him. (*Id.* ¶ 31.)

Mr. Maehr's second claim for relief appears to be a request for "compensatory and punitive damages" against the United States. (*Id.* ¶ 27.) Similarly, his third claim for relief requests an award of attorney fees and costs "and/or . . . whatever this honorable

court deems right, just and fair to compensate Plaintiff for the depravation [sic] of rights, finances, living, health and emotional state for well over ten years." (*Id.* ¶¶ 29-30.)

Finally, in the Addendum, Mr. Maehr alleges that the United States possesses an "'Individual Master File' . . . whereby Defendant's records and documentation of all assessments and all elements related to such assessments are to be part of Defendant's lawful records." (Dkt. #78 ¶ 1.) He asks the Court to order the United States to provide him with this file, which he claims "likely will show that the assessment is fraudulent[.]" (*Id.* ¶ 2.)

II. ANALYSIS

a. United States' Renewed Motion to Dismiss (Dkt. #82) Motion to Dismiss

The United States moves for dismissal of Mr. Maehr's claims under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Dismissal pursuant to Rule12(b)(1) is appropriate if the Court lacks subject matter jurisdiction over claims for relief asserted in the complaint. Rule 12(b)(1) challenges are generally presented in one of two forms: "[t]he moving party may (1) facially attack the complaint's allegations as to the existence of subject matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject matter jurisdiction rests." *Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1074 (10th Cir. 2004) (quoting *Maestas v. Lujan*, 351 F.3d 1001, 1013 (10th Cir. 2003)). When reviewing the factual basis on which subject matter jurisdiction rests, the district court does not presume the truthfulness of the complaint and "has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)." *Holt v. United States*, 46 F.3d 1000, 1003 (10th

Cir. 1995) (citations omitted). Consideration of evidence outside the pleadings does not convert the motion to a Rule 56 motion. *Id.*

By contrast, Rule 12(b)(6) provides that a defendant may move to dismiss a claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1201 (10th Cir. 2003) (citations and quotation marks omitted).

"A court reviewing the sufficiency of a complaint presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Hall*, 935 F.2d at1198. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff pleaded facts which allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The *Iqbal* evaluation requires two prongs of analysis. First, the court identifies "the allegations in the complaint that are not entitled to the assumption of truth," that is, those allegations which are legal conclusions, bare assertions, or merely conclusory. *Id.* at 679–81. Second, the court considers the factual allegations "to determine if they plausibly suggest an entitlement to relief." *Id.* at 681. If the allegations state a plausible claim for relief, such claim survives the motion to dismiss. *Id.* at 679.

However, the Court need not accept conclusory allegations without supporting factual averments. *Southern Disposal, Inc., v. Texas Waste*, 161 F.3d 1259, 1262 (10th Cir. 1998). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Moreover, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does the complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citation omitted). "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.'" *Id.* (citation omitted).

The United States argues that Mr. Maehr has already challenged the IRS's calculations of his income tax deficiencies for the tax years 2003–06, and this Court does not have jurisdiction to relitigate that issue. Mr. Maehr attempts to frame his lawsuit as one that "simply asks the Defendant to produce what was never produced in prior cases, and to address evidence Plaintiff produced in the same cases." (Dkt. #84 at 4.) The Court rejects Mr. Maehr's proposed framework and agrees with the United States that this lawsuit should be dismissed because Mr. Maehr's claims for relief are barred by 26 U.S.C. § 6512(a) (I.R.C. § 6512(a)).

Under the Internal Revenue Code, a taxpayer may challenge an income tax assessment in two ways:

> One way is to pay the tax, request a refund from the IRS, and then file a refund suit in the Court of Federal Claims or in a district court. I.R.C. § 7422(a). The Court of Federal Claims lacks jurisdiction over a tax refund suit unless the assessment has been fully paid. *See Ledford v. United*

> *States*, 297 F.3d 1378, 1382 (Fed. Cir. 2002). In the alternative, the taxpayer can file a petition with the Tax Court without paying the assessment. *See Flora v. United States*, 362 U.S. 145, 163, 80 S. Ct. 630, 4 L. Ed. 2d 623 (1960).

Smith v. United States, 495 F. App'x 44, 48 (Fed. Cir. 2012). With certain enumerated exceptions, if a taxpayer properly files a petition with the Tax Court, he cannot later file a claim in the Court of Federal Claims or in a district court to obtain a credit or refund for the same taxable year. *Id.* (citing 26 U.S.C. § 6512(a)). In other words, under 26 U.S.C. § 6512(a), "filing a petition to the Tax Court to challenge an asserted deficiency bars the taxpayer from bringing a suit in any other court for the recovery of any part of the tax for that taxable year." *Hook v. United States*, 624 F. App'x 972, 978 (10th Cir. 2015).

Here, Mr. Maehr did not pay the taxes and then seek a refund. Instead, he filed a petition with the United States Tax Court seeking redetermination of the IRS's notices of income tax deficiencies for the tax years 2003, 2004, 2005, and 2006. His petition was dismissed.[2] Mr. Maehr then appealed the Tax Court's decision to the Tenth Circuit, which affirmed the dismissal of his petition, concluding that the petition "contains no valid challenges to the notices of deficiency and fails to specifically identify errors related to the determination of his income tax deficiencies. It, instead, raises conclusory challenges to the constitutionality of the Internal Revenue Code and power of the Commissioner to impose income taxes." *Maehr v. Comm'r*, 480 F. App'x 921, 923 (10th Cir. 2012). The court also stated that the challenges raised by Mr. Maehr have been roundly rejected. *Id.* (collecting cases). On September 6, 2012, Mr. Maehr filed a petition for certiorari in the United States Supreme Court that was denied. *See Maehr v.*

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[2] The United States attached as an exhibit to its Response a copy of the Tax Court's August 19, 2011 Order of Dismissal and Decision. (Dkt. #82-1.)

Comm'r, 568 U.S. 1232 (2013). On April 11, 2013, Mr. Maehr filed a petition for rehearing that also was denied. *See Maehr v. Comm'r*, 569 U.S. 990 (2013).

Mr. Maehr argues that because "[n]one of the past courts had pre-assessment records as evidence despite Plaintiff's assessment challenges," his case was "never adjudicated." (Dkt. #70 ¶ 20.) But "an inability to advance certain arguments in the Tax Court does not defeat § 6512(a)'s bar." *Smith v. United States*, 101 Fed. Cl. 474, 479 (2011), *aff'd*, 495 F. App'x 44 (Fed. Cir. 2012). Nor is his claim that his due process rights were violated among the six exceptions to the statutory bar enumerated in § 6512(a). *See* 26 U.S.C. § 6512(a)(1)–(6). *See also Hook*, 624 F. App'x at 978 (rejecting the plaintiff's argument that the Tax Court proceedings were constitutionally flawed for the same reason). Moreover, in the Addendum, Mr. Maehr claims that the IRS records he seeks will "likely show that the assessment was fraudulent." (Dkt. #78 ¶ 2.) Under these circumstances, the Court cannot view the present lawsuit as anything but Mr. Maehr's latest attempt to contest the Tax Court's final determination of his tax liabilities. When he chose to challenge the federal income tax deficiencies in the Tax Court first, Mr. Maehr "put the entire matter into the hands of that court." *Stephanatos v. United States*, 306 F. App'x 560, 563 (Fed. Cir. 2009) (citing *Erickson v. United States*, 159 Ct. Cl. 202, 309 F.2d 760, 767 (1962)). This Court is precluded by § 6512(a) from exercising jurisdiction to redetermine those same liabilities.[3]

[3] To the extent that Mr. Maehr argues that the Court should exercise jurisdiction to compel the IRS to produce documents to him, Mr. Maehr has filed a Freedom of Information Act ("FOIA") request for his IRS records. (*See* Dkt. #84 at 30-32; #92.) The Court agrees with the United States that Mr. Maehr has not cited and authority or need to interfere with the FOIA process.

The Court further notes that Mr. Maehr's other attempts to thwart the IRS's investigation into and collection of his unpaid taxes have failed. For example, in *Maehr v. Comm'r*, 641 F. App'x 813 (10th Cir. 2016), a case where Mr. Maehr sought to quash IRS summons issued to third parties, the Tenth Circuit, after observing that he "did not pay his federal income taxes from 2003 to 2006 and still owes the IRS the amount of his unpaid liabilities for these years," stated:

> [Mr. Maehr] has continuously utilized the judicial system (he claims he "has now been in at least twelve courts") to try to avoid paying his underlying tax liabilities even though the courts have repeatedly concluded that his claims are without merit. *See, e.g., Maehr v. United States*, No. 8:08CV190, 2009 WL 2507457, at *3 (D. Neb. Aug. 13, 2009) (concluding that Petitioner's "arguments are without merit and the court will not waste time addressing these frivolous claims"); *Maehr v. United States*, No. 3:08–MC–00067–W, 2008 WL 2705605, at *2 (W.D.N.C. July 10, 2008) (concluding that Petitioner's arguments are "wholly without merit").

641 F. App'x at 816–17 (brackets omitted). *See also Maehr v. Koskinen*, 664 F. App'x 683, 684 (10th Cir. 2016) ("We agree with the district court that Appellant's challenges to his underlying tax liabilities are frivolous. Appellant has raised these same arguments before, and we have rejected them before."). And, in April 2018, the Court of Federal Claims dismissed on jurisdictional grounds yet another lawsuit filed by Mr. Maehr challenging the IRS's tax assessments. *See Maehr v. United States*, 137 Fed. Cl. 805, *reconsideration denied*, 139 Fed. Cl. 1 (2018), *aff'd*, 767 F. App'x 914 (Fed. Cir. 2019).

This Court must likewise reject Mr. Maehr's most recent collateral attack on the final decision issued by the Tax Court. The Court finds that it lacks subject matter jurisdiction over Mr. Maehr's claims, and therefore recommends that this lawsuit be dismissed without prejudice. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216–17 (10th Cir.2006) (recognizing established rule that "where the district court dismisses for lack of jurisdiction . . . the dismissal must be without prejudice" because a court

without jurisdiction lacks power "to make any determination of the merits of the underlying claim"). Because the Court has determined that lacks subject matter jurisdiction pursuant to Rule 12(b)(1), it will not address the United States' res judicata and Rule 12(b)(6) arguments. *See Smith v. United States*, No. 13-cv-01156-RM-KLM, 2014 WL 6515677, at *5 (D. Colo. July 10, 2014) ("Although Defendant raises the issue of res judicata, . . . the Court must first address subject matter jurisdiction over the case."), *report and recommendation adopted as modified*, No. 13-cv-01156-RM-KLM, 2014 WL 6527980 (D. Colo. Nov. 20, 2014), *aff'd sub nom. Hook*, 624 F. App'x 972.

b. Mr. Maehr's Opposed Motion for Preliminary Injunction (Dkt. #45)

Mr. Maehr requests that the Court stop the United States from collecting owed but unpaid taxes. Specifically, he asks that the Court enter "the immediate stay of garnishment of all social security funds until all possible adjudication has been completed." (Dkt. #45 at 2.) This motion will be denied because the requested relief is barred by the Anti-Injunction Act, 26 U.S.C. § 7421 (I.R.C. § 7421)).

The Anti–Injunction Act provides that "a litigant may not bring a 'suit for the purpose of restraining the assessment or collection of any tax . . . in any court by any person, whether or not such person is the person against whom such tax was assessed.'" *Green Sol. Retail, Inc. v. United States*, 855 F.3d 1111, 1114 (10th Cir. 2017) (quoting I.R.C. § 7421(a)). "The purpose of the Anti–Injunction Act is to allow the government to conduct its business expeditiously in the assessment and collection of taxes without judicial intervention and to require that a taxpayer challenging the assessment and collection of taxes against him must first file a claim for a refund with the IRS." *Brasfield v. I.R.S.*, No. 01-Z-2409 (CBS), 2002 WL 1760852, at *2 (D. Colo.

June 6, 2002) (citing *Wyo. Trucking Assoc., Inc. v. Bentsen*, 82 F.3d 930, 933 (10th Cir.1996)). The Anti-Injunction Act is jurisdictional. *Green Solution*, 855 F.3d at 1114.

There are two narrow judicial exceptions to the Anti-Injunction Act's bar that are relevant here. The first applies where the taxpayer demonstrates that "1) under no circumstances could the government establish its claim to the asserted tax; and 2) irreparable injury would otherwise occur." *Souther v. Milhbachler*, 701 F.2d 131, 132 (10th Cir.1983) (citing *Bob Jones Univ. v. Simon*, 416 U.S. 725, 737 (1974); *Lonsdale v. United States*, 919 F.2d 1440, 1442 (10th Cir.1990)). This exception does not apply because Mr. Maehr has not satisfied either of its required elements. First, he cites to no evidence that shows the United States could not, under any circumstances, establish its claim on Mr. Maehr's 2003–06 taxes. Indeed, myriad courts have found that Mr. Maehr owes federal income taxes for those years. *See, e.g.,* Maehr, 641 F. App'x at 814. Nor does Mr. Maehr demonstrate that he will suffer irreparable harm absent an injunction. He only alleges that the United States garnishing his Social Security benefits since February 2016, "despite an unproven, and as yet, unvetted assessment," constitutes "severe, ongoing harm to him financially." (Dkt. #45 at 2.) Not only is this allegation conclusory, mere monetary harm or financial hardship is not sufficient to establish irreparable injury. *Andrews v. United States*, No. 09-cv-02394-MSK-KLM, 2010 WL 2510399, at *6 (D. Colo. Mar. 8, 2010).

In his Response, Mr. Maehr states that the government is not permitted to garnish all his Social Security benefits, which is what it has been doing. Instead, he argues that 26 U.S.C. § 6331(h) only allows a levy of up to fifteen percent of certain

Social Security payments. He also contends that 42 U.S.C. § 407 "suggests" that no social security benefits can be levied.

The Court can dispense with Mr. Maehr's latter argument as it was already made to and rejected by the Tenth Circuit. *See Maehr v. Koskinen*, 664 F. App'x at 684 (Mr. Maehr's "argument that his Social Security retirement benefits cannot be levied under 42 U.S.C. § 407(a) ignores the fact that this provision is expressly superseded by 26 U.S.C. § 6334(c) in the tax-collection context."). As to the former, under 26 U.S.C. § 6331(a), the IRS can levy on **all** property or rights to property of a delinquent taxpayer unless § 6334 provides a specific exception. Most levies are limited, however, in that they may only attach to "property possessed and obligations existing at the time thereof." 26 U.S.C. § 6331(b). Section 6331(h) provide a means for the IRS to levy property and obligations to the taxpayer which are not yet in existence at the time of attachment. *See* 26 U.S.C. 6331(h) ("the effect of such levy on specified payments to or received by a taxpayer shall be continuous from the date such levy is first made . . ."). Unlike levies under Section 6331(a), "continuing" levies attach to new property rights as they arise but are limited to fifteen percent of any specified payment. Mr. Maehr claims that his Social Security benefits are subject to the limitations on continuous levy from specified payments. However, the pertinent case law "overwhelmingly" rejects Mr. Maehr's position. *See Holland v. United States,* No. 17-13926, 2019 WL 1077123, at *6 (E.D. Mich. Mar. 7, 2019) (collecting cases). *But see Anderson v. I.R.S. (In re Anderson),* 250 B.R. 707, 709-11 (Bankr. D. Mont. 2000). The Court finds that Mr. Maehr's Social Security payments likely represent a present, vested right to receive benefits in fixed monthly payments and that the amount of these benefits are calculable.

See Bowers v. United States, 861 F. Supp. 2d 921, 923 (C.D. Ill.), *aff'd*, 498 F. App'x 623 (7th Cir. 2012). Thus, Mr. Maehr has not demonstrated that "under no circumstances" could the IRS seize the entire stream of payments through a one-time levy pursuant to §§ 6331(a)–(b).

The second Anti-Injunction Act exception applies where Congress has not provided the taxpayer with an alternative remedy to challenge the validity of the tax at issue. *See Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004). Here, Mr. Maehr had an alternate remedy and he used it. He filed a petition in Tax Court, and when the petition was dismissed, he sought review in the Tenth Circuit. Moreover, under 26 U.S.C. § 6330, Mr. Maehr had an opportunity to request a pre-levy hearing, at which he could have challenged the appropriateness of the collection actions and offered collection alternatives. His motion is silent as to whether he exercised that right. Therefore, neither exception to Anti-Injunction Act apply and Mr. Maehr is not entitled to injunctive relief.

IV. RECOMMENDATION

WHEREFORE, for the foregoing reasons, it is hereby **RECOMMENDED** that Plaintiff Jeffrey T. Maehr's Opposed Motion for Preliminary Injunction (Dkt. #45) be **DENIED**, that Defendant United States' Renewed Motion to Dismiss (Dkt. #82) be **GRANTED**, and that Plaintiff's Third Amended Complaint (as construed as Dkt. #70 & #78) be **DISMISSED WITHOUT PREJUDICE**.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(2), the parties have fourteen (14) days after service of this recommendation to serve and file specific written objections to the above recommendation with the District

Judge assigned to the case. A party may respond to another party's objections within fourteen (14) days after being served with a copy. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives *de novo* review of the recommendation by the District Judge, *Thomas v. Arn*, 474 U.S. 140, 148-53 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colorado Dep't of Corrections*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

BY THE COURT

Date: August 1, 2019
Denver, Colorado

N. Reid Neureiter
United States Magistrate Judge

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