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OPINION AND ORDER

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ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT
(MARCH 25, 2020)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID HEGLAND; ET AL.,

Plaintiffs-Appellants,

v.

NICOLA T. HANNA,

Defendant-Appellee.

No. 19-56401

D.C. No. 2:19-cv-04492-R-AFM
Central District of California, Los Angeles

Before: TASHIMA, FRIEDLAND,
and MILLER, Circuit Judges.

A review of the record and appellants' response to the motion for summary affirmance indicates that the questions raised in this appeal are so insubstantial as not to require further argument. *See* 9th Cir. R. 3-6(a)(2); *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard); *see also Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) ("Where a suit has not been consented to by the United States, dismissal of the action is required.").

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Accordingly, appellee's motion to summarily affirm the district court's judgment (Docket Entry No. 6) is granted.

AFFIRMED.

**ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA
(NOVEMBER 4, 2019)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID HEGLAND, ET. AL.

v.

NICOLA T HANNA

No. 2:19-cv-04492-R-AFM

Before: The Hon. R. Gary KLAUSNER,
United States District Judge.

Proceedings: (IN CHAMBERS) Order Re: Defendant's
Motion to Dismiss (DE 9)

I. Introduction

On August 27, 2019, Defendant Nicola T. Hanna, in his official capacity as United States Attorney for the Central District of California ("Defendant") filed his Motion to Dismiss Plaintiffs' Complaint pursuant under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

For the following reasons, the Court GRANTS the Motion.

II. Plaintiffs' Allegations¹

Pro se Plaintiffs are seven individuals residing in Iowa and Jacksonville. On May 29, 2019, Plaintiffs filed their "Petition for Declaratory and Injunctive Relief and for Writ of Mandamus" ("Compl.") seeking to compel the United States Attorney's Office for the Central District of California to bring Plaintiffs before the grand jury to present evidence regarding a financial fraud. (DE 2).

Attached as Exhibit A to Plaintiffs' Complaint is a January 7, 2019 letter to Defendant requesting that Defendant "present evidence to either or both the regular and/or special grand jury concerning crimes in your district in order to trigger an investigation" and that Defendant "prosecute certain individuals for securities fraud." The letter further provides background regarding the financial fraud, stating that roughly "1400-1700 individual investors, many non-accredited, were solicited to invest in a movie company called *Legends of Oz: Dorothy's Return*." According to the letter, approximately \$120,000,000 was raised for the movie, which generated \$18,000,000, and the fraudulent fundraisers took nearly \$73,000,000 in fees.

Plaintiffs further attach a 92-page document as Exhibit B to their Complaint and characterize it as a "summary of the crimes Plaintiffs seek to present to the grand jury." Based on these facts, Plaintiffs believe they have been defrauded and ask this Court to "declare" the following:

¹ Plaintiffs' allegations are accepted as true only for the purposes of this motion.

- “Petitioners have a First Amendment right to Petition their Government for the redress of grievances.”
- “[T]he federal grand jury is an arm of that government.”
- “[C]itizens are entitled to present their grievances, in person, to their fellow citizens on the grand jury, without blocking or ‘stonewalling’ by the U.S. Attorney or his minions.”

Plaintiffs also seek an order, pursuant to the Administrative Procedures Act (“APA”) “directing the U.S. Attorney to introduce the Plaintiffs to their fellow citizens on the grand jury, in person, to prevent interference by the U.S. Attorney or his staff.”

III. Judicial Standard

Federal Courts are courts of limited jurisdiction. On a motion to dismiss under Rule 12(b)(1), the plaintiff has the burden of establishing that the court has subject matter jurisdiction. *Kokkenen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Because jurisdiction is a preliminary issue, a court must first determine it has jurisdiction before proceeding to rule on the merits of a case. *Sinochein Int’l co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 430-31 (2007).

A motion to dismiss under Rule 12(b)(1) may be “facial” or “factual.” *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, the challenger asserts the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. *Id.* The court must assume the factual allegations in the complaint are true and construe them in the light most favorable to the plaintiff. *See*

Warren v. Fox Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). However, the court need not accept as true legal conclusions pled as factual allegations. *Id.* A Rule 12(b)(1) motion will be granted if, on its face, the complaint fails to allege grounds for federal subject matter jurisdiction as required by Rule 8(a). *See id.*

Under Rule 12(b)(6), a party may move to dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible if the plaintiff alleges enough facts to draw a reasonable inference that the defendant is liable. *Iqbal*, 556 U.S. at 678. A plaintiff need not provide detailed factual allegations but must provide more than mere legal conclusions. *Twombly*, 550 U.S. at 555. However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

VI. Discussion

Defendant moves to dismiss Plaintiffs’ Complaint pursuant to Rule 12(b)(1) and 12(b)(6) for three reasons. First, Defendant argues that this Court lacks subject matter jurisdiction because Plaintiffs’ claims are barred by sovereign immunity. Second, Defendant argues that Plaintiffs fail to state a claim under the Declaratory Judgment Act. Third, Defendant argues that Plaintiffs’ Complaint fails to comply with minimal federal pleadings standards because it consists of voluminous, vague and mostly incomprehensible allegations.

A. Plaintiffs' Claims Are Barred by Sovereign Immunity.

Under the doctrine of sovereign immunity, a sovereign entity is subject to a court's jurisdiction only when it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). A lawsuit seeking injunctive relief against a federal officer in his official capacity is similarly barred by the doctrine of sovereign immunity unless that immunity has been expressly waived. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 687 (1949).

Plaintiffs seek judicial review of Defendant's decision—in his official capacity as U.S. Attorney to decline Plaintiffs' request to allow them to present information to a grand jury. Plaintiffs ask this Court to declare that Plaintiffs' inability to present evidence, in person, to a grand jury violates constitutional and statutory rights. Plaintiffs further seek injunctive relief requiring Defendant to allow Plaintiffs access to a grand jury. Plaintiffs claim that this Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1361, 2201 and 2202.

Plaintiffs do not appear to dispute that sovereign immunity generally extends to Defendant in his official capacity. Plaintiff also do not and cannot dispute that four of the statutes under which they bring their claims—28 U.S.C. §§ 1331, 1361, 2201 and 2202—do not waive sovereign immunity for the United States and its officers in their official capacities, including Defendant. *Pit River Home & Agr. Co-op. Ass'n v. United States*, 30 F.3d 1088, 1098 (9th Cir. 1994) (“Sections 1331 and 1361 do not waive the sovereign immunity of the United States.”) (citing *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983); *Smith v.*

Grimm, 534 F.2d 1346, 1352 n. 9 (9th Cir.); *Brownell v. Ketcham Wire & Mfg. Co.*, 211 F.2d 121, 128 (9th Cir. 1954) (stating that 28 U.S.C. §§ 2201-2202 does not waive sovereign immunity) (citations omitted). Plaintiffs appear to contend, however, that the Administrative Procedure Act (“MA”), 5 U.S.C. § 702 *et. seq.* waives Defendant’s sovereign immunity.

But the APA’s waiver of sovereign immunity does not apply where “agency action is committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). And decades of binding precedent hold that an agency’s decision to prosecute, enforce or bring charges before a grand jury is within the prosecutor’s absolute discretion. *See, e.g., Heckler v. Chaney*, 470 U.S. 821, 831, 105 S. Ct. 1649, 84 L.Ed.2d 714 (1985) (“[A]n agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion. This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement.”) (citations omitted). It is therefore clear that the APA does not create a private cause of action in Plaintiffs to compel Defendant to prosecute or present evidence to a grand jury because that decision is committed to agency discretion by law. *See, e.g., City & Cty. of San Francisco v. U.S. Dept of Transp.*, 796 F.3d 993, 1004 (9th Cir. 2015) (“As we have explained, decisions not to enforce are presumptively unreviewable under 5 U.S.C. § 701 (a)(2).”)

Plaintiffs—who have the burden of overcoming sovereign immunity—offer no authority to contradict that the issues present in this case fall squarely within Defendant’s discretion by law, and the Court has

located none. *Consumer Fin. Prot. Bureau v. Nationwide Biweekly Admin., Inc.*, CV 15-02106 RS, 2016 WL 2961868, at *4 (N.D. Cal. May 23, 2016) (“[B]efore a party may seek review of federal agency activity under the APA, he or she must first clear the hurdle of Section 701(a), which provides that APA’s waiver of sovereign immunity does not apply to the extent that agency action is committed to agency discretion by law.”). Plaintiff has identified no further statutes or other authority for waiving Defendant’s immunity in this case, and the Court has located none.²

Thus, Defendant retains sovereign immunity, the Court does not have jurisdiction over Defendant, and dismissal of this case is proper. Because this Court lacks jurisdiction, the Court need not, and does not, reach other arguments raised by the parties.

V. Conclusion

For the foregoing reasons, the Court GRANTS Defendant’s Motion to Dismiss (DE 9).

IT IS SO ORDERED.

CCH

Initials of Deputy Clerk

² The Complaint references the Special Grand Jury statute, 18 U.S.C. §§ 3331-32, but that statute does not create a right for citizens to require a United States Attorney to prosecute or allow citizens to present evidence to a grand jury. *Arnett v. Unknown*, No. CV 11-5896-JAK E, 2011 WL 4346329, at *5 (C.D. Cal. Aug. 23, 2011), report and recommendation adopted, No. CV 11-5896-JAK E, 2011 WL 4344103 (C.D. Cal. Sept. 15, 2011).

ORDER OF THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT DENYING
MOTION FOR RECONSIDERATION
(AUGUST 4, 2020)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID HEGLAND; ET AL.,

Plaintiffs-Appellants,

v.

NICOLA T. HANNA,

Defendant-Appellee.

No. 19-56401

D.C. No. 2:19-cv-04492-R-AFM
Central District of California, Los Angeles

Before: TASHIMA, FRIEDLAND,
and MILLER, Circuit Judges.

Appellants have filed a request that this court disclose the identities of, and information pertaining to, certain court personnel (Docket Entry No. 9) and a combined motion for reconsideration and motion for reconsideration *en banc* (Docket Entry No. 10).

The request for disclosure is denied.

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The motion for reconsideration is denied, and the motion for reconsideration *en banc* is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.



SUPREME COURT
PRESS