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NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MORGAN JOSEPH LANGAN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1057

Appeal from the United States Court of Federal
Claims in No. 1:18-cv-01603-LKG,
Judge Lydia Kay Griggsby.

Decided: May 6, 2020

MORGAN JOSEPH LANGAN, Cornville, AZ, pro se.

ANTHONY F. SCHIAVETTI, Commercial Litigation
Branch, Civil Division, United States Department of
Justice, Washington, DC, for defendant-appellee. Also
represented by JOSEPH H. HUNT, ROBERT EDWARD
KIRSCHMAN, JR., LOREN MISHA PREHEIM.

Before CHEN, LINN, and STOLL, *Circuit Judges*.

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PER CURIAM.

Plaintiff-Appellant Morgan Joseph Langan appeals from a judgment from the Court of Federal Claims (Claims Court) dismissing his complaint for lack of subject matter jurisdiction. *See Langan v. United States*, No. 18-cv-01603, 2019 WL 3857044 (Fed. Cl. Aug. 16, 2019). For the reasons explained below, we *affirm*.

BACKGROUND

Mr. Langan filed suit in the Claims Court against the United States, the State of Arizona, and Yavapai County, Arizona, alleging that certain banks operating in Arizona and certain state and local county government officials in Yavapai County improperly foreclosed upon and confiscated his house and land. SAppx 27, 30–31.¹ Mr. Langan alleged that he “was deprived of [his] land, home, estate and property under operation of State non-judicial foreclosure laws that impaired the obligations required by [certain] contracts between the parties.” SAppx 29. His complaint also appeared to assert claims against the United States based upon the First, Fifth and Fourteenth Amendments and Article 1 § 10 of the United States Constitution. SAppx 28. As relief, Mr. Langan sought to recover \$1,398,838.05 in

¹ Mr. Langan and the Government submitted their own appendices, which will be referred to with the prefixes “Appx” and “SAppx,” respectively.

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damages from the United States and certain equitable relief. SAppx 38–39.

The Government moved to dismiss for lack of subject matter jurisdiction or for failure to state a claim pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of the Court of Federal Claims. *See* Def.'s Mot. Dismiss, No. 18-cv-01603 (Fed. Cl. Dec. 10, 2018), ECF No. 7 at 1–2. In response to the Government's motion to dismiss, Mr. Langan raised a breach of contract claim against the United States and asserted a violation of an alleged federal land patent. Pl.'s Resp. Mot. Dismiss, No. 18-cv-01603 (Fed. Cl. Mar. 11, 2019), ECF No. 18 at 1. Mr. Langan also identified 28 U.S.C. §§ 1491(a)(1), 1493, 1498, and 42 U.S.C. § 1983 as the jurisdictional bases for his claims and cause of action against the United States. *Id.* at 4.

The Claims Court granted the Government's motion to dismiss, holding that it lacked jurisdiction over Mr. Langan's claims on various grounds. *Langan*, 2019 WL 3857044, at *8. The court explained that it lacked jurisdiction to entertain Mr. Langan's complaint because he asserted claims against parties other than the United States, did not establish the existence of a contract with the United States, and pleaded various other claims outside the court's subject matter jurisdiction. *Id.* at *5–7. The court later denied Mr. Langan's motion for reconsideration. *Langan v. United States*, No. 18-cv-01603, 2019 WL 4643746, at *1 (Fed. Cl. Sept. 24, 2019).

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Mr. Langan appealed. We have jurisdiction over the appeal pursuant to 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review de novo the Claims Court’s legal conclusion that it lacked subject matter jurisdiction. *Stephens v. United States*, 884 F.3d 1151, 1155 (Fed. Cir. 2018) (citing *Coast Prof’l, Inc. v. United States*, 828 F.3d 1349, 1354 (Fed. Cir. 2016)). As the plaintiff, Mr. Langan “bears the burden of establishing subject matter jurisdiction by a preponderance of the evidence.” *Estes Exp. Lines v. United States*, 739 F.3d 689, 692 (Fed. Cir. 2014) (citing *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988)). When reviewing a Claims Court’s decision on a “motion to dismiss for lack of subject matter jurisdiction, [we] accept[] as true all uncontroverted factual allegations in the complaint, and construe[] them in the light most favorable to the plaintiff.” *Id.* (citing *Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583–84 (Fed. Cir. 1993)).

The Claims Court was correct to dismiss Mr. Langan’s complaint for lack of jurisdiction. Pursuant to the Tucker Act, the Claims Court has jurisdiction over “any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.” 28 U.S.C. § 1491(a)(1). The Claims Court’s jurisdiction under the Tucker Act “is confined

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to the rendition of money judgments in suits brought for that relief against the United States,” *United States v. Sherwood*, 312 U.S. 584, 588 (1941), and Mr. Langan’s complaint does not allege any claim within the court’s jurisdiction under the Tucker Act.

Under the Tucker Act, the Claims Court only has jurisdiction to hear “claim[s] against the United States.” § 1491(a)(1); *Sherwood*, 312 U.S. at 588. “[I]f the relief sought is against others than the United States[,] the suit as to them must be ignored as beyond the jurisdiction of the court.” *Sherwood*, 312 U.S. at 588. The essence of Mr. Langan’s complaint appears to relate to actions by banks and certain state and local government officials in Arizona. SAppx 27, 30–31. To the extent the complaint sought relief against defendants other than the United States, including private parties and state and county entities, the Claims Court correctly dismissed those claims. *See Sherwood*, 312 U.S. at 588 (The Claims Court is “without jurisdiction of any suit brought against private parties.”); *Conner v. United States*, 407 F. App’x 428, 430 (Fed. Cir. 2011) (The Claims Court “does not have jurisdiction [over] claims against Virginia, its entities, or its employees.”).

Further, the Tucker Act is “only a jurisdictional statute.” *United States v. Testan*, 424 U.S. 392, 398 (1976). That means it “does not create a substantive cause of action,” but instead requires the plaintiff to identify a “money-mandating” source of law, i.e., “a separate source of substantive law that creates the right to money damages.” *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). Therefore, a

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plaintiff seeking to invoke the court's Tucker Act jurisdiction must identify an independent source of a substantive cause of action for money damages from the United States arising out of a contract, statute, regulation, or constitutional provision. *Id.*; *Jan's Helicopter Serv., Inc. v. Fed. Aviation Admin.*, 525 F.3d 1299, 1306 (Fed. Cir. 2008). In this case, the Claims Court correctly concluded that Mr. Langan's complaint was not based upon a money-mandating provision of law, or a contract with the United States.

Mr. Langan's complaint appeared to allege violations of his rights under the First, Fifth, and Fourteenth Amendments and Article 1 § 10 of the United States Constitution. SAppx 28. As the Claims Court correctly noted, the First and Fourteenth Amendments and Article 1 § 10 cannot support jurisdiction under the Tucker Act because none of these constitutional provisions are money-mandating. *United States v. Connolly*, 716 F.2d 882, 887 (Fed. Cir. 1983) (“[T]he [F]irst [A]mendment, standing alone, cannot be so interpreted to command the payment of money.”); *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (The Fourteenth Amendment is not “a sufficient basis for jurisdiction because [it] do[es] not mandate payment of money by the government.”); *Olajide v. United States*, No. 16-01594, 2017 WL 3225048, at *4 (Fed. Cl. July 31, 2017) (Article I § 10 is “not money-mandating and do[es] not create a duty for the government to pay.”). While the Claims Court may consider takings claims based upon the Fifth Amendment, the complaint asserted no factual predicate for the conclusion that the

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banks or state and local government officials acted on behalf of the United States in connection with the foreclosure of Mr. Langan's property. Therefore, the Claims Court correctly concluded that Mr. Langan failed to identify a cognizable property interest that had been taken by the United States. *See Langan*, 2019 WL 3857044, at *6.

The Claims Court also correctly dismissed Mr. Langan's breach of contract claim against the United States for lack of subject matter jurisdiction because Mr. Langan failed to plausibly establish the existence of an express or implied contract with the United States. *See Langan*, 2019 WL 3857044, at *5–6 (citing *Crewzers Fire Crew Transp., Inc. v. United States*, 741 F.3d 1380, 1382 (Fed. Cir. 2014) (“To invoke the Court of Federal Claims’[] jurisdiction under the Tucker Act, a [plaintiff] must first show that its claims arose out of a valid contract with the United States.”)). As the plaintiff, Mr. Langan bears the burden of proving the existence of a valid contract with the United States. *Kam-Almaz v. United States*, 682 F.3d 1364, 1368 (Fed. Cir. 2012). “The party alleging a contract must show a mutual intent to contract including an offer, an acceptance, and consideration.” *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997). “A contract with the United States also requires that the Government representative who entered or ratified the agreement had actual authority to bind the United States.” *Id.* As the Claims Court correctly concluded, Mr. Langan failed to point to any evidence to plausibly

establish these elements of a contract with the United States.

Mr. Langan referred to an alleged federal land patent. But, as the Claims Court correctly noted, *see Langan*, 2019 WL 3857044, at *6, “[h]olding a land patent, like any ownership interest in property, . . . is not sufficient on its own to give rise to a cause of action,” *Daniels v. United States*, No. 17-01598, 2018 WL 1664476, at *8 (Fed. Cl. Apr. 6, 2018); *see also Ioane v. United States*, 4 F. App’x 762, 763 (Fed. Cir. 2001) (“[A] Federal Land Patent is a deed and gives . . . no rights against the United States.”). Mr. Langan has not identified any independent money-mandating provision of law basis for his land patent claim, as is required to invoke the Claims Court’s jurisdiction under the Tucker Act. Nor does Mr. Langan identify any adverse action taken by the United States in regard to his land patent.

Next, the Claims Court correctly concluded it lacked jurisdiction to consider Mr. Langan’s statutory claims because the statutes relied upon were either outside the court’s jurisdiction or inapplicable to his claims. *See Langan*, 2019 WL 3857044, at *7. Mr. Langan identified the Tucker Act, 28 U.S.C. § 1491(a)(1), as the jurisdictional basis for his case, but as previously discussed, this is “only a jurisdictional statute” and “does not create any substantive right enforceable against the United States for money damages.” *Testan*, 424 U.S. at 398. He also relied on 28 U.S.C. § 1493, but that statute was repealed in 1953. Also, as the Claims Court correctly noted, 28 U.S.C. § 1498 is inapplicable to Mr. Langan’s claims because it addresses the court’s

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jurisdiction regarding invention patents, not land patents. *See Langan*, 2019 WL 3857044, at *7; *see also Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 138 S. Ct. 1365, 1376 n.3 (2018) (“Modern invention patents . . . are meaningfully different from land patents.”). Mr. Langan further identified 42 U.S.C. § 1983 as a substantive cause of action, but the Claims Court does not possess jurisdiction to hear claims for violations of this statute. *See* 28 U.S.C. § 1343 (providing that exclusive jurisdiction to hear civil rights claims resides in the federal district courts); *Kennedy v. United States*, 138 Fed. Cl. 611, 618 (2018) (“[O]nly federal district courts possess jurisdiction to entertain claims alleging civil rights violations” such as claims brought pursuant to 42 U.S.C. § 1983.), *appeal dismissed*, 748 F. App'x 335 (Fed. Cir. 2019).

Finally, the remainder of Mr. Langan's demands, which are for equitable relief, are also outside the jurisdiction of the Claims Court. The complaint sought, among other things, that the Claims Court “decree a fair and equitable process to command specific performance for officers of the government including Yavapai County and the State of Arizona.” SAppx 39. Mr. Langan also asserted a “right to redeem [his land] in equity” based on “unjust enrichment.” Pl.'s Resp. Mot. Dismiss, ECF No. 18 at 2. The Claims Court lacks general equity jurisdiction and can only award equitable relief “incident of and collateral to” a money judgment. *See* 28 U.S.C. § 1491(a)(2); *Roth v. United States*, 378 F.3d 1371, 1384 (Fed. Cir. 2004) (“[T]he Court of Federal Claims does not possess general equity

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jurisdiction.”); *Martinez v. United States*, 333 F.3d 1295, 1303 (Fed. Cir. 2003) (same). Further, Mr. Langan’s unjust enrichment claim, as an equitable cause of action, is beyond the jurisdiction of the Claims Court. *8x8, Inc. v. United States*, 854 F.3d 1376, 1383 n.7 (Fed. Cir. 2017).

CONCLUSION

We have considered Mr. Langan’s remaining arguments and find them unpersuasive. For the foregoing reasons, the Claims Court lacked jurisdiction over Mr. Langan’s claims, and properly dismissed the complaint.

AFFIRMED

COSTS

No costs.

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NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MORGAN JOSEPH LANGAN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1057

Appeal from the United States Court of Federal
Claims in No. 1:18-cv-01603-LKG, Judge Lydia Kay
Griggsby.

(Filed: 05/21/2020)

Before CHEN, LINN, and STOLL, *Circuit Judges*.

PER CURIAM.

ORDER

Morgan Joseph Langan submits a document titled
“Petition for a Writ of Mandamus to the Clerk the
United States Court of Federal Claims Issued Under
Exceptional Circumstances During this Peculiar
Emergency of Public Importance.”

Upon consideration thereof,

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IT IS ORDERED THAT:

The petition is denied.

FOR THE COURT

May 21, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

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In the United States Court of Federal Claims

No. 18-1603C

Filed: September 24, 2019

NOT FOR PUBLICATION

MORGAN JOSEPH)	
LANGAN,	)	RCFC 59(a); Motion
	)	For Reconsideration;
Plaintiff,	)	RCFC 60(b); Motion
	)	For Relief From
v.	)	Judgment;
THE UNITED STATES,	)	RCFC 52; Motion To
	)	Amend Judgment.
Defendant.)	

Morgan Joseph Langan, Cornville, AZ, Plaintiff,
pro se.

Anthony F. Schiavetti, Trial Attorney, *L. Misha Preheim*, Assistant Director, *Robert E. Kirschman, Jr.*, Director, *Joseph H. Hunt*, Assistant Attorney General, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant.

**MEMORANDUM OPINION AND
ORDER DENYING MOTIONS FOR
RECONSIDERATION, RELIEF FROM
JUDGMENT AND TO AMEND JUDGMENT**

GRIGGSBY, Judge

I. INTRODUCTION

This matter involved a claim by plaintiff *pro se*, Morgan Joseph Langan, alleging that certain state and county government officials in Yavapai County, Arizona improperly confiscated his house and land. *See generally* Compl. After the government moved to dismiss this matter for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted, and plaintiff filed motions for entry of default judgment and to consolidate cases, the Court: (1) granted the government's motion to dismiss; (2) denied-as-moot plaintiff's motions for entry of default judgment and to consolidate cases; and (3) dismissed the complaint on August 16, 2019 (the "August 16, 2019, Decision"). *Langan v. United States*, No. 18-1603C, 2019 WL 3857044, at *1 (Fed. Cl. Aug. 16, 2019).

On September 3, 2019, plaintiff timely filed motions for reconsideration, for relief from judgment and to alter or amend judgment, pursuant to Rules 59(a), 60(b) and 52(b) of the Rules of the United States Court of Federal Claims ("RCFC"). *See generally* Pl. Mot. For the reasons set forth below the Court DENIES plaintiff's motions.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

In this breach of contract action, plaintiff alleged that certain banks operating in the State of Arizona, and certain Yavapai County government officials, improperly foreclosed upon and confiscated his land, home and estate. *Langan v. United States*, No. 18-1603C, 2019 WL 3857044, at *1 (Fed. Cl. Aug. 16, 2019). Plaintiff also asserted claims against the United States based upon an alleged land patent; the First, Fifth and Fourteenth Amendments of the United States Constitution; Article 1 § 10 of the United States Constitution; 28 U.S.C. § 1491; 28 U.S.C. § 1498; 28 U.S.C. § 1493; and 42 U.S.C. § 1983. *Id.*

In the August 16, 2019, Decision, the Court dismissed plaintiff's claims for lack of subject-matter jurisdiction for several reasons. First, the Court held that it may not consider plaintiff's claims against parties other than the United States, because the United States is the only proper defendant in cases brought in this Court. *Id.* at *5. Second, the Court held that it must also dismiss plaintiff's breach of contract claim against the United States, because plaintiff failed to establish the existence of an express or implied-in-fact contract with the United States. *Id.* at *5-6.

Third, the Court dismissed plaintiff's land patent claim for want of subject-matter jurisdiction, because a land patent is not sufficient on its own to give rise to a cause of action against the United States. *Id.* at *6.

Fourth, the Court held that it could not entertain plaintiff's constitutional law claims, because the constitutional provisions upon which plaintiff relied are not money-mandating and plaintiff failed to identify a cognizable property interest that has been taken by the United States in the complaint. *Id.*

In addition, the Court held that it was without jurisdiction to consider plaintiff's statutory claims, because these claims either may not be brought in this Court or the statutes relied upon by plaintiff were unrelated to his claims. *Id.* at *7. Lastly, the Court held that plaintiff's request for equitable relief falls beyond the jurisdictional boundaries of the Tucker Act, because the Court may only award equitable relief "incident[al] and collateral to" a money judgment. *Id.*; see also 28 U.S.C. § 1491(a)(2).¹

III. LEGAL STANDARDS

A. RCFC 59(a)

Motions for reconsideration are governed by RCFC 59, which provides, in relevant part that:

- (1) ***Grounds for New Trial or Reconsideration.*** The court may, on motion, grant a new trial or a motion for reconsideration

¹ The Court also denied plaintiff's motions for entry of default judgment against the United States and to consolidate cases as moot. *Langan v. United States*, No. 18-1603C, 2019 WL 3857044, at *8 (Fed. Cl. Aug. 16, 2019)

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on all or some of the issues—and to any party—as follows:

- (A) for any reason for which a new trial has heretofore been granted in an action at law in federal court;
- (B) for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court; or
- (C) upon the showing of satisfactory evidence, cumulative or otherwise, that any fraud, wrong, or injustice has been done to the United States.

RCFC 59(a)(1). This Court has held that “[t]o prevail on a motion for reconsideration under RCFC 59, the movant must identify a ‘manifest error of law, or mistake of fact.’” *Shapiro v. Sec’y of Health & Human Servs.*, 105 Fed. Cl. 353, 361 (2012) (quoting *Fru-Con Constr. Corp. v. United States*, 44 Fed. Cl. 298, 300 (1999)), *aff’d*, 503 F. App’x 952 (Fed. Cir. 2013). And so, the Court will grant a motion for reconsideration upon a showing of either: “(i) an intervening change in controlling law; (ii) the availability of previously unavailable evidence; or (iii) the necessity of granting the motion to prevent manifest injustice.” *Id.* (citing *Petro-Hunt, L.L.C. v. United States*, No. 00-512L, 2012 WL 1957929, at *1 (Fed. Cl. May 30, 2012)); *see also Johnson v. United States*, 126 Fed. Cl. 558, 560 (2016).

Granting relief based upon a motion for reconsideration also requires “‘a showing of extraordinary circumstances.’” *Caldwell v. United States*, 391 F.3d 1226,

1235 (Fed. Cir. 2004) (quoting *Fru-Con Constr. Corp.*, 44 Fed. Cl. at 300). Given this, the Court has held that motions “for reconsideration may not be used simply as ‘an opportunity for a party to take a second bite at the apple by rearguing positions that have been rejected.’” *Johnson*, 126 Fed. Cl. at 560 (quoting *Shell Petroleum, Inc. v. United States*, 47 Fed. Cl. 812, 819 (2000)). And so, “[t]he decision whether to grant reconsideration lies largely within the discretion of the [trial] court.” *Yuba Nat. Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990) (citations omitted).

B. RCFC 60(b)

RCFC 60(b) sets forth the grounds for obtaining relief from a final judgment. Specifically, this rule provides that:

- (b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) mistake, inadvertence, surprise, or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under RCFC 59(b);

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- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

RCFC 60(b). The United States Court of Appeals for the Federal Circuit has held, within the context of the entry of a default judgment, that this Court should balance three factors when determining whether to grant relief pursuant to RCFC 60(b)(1) due to excusable neglect: (1) whether the nonmovant will be prejudiced by the granting of relief; (2) whether the movant has a meritorious claim or defense; and (3) whether the movant's dilemma was caused by his own culpable conduct. *Info. Sys. And Networks Corp. v. United States*, 994 F.2d 792, 795 (Fed. Cir. 1993) (applying excusable neglect under our predecessor court's identical rule); *see also Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Telzrow v. United States*, 127 Fed. Cl. 115, 120 (2016); *Stelco Holding Co. v. United States*, 44 Fed. Cl. 703, 708-09 (1999).

C. RCFC 52(b)

Lastly, RCFC 52(b) provides that, “[o]n a party’s motion filed no later than 30 days after the entry of judgment, the [C]ourt may amend its findings—or make additional findings—and may amend the judgment accordingly.” RCFC 52(b).

IV. LEGAL ANALYSIS

A careful review of plaintiff’s motions for reconsideration, for relief from judgment and to alter or amend judgment makes clear that plaintiff has not met his heavy burden to demonstrate that such relief is warranted in this case. And so, for the reasons set forth below, the Court DENIES plaintiff’s motions.

In his motions, plaintiff requests that the Court alter or amend the judgment entered in the August 16, 2019, Decision and he seeks relief from certain orders issued by the Court on July 24, 2019,² and August 16, 2019, respectively. Pl. Mot. at 1-3. In support of these requests, plaintiff argues, among other things, that: (1) the record in this matter contains clerical errors; (2) the Court did not respond to plaintiff’s motion to proceed *in forma pauperis*³; (3) “a serous injustice occurred

² On July 24, 2019, the Court issued an order returning unfiled several documents submitted by plaintiff because there is no provision in the Rules of the United States Court of Federal Claims for the filing of such documents (docket entry no. 27).

³ A review of the docket reveals that plaintiff did not file a motion to proceed *in forma pauperis* in this case. See generally Docket, No. 18-1603C.

when the Court ruled contrary to the legal and equitable interests of the plaintiff who was deprived of his home, land and private assets absent good reason, fairness, justice and due process;” and (4) there is evidence of “ongoing harassment by [Yavapai] County that is outside the grant of its municipal charter from the United States.” *Id.* at 1-4. Plaintiff has not shown that the relief he seeks is warranted for several reasons.

First, plaintiff has not shown that reconsideration of the Court’s August 16, 2019, Decision is warranted in this case, because he presents no allegations of an intervening change in controlling law nor the availability of previously unavailable evidence. *See generally* Pl. Mot. To prevail on a motion for reconsideration under RCFC 59, plaintiff must identify a manifest error of law, or mistake of fact. *Shapiro v. Sec’y of Health & Human Servs.*, 105 Fed. Cl. 353, 361 (2012) (quoting *Fru-Con Constr. Corp. v. United States*, 44 Fed. Cl. 298, 300 (1999)), *aff’d*, 503 F. App’x 952 (Fed. Cir. 2013). And so, the Court will grant a motion for reconsideration upon a showing of either: “(i) an intervening change in controlling law; (ii) the availability of previously unavailable evidence; or (iii) the necessity of granting the motion to prevent manifest injustice.” *Id.* (citing *Petro-Hunt, L.L.C. v. United States*, No. 00-512L, 2012 WL 1957929, at *1 (Fed. Cl. May 30, 2012)); *see also Johnson v. United States*, 126 Fed. Cl. 558, 560 (2016).

Plaintiff does not allege an intervening change in controlling law, or the availability of previously unavailable evidence in his motion. *See generally* Pl. Mot. Plaintiff does argue, however, that “a serious injustice

occurred when the Court ruled contrary to the legal and equitable interests of the plaintiff who was deprived of his home, land and private assets absent good reason, fairness, justice and due process. . . .” *Id.* at 2. But, plaintiff does not explain why granting his motion for reconsideration would be necessary to prevent manifest injustice in this case. *Id.* As discussed above, the Court dismissed plaintiff’s complaint for lack of subject-matter jurisdiction and the Court did not reach the merits of any of plaintiff’s claims. *Langan v. United States*, No. 18-1603C, 2019 WL 3857044, at *1-8 (Fed. Cl. Aug. 16, 2019). Given this, plaintiff simply has not shown how reconsideration of whether the Court may consider his claims under the Tucker Act would prevent the “serious injustice” that plaintiff alleges in his motion for reconsideration. Pl. Mot. at 2.

Plaintiff’s argument that reconsideration is appropriate because of evidence of “ongoing harassment by [Yavapai] County that is outside the grant of its municipal charter from the United States” is equally unavailing. *Id.* at 3-4. Even if true, the purported conduct of Yavapai County government officials is not a basis for the Court to reconsider the decision to dismiss plaintiff’s complaint against the United States for lack of subject-matter jurisdiction. And so, the Court denies plaintiff’s request for relief pursuant to RCFC 59(a).

Plaintiff similarly fails to show that relief under RCFC 60(b) is warranted in this case. Plaintiff states that he seeks relief from the orders issued in this matter on August 16, 2019, and July 24, 2019, “under equity rules in the nature of RCFC 60.” Pl. Mot. at 1.

Pursuant to RCFC 60(b), the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for, among other things, mistake, inadvertence, surprise, or excusable neglect. RCFC 60(b)(1). While the precise basis for plaintiff's motion for relief from judgment is not clear, it appears that plaintiff is seeking relief from judgment due to his several unsuccessful attempts to direct the Clerk of the Court to change the appearance of his name on the docket, correct the filing date of the government's motion to dismiss and to modify certain exhibits attached to a reply brief in support of his motion for a default judgment.⁴ Pl. Mot. at 1-2. But, none of these concerns are relevant to the Court's determination that plaintiff failed to establish that the Court possesses subject-matter jurisdiction to consider any of his claims. And so, the Court must also deny plaintiff's request for relief pursuant to RCFC 60(b).

As a final matter, plaintiff also has not shown that it is appropriate to alter or amend the judgment entered in connection with the Court's August 16, 2019, Decision. *See* RCFC 52(b). While plaintiff argues that that the Court should alter or amend the judgment

⁴ On February 14, 2019, the Clerk's Office informed plaintiff that: (1) it could not change the appearance of plaintiff's name on the court docket; (2) it had no record of receiving plaintiff's "original bill with affidavit in support of proceedings;" and (3) the correct filing date of government's motion to dismiss is December 10, 2018 (docket entry no. 13). On March 11, 2019, and July 19, 2019, the Clerk's Office informed plaintiff that it did not have the authority to modify or supplement the filings in this case (docket entry nos. 17, 26).

entered in connection with the August 16, 2019, Decision, he points to no error in that judgment. *See generally* Pl. Mot. Given this, the Court must also deny plaintiff's request for relief under RCFC 52(b).

V. CONCLUSION

And so, for all of the aforementioned reasons, the Court DENIES plaintiff's motions for reconsideration, for relief from judgment and to alter or amend judgment.

IT IS SO ORDERED.

/s/ Lydia Kay Griggsby
LYDIA KAY GRIGGSBY
Judge

In the United States Court of Federal Claims

No. 18-1603C

Filed, August 16, 2019

NOT FOR PUBLICATION

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MORGAN JOSEPH)	
LANGAN,)	<i>Pro se</i> ; RCFC 12(b)(1);
)	Subject-Matter
Plaintiff,)	Jurisdiction; Money-
	)	Mandating Source
v.	)	Of Law; Breach Of
THE UNITED STATES,	)	Contract; Default
Defendant.	)	Judgment.
<hr/>)	

Morgan Joseph Langan, Cornville, AZ, Plaintiff,
pro se.

Anthony F. Schiavetti, Trial Attorney, *L. Misha Preheim*, Assistant Director, *Robert E. Kirschman, Jr.*, Director, *Joseph H. Hunt*, Assistant Attorney General, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant.

MEMORANDUM OPINION AND ORDER

GRIGGSBY, Judge.

I. INTRODUCTION

Plaintiff *pro se*, Morgan Joseph Langan, brings this action against the United States alleging that certain state and county government officials in Yavapai County, Arizona improperly confiscated his land. *See generally* Compl. As relief, plaintiff seeks to recover

\$1,398,838.05 in monetary damages from the United States and certain equitable relief. *Id.* at 12.

The government has moved to dismiss this matter for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted, pursuant to Rules 12(b)(1) and (b)(6) of the Rules of the United States Court of Federal Claims (“RCFC”). *See generally* Def. Mot. Plaintiff has also filed motions for entry of default judgment and to consolidate cases. *See generally* Pl. Mot. for Default. For the reasons discussed below, the Court: (1) **GRANTS** the government’s motion to dismiss; (2) **DENIES-AS-MOOT** plaintiff’s motions for entry of default judgment and to consolidate cases; and (3) **DISMISSES** the complaint.

II. FACTUAL AND PROCEDURAL BACKGROUND¹

A. Factual Background

In the complaint, plaintiff alleges that “this is an action for redemption of equity and return of payments issued by mistake, error, inducement or fraud.” Compl. at 1. Plaintiff also identifies the First, Fifth and Fourteenth Amendments of the United States Constitution; Article 1 § 10 of the United States Constitution; 28 U.S.C. § 1491; 28 U.S.C. § 1498; 28 U.S.C. § 1493; and

¹ The facts recited in this Memorandum Opinion and Order are taken from the complaint (“Compl.”) and the exhibits attached thereto (“Pl. Ex.”); the government’s motion to dismiss (“Def. Mot.”); and plaintiff’s response thereto (“Pl. Resp.”). Unless otherwise noted herein, the facts recited are undisputed.

42 U.S.C. § 1983 as the legal and jurisdictional bases for his claims. *Id.* at 2-3; Pl. Resp. at 4.

Although plaintiff names the United States as a defendant in this action, he appears to primarily allege that certain banks operating in the State of Arizona, and certain Yavapai County government officials, improperly foreclosed upon and confiscated his land, home and estate. *See generally* Compl. Specifically, plaintiff alleges that the National Bank of Arizona (“NBAZ”) “completed a non-judicial foreclosure on [his] land” on August 21, 2015. *Id.* at 4-5. Plaintiff also alleges that, on February 10, 2016, “Cenlar FSB completed a non-judicial foreclosure on [his] home” and that NBAZ “claimed to purchase the home at a trustee sale.” *Id.* at 5.

Thereafter, plaintiff alleges that the Yavapai County Sheriff sold the land purchased by the trust to a private party to satisfy NBAZ’s judgment against plaintiff and that the Yavapai County Sheriff deputies permitted representatives of the bank to enter onto his land. *Id.*, at 6. Plaintiff also alleges that he subsequently entered into a settlement agreement with NBAZ. *Id.* at 7; *see also* Pl. Exs. E, G. And so, plaintiff contends that he “was deprived of [his] land, home, estate and property under operation of State non-judicial foreclosure laws that impaired the obligations required by [certain] contracts between the parties.” Compl. at 3.

As relief, plaintiff seeks, among other things, to recover \$1,398,838.05 in monetary damages from the

United States and he requests that the Court “decree a fair and equitable process to command specific performance for the officers of the government including Yavapai County and the State of Arizona.” *Id.* at 13.

B. Procedural History

Plaintiff commenced this action on October 9, 2018. *See generally* Compl. On December 10, 2018, the government filed a motion to dismiss this matter pursuant to RCFC 12(b)(1) and (b)(6). *See generally* Def. Mot.

On December 20, 2018, plaintiff filed motions for entry of default judgment and to consolidate cases. *See generally* Pl. Mot. for Default. On February 14, 2019, the government filed a response and opposition to plaintiff’s motions for entry of default judgment and to consolidate cases. *See generally* Def. Resp. Plaintiff filed a reply in support of his motions for entry of default judgment and to consolidate cases on February 25, 2019. *See generally* Pl. Reply.

On March 11, 2019, plaintiff filed a response and opposition to the government’s motion to dismiss. *See generally* Pl. Resp. On April 10, 2019, the government filed a reply in support of its motion to dismiss. *See generally* Def. Reply. On April 22, 2019, plaintiff filed a sur-reply. *See generally* Pl. Sur-Reply.

These matters having been fully briefed, the Court resolves the pending motions.

III. LEGAL STANDARDS

A. *Pro Se* Litigants

Plaintiff is proceeding in this matter *pro se*, without the benefit of counsel. And so, the Court applies the pleading requirements leniently. *Beriont v. GTE Labs., Inc.*, 535 F.App'x 919, 926 n.2 (Fed. Cir. 2013) (citing *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007)). When determining whether a complaint filed by a *pro se* plaintiff is sufficient to survive a motion to dismiss, this Court affords more leeway under the rules to *pro se* plaintiffs than to plaintiffs who are represented by counsel. *See Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594 (1972) (holding that *pro se* complaints, “however inartfully pleaded,” are held to “less stringent standards than formal pleadings drafted by lawyers”); *Matthews v. United States*, 750 F.3d 1320, 1322 (Fed. Cir. 2014). But, there “is no duty on the part of the trial court to create a claim which [the plaintiff] has not spelled out in his pleading.” *Lengen v. United States*, 100 Fed. Cl. 317, 328 (2011) (brackets existing) (internal quotation marks omitted) (quoting *Scogin v. United States*, 33 Fed. Cl. 285, 293 (1995)).

While “a *pro se* plaintiff is held to a less stringent standard than that of a plaintiff represented by an attorney . . . the *pro se* plaintiff, nevertheless, bears the burden of establishing the Court’s jurisdiction by a preponderance of the evidence.” *Riles v. United States*, 93 Fed. Cl. 163, 165 (2010) (citing *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002)). And so,

the Court may excuse ambiguities, but not defects, in the complaint. *Colbert v. United States*, 617 F.App'x 981, 983 (Fed. Cir. 2015); *see also Demes v. United States*, 52 Fed. Cl. 365, 368 (2002) (“[T]he leniency afforded *pro se* litigants with respect to mere formalities does not relieve them of jurisdictional requirements.”).

B. RCFC 12(b)(1)

When deciding a motion to dismiss upon the ground that the Court does not possess subject-matter jurisdiction pursuant to RCFC 12(b)(1), this Court must assume that all undisputed facts alleged in the complaint are true and must draw all reasonable inferences in the non-movant's favor. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *see also* RCFC 12(b)(1). But, plaintiff bears the burden of establishing subject-matter jurisdiction, and he must do so by a preponderance of the evidence. *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988). Should the Court determine that “it lacks jurisdiction over the subject matter, it must dismiss the claim.” *Matthews v. United States*, 72 Fed. Cl. 274, 278 (2006).

In this regard, the United States Court of Federal Claims is a court of limited jurisdiction and “possess[es] only that power authorized by Constitution and statute. . . .” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). The Tucker Act grants the Court jurisdiction over:

[A]ny claim against the United States founded either upon the Constitution, or any

Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1). The Tucker Act is, however, “a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages. . . . [T]he Act merely confers jurisdiction upon [the United States Court of Federal Claims] whenever the substantive right exists.” *United States v. Testan*, 424 U.S. 392, 398 (1976) (alterations original). And so, to pursue a substantive right against the United States under the Tucker Act, a plaintiff must identify and plead a money-mandating constitutional provision, statute, or regulation; an express or implied contract with the United States; or an illegal exaction of money by the United States. *Cabral v. United States*, 317 F.App’x 979, 981 (Fed. Cir. 2008) (citing *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005)); see also *Martinez v. United States*, 333 F.3d 1295, 1302 (Fed. Cir. 2003). “[A] statute or regulation is money-mandating for jurisdictional purposes if it ‘can fairly be interpreted as mandating compensation for damages sustained as a result of the breach of the duties [it] impose[s].’” *Fisher*, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (quoting *United States v. Mitchell*, 463 U.S. 206, 217 (1983)).

Specifically relevant to this dispute, this Court has held that holding a land patent is not sufficient on its own to give rise to a cause of action under the Tucker

Act. *Daniels v. United States*, No. 17-1598C, 2018 WL 1664476 at *8 (Fed. Cl. April 6, 2018); *see also Ioane v. United States*, 4 F.App'x 762, 763 (Fed. Cir. 2001). A claim related to a land patent requires the complaint to identify a substantive source of law that has been violated. *Id.*

C. RCFC 12(b)(6)

When deciding a motion to dismiss based upon failure to state a claim upon which relief can be granted, pursuant to RCFC 12(b)(6), this Court must also assume that all undisputed facts alleged in the complaint are true and must draw all reasonable inferences in the non-movant's favor. *See Redondo v. United States*, 542 F.App'x 908, 910 (Fed. Cir. 2013). And so, to survive a motion to dismiss under RCFC 12(b)(6), a complaint must contain facts sufficient to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

When the complaint fails to "state a claim to relief that is plausible on its face," the Court must dismiss the complaint. *Iqbal*, 556 U.S. at 678 (citation omitted). On the other hand, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity," and determine whether it is plausible, based upon these facts, to find against the defendant. *Id.* at 663-64, 678 ("A claim has facial plausibility when the pleaded factual content allows the court to draw the

reasonable inference that the defendant is liable for the misconduct alleged.”).

Specifically relevant to this case, the United States Court of Appeals for the Federal Circuit has held that a property owner failed to state a viable claim against the United States to establish a basis for holding the United States liable for a bank’s foreclosure upon his property, because the complaint was devoid of any allegations to show that the banks acted on behalf of the United States during the foreclosure. *Ioane*, 4 F.App’x at 762-63. *Id.* at 763.

D. Contracts With The United States

Lastly, this Court possesses subject-matter jurisdiction to consider breach of contract claims against the United States based upon an express or implied-in-fact contract. 28 U.S.C. § 1491(a)(1). Plaintiff bears the burden of proving the existence of a contract with the United States and he must demonstrate that there is “something more than a cloud of evidence that could be consistent with a contract to prove a contract and enforceable contract rights.” *D & N Bank v. United States*, 331 F.3d 1374, 1377 (Fed. Cir. 2003).

To pursue a breach of contract claim against the United States, plaintiff must have privity of contract with the United States. *Flexfab, L.L.C. v. United States*, 424 F.3d 1254, 1263 (Fed. Cir. 2005) (citations omitted) (“[T]he ‘government consents to be sued only by those with whom it has privity of contract.’”). Plaintiff must also support his contract claim with well-pleaded

allegations going to each element of a contract. *See Crewzers Fire Crew Transp., Inc. v. United States*, 741 F.3d 1380, 1382 (Fed. Cir. 2014) (holding that to invoke the jurisdiction of this Court under the Tucker Act, a plaintiff must present a well-pleaded allegation that its claims arose out of a valid contract with the United States); *see also* RCFC 9(k) (“In pleading a claim founded on a contract or treaty, a party must identify the substantive provisions of the contract or treaty on which the party relies.”); *Gonzalez-McCaulley Inv. Grp., Inc. v. United States*, 93 Fed. Cl. 710, 715 (2010). In addition, RCFC 9(k) requires that a party identify the substantive provisions of the contract on which the party relies when pleading a claim founded on a contract with the United States. RCFC 9(k). And so, this rule ensures that the Court knows the relevant provisions of a contract to render a decision on a breach of contract claim. *Gonzalez-McCaulley Inv. Grp., Inc.*, 93 Fed. Cl. at 715.

The requirements for establishing a contract with the United States are identical for express and implied-in-fact contracts. *See Night Vision Corp. v. United States*, 469 F.3d 1369, 1375 (Fed. Cir. 2006); *Huntington Promotional & Supply, LLC v. United States*, 114 Fed. Cl. 760, 767 (2014) (“The elements are the same for an express or implied-in-fact contract. . . .”). Specifically, a plaintiff must show: (1) mutuality of intent; (2) consideration; (3) lack of ambiguity in the offer and acceptance; and (4) actual authority to bind the government in contract on the part of the government official whose conduct is relied upon. *Kam-Almaz v. United*

States, 682 F.3d 1364, 1368 (Fed. Cir. 2012); *see also* *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997). In this regard, a government official's authority to bind the United States must be express or implied. *Roy v. United States*, 38 Fed. Cl. 184, 188-89 (1997), *dismissed*, 124 F.3d 224 (Fed. Cir. 1997). And so, "the [g]overnment, unlike private parties, cannot be bound by the apparent authority of its agents." *Id.* at 187.

IV. LEGAL ANALYSIS

The government has moved to dismiss this matter for lack of subject-matter jurisdiction upon the grounds that: (1) plaintiff alleges claims against parties other than the United States; (2) plaintiff has not established the existence of a contract with the United States; (3) plaintiff fails to identify a money-mandating source of law to establish jurisdiction under the Tucker Act; (4) the statutes upon which plaintiff relies to establish jurisdiction are neither money-mandating nor applicable to his claims; and (5) this Court may not consider plaintiff's request for general equitable relief. Def. Mot. at 1-2; Def. Reply at 1-5. Plaintiff counters that the Court possesses subject-matter jurisdiction to consider his claims, because he has entered into an express contract with the government based upon a land patent. Pl. Resp. at 1. Plaintiff has also filed motions for entry of default judgment against the government and to consolidate this matter with *Langan v. United States*, No. 18-900 (Fed. Cl. 2018). Pl. Mot. for Default at 1-2.

For the reasons discussed below, the most generous reading of plaintiff's complaint makes clear that the Court does not possess subject-matter jurisdiction to consider any of plaintiff's claims. Because the Court does not possess subject-matter jurisdiction to consider plaintiff's claims, plaintiff's motions for entry of default judgment and to consolidate cases are also moot. And so, the Court: (1) **GRANTS** the government's motion to dismiss; (2) **DENIES-AS-MOOT** plaintiff's motions for entry of default judgment and to consolidate cases; and (3) **DISMISSES** the complaint. RCFC 12(b)(1).

A. The Court Does Not Possess Jurisdiction To Consider Plaintiff's Claims

1. The Court May Not Consider Claims Against Parties Other Than The United States

As an initial matter, to the extent that plaintiff asserts claims against the National Bank of Arizona and Cenlar FSB and certain state and county government officials, the Court does not possess subject-matter jurisdiction to consider these claims. Compl. at 1. In the complaint, plaintiff alleges that certain banks operating in the State of Arizona and certain Yavapai County government officials improperly foreclosed upon and confiscated his land, home and estate. *See generally id.* It is well-settled that the United States is the only proper defendant in cases brought in this Court. *Pikulin v. United States*, 97 Fed. Cl. 71, 75 (2011); *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003) (“[T]he

only proper defendant for any matter before this court is the United States. . . .” (emphasis in original)). Given this, to the extent that plaintiff seeks to bring claims against these banks and state and county government officials, the Court does not possess subject-matter jurisdiction to entertain plaintiff’s claims. *Souders v. S.C. Pub. Serv. Auth.*, 497 F.3d 1303, 1308 (Fed. Cir, 2007); *Anderson v. United States*, 117 Fed. Cl. 330, 331 (2014). And so, the Court must dismiss these claims. RCFC 12(b)(1).

2. Plaintiff Has Not Alleged The Existence Of A Contract With The United States

The Court must also dismiss plaintiff’s breach of contract claim against the United States in this matter, because plaintiff fails to establish the existence of an express or implied-in-fact contract with the United States. While this Court may consider express or implied-in-fact contract claims against the United States, plaintiff bears the burden of proving the existence of a contract with the government. *See D & N Bank v. United States*, 331 F.3d 1374, 1376 (Fed. Cir. 2003). To do so here, plaintiff must allege facts that plausibly demonstrate: (1) mutuality of intent; (2) consideration; (3) lack of ambiguity in the offer and acceptance; and (4) actual authority to bind the government in contract on the part of the government official whose conduct is relied upon. *Kam-Almaz v. United States*, 682 F.3d 1364, 1368 (Fed. Cir. 2012); *see also Truama Serv. Grp. v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997).

In addition, plaintiff must demonstrate that there is “something more than a cloud of evidence that could be consistent with a contract to prove a contract and enforceable contract rights.” *D & N Bank*, 331 F.3d at 1376. Plaintiff fails to make such a showing in this case.

In his response and opposition to the government’s motion to dismiss, plaintiff raises for the first time a breach of contract claim against the United States.² Pl. Resp. at 1. But, the complaint is devoid of any factual allegations to show mutual intent to contract, consideration, and offer and acceptance, to show the existence of the alleged contract with the United States. *See generally* Compl. Because plaintiff fails to point to any evidence to establish the elements of either an express or implied-in-fact contract with the government, the Court must dismiss plaintiff’s breach of contract claim for lack of subject-matter jurisdiction. *See Crewzers Fire Crew Transp. Inc. v. United States*, 741 F.3d 1380, 1382 (Fed. Cir. 2014); *D & N Bank*, 331 F.3d at 1376; *see also* RCFC 12(b)(1).

3. This Court Does Not Possess Jurisdiction To Consider Plaintiff’s Land Patent Claim

The Court must also dismiss plaintiff’s land patent claim for want of subject-matter jurisdiction. In

² The Court has held that it is generally improper to raise a new claim in response to a motion to dismiss. *Driessen v. United States*, 116 Fed. Cl. 33, 44 n.10 (2014).

his response and opposition to the government's motion to dismiss, plaintiff alleges that he entered into a federal land patent with the government. *See generally* Pl. Resp. But, this Court has held that a land patent is not sufficient on its own to give rise to a cause of action against the United States. *Daniels v. United States*, No. 17-1598C, 2018 WL 1664476 at *8 (Fed. Cl. April 6, 2018) (“[h]olding a land patent, like any ownership interest in property, however, is not sufficient on its own to give rise to a cause of action. A claim related to a land patent requires the complaint to identify a substantive source of law that has been violated.”); *see also Ioane v. United States*, 4 F.App’x 762, 763 (Fed. Cir. 2001) (stating that “a Federal Land Patent is a deed and gives . . . no rights against the United States”). And so, the mere existence of a land patent cannot create a valid cause of action against the government in this case. *Daniels*, 2018 WL 1664476 at *8. Plaintiff also fails to point to any other substantive provision of law that has been violated in this case. And so, the Court must also dismiss plaintiff’s claim based upon a land patent.

4. Plaintiff’s Constitutional Claims Are Jurisdictionally Precluded

The Court is also without jurisdiction to entertain plaintiff’s constitutional claims, because the constitutional provisions upon which plaintiff relies are not money-mandating. *Fisher*, 402 F.3d at 1172. In the complaint, plaintiff alleges that this Court possess

subject-matter jurisdiction to consider his claims pursuant to the First, Fifth and Fourteenth Amendments of the United States Constitution and Article I § 10 of the United States Constitution. Compl. at 2.

But, the First and Fourteenth Amendments and Article I § 10 of the United States Constitution are not money-mandating sources of law. *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (holding that the Fourteenth Amendment is not a sufficient basis for jurisdiction because it does not mandate payment of money by the government); *United States v. Connolly*, 716 F.2d 882, 886-88 (Fed. Cir. 1983) (holding that the First Amendment does not provide persons aggrieved by government action with an action for damages in the absence of some other jurisdictional basis); *Olajide v. United States*, No. 16-1594C, 2017 WL 3225048, at *4 (Fed. Cl. July 31, 2017) (stating that Article I § 10 is not money-mandating and does not create a duty for the government to pay).

In addition, while the Court may consider takings claims based upon the Fifth Amendment, plaintiff has not identified a cognizable property interest that has allegedly been taken by the United States in the complaint. *See generally* Compl.; 28 U.S.C. § 1491(a); *A & D Auto Sales, Inc.*, 748 F.3d 1142, 1151 (Fed. Cir. 2014); *Huntleigh USA Corp. v. United States*, 525 F.3d 1370, 1377-78 (Fed. Cir. 2008). Notably, plaintiff alleges that certain banks and local government officials improperly foreclosed upon and confiscated his land. Compl. at 1, 4-5. But, plaintiff has not alleged that these banks, or the State of Arizona, acted on behalf of the

United States in connection with the foreclosure proceedings. *Ioane*, 4 F.App'x at 763. And so, the Court must dismiss plaintiff's constitutional law claims. RCFC 12(b)(1).³

5. The Statutes Plaintiff Relies Upon To Establish Jurisdiction Are Inapplicable To Plaintiff's Claims

The Court is also without jurisdiction to consider plaintiff's claims because the statutes upon which plaintiff relies to establish jurisdiction under the Tucker Act either may not be considered by this Court or are unrelated to his claims. Compl. at 3; Pl. Resp. at 4.

The Tucker Act is "a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages. . . . [T]he Act merely confers jurisdiction upon [the United States Court of Federal Claims] whenever the substantive right exists." *United States v. Testan*, 424 U.S. 392, 398 (1976) (alterations original). And so, to pursue a substantive right against the United States under the Tucker Act, a plaintiff must identify and plead a money-mandating constitutional provision, statute, or regulation; an express or implied contract with the

³ Dismissal of plaintiff's claim based upon the foreclosure on his property is also appropriate pursuant to RCFC 12(b)(6), because plaintiff fails to allege that the banks or government officials acted on behalf of the United States in foreclosing upon his property.

United States; or an illegal exaction of money by the United States. *Cabral v. United States*, 317 F.App'x 979, 981 (Fed. Cir. 2008) (citing *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005)); see also *Martinez v. United States*, 333 F.3d 1295, 1302 (Fed. Cir. 2003).

First, plaintiff's reliance upon Section 1983 to establish jurisdiction is misplaced. Pl. Resp. at 4. It is well-settled that only federal district courts may consider claims based upon violations of Section 1983. See e.g., *Jones v. United States*, 104 Fed. Cl. 92, 98 (2012) (explaining that the Court of Federal Claims has no jurisdiction over claims based on, among other causes of action, alleged "violations of . . . civil rights"). And so, the Court may not consider plaintiff's Section 1983 claim.

Second, 28 U.S.C. §§ 1498, 1493 are not applicable to plaintiff's claims. Section 1498 addresses the Court's jurisdiction regarding invention patents. See generally 28 U.S.C. § 1498. This Court has held that "modern invention patents are distinguishable from land patents because the Patent and Trademark Office exercises continuing authority over invention patents, whereas the government generally cedes 'all authority or control' over the land in question when it issues a land patent." *Christy, Inc. v. United States*, 141 Fed. Cl. 641, 660 (2019). And so, Section 1498 is not applicable to plaintiff's claims. Pl. Resp. at 1. In addition, Section 1493 has been repealed. Pl. Resp. at 4; *Pikulin*, 97 Fed. Cl. at 75. And so, this statute is also inapplicable to plaintiff's claims. Given this, the Court must dismiss plaintiff's claims based upon Sections 1493 and 1498.

6. The Court May Not Grant The Equitable Relief That Plaintiff Seeks

Lastly, the government correctly argues that this Court also does not possess subject-matter jurisdiction to consider plaintiff's request for equitable relief. Def. Reply at 2-3. It is well-settled that this Court does not possess general equity jurisdiction and that the Court can only award equitable relief "incident[al] and collateral to" a money judgment. 28 U.S.C. § 1491(a)(2); *see also Roth v. United States*, 378 F.3d 1371, 1384 (Fed. Cir. 2004) ("[T]he Court of Federal Claims does not possess general equity jurisdiction."). In the complaint, plaintiff requests that the Court "decree a fair and equitable process to command specific performance for officers of the government including Yavapai County and the State of Arizona. . . ." Compl. at 13. In addition, in his response and opposition to the government's motion to dismiss, plaintiff also argues that he has a "right to redeem [his land] in equity." Pl. Resp. at 2. Because plaintiff's claims sound in equity, the Court must also dismiss these claims. RCFC 12(b)(1).

B. The Court Denies Plaintiff's Motions For Entry Of Default Judgment And To Consolidate Cases As Moot

As a final matter, plaintiff has filed motions for entry of default judgment against the United States and to consolidate cases. Because the Court has determined that it does not possess subject-matter jurisdiction to consider any of plaintiff's claims, the Court denies these motions as moot. *See Wojtczak v. United*

States, No. 12-499C, 2012 WL 4903025, at *4 (Fed. Cl. Oct. 17, 2012) (“Because plaintiff still has not raised allegations over which this court has jurisdiction, the court denies these motions as moot.”).

V. CONCLUSION

In sum, the most generous reading of plaintiff’s complaint makes clear that the Court does not possess subject-matter jurisdiction to consider any of plaintiff’s claims. For these reasons, the Court must dismiss this action for lack of subject-matter jurisdiction pursuant to RCFC 12(b)(1).

And so, for the foregoing reasons, the Court:

1. **GRANTS** the government’s motion to dismiss;
2. **DENIES-AS-MOOT** plaintiff’s motions for entry of default judgment and to consolidate cases; and
3. **DISMISSES** the complaint.

The Clerk shall enter judgment accordingly.

Each party shall bear its own costs.

IT IS SO ORDERED.

/s/ Lydia Kay Griggsby
LYDIA KAY GRIGGSBY
Judge

App. 45

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

MORGAN JOSEPH LANGAN,
Plaintiff-Appellant

v.

UNITED STATES,
Defendant-Appellee

2020-1057

Appeal from the United States Court of Federal
Claims in No. 1:18-cv-01603-LKG, Judge Lydia Kay
Griggsby.

ON PETITION FOR REHEARING EN BANC

(Filed 07/21/2020)

Before PROST, *Chief Judge*, NEWMAN, LOURIE, LINN*,
DYK, MOORE, O'MALLEY, REYNA, WALLACH, TARANTO,
CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

* Circuit Judge Linn participated only in the decision on the
petition for panel rehearing

App. 46

ORDER

Appellant Morgan Joseph Langan filed a petition for rehearing en banc. The petition was first referred as a petition for rehearing to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition for rehearing en banc is denied.

The mandate of the court will issue on July 28, 2020.

FOR THE COURT

July 21, 2020

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court
