

## APPENDIX

## Table of Appendices

Appendix A U.S Court of Appeals for The Federal Circuit	
The petition was reported on 7/10/25	App1-4
Appendix B U.S Court of Federal Claims	
Judge Carolyn Lerner	
Case reported on 8/9/24	App5-9
Appendix C U.S District Court Central District	
Of California	
Judge Dale S. Fischer	
Case No 2:23-CV-08541-DSF-MRW	
Case reported 3/10/24	App10-41

NOTE: This disposition is nonprecedential.

United States Court of Appeals  
for the Federal Circuit

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ROD SERP,  
*Plaintiff-Appellant*

v.

UNITED STATES,  
*Defendant-Appellee*

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2024-2319

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Appeal from the United States Court of Federal Claims  
in No. 1:24-cv-00719-CNL, Judge Carolyn N. Lerner.

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Decided: July 10, 2025

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ROD SERP, Los Angeles, CA, pro se.

ROBERT R. KIEPURA, Commercial Litigation Branch,  
Civil Division, United States Department of Justice, Washington,  
DC, for defendant-appellee. Also represented by  
BRIAN M. BOYNTON, LISA LEFANTE DONAHUE, PATRICIA M.  
MCCARTHY.

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Before MOORE, *Chief Judge*, STOLL, *Circuit Judge*, and BUMB, *Chief District Judge*.<sup>1</sup>

PER CURIAM.

Rod Serp appeals a decision of the United States Court of Federal Claims granting the government's motion to dismiss for lack of subject matter jurisdiction and failure to state a claim. For the following reasons, we *affirm*.

#### BACKGROUND

Mr. Serp filed a complaint with the Court of Federal Claims alleging that, over a period of several years beginning in 2010, he provided services to Immigration and Customs Enforcement (ICE) and other government agencies as an undercover informant. Appx. 1.<sup>2</sup> He alleged that ICE agents promised he would be paid for his services, he signed an official contract with the Department of Homeland Security (DHS), and the government breached this contract by failing to pay him. Appx. 1–2.

The government moved to dismiss for lack of subject matter jurisdiction and failure to state a claim. The Court of Federal Claims held Mr. Serp did not plead a valid contract with the government and therefore failed to establish subject matter jurisdiction. Appx. 3–4. The court also held Mr. Serp failed to allege facts on which relief could be granted. Appx. 4–5. Accordingly, the court granted the government's motion and dismissed Mr. Serp's case. Mr. Serp appeals. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

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<sup>1</sup> Honorable Renée M. Bumb, Chief District Judge, United States District Court for the District of New Jersey, sitting by designation.

<sup>2</sup> “Appx.” refers to the appendix attached to Appellee's Informal Brief.

## DISCUSSION

We review dismissal for lack of subject matter jurisdiction de novo. *Chemehuevi Indian Tribe v. United States*, 104 F.4th 1314, 1320 (Fed. Cir. 2024). The Tucker Act gives the Court of Federal Claims jurisdiction over a claim against the United States based on any express or implied contract. 28 U.S.C. § 1491(a)(1). But the Tucker Act itself does not create a substantive cause of action; a plaintiff must identify the contract which, if violated, gives rise to a claim for money damages against the United States. *See Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc). Under Rule of the Court of Federal Claims (RCFC) 9(k), to plead a contract claim, a plaintiff must identify the substantive provisions of the contract on which the party relies.

We review dismissal for failure to state a claim de novo. *B.H. Aircraft Co. v. United States*, 89 F.4th 1360, 1363 (Fed. Cir. 2024). To plead a valid contract claim, a plaintiff must allege facts sufficient to establish an express or implied-in-fact contract, entered into by an authorized government agent, and breach of that contract. *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1325–26 (Fed. Cir. 1997).

Mr. Serp argues the Court of Federal Claims improperly required him to provide a copy of the contract, to which he does not have access, and as a result he was denied a hearing and the opportunity to present his case. Appellant's Informal Br. 1–2. But the Court of Federal Claims did not require Mr. Serp to provide a copy of the contract. The court expressly stated that, under RCFC 9(k), a plaintiff can survive a motion to dismiss for lack of subject matter jurisdiction by either providing a copy of the contract or describing the breached contract provisions. Appx. 3. The court did not dismiss Mr. Serp's claim because he failed to provide a copy of the contract; rather, it explained Mr. Serp failed to describe any details of the contract, including

when the alleged contract was signed, who signed it on behalf of the government, or any other terms of the agreement. Appx. 3-4. Indeed, Mr. Serp did not identify any contractual terms or provisions and relied only on vague assertions of the existence of a contract. Appx. 3-4. We hold the Court of Federal Claims properly concluded Mr. Serp failed to establish subject matter jurisdiction.

Mr. Serp also argues he has a Sixth Amendment right to represent himself. Appellant's Informal Br. 2. He does not, however, provide any indication he has been deprived of that right. *See id.* Both the Court of Federal Claims and this Court have allowed Mr. Serp to proceed *pro se*. *See* Appx. 1; ECF No. 5.

Finally, Mr. Serp argues the Court of Federal Claims denied him the right to subpoena DHS agents. Appellant's Informal Br. 2. The Court of Federal Claims could not have issued any subpoena because it lacked jurisdiction over Mr. Serp's complaint. *See* Fed. R. Civ. P. 45(a)(2) ("A subpoena must issue from the court where the action is pending.").

**CONCLUSION**

We have considered Mr. Serp's remaining arguments and find them unpersuasive. We affirm the Court of Federal Claims' dismissal of Mr. Serp's complaint.

**AFFIRMED**

**COSTS**

No costs.

# In the United States Court of Federal Claims

ROD SERP,

*Plaintiff.*

v.

THE UNITED STATES,

*Defendant.*

No. 24-719C  
(Filed: August 8, 2024)

*Rod Serp, pro se, Los Angeles, CA.*

*Robert P. Kiepura, Civil Division, United States Department of Justice, Washington, DC, for Defendant.*

## OPINION AND ORDER

**LERNER, Judge.**

Plaintiff Rod Serp, appearing pro se, filed a complaint in this Court on May 2, 2024. Compl., ECF No. 1. He alleges that for several years beginning in 2010, he provided services to Immigration and Customs Enforcement (“ICE”) and the Department of Homeland Security (“DHS”) as an undercover informant. Compl. at 5–10. Mr. Serp claims that federal agents promised to pay him for his services, these promises created a contract, and the Government breached this contract when it failed to pay him. *Id.* at 8–9. Mr. Serp asks for \$250,000 plus any additional “monies promised and interest incurred.” Compl. at 3.

Before the Court is Defendant’s Motion to Dismiss, ECF No. 6, and Mr. Serp’s Application to Proceed *In Forma Pauperis*, ECF No. 2. The Government moves to dismiss the Complaint under Rule 12(b)(1) on the grounds that Mr. Serp fails to identify a contract or any contract provision that has been breached. Mot. to Dismiss at 4–6; Rule 12(b)(1) of the Rules of the Court of Federal Claims (“RCFC”). The Government also moves to dismiss because the federal agents with whom Mr. Serp claims to have contracted lacked the authority to bind the United States in contract. Mot. to Dismiss at 8–9.

Because Mr. Serp’s Complaint does not provide a description of the substantive provisions of the alleged contract and federal law enforcement agents generally lack authority to bind the Government in contract, Defendant’s Motion to Dismiss is **GRANTED** and Mr. Serp’s Complaint is **DISMISSED** without prejudice. In addition, Mr. Serp’s Application to Proceed *In Forma Pauperis* is **GRANTED**.

## I. Background

Mr. Serp alleges that sometime in March 2010, he contacted ICE about suspected human trafficking by his employer. Compl. at 5. He claims he spoke with ICE Agent Michael Huang, and later went to “ICE HQ” for a “personal interview.” *Id.* Mr. Serp states that “although unofficial[,] Michael Huang became my handler” which in turn “made me an informant.” *Id.* Mr. Serp alleges to have assisted Agent Huang in human trafficking cases, and that his work with ICE “led to deportation of many individuals and at least one successful prosecution.” *Id.* at 6. According to Mr. Serp, Agent Huang repeatedly promised that he would be paid for his efforts, and in the fall of 2010, ICE paid him \$500. *Id.*

According to Mr. Serp, in early 2011, Agent Huang left for military service, and Mr. Serp claims he began working on narcotic cases with Agent Rich Harlow. *Id.* Mr. Serp states that Agent Harlow promised him compensation for his services, but he was never paid. *Id.* at 6–7. Mr. Serp states he “was introduced to other agents from different agencies” and “advised them with their cases,” including agents from “DEA, DMV investigative unit and even Pasadena Police Dept.” *Id.* at 7. Mr. Serp alleges that following his “successful efforts” he signed an “official contract with DHS.” *Id.* He was also “photographed and fingerprinted” which was witnessed by Agent Harlow and two other agents. *Id.* “Whenever a case is discussed,” Mr. Serp states, “ICE agents would always inquire on whether I’ll be willing to testify on [the] behest of [the] U.S. Attorney.” *Id.*

Around February 2012, Mr. Serp claims Agent Huang contacted him and their relationship resumed, albeit “with another lie.” *Id.* at 8. Agent Huang purportedly told Mr. Serp that Agent Harlow “fucked up the paperwork,” meaning Mr. Serp was “no longer under contract with ICE.” *Id.* Mr. Serp then alleges that Agent Huang used him in an “advisory role by introducing trainees and question me or (interrogate) me in front of them.” *Id.* Because Mr. Serp is “an Arabic and Russian speaker,” he “would assist Agent Huang in a linguistic capacity in cases that he was investigating,” ranging from “EBT fraud to missle [sic] parts.” *Id.* Despite “the promises and seriousness of the cases” that Mr. Serp claims to have worked on, he “never received another payment” from the Government. *Id.* Around March 2019, Agent Huang purportedly contacted Mr. Serp informing him that he was resuming his military duties and “will be back in a year.” *Id.* at 9. Mr. Serp states that is “the last time” he heard from anyone in DHS. *Id.*

Mr. Serp claims to “have electronic emails that [he] exchanged with DHS but only the ones that pre-date the Snowden Affair.” *Id.* But, according to Mr. Serp, after the “Edward Snowden debacle, there was no more emails or text messages.” *Id.* Mr. Serp states that he was “under no pressure legally” to work with DHS, and that he “chose to do so voluntarily and under a contract.” *Id.* He believes he “fulfilled [his] obligation under the contract” and expects the Government “to fulfill their part.” *Id.* Finally, Mr. Serp claims he “tried to reach out to DHS prior to filing this case to no avail.” *Id.* at 10.

In early August 2023, Mr. Serp filed an administrative claim with ICE’s Office of the Principal Legal Advisor. Compl. Ex. 2 at 1, ECF No. 1-2. ICE responded later that month, stating that the agency “analyzed [Mr. Serp’s] claim under the Federal Tort Claims Act (FTCA)” and that the “agency’s investigation has determined that the United States is not liable under the

FTCA for the damages claimed.” *Id.* Accordingly, the agency denied Mr. Serp’s claim. *Id.* Mr. Serp then filed a breach of contract claim in the United States District Court in the Central District of California seeking to recover \$250,000. *Id.* at 2. On March 26, 2024, that case was dismissed without prejudice on the grounds that “[b]reach of contract claims against the United States exceeding \$10,000 must be brought in the Court of Federal Claims.” *Id.* Mr. Serp subsequently filed in this Court on May 2, 2024. Compl.

## II. Motion to Dismiss

The Tucker Act grants this Court “jurisdiction to render judgment upon any claim against the United States founded . . . upon any express or implied contract with the United States.” 28 U.S.C. § 1491(a)(1). “To satisfy the jurisdictional requirements of the Tucker Act, a plaintiff must identify and plead a[n] . . . independent contractual relationship . . . that provides a substantive right to money damages.” *Crewzers Fire Crew Transp., Inc. v. United States*, 111 Fed. Cl. 148, 153 (2013), *aff’d*, 741 F.3d 1380 (Fed. Cir. 2014). Whether a plaintiff has pled a valid contract with the government is a jurisdictional inquiry. *See San Antonio Hous. Auth. v. United States*, 143 Fed. Cl. 425, 454 (2019); *see also Fairholme Funds, Inc. v. United States*, 26 F.4th 1274, 1293–94 (Fed. Cir. 2022). In determining jurisdiction under 12(b)(1), “a court must accept as true all undisputed facts asserted in the plaintiff’s complaint and draw all reasonable inferences in favor of the plaintiff.” *Trusted Integration, Inc. v. United States*, 659 F.3d 1159, 1163 (Fed. Cir. 2011). Although courts liberally construe pro se plaintiffs’ filings, they still bear the burden of establishing subject matter jurisdiction by a preponderance of the evidence. *Curry v. United States*, 787 F. App’x 720, 722 (Fed. Cir. 2019) (citing *Taylor v. United States*, 303 F.3d 1357, 1359 (Fed. Cir. 2002)).

To survive a 12(b)(1) motion when asserting a breach of contract claim, Rule 9(k) requires a plaintiff to explicitly identify the breached contract provisions. RCFC 9(k); *see also Garreaux v. United States*, 77 Fed. Cl. 726, 730 (2007) (“The purpose served by the rule is obvious: In order for the court to render a decision on a breach of contract claim, it must know the relevant terms of the contract.”) (analyzing Rule 9(h)(3), now as amended 9(k)); *Baha v. United States*, 123 Fed. Cl. 1, 5 n.4 (2015) (“Satisfaction of RCFC 9(k) is a jurisdictional requirement.”). Rule 9(k) requires a party pleading a contract claim to “identify the substantive provisions of the contract . . . on which the party relies. In lieu of a description, the party may annex to the complaint a copy of the contract . . . indicating the relevant provisions.” RCFC 9(k). If a plaintiff fails to comply with RCFC 9(k) and alleges facts insufficient to show a contract with the United States, the court lacks jurisdiction to hear the plaintiff’s claim. *Mendez-Cardenas v. United States*, 88 Fed. Cl. 162, 168 (2009); *Phang v. United States*, 87 Fed. Cl. 321, 330 (2009).

## III. Mr. Serp fails to meet RCFC 9(k)’s requirements.

Mr. Serp fails to identify the substantive provisions—indeed, any provisions—of the contract on which he relies. *See* RCFC 9(k); *Garreaux*, 77 Fed. Cl. at 730. He neither attached a copy of the alleged contract to the complaint nor identified sufficient facts to show he entered a contract with the United States. *See* Compl. at 7; *see also* *Garreaux*, 77 Fed. Cl. at 730. While Mr. Serp alleges that a contract with the Government exists, he provides no description of the contract’s substantive terms or provisions. Compl. at 5–10. Rather, and as noted by the Government, Plaintiff makes vague assertions that he contracted with several government agents

who allegedly agreed to pay him for undercover investigative work and as a testifying witness. *Id.*; Mot. to Dismiss at 5. Mr. Serp writes that he “signed a contract,” suggesting the existence of a written document. Compl. at 4, 8. But the complaint lacks essential details; i.e., when the purported contract was signed, who signed it on behalf of the Government, the contract’s terms, the work to be performed, compensation amount, or any other information on the nature of the alleged arrangement. Compl. at 4–10. Nor does Mr. Serp say what contract provisions the Government violated.

Indeed, as summarized by the Government, “Mr. Serp’s complaint provides no description of ‘substantive provisions’ and does not allege any facts as to specific terms of the contract.” Mot. to Dismiss at 5. Rather, “he makes vague assertions that he contracted with any one of a number of named government agents who allegedly agreed to pay him for undercover investigative work.” *Id.* Mr. Serp “fails to allege when that contract was signed, who signed it on behalf of the Government, or what services he was to provide under the contract.” *Id.* And, as the Government observes, “Mr. Serp fails to provide a copy of the document that was allegedly signed and witnessed, does not provide the date on which this action occurred, or provide[] any other details of the arrangement.” *Id.* These types of vague assertions cannot establish the existence of an express or implied in fact contract. *See Sahagun-Pelayo v. United States*, No. 13-929, 2014 WL 3643471, at \*5–6 (Fed. Cl. July 22, 2014) *aff’d*, 602 F. App’x. 822, 826 (Fed. Cir. 2015).

The Court recognizes that pro se litigants are “not expected to frame issues with the precision of a common law pleading.” *Roche v. U.S. Postal Serv.*, 828 F.2d 1555, 1558 (Fed. Cir. 1987). That said, “the leniency afforded to a pro se litigant with respect to mere formalities does not relieve the burden to meet jurisdictional requirements.” *Minehan v. United States*, 75 Fed. Cl. 249, 253 (2007). Failure to allege facts sufficient to establish the existence of a contract with the United States deprives this Court of jurisdiction to hear Mr. Serp’s claim. *See, e.g., Atlas Corp. v. United States*, 895 F.2d 745, 754 (Fed. Cir. 1990) (noting that a contract breach claim requires the plaintiff to point to the “specific [contract] provision that was breached”); *Huntington Promotional & Supply, LLC v. United States*, 114 Fed. Cl. 760, 766 (2014) (“If a plaintiff fails to comply with RCFC 9(k) and to allege sufficient facts to show that it had a contract with the United States, the court cannot exercise jurisdiction over the claim.”); *Kissi v. United States*, 102 Fed. Cl. 31, 35 (2011) (finding that the court lacked jurisdiction because of plaintiff’s failure to “adequately plead a contract claim under RCFC 9(k)”). Here, Mr. Serp’s Complaint fails under RCFC 9(k) because he does not allege facts sufficient to show a contract with the United States. Accordingly, this Court lacks jurisdiction to consider Mr. Serp’s contract claim.

#### IV. Mr. Serp also fails to state a claim.

Mr. Serp also fails to state a claim upon which relief may be granted. “To plead a contract claim, whether express or implied, within Tucker Act jurisdiction, a complainant must allege . . . facts sufficient to establish that the contract was entered into with an authorized agent of the United States who ‘had actual authority to bind the United States.’” *Lion Raisins, Inc. v. United States*, 54 Fed. Cl. 427, 431 (2002) (quoting *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997)). In other words, “one of the requirements for the existence of a contract with the government is that the individual executing the contract on behalf of the Government must have actual authority to bind the government in contract.” Mot. to Dismiss at

8. “Therefore, even if a government employee purports to have authority to bind the government, the government will not be bound unless the employee actually has that authority.” *Tracy v. United States*, 55 Fed. Cl. 679, 682 (2003); *see also Snyder & Assocs. Aquisitions LLC v. United States*, 133 Fed. Cl. 120, 126 (2017) (“Private parties bear the risk that Government agents may not have actual authority to bind the Government, even when the agents themselves believe they have such authority.”); *Kenney v. United States*, 41 Fed. Cl. 353, 358 (1998) (observing that “the United States government may generally deny unauthorized acts of its agents”).

Mr. Serp seems to allege he contracted with DHS agents, Compl. at 7–8, who—like other federal law enforcement agents—generally lack the authority to bind the government in contract. *Yifrach v. United States*, 169 Fed. Cl. 33, 61 (2024) (“This court consistently holds Federal law enforcement agents lack both actual express and actual implied authority to contract with confidential informants.”); *Humlen v. United States*, 49 Fed. Cl. 497, 503 (2001) (“As a general rule, DEA Field Agents and FBI Special Agents lack the requisite actual authority—either expressed or implied—to contractually bind the United States to remit rewards to confidential informants/cooperative witnesses.”); *see also Sahagun-Pelayo v. United States*, 602 F. App’x at 825 (“[T]o the extent [plaintiff] *believed* that an unidentified government official . . . possessed the authority to enter into a contract with him, that subjective belief is insufficient because *actual* authority—not just *apparent* authority—is required to contract.”) (emphasis in original). Thus, even if an agreement existed between Mr. Serp and the named DHS agents, these law enforcement agents cannot bind the Government in contract absent a showing they were authorized to do so. Accordingly, even construing all facts in Mr. Serp’s favor, he has failed to allege facts on which relief could be granted.

#### V. Conclusion

For the reasons set forth above, Defendant’s Motion to Dismiss is **GRANTED**, and the case is **DISMISSED** without prejudice. Mr. Serp may file a new complaint specifying the relevant terms of the contract allegedly breached by the Government, or by attaching a copy of the contract to his complaint. In addition, Plaintiff’s Motion to Proceed *In Forma Pauperis* is **GRANTED**. The Clerk is directed to enter judgment accordingly.

**IT IS SO ORDERED.**

s/ Carolyn N. Lerner  
CAROLYN N. LERNER  
Judge

Office of the Principal Legal Advisor

U.S. Department of Homeland Security  
500 12<sup>th</sup> Street SW, Stop 5900  
Washington, DC 20536-5900



U.S. Immigration  
and Customs  
Enforcement

August 22, 2023

Mr. Rod Serp  
501 S. Spring Street, No. 450  
Los Angeles, California 90013

Re: Administrative Claim Rod Serp (August 8, 2023)

Dear Mr. Serp:

This letter responds to the administrative claim which you filed and which was received by the Office of the Principal Legal Advisor, Immigration and Customs Enforcement (ICE), on or about August 8, 2023.

ICE has analyzed this claim under the Federal Tort Claims Act (FTCA), which can be found in 28 U.S.C. §§ 1346(b), 2401(b), and 2671-2680. The agency's investigation has determined that the United States is not liable under the FTCA for the damages claimed.

Accordingly, this letter is furnished as notice that the agency has considered the claim and has denied it. If you are dissatisfied with this determination, federal law allows you to file suit against the United States in an appropriate United States District Court on behalf of your client not later than six months after the date of mailing of this notification of denial—please refer to 28 U.S.C. § 2401(b).

Sincerely,

*John F. Cox III*

/s/ John F. Cox III  
John F. Cox III  
Associate Legal Advisor

**U.S. District Court****California Central - Los Angeles**

Receipt Date: Nov 6, 2023 2:58PM

Rod Serp

Rcpt. No: 9653

Trans. Date: Nov 6, 2023 2:58PM

Cashier ID: #AS

CD	Purpose	Case/Party/Defendant	Qty	Price	Amt
200	Civil Filing Fee- Non-Prisoner	2:23-cv-08541	1	402.00	402.00

CD	Tender	Amt
CC	Credit Card	\$402.00
	Total Due Prior to Payment:	\$402.00
	Total Tendered:	\$402.00
	Total Cash Received:	\$0.00
	Cash Change Amount:	\$0.00

Only when the bank clears the check, money order, or verifies credit of funds, is the fee or debt officially paid or discharged. A \$53 fee will be charged for a returned check.

FILED

NAME, ADDRESS AND TELEPHONE NUMBER OF ATTORNEY(S)

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELESUNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

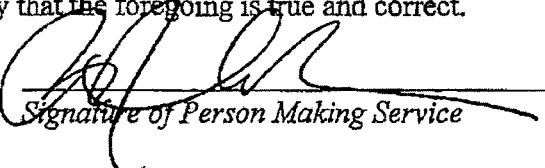
ROD SERP  v.  United States of America	PLAINTIFF(S),	CASE NUMBER
	DEFENDANT(S),	2:23-CV-08541-DSF-MRW (SEALED)
PROOF OF SERVICE - ACKNOWLEDGMENT OF SERVICE		

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the above-entitled cause. On December 12, 2023, I served a true copy of Summons, Complaint, Standing Orders, Certification Notice by personally delivering it to the person (s) indicated below in the manner as provided in FRCivP 5(b); by depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the following: (list names and addresses for person(s) served. Attach additional pages if necessary.)

Place of Mailing: U. S. Attorney General, 950 Pennsylvania Ave, NW, Washington, D.C. 20530  
 Executed on December 14, 2023 at Los Angeles, California

Please check one of these boxes if service is made by mail:

- I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.
- I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.
- I hereby certify under the penalty of perjury that the foregoing is true and correct.



Signature of Person Making Service

## ACKNOWLEDGEMENT OF SERVICE

I, \_\_\_\_\_, received a true copy of the within document on \_\_\_\_\_.

Signature

Party Served

1 Rock Serp (Full Name)  
 2 rockserp@gmail.com (Email Address)  
 3 501 S. Spring st #450 (Address Line 1)  
 4 LA, CA 90013 (Address Line 2)  
 5 213-440-9622 (Phone Number)  
 6 Rock Serp. Plaintiff in Pro Per  
 7 (Indicate Plaintiff or Defendant)

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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11 Rock Serp,  
 12 PLAINTIFF,

13 vs.

14 United States of America

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20 DEFENDANT(S).

21 Case No.: 2:23-cv-08541-DSEM RW  
 22 (To be supplied by the Clerk)  
 23 **COMPLAINT FOR:** "Sealed"

24 Federal Tort Claims

25 Act 28 U.S.C 1331 (b)

26 and 2671-2680

27 Demand for Jury Trial

28 Jury Trial Demanded:  Yes  No

29 **I. JURISDICTION**

30 1. This Court has jurisdiction under 28 U.S.C 1331  
 31 pursuant to federal laws that apply in this  
 32 case

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## II. VENUE

2. Venue is proper pursuant to 28 U.S.C 1331 because the  
3 the property at issue in this complaint located  
4 in this district  
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## III. PARTIES

3. Plaintiff's name is Rod Serp. Plaintiff resides  
4 at: 501 S. Spring st #450, Ft. Co. 90013

5. Defendant United States of America

5. Defendant \_\_\_\_\_

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5 **V. CAUSES OF ACTION**  
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10 **FIRST CAUSE OF ACTION**  
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contract that I signed with United  
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**VI. REQUEST FOR RELIEF**

WHEREFORE, the Plaintiff requests:

*Insert ¶ #*

*Money in the amount of \$250,000*

*Insert ¶ #*

*Insert ¶ #*

*Insert ¶ #*

Dated: 10-3-23

Sign: Red Sarp

Print Name: Red Sarp

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II. VENUE

2. Venue is proper pursuant to 28 U.S.C 1331 because the  
the property at issue in this complaint located  
in this district

III. PARTIES

3. Plaintiff's name is Raul Serp. Plaintiff resides  
at: 501 S. Spring st #450 LA, Ca. 90013

4. Defendant United States of America

5. Defendant \_\_\_\_\_

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IV. STATEMENT OF FACTS

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Approximately on March 2010 I was  
working as a driver for Adult Talent Managers,  
A talent agency that supplied talent (models)  
for adult industry. I suspected that the agency  
was involved in human trafficking and I  
chose to notify Immigration Customs Enforcement.  
An ICE Agent Michael Huang called me back  
and we had a long conversation about the

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agency, talent and my job. Upon  
which, I was invited for a personal  
interview in ICE HQ on 300 N. Los Angeles  
street. It was more of an interrogation  
than interview but I figured it's for a  
good cause.

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After that interview although  
an official Michael Huang became my  
handler in turn that made me an informant.  
Since Agent Huang primarily worked  
human trafficking cases. I assisted him  
in human trafficking cases. However,  
human trafficking touches many areas of  
our lives such as narcotics, identity

1  
2 <sup>Insert 11#</sup> theft and human smuggling. Our  
3 efforts (myself) and ICE led to deportation  
4 of many individuals and at least one successful  
5 for prosecution.

6  
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10  
11 <sup>Insert 12#</sup> All throughout Agent Huang kept  
12 promising me that I will be paid for my  
13 efforts. We started working together in  
14 Spring 2010 and all through the summer.  
15 In the fall 2010 I received \$500. That  
16 is the only money that I have received  
17 from DHS/ICE.

18  
19  
20 <sup>Insert 13#</sup> Approximately in Feb 2011 I was  
21 informed that Agent Huang will be  
22 leaving for military service and Agent  
23 Rich Harlow will be my new handler.  
24 Since Agent Harlow specialized in  
25 narcotics we (Agent Harlow and I)  
26 primarily worked narcotic cases. Once  
27 again I promised compensation for my

1  
2 <sup>Insert #</sup> services, however, I was never paid,  
3 under Agent Harlow <sup>was</sup> introduced to other  
4 agents from different agencies and I've  
5 advised them with their cases. Anywhere from  
6 DEA, DMV investigative unit and even  
7 Pasadena Police Dept.

8  
9  
10 Due to our successful efforts I've  
11 <sup>Insert #</sup> signed an official an official contract with  
12 DHS. I was photographed and fingerprinted,  
13 that was witnessed by Rich Harlow and  
14 Agent Myron Chism. It was also supervised  
15 by (SAC) Ezequiel Garcia.

16  
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20 <sup>Insert #</sup> whenever a case is discussed ICE  
21 agents would always inquire on whether  
22 I'll be willing to testify on behalf of  
23 U.S Attorney. There is was always a  
24 risk to my safety. During one of the  
25 stake outs Agent Perry <sup>was</sup> out of  
26 empathy or concern for my life even  
27 reminded me of that.

1  
2 A few months after (SAIC) Garcia's  
3 <sup>Insert #</sup> demise on the hands of another agent.  
4 Approximately around Feb 2012. I  
5 was contacted again by Agent Michael Huang  
6 and our relationship resumed. Although  
7 this time our relationship restarted with  
8 another lie. Huang said "Rich (as in  
9 agent Harlow) fucked up the paperwork".

10  
11 <sup>Insert #</sup> What he meant is I no longer under  
12 contract with ICE. I did not sign a  
13 contract with Harlow or Garcia. I signed  
14 a contract with United States of America.

15 After that Agent Huang would use me in  
16 advisory role by introducing trainees and  
17 questioning me or (interrogate) me in front of them.  
18 It was humiliating but I knew that was for a good  
19 cause.

20 <sup>Insert #</sup> I'm an Arabic and Russian speaker,  
21 therefore, I would assist Agent Huang in a  
22 linguistic capacity in cases that he was invest-  
23 igating. It was a wide <sup>variety</sup> of cases anywhere  
24 from EBT fraud to missle parts. Aside from  
25 the \$1500 I've never received another pay-  
26 ment from United States of America despite  
27 the promises and seriousness of the cases

1  
2 Regardless, on or about March 2019  
3 <sup>Insert #</sup> Michael Huang contacted me via phone  
4 to tell me he is going to Middle East with  
5 U.S Army and will be back in a year. That was  
6 the last time I heard from anyone in DHS.  
7 Not even a thank you.  
8  
9

10  
11 I need to clarify a few things:  
12 <sup>Insert #</sup> I do have electronic emails that I exchanged  
13 with DHS but only the ones that pre-  
14 date the Snowden affair. After Edward  
15 Snowden debacle there was no more emails  
16 or text messages. I did not have to cooperate  
17 with U.S government. I did not have a  
18 pending litigation or criminal case. I was  
19

20 <sup>Insert #</sup> under no pressure legally. I chose  
21 to do so voluntarily and under a contract.  
22 I've fulfilled my obligation under the  
23 contract to U.S government. I expect the  
24 government of United States to fulfill their  
25 part.  
26  
27  
28

1  
2 I've tried to reach out to DHS  
3 <sup>Insert 1#</sup> prior to filing this case to no avail.  
4 I suffer from COPD and live on  
5 SSDI. This case is putting a burden  
6 on my life.

7  
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10  
11 <sup>Insert 1#</sup> \_\_\_\_\_  
12  
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21 <sup>Insert 1#</sup> \_\_\_\_\_  
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**DEMAND FOR JURY TRIAL**  
34  
Plaintiff hereby requests a jury trial on all issues raised in this complaint.  
56  
Dated: 10-3-23  
7Sign: Rocel Serp  
8Print Name: Rocel Serp  
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1 E. MARTIN ESTRADA  
2 United States Attorney  
3 DAVID M. HARRIS  
4 Assistant United States Attorney  
5 Chief, Civil Division  
6 JOANNE S. OSINOFF  
7 Assistant United States Attorney  
8 Chief, Complex and Defensive Litigation Section  
9 JULIAN J. XU (Cal. Bar No. 341375)  
10 Assistant United States Attorney  
11 Federal Building, Suite 7516  
12 300 North Los Angeles Street  
13 Los Angeles, California 90012  
14 Telephone: (213) 894-3104  
15 E-mail: Julian.Xu@usdoj.gov

16 Attorneys for Defendant  
17 UNITED STATES OF AMERICA

18  
19  
20 UNITED STATES DISTRICT COURT  
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 ROD SERP,

23 Plaintiff,

24 v.

25 UNITED STATES OF AMERICA,

26 Defendant.

27 No. 2:23-cv-08541-DSF-MRW

28 DEFENDANT UNITED STATES OF  
AMERICA'S NOTICE OF MOTION  
AND MOTION TO DISMISS UNDER  
FED. R. CIV. P. 12(b)(1);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF

[(Proposed)] Order filed concurrently  
herewith]

Hearing Date: March 11, 2024

Hearing Time: 1:30 p.m.

Ctrm: 7D

Honorable Dale S. Fischer  
United States District Judge

1                   **NOTICE OF MOTION AND MOTION TO DISMISS**

2                   PLEASE TAKE NOTICE that, on March 11, 2024 at 1:30 p.m., as soon thereafter  
3 as the matter may be heard, defendant United States of America (the "United States")  
4 will, and hereby does, move this Court for an order dismissing the Complaint of plaintiff  
5 Rod Serp ("Plaintiff"). This motion will be made before the Honorable Dale S. Fischer,  
6 United States District Judge, Courtroom 7D, located in the First Street Federal  
7 Courthouse, 350 W. 1st Street, Los Angeles, CA 90012.

8                   The United States brings this motion under Fed. R. Civ. P. 12(b)(1) for lack of  
9 subject matter jurisdiction. Plaintiff cannot bring suit for breach of contract under the  
10 Federal Tort Claims Act. Further, any breach of contract claim must be brought in the  
11 Court of Federal Claims.

12                  This motion is made upon this Notice, the attached Memorandum of Points and  
13 Authorities, and all pleadings, records, and other documents on file with the Court in this  
14 action, and upon such oral argument as may be presented at the hearing of this motion.

15                  This motion is made following the conference of undersigned counsel and  
16 Plaintiff pursuant to Local Rule 7-3, which was held on February 2, 2024.

17  
18                  Dated: February 12, 2024

Respectfully submitted,

19                   E. MARTIN ESTRADA  
20                   United States Attorney  
21                   DAVID M. HARRIS  
22                   Assistant United States Attorney  
23                   Chief, Civil Division  
24                   JOANNE S. OSINOFF  
25                   Assistant United States Attorney  
26                   Chief, Complex and Defensive Litigation Section

27  
28                   \_\_\_\_\_  
29                   /s/ Julian J. Xu  
30                   JULIAN J. XU  
31                   Assistant United States Attorney

32                   Attorneys for Defendant  
33                   United States of America

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## 1. INTRODUCTION

Plaintiff's sealed Complaint<sup>1</sup> alleges breach of contract under the Federal Torts Claim Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680, seeking "[m]oney in the amount of \$250,000." Dkt. 1 ("Compl.") at 3–4. Plaintiff's claim fails because a breach of contract claim cannot be brought under the FTCA. Further, any breach of contract claim must be brought in the Court of Federal Claims. The United States respectfully requests that the Court dismiss the Complaint because Plaintiff cannot establish subject matter jurisdiction.

## II. PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that he acted as an informant or advisor to multiple governmental agencies, including the United States Department of Homeland Security (DHS), Drug Enforcement Agency (DEA), and Department of Motor Vehicles (DMV). Compl. at 7. Plaintiff avers that he was not paid for certain consulting services provided to these agencies. *See generally* Compl. Plaintiff states that he “signed an official contract” with either DHS or the United States. Compl. at 7, 8. Plaintiff alleges that other than a one-time payment of \$500, Plaintiff “never received another payment from the United States of America despite the promises and seriousness of the cases.” *Id.* at 6, 8.

### III. LEGAL STANDARD

A motion to dismiss under Fed. R. Civ. P. 12(b)(1) challenges a court's subject matter jurisdiction. Federal district courts are courts of limited jurisdiction that "may not grant relief absent a constitutional or valid statutory grant of jurisdiction" and are "presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *A-Z Int'l v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003) (internal quotations omitted). Rule 12(b)(1) motions may challenge jurisdiction facially or factually. *Safe Air*

<sup>1</sup> Plaintiff filed the Complaint “under seal pursuant to order of the court 10-3-23.” Compl. at 1. When asked to provide a copy of the Court’s purported order, Plaintiff sent a copy of the Court’s standing order. It appears that the Complaint was improperly filed under seal.

1 *for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). “In a facial attack, the  
2 challenger asserts that the allegations contained in a complaint are insufficient on their  
3 face to invoke federal jurisdiction. By contrast, in a factual attack, the challenger  
4 disputes the truth of the allegations that, by themselves, would otherwise invoke federal  
5 jurisdiction.” *Id.*

6 **IV. ARGUMENT**

7 Plaintiff’s sole claim is for breach of contract under the FTCA and seeks a  
8 monetary award of \$250,000. Compl. at 3–4. “Suits against the United States and its  
9 agencies are barred by sovereign immunity unless permitted by an explicit waiver of  
10 immunity from suit.” *Sigman v. United States*, 217 F.3d 785, 792 (9th Cir. 2000).  
11 Plaintiff has the burden of showing that sovereign immunity has been waived. *Plater v.*  
12 *United States*, 359 F. Supp. 3d 930, 937 (C.D. Cal. 2018).

13 The FTCA offers a limited waiver of sovereign immunity for actions against the  
14 United States for the negligent or wrongful act or omission of any employee of the  
15 Government while acting within the scope of his or her office or employment. 28 U.S.C.  
16 § 2679(b)(1).

17 This limited waiver of sovereign immunity does not apply to Plaintiff’s breach of  
18 contract claim. Where an “action is essentially for breach of a contractual undertaking,  
19 and the liability, if any, depends wholly upon the government’s alleged promise, the  
20 action must be under the Tucker Act, and cannot be under the Federal Tort Claims Act.”  
21 *Woodbury v. United States*, 313 F.2d 291, 296 (9th Cir. 1963), *abrogated on other*  
22 *grounds by DaVinci Aircraft, Inc. v. United States*, 926 F.3d 1117 (9th Cir. 2019). Here,  
23 Plaintiff claims that the United States or its agencies owes him \$250,000 “for a contract  
24 that [Plaintiff] signed with the United States of America.” Compl. at 3–4. The only  
25 proper court in which Plaintiff could bring such a breach of contract claim against the  
26 United States would be the Court of Federal Claims. 28 U.S.C. § 1491(a)(1); *see also*  
27 *Briones v. Escrow*, 2020 WL 3415373, at \*2 (C.D. Cal. 2020) (dismissing a plaintiff’s  
28 breach of contract claims for lack of subject matter jurisdiction when the plaintiff’s

claims fell within the scope of the Tucker Act.).

Further, under the FTCA, the substantive law of the state where the alleged tortious act occurred applies. 28 U.S.C. § 1346(b)(1). As such, California law governs Plaintiff's contract claim. In California, there can be "no liability in tort for economic loss caused by negligence in the performance or negotiation of a contract between the parties." *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905, 923 (2022), *reh'g denied* (June 1, 2022).

Accordingly, the FTCA cannot be the basis for Plaintiff's claim because he seeks economic losses for an alleged breach of contract. Plaintiff cannot establish that sovereign immunity has been waived. *See Plater*, 359 F. Supp. 3d at 937.

## V. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court dismiss Plaintiff's Complaint with prejudice and without leave to amend.

Dated: February 12, 2024      Respectfully submitted,

E. MARTIN ESTRADA  
United States Attorney  
DAVID M. HARRIS  
Assistant United States Attorney  
Chief, Civil Division  
JOANNE S. OSINOFF  
Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section

/s/ Julian J. Xu  
**JULIAN J. XU**  
Assistant United States Attorney

Attorneys for Defendant  
United States of America

1                   **Certificate of Compliance under L.R. 11-6.2**

2                   The undersigned, counsel of record for the Federal Defendant, certifies that this  
3 brief contains 823 words, which complies with the word limit of L.R. 11-6.1.

4                   \_\_\_\_\_  
5                   */s/ Julian J. Xu*  
6                   JULIAN J. XU

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**PROOF OF SERVICE BY MAILING**

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California, and am readily familiar with the practice of this office for collection and processing collection and mailing. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On February 12, 2024, I served DEFENDANT UNITED STATES OF AMERICA'S NOTICE OF MOTION AND MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(1); MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF persons or entities named below by enclosing a copy in a sealed envelope with postage fully prepaid and addressed as shown below and placing the envelope for collection and mailing with the United States Postal Service on the date and at the place shown below following our ordinary office practices.

Date of mailing: **February 12, 2024**. Place of mailing: Los Angeles, California.  
Person(s) and/or Entity(s) To Whom Mailed:

**ROD SERP  
501 S. SPRING STREET #450  
LOS ANGELES, CA 90013**

I declare under penalty of perjury under the laws of the United States of America  
that the forgoing is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on **February 12, 2024** at Los Angeles, California.

1960

**KAROLYN LI**

FILED

1 Rod Serp (Full Name)  
 2 rodserp@gmail.com (Email Address)  
 3 501 S. Spring St #450 (Address Line 1)  
 4 Los Angeles, Ca. 90013 (Address Line 2)  
 5 213-440-9622 (Phone Number)  
 6 Plaintiff in Pro Per  
 7 (indicate Plaintiff or Defendant)

2024 FEB 20 PM 1:35

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY: \_\_\_\_\_

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10 Rod Serp,  
 11 Plaintiff,  
 12 vs.  
 13 United States of America,  
 14  
 15  
 16  
 17 Defendant(s).

Case No.: 2:23-CV-08541-DSF-  
MRW "Sealed"  
Plaintiff 's  
 (indicate Plaintiff or Defendant)

**DECLARATION IN SUPPORT OF  
OPPOSITION TO MOTION**

Motion to Dismiss Under  
Fed. R. CIV. P. 12 (b)(1)

Hearing Date: 3-11-24

Hearing Time: 1:30 pm

Judge: Honorable Dale S. Fischer  
(Judge's name)

Place: 7D  
(courtroom number)

I, Rod Serp, declare as follows:

- I am the Plaintiff in the above-entitled case.  
(indicate Plaintiff or Defendant)
- I have personal knowledge of the following facts, and, if called as a

witness, I could and would competently testify thereto.

1 Roel Serp (Full Name)  
 2 roelserp@gmail.com (Email Address)  
 3 501 S. Spring St #450 (Address Line 1)  
 4 Los Angeles, Ca. 90013 (Address Line 2)  
 5 213-440-9622 (Phone Number)  
 6 Plaintiff in Pro Per  
 7 (indicate Plaintiff or Defendant)

8 **UNITED STATES DISTRICT COURT**  
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10 Roel Serp,  
 11 Plaintiff,  
 12 vs.  
 13 United States of America

14  
 15  
 16  
 17 Defendant(s).

18 Case No.: 2:23-cv-08541-DSF-  
 19 MRW "Sealed"

20 Plaintiff 's  
 21 (indicate Plaintiff or Defendant)

22 **DECLARATION IN SUPPORT OF**  
 23 **OPPOSITION TO MOTION**

24 Motion to Dismiss Under  
 25 Fed. R. CIV. P. 12(b)(1)

26 Hearing Date: 3-11-24

27 Hearing Time: 1:30 pm

28 Judge: Honorable Dale S. Fischer  
 29 (Judge's name)

30 Place: 7D  
 31 (courtroom number)

32 I, Roel Serp, declare as follows:  
 33 (print name)

34 1. I am the Plaintiff in the above-entitled case.  
 35 (indicate Plaintiff or Defendant)

36 2. I have personal knowledge of the following facts, and, if called as a  
 37 witness, I could and would competently testify thereto.

1                   I. INTRODUCTION  
2  
34                   *(Include a brief statement of the facts and the procedure in the case that are relevant to this motion.)*

5                   It was a difficult thing to read and  
6                   even more difficult to respond. I realize  
7                   now of this is personal but when one  
8                   has a relationship with people for 10 yrs  
9                   its hard not to take it personally.  
10                  Even though the government cast a doubt  
11                  on this relationship it doesn't even dispute  
12                  any of the Federal Agents that I mentioned.  
13                  The government mentions a lack of jurisdiction  
14                  of this court and yet simultaneously asks  
15                  the court to dismiss the case with prejudice.  
16                  United States claiming that this case should  
17                  have been filed in Court of Federal Claims.  
18                  The government knows full well that  
19                  cases in Federal Claims cannot be  
20                  filed under seal, therefore, puts my life  
21                  and other people's lives in danger. It  
22                  also claims that the complaint under seal  
23                  was improperly filed. I requested (filed a form)  
24                  requesting to be filed under seal and  
25                  my request was granted.  
26  
27  
28

## II. ARGUMENT

The government knows this court cannot be more proper venue, after all it all began right in that building 300 North Los Angeles street. Although they did have an affiliate office by LAX, Agent Michael Huang was by the book a type of individual. Therefore, all his directives came from the same office that is trying to get this case dismissed. One may argue, why didn't I insist on payment upfront from the agents themselves.

It is a dangerous thing to do demanding money from armed individuals, especially as my original complaint states, they do not hesitate to use them even against each other. At least two of the agents that I worked with have met tragic demise.

It can be suggested that I file case against agents themselves or their estate but as the court knows agents have qualified immunity so that is not an option.

In my original complaint I mentioned how all electronic communication has seized after Edward Snowden affair. That was not a directive to me from

1 Agent Huang, Harlow, Chism or Garcia.  
2 The directive came from U.S Attorney's  
3 Office in 300 N Los Angeles st.

4 I one case when I was served with  
5 a subpoena by Federal Public Defender  
6 Central District. I contacted Agent Huang  
7 who inturn connected me to a Federal  
8 prosecutor who worked in one of  
9 the court houses right here in  
10 downtown.

11 As a Pro Se litigant I cannot  
12 understand why United States  
13 Government fears a trial with a  
14 disabled person. United States has a lot  
15 of resources and many talented  
16 attorneys. I do not understand why  
17 they are working so hard to avoid  
18 a trial with a layman like me.

19  
20 For the reasons stated above, I urge  
21 the Court to deny Motion to Dismiss  
22 and proceed with pre-trial  
23 hearing.

24 2-20-23  
25 Rod Serp  
26 Rod Serp  
27 Plaintiff in pro per  
28

1 E. MARTIN ESTRADA  
2 United States Attorney  
3 DAVID M. HARRIS  
4 Assistant United States Attorney  
5 Chief, Civil Division  
6 JOANNE S. OSINOFF  
7 Assistant United States Attorney  
8 Chief, Complex and Defensive Litigation Section  
9 JULIAN J. XU (Cal. Bar No. 341375)  
10 Assistant United States Attorney  
11 Federal Building, Suite 7516  
12 300 North Los Angeles Street  
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14 Telephone: (213) 894-3104  
15 E-mail: Julian.Xu@usdoj.gov

16 Attorneys for Defendant  
17 UNITED STATES OF AMERICA

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10 UNITED STATES DISTRICT COURT  
11  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 ROD SERP,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

18 No. 2:23-cv-08541-DSF-MRW

19 REPLY IN SUPPORT OF DEFENDANT  
20 UNITED STATES OF AMERICA'S  
21 MOTION TO DISMISS

22 Honorable Dale S. Fischer  
23 United States District Judge

1     **I. INTRODUCTION**

2     The United States moved to dismiss Plaintiff's Complaint for lack of subject matter  
3 jurisdiction because Plaintiff's breach of contract claim cannot be brought under the  
4 Federal Tort Claims Act (FTCA).<sup>1</sup> Even given the wide latitude due *pro se* litigants,  
5 Plaintiff fails to meaningfully oppose the United States's motion. ("Opp'n").<sup>2</sup> The United  
6 States respectfully requests that the Court dismiss the Complaint without leave to amend  
7 because Plaintiff cannot establish subject matter jurisdiction.

8     **II. ARGUMENT**

9         **A. Plaintiff Cannot Establish Subject Matter Jurisdiction**

10     Plaintiff does not dispute that breach of contract claims cannot be brought under the  
11 FTCA. *See generally* Opp'n. Instead, Plaintiff argues that he cannot file in the Court of  
12 Federal Claims because he would not be able to file a case under seal. Opp'n at 2. Plaintiff  
13 continues that venue is proper because some of the underlying allegations took place in  
14 this district. *Id.* at 3–4. These arguments do not reach the main issue: contract claims  
15 cannot be brought under the FTCA. Where an "action is essentially for breach of a  
16 contractual undertaking, and the liability, if any, depends wholly upon the government's  
17 alleged promise, the action must be under the Tucker Act, and cannot be under the Federal  
18 Tort Claims Act." *Woodbury v. United States*, 313 F.2d 291, 296 (9th Cir.  
19 1963), *abrogated on other grounds by DaVinci Aircraft, Inc. v. United States*, 926 F.3d  
20 1117 (9th Cir. 2019). The United States has not waived sovereign immunity, and Plaintiff  
21 cannot establish subject matter jurisdiction.

22     Plaintiff's allegations of where the underlying events took place are irrelevant. The  
23 United States has not moved for a change in venue. Rather, the United States argued that  
24 Plaintiff's claim cannot proceed for lack of jurisdiction. Mot. at 2–3. Plaintiff seeks over

26         <sup>1</sup> Because this case is entirely under seal, the United States is unable to access the  
27 docket and cannot identify docket numbers.

27         <sup>2</sup> The United States received a physical copy of Plaintiff's Opposition on February  
28 20, 2024, which included a CD labeled "ROD SERP." The Opposition does not identify  
the contents of the CD. Due to security concerns, the United States has not opened it.

1 \$10,000 for breach of contract against the United States—a claim that can only be brought  
2 under the Tucker Act in the Court of Federal Claims. 28 U.S.C. § 1491(a)(1); *see also*  
3 *Briones v. Escrow*, 2020 WL 3415373, at \*2 (C.D. Cal. 2020) (dismissing breach of  
4 contract claims for lack of subject matter jurisdiction when the plaintiff’s claims fell within  
5 the scope of the Tucker Act). Plaintiff has failed to establish that sovereign immunity has  
6 been waived, and so the Complaint must be dismissed.

**B. Plaintiff's Complaint Should Be Dismissed With Prejudice**

8 Plaintiff suggests that the United States cannot argue a lack of jurisdiction while  
9 “simultaneously ask[ing] the court to dismiss the case with prejudice.” Opp’n at 2. While  
10 dismissals for lack of subject matter jurisdiction are typically without prejudice, here, “the  
11 bar of sovereign immunity is absolute.” *Frigard v. United States*, 862 F.2d 201, 204 (9th  
12 Cir. 1988) (affirming a district court’s dismissal with prejudice when plaintiffs brought a  
13 misrepresentation claim under the FTCA). Plaintiff cannot bring this case under the FTCA,  
14 and Plaintiff “cannot redraft [his] claims to avoid the exceptions to the FTCA.” *Id.*  
15 Therefore, Plaintiff’s Complaint must be dismissed with prejudice.

### III. CONCLUSION

The United States respectfully requests that the Court dismiss Plaintiff's Complaint with prejudice and without leave to amend.

Dated: February 26, 2024      Respectfully submitted,

E. MARTIN ESTRADA  
United States Attorney  
DAVID M. HARRIS  
Assistant United States Attorney  
Chief, Civil Division  
JOANNE S. OSINOFF  
Assistant United States Attorney  
Chief, Complex and Defensive Litigation Section

/s/ Julian J. Xu  
JULIAN J. XU  
Assistant United States Attorney

Attorneys for Defendant  
United States of America

**Certificate of Compliance under L.R. 11-6.2**

2 The undersigned, counsel of record for the Federal Defendant, certifies that this  
3 brief contains 641 words, which complies with the word limit of L.R. 11-6.1.

/s/ Julian J. Xu  
JULIAN J. XU

**PROOF OF SERVICE BY MAILING**

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California, and am readily familiar with the practice of this office for collection and processing collection and mailing. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On February 26, 2024, I served **REPLY IN SUPPORT OF DEFENDANT** **UNITED STATES OF AMERICA'S MOTION TO DISMISS** persons or entities named below by enclosing a copy in a sealed envelope with postage fully prepaid and addressed as shown below and placing the envelope for collection and mailing with the United States Postal Service on the date and at the place shown below following our ordinary office practices.

Date of mailing: **February 26, 2024**. Place of mailing: Los Angeles, California.  
Person(s) and/or Entity(s) To Whom Mailed:

**ROD SERP  
501 S. SPRING STREET #450  
LOS ANGELES, CA 90013**

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 26, 2024 at Los Angeles, California.

100

KAROLYN LI