

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Pina v. Pina

Case No. 25-CV-386 JLS (SBC) · No. 25-CV-386 JLS (SBC) · Decided August 1, 2025

SUMMARY

The United States District Court for the Southern District of California renewed its order requiring Plaintiff Marcelina Pina to show cause why federal subject-matter jurisdiction exists over her child-support-related claims. The court held that the cited criminal statutes do not create private rights of action, denied as moot Plaintiff’s motions for leave to amend, to quash service, and for an extension of time to serve, and ordered a jurisdictional response by September 12, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 1, 2025
DOCKET	25-CV-386 JLS (SBC)
DISPOSITION	other
PROCEDURAL POSTURE	The district court sua sponte examined whether it had subject matter jurisdiction over Plaintiff's action and ordered Plaintiff to show cause why jurisdiction exists. The court denied as moot Plaintiff's motions for leave to amend, to quash service, and for an extension of time to serve Defendant.
STANDARD OF REVIEW	The court independently reviewed subject matter jurisdiction sua sponte. Federal district courts are presumed to lack jurisdiction unless a constitutional or statutory basis affirmatively appears, and the action must be dismissed if the court determines at any time that subject matter jurisdiction is lacking.
PRECEDENTIAL VALUE	unpublished
PARTIES	Marcelina Pina v. Martine Pina

TOPICS

subject matter jurisdiction

civil procedure

statutory interpretation

motion to amend

service of process

PRACTICE AREAS

civil procedure

family law

federal jurisdiction

QUESTIONS PRESENTED

1. Whether Plaintiff's reliance on 18 U.S.C. § 228 establishes federal-question jurisdiction or creates a private right of action.
2. Whether the criminal tax provisions cited in Plaintiff's proposed amended complaint create a private right of action or support federal-question jurisdiction.
3. Whether Plaintiff's motions for leave to amend, to quash service, and for an extension of time to serve Defendant should be decided while subject matter jurisdiction remains unresolved.

HOLDINGS

1. Section 228 is a criminal statute that does not create a private right of action; therefore, Plaintiff's invocation of the statute does not establish federal-question jurisdiction.
2. The criminal provisions in 26 U.S.C. §§ 7201, 7206, and 7207 do not create private rights of action and therefore do not provide a basis for federal-question jurisdiction.
3. The court may defer consideration of the service-related issues and deny the motions to amend, quash service, and extend time to serve as moot while requiring Plaintiff to demonstrate that subject matter jurisdiction exists.

KEY QUOTATIONS

"If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." (at 1)

"The fact that a federal statute has been violated and some person harmed does not automatically give rise to a private right of action." (at 2)

"No such intent can be discerned when it comes to § 228." (at 3)

FACTUAL BACKGROUND

Plaintiff sought to collect unpaid child support and initially invoked 18 U.S.C. § 228, a federal criminal statute concerning failure to pay certain interstate child-support obligations. Plaintiff and Defendant both reside in California, eliminating complete diversity jurisdiction. Plaintiff's proposed amended complaint would assert claims involving concealment of income, tax fraud under 26 U.S.C. §§ 7201, 7206, and 7207, and interference with child-support enforcement.

PROCEDURAL HISTORY

Plaintiff filed a form complaint asserting a claim under 18 U.S.C. § 228 and paid the filing fee after in forma pauperis status was denied. The court previously denied appointment of counsel and issued an order to show cause concerning subject matter jurisdiction. Plaintiff conceded diversity jurisdiction was unavailable, argued that federal-question jurisdiction existed, and alternatively moved to amend the complaint; she also moved to quash service and extend the time for service. The court renewed the show-cause order, denied the motions as moot, and warned that failure to respond could result in dismissal for lack of jurisdiction and failure to prosecute.

DISPOSITION

other

CASES CITED

- Allstate Ins. Co. v. Hughes, 358 F.3d 1089, 1093 (9th Cir. 2004)
- Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999)
- Cooper v. Tokyo Elec. Power Co., 990 F. Supp. 2d 1035, 1038 (S.D. Cal. 2013)
- A-Z Int'l v. Phillips, 323 F.3d 1141, 1145 (9th Cir. 2003)
- Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning, 578 U.S. 374, 383 (2016)
- Gunn v. Minton, 568 U.S. 251, 258 (2013)
- Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979)
- In re Digimarc Corp. Derivative Litig., 549 F.3d 1223, 1230 (9th Cir. 2008)
- Stupy v. U.S. Postal Serv., 951 F.2d 1079, 1081 (9th Cir. 1991)
- Alaji Salahuddin v. Alaji, 232 F.3d 305, 311-12 (2d Cir. 2000)
- McQueary v. Child Support Enf't, 812 F. App'x 911, 914-15 (11th Cir. 2020)
- Freeman v. Freeman, No. 5:24-CV-351-BO-KS, 2024 WL 5150671, at *2 (E.D.N.C. Nov. 7, 2024)
- Treadway v. Soc. Sec. Admin., 2021 WL 694927, at *2 (E.D. Mo. Feb. 23, 2021)
- Cammack v. Foschini, No. A-17-MC-557-SS, 2017 WL 7805750, at *1 (W.D. Tex. Aug. 31, 2017)
- Transamerica Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 24 (1979)
- Lemke v. Jander, No. 20-CV-362 JLS (KSC), 2021 WL 778653, at *4 (S.D. Cal. Mar. 1, 2021)
- McRae v. Norton, No. 12-CV-1537 (KAM), 2012 WL 1268295, at *4 (E.D.N.Y. Apr. 13, 2012)
- United States ex rel. Lissack v. Sakura Glob. Cap. Mkts., Inc., 377 F.3d 145, 153 (2d Cir. 2004)
- Karupaiyan v. Wipro Ltd., No. 3:23-2005 (GC) (TJB), 2023 WL 4896672, at *3 (D.N.J. July 31, 2023)
- Rumfelt v. Jazzie Pools, Inc., No. 1:11cv217 (JCC/TCB), 2011 WL 2144553, at *5 (E.D. Va. May 31, 2011)
- Nordblad v. Deutsche Bank Nat'l Tr. Co., No. CV 13-07542 DDP (VBKx), 2013 WL 6859273, at *1 (C.D. Cal. Dec. 30, 2013)
- Miller v. Walt Disney Co. Channel 7 KABC, No. 2:13-cv-06144-ODW(SHx), 2013 WL 12122677, at *1 (C.D. Cal. Sept. 30, 2013)
- Abdelqader v. Great Lakes Higher Educ. Corp., No. C 95-2484 FMS, 1996 WL 175960, at *1 (N.D. Cal. Apr. 3, 1996)

- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005)

OPINION

Pina v. Pina

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 MARCELINA PINA, Case No.: 25-CV-386 JLS (SBC)

12 Plaintiff, ORDER: 13 v.

(1) ORDERING PLAINTIFF TO

14 MARTINE PINA,

SHOW CAUSE; AND

15 Defendant.

(2) DENYING AS MOOT

16

PLAINTIFF'S MOTION FOR

17 LEAVE TO FILE AMENDED

COMPLAINT, MOTION TO QUASH,

18

AND MOTION FOR EXTENSION

19 OF TIME TO SERVE DEFENDANT

20 (ECF No. 9, 10, 11, 12) 21 22 Presently before the Court are three Motions filed by pro se
Plaintiff Marcelina Pina. 23 The first is a Motion for Extension of Time to Serve Defendant and
Request for Permission 24 to Serve by Alternative Means ("MET," ECF No. 9). The second is a
Motion for Leave to 25 File Amended Complaint ("FAC Mot.," ECF No. 11). And the third is a
Motion to Quash 26 ("Quash Mot.," ECF No. 12). Also before the Court is Plaintiff's Response to
Order to 27 Show Cause Regarding Subject Matter Jurisdiction ("OSC Resp.," ECF No. 10).
Having 28 carefully considered Plaintiff's filings and the law, the Court RENEWS its show-cause
1 order, and DENIES AS MOOT Plaintiff's Motion for Leave to File Amended Complaint, 2
Motion to Quash, and Motion for Extension of Time.

3 BACKGROUND

4 Plaintiff initiated this action on February 21, 2025, by filing a Complaint utilizing 5 this district's
form complaint. See ECF No. 1 ("Compl."). She appeared to raise one claim 6 under 18 U.S.C. §
228, a federal statute criminalizing the failure to pay legal child support 7 obligations when certain
conditions are met related to the interstate nature of the unpaid 8 obligation. Compl. at 3, 5. After
the Court denied Plaintiff in forma pauperis status, ECF

9 No. 4, Plaintiff paid the required \$405 filing fee, ECF No. 6. Plaintiff also requested the
10 Court appoint counsel to her case, ECF No. 5, but that request was denied, ECF No. 8 11
12 (“OSC Order”). 12 At the same time it denied Plaintiff’s request for appointment of counsel, the
13 Court expressed apprehension about the existence of subject matter jurisdiction. The Court
14 noted that Plaintiff and Defendant both reside in California, thus rendering diversity
15 jurisdiction under 28 U.S.C. § 1332 inapplicable. *Id.* at 3–4. The Court further noted that 18
19 U.S.C. § 228, the lone statute under which Plaintiff brought her case, likely does not create an
20 implied private right of action, calling into question whether the Court may exercise federal
21 question jurisdiction under 28 U.S.C. § 1331. *Id.* at 4 (citing *Alaji Salahuddin v. Alaji*, 19 232 F.3d
22 305, 311–12 (2d Cir. 2000)). Accordingly, on May 9, 2025, the Court ordered Plaintiff to show
23 cause as to why jurisdiction exists over this matter. *Id.* 21 Plaintiff responded to the show-cause
22 Order on June 4, 2025. See OSC Resp. She 22 conceded that diversity jurisdiction does not exist
23 over this action but argued that federal 23 question jurisdiction does indeed exist. *Id.* at 1.
24 Although Plaintiff recognized that she 24 could not “enforce the criminal statute directly,” she
25 clarified that she is “invok[ing] the 25 federal interest involved due to the interstate nature of the
26 unpaid support and the 26 substantial federal child support enforcement scheme.” *Id.* Alternatively,
27 Plaintiff sought 27 leave to file a first amended complaint. FAC Mot. And separately, Plaintiff
28 requested 28 additional time to serve Defendant on the grounds that Defendant is actively evading
1 service of process, though on July 28, 2025, Plaintiff filed a Proof of Service. ECF No. 13.

2 LEGAL STANDARD

3 “[T]his court has an independent obligation to address sua sponte whether [it] ha[s] 4 subject
4 matter jurisdiction.” *Allstate Ins. Co. v. Hughes*, 358 F.3d 1089, 1093 (9th Cir. 5 2004) (citing
5 *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999)). “Federal 6 district courts are courts of
6 limited jurisdiction that ‘may not grant relief absent a 7 constitutional or valid statutory grant of
7 jurisdiction’ and are ‘presumed to lack jurisdiction 8 in a particular case unless the contrary
8 affirmatively appears.’” *Cooper v. Tokyo Elec. 9 Power Co.*, 990 F. Supp. 2d 1035, 1038 (S.D.
9 Cal. 2013) (quoting *A-Z Int’l v. Phillips*, 10 323 F.3d 1141, 1145 (9th Cir. 2003)). “If the court
10 determines at any time that it lacks 11 subject-matter jurisdiction, the court must dismiss the
11 action.” Fed. R. Civ. P. 12(h)(3). 12 Generally, subject matter jurisdiction is based on the presence
12 of a federal question, 13 see 28 U.S.C § 1331, or on complete diversity of citizenship between the
13 parties, see 14 28 U.S.C. § 1332. When a plaintiff invokes federal question jurisdiction under §
14 1331, 15 “[m]ost directly, and most often, federal jurisdiction attaches when federal law creates
15 the 16 cause of action asserted.” *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 17 578
16 U.S. 374, 383 (2016). Other times, “federal jurisdiction over a state law claim will lie 18 if a
17 federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and 19 (4) capable of
18 resolution in federal court without disrupting the federal-state balance 20 approved by Congress.”
19 *Gunn v. Minton*, 568 U.S. 251, 258 (2013). 21 “The fact that a federal statute has been violated
20 and some person harmed does not 22 automatically give rise to a private right of action.” *Touche*

Ross & Co. v. Redington, 23 442 U.S. 560, 568 (1979). “Instead, the statute must either explicitly create a right of action 24 or implicitly contain one.” In re Digimarc Corp. Derivative Litig., 549 F.3d 1223, 1230 25 (9th Cir. 2008). Legislative intent to create a private right of action is necessary for an 26 implied private right of action under a criminal statute: “An evaluation of the other 27 elements is not necessary if the court finds that Congress did not intend to create a private 28 right of action.” Stupy v. U.S. Postal Serv., 951 F.2d 1079, 1081 (9th Cir. 1981).

1 ANALYSIS

2 Plaintiff responded to the show-cause Order by purporting “to invoke the federal 3 interest involved due to the interstate nature of the unpaid support and the substantial 4 federal child support enforcement scheme.” OSC Resp. at 1. Alternatively, Plaintiff seeks 5 leave to file a first amended complaint that asserts three causes of action: (1) willful 6 concealment of income (fraud); (2) tax fraud under 26 U.S.C. §§ 7201, 7206, and 7207; 7 and (3) interference with child support enforcement. See ECF No. 11-1. 8 The Court maintains its doubt that subject matter jurisdiction is proper in federal 9 court for Plaintiff’s claims. Plaintiff’s insistence that 18 U.S.C. § 228 unlocks federal 10 question jurisdiction remains unsupported by any precedent; indeed, the Second Circuit in 11 Alaji Salahuddin comprehensively analyzed the statutory framework of the Child Support 12 Recovery Act to conclude that “Congress did not intend to create a private right of action” 13 in § 228. 232 F.3d at 312. The Eleventh Circuit reached the same conclusion more 14 recently, see McQueary v. Child Support Enf’t, 812 F. App’x 911, 914–15 (11th Cir. 15 2020), and countless district courts from across the country unanimously agree, see, e.g., 16 Freeman v. Freeman, No. 5:24-CV-351-BO-KS, 2024 WL 5150671, at *2 (E.D.N.C.

17 Nov. 7, 2024) (“[T]he federal criminal statute invoked by Plaintiff, 18 U.S.C. § 228, does 18 not create a private right of action.”); Treadway v. Soc. Sec. Admin., 2021 WL 694927, 19 at *2 (E.D. Mo. Feb. 23, 2021) (“[T]he CSRA is a criminal statute that . . . neither confers 20 civil jurisdiction over child support matters, nor implies a private right of action. It 21 therefore provides no basis for this Court’s subject matter jurisdiction.”); Cammack v. 22 Foschini, No. A-17-MC-557-SS, 2017 WL 7805750, at *1 (W.D. Tex. Aug. 31, 2017) 23 (concluding that 18 U.S.C. § 228 “is a criminal statute and does not create an implied 24 private right of action”). Each of those courts recognized that “[t]he dispositive question 25 remains whether Congress intended to create” a private cause of action. Transamerica 26 Mortg. Advisors, Inc. v. Lewis, 444 U.S. 11, 24 (1979). No such intent can be discerned 27 when it comes to § 228. 28 Plaintiff tries in her Motion for Leave to File Amended Complaint to reconfigure her 1 causes of action to conform to the Court’s jurisdictional constraints, but her proposed first 2 amended complaint fares no better. Therein, Plaintiff invokes 26 U.S.C. §§ 7201, 7206, 3 and 7207 to support federal question jurisdiction, but those statutes, like 28 U.S.C. § 228, 4 are criminal provisions that do not give rise to a private right of action. A few years ago, 5 this Court analyzed a similar claim under 26 U.S.C. § 7201 and found that “courts that have 6 considered whether § 7201 provides for a private right of action have concluded that it does 7 not.” Lemke v. Jander, No. 20-CV-362 JLS (KSC), 2021

WL 778653, at *4 (S.D. Cal.

8 Mar. 1, 2021) (first citing *McRae v. Norton*, No. 12-CV-1537 (KAM), 2012 WL 1268295, 9 at *4 (E.D.N.Y. Apr. 13, 2012); and then citing *United Stats ex rel. Lissack v. Sakura Glob. 10 Cap. Mkts., Inc.*, 377 F.3d 145, 153 (2d Cir. 2004)). Similarly, other courts have 11 determined that Section 7206 “of the Internal Revenue Code also do[es] not grant a private 12 right of action.” *Karupaiyan v. Wipro Ltd.*, No. 3:23-2005 (GC) (TJB), 13 2023 WL 4896672, at *3 (D.N.J. July 31, 2023), vacated in part on other grounds by, 14 No. 23-2424, 2025 WL 89076 (3d Cir. Jan. 14, 2025); see also *Rumfelt v. Jazzie Pools, 15 Inc.*, No. 1:11cv217 (JCC/TCB), 2011 WL 2144553, at *5 (E.D. Va. May 31, 2011). 16 Simply put, as the Internal Revenue Code itself establishes, “the administration and 17 enforcement of [the tax laws] shall be performed by or under the supervision of the 18 Secretary of the Treasury,” not private litigants. 26 U.S.C. § 7801(a)(1). 19 It is clear after reviewing Plaintiff’s proposed first amended complaint that, at 20 bottom, this case is about Plaintiff’s pursuit to collect on child support payments she 21 believes she is owed. See generally ECF No. 11-1. As sympathetic as the Court may feel 22 towards Plaintiff’s struggles, it can only stretch its judicial authority to the outer limits as 23 24 25 1 Plaintiff offers two other causes of action in her proposed first amended complaint, but those claims arise from nothing more than common-law fraud, which does not implicate federal question jurisdiction. See 26 *Nordblad v. Deutsche Bank Nat’l Tr. Co.*, No. CV 13-07542 DDP (VBKx), 2013 WL 6859273, at *1 (C.D. Cal. Dec. 30, 2013) (“The case does not does present any question of federal law, instead arising 27 from common law fraud and state property laws.”); see also *Miller v. Walt Disney Co. Channel 7 KABC*, 28 No. 2:13-cv-06144-ODW(SHx), 2013 WL 12122677, at *1 (C.D. Cal. Sept. 30, 2013) (“And a 1 permitted by Congress and the Constitution. In the event Plaintiff’s claims are ill-suited 2 for adjudication in federal court, she is free to bring her claims in state court, where the 3 judicial authority is not constrained to the same extent as in federal court. See *Abdelqader 4 v. Great Lakes Higher Educ. Corp.*, No. C 95-2484 FMS, 1996 WL 175960, at *1 (N.D. 5 Cal. Apr. 3, 1996) (“State courts are not so limited; they are courts of general jurisdiction. 6 Nothing in this order prevents plaintiff from filing this lawsuit in state court.”). 7 Still, in light of Plaintiff’s pro se status, the Court will permit Plaintiff one more 8 opportunity to demonstrate the existence of subject matter jurisdiction. Accordingly, the 9 Court ORDERS Plaintiff to SHOW CAUSE as to why jurisdiction exists over this matter. 10 Plaintiff SHALL file a response to this Order on or before September 12, 2025. 11 Moreover, because she may amend her Complaint once as a matter of course without 12 the Court’s intervention, the Court DENIES AS MOOT Plaintiff’s Motion for Leave to 13 File Amended Complaint (ECF No. 11). The Court will also otherwise defer on addressing 14 Plaintiff’s concerns regarding service of process until it assures itself of subject matter 15 jurisdiction; thus, Plaintiff’s Motion to Quash Service of Process (ECF No. 12) is DENIED 16 AS MOOT. And Plaintiff’s Motion for Extension of Time to Serve Defendant (ECF 17 No. 9) is likewise DENIED AS MOOT as Plaintiff has now filed a Proof of Service. See

18 ECF No. 13.

19 CONCLUSION

20 In light of the foregoing, the Court ORDERS Plaintiff to SHOW CAUSE as to why 21 this
Court has subject matter over her claims. The Court further DENIES AS MOOT 22 Plaintiff's
Motion for Extension of Time (ECF No. 9), Motion for Leave to File Amended 23 Complaint
(ECF No. 11) and Plaintiff's Motion to Quash (ECF No. 12). 24 /// 25 /// 26 /// 27 /// 28 /// 1
Should Plaintiff fail to respond to this Order as described above, the Court will enter 2 ||a final
order dismissing this civil action based both on lack of subject matter jurisdiction 3 || and
Plaintiff's failure to prosecute in compliance with a court order requiring a response. 4 || See Lira
v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005). 5 IT IS SO ORDERED. 6 ||Dated: August 1, 2025
jae L. Lo memeait- 7 on. Janis L. Sammartino United States District Judge 8 9 10 11 12 13 14 15
16 17 18 19 20 21 22 23 24 25 26 27 28