**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

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## 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.


## OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA MARCELINA PINA, Case No.: 25-CV-386 JLS (SBC) Plaintiff, ORDER: v. (1) ORDERING PLAINTIFF TO MARTINE PINA, SHOW CAUSE; AND Defendant.

(2) DENYING AS MOOT PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT, MOTION TO QUASH, AND MOTION FOR EXTENSION OF TIME TO SERVE DEFENDANT (ECF No. 9, 10, 11, 12) Presently before the Court are three Motions filed by pro se Plaintiff Marcelina Pina. The first is a Motion for Extension of Time to Serve Defendant and Request for Permission to Serve by Alternative Means ("MET," ECF No. 9).

The second is a Motion for Leave to File Amended Complaint ("FAC Mot.," ECF No. 11). And the third is a Motion to Quash ("Quash Mot.," ECF No. 12). Also before the Court is Plaintiff's Response to Order to Show Cause Regarding Subject Matter Jurisdiction ("OSC Resp.," ECF No. 10).

Having carefully considered Plaintiff's filings and the law, the Court RENEWS its show-cause order, and DENIES AS MOOT Plaintiff's Motion for Leave to File Amended Complaint, Motion to Quash, and Motion for Extension of Time. BACKGROUND Plaintiff initiated this action on February 21, 2025, by filing a Complaint utilizing this district's form complaint.

See ECF No. 1 ("Compl."). She appeared to raise one claim under 18 U.S.C. § 228, a federal statute criminalizing the failure to pay legal child support obligations when certain conditions are met related to the interstate nature of the unpaid 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 (“OSC Order”). 12 At the same time it denied Plaintiff’s request for appointment of counsel, the Court 13 expressed apprehension about the existence of subject matter jurisdiction.

The Court noted 14 that Plaintiff and Defendant both reside in California, thus rendering diversity jurisdiction 15 under 28 U.SC. § 1332 inapplicable. Id. at 3–4. The Court further noted that 18 U.S.C. 16 § 228, the lone statute under which Plaintiff brought her case, likely does not create an 17 implied private right of action, calling into question whether the Court may exercise federal 18 question jurisdiction under 28 U.S.C. § 1331.

Id. at 4 (citing Alaji Salahuddin v. Alaji, 19 232 F.3d 305, 311–12 (2d Cir. 2000)). Accordingly, on May 9, 2025, the Court ordered 20 Plaintiff to show cause as to why jurisdiction exists over this matter. Id. 21 Plaintiff responded to the show-cause Order on June 4, 2025. See OSC Resp. She 22 conceded that diversity jurisdiction does not exist over this action but argued that federal 23 question jurisdiction does indeed exist.

Id. at 1. Although Plaintiff recognized that she 24 could not “enforce the criminal statute directly,” she clarified that she is “invok[ing] the 25 federal interest involved due to the interstate nature of the unpaid support and the 26 substantial federal child support enforcement scheme.” Id. Alternatively, Plaintiff sought 27 leave to file a first amended complaint.

FAC Mot. And separately, Plaintiff 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 matter jurisdiction.” Allstate Ins.

Co. v. Hughes, 358 F.3d 1089, 1093 (9th Cir. 5 2004) (citing Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999)). “Federal 6 district courts are courts of limited jurisdiction that ‘may not grant relief absent a 7 constitutional or valid statutory grant of jurisdiction’ and are ‘presumed to lack jurisdiction 8 in a particular case unless the contrary affirmatively appears.’” Cooper v. Tokyo Elec.

9 Power Co., 990 F. Supp. 2d 1035, 1038 (S.D. Cal. 2013) (quoting A-Z Int’l v. Phillips, 10 323 F.3d 1141, 1145 (9th Cir. 2003)). “If the court determines at any time that it lacks 11 subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3). 12 Generally, subject matter jurisdiction is based on the presence of a federal question, 13 see 28 U.S.C § 1331, or on complete diversity of citizenship between the parties, see 14 28 U.S.C. § 1332.

When a plaintiff invokes federal question jurisdiction under § 1331, 15 “[m]ost directly, and most often, federal jurisdiction attaches when federal law creates the 16 cause of action asserted.”

Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning, 578 U.S. 374, 383 (2016). Other times, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” Gunn v. Minton, 568 U.S. 251, 258 (2013).

“The fact that a federal statute has been violated and some person harmed does not automatically give rise to a private right of action.” Touche Ross & Co. v. Redington, 442 U.S. 560, 568 (1979). “Instead, the statute must either explicitly create a right of action or implicitly contain one.” In re Digimarc Corp. Derivative Litig., 549 F.3d 1223, 1230 (9th Cir.

2008). Legislative intent to create a private right of action is necessary for an implied private right of action under a criminal statute: “An evaluation of the other elements is not necessary if the court finds that Congress did not intend to create a private right of action.” Stupy v. U.S. Postal Serv., 951 F.2d 1079, 1081 (9th Cir. 1981).

ANALYSIS

Plaintiff responded to the show-cause Order by purporting “to invoke the federal interest involved due to the interstate nature of the unpaid support and the substantial federal child support enforcement scheme.” OSC Resp. at 1.

Alternatively, Plaintiff seeks leave to file a first amended complaint that asserts three causes of action: (1) willful concealment of income (fraud); (2) tax fraud under 26 U.S.C. §§ 7201, 7206, and 7207; and (3) interference with child support enforcement. See ECF No. 11-1. The Court maintains its doubt that subject matter jurisdiction is proper in federal court for Plaintiff’s claims.

Plaintiff’s insistence that 18 U.S.C. § 228 unlocks federal question jurisdiction remains unsupported by any precedent; indeed, the Second Circuit in Alaji Salahuddin comprehensively analyzed the statutory framework of the Child Support Recovery Act to conclude that “Congress did not intend to create a private right of action” in § 228. 232 F.3d at 312.

The Eleventh Circuit reached the same conclusion more recently, see McQueary v. Child Support Enf’t, 812 F. App’x 911, 914–15 (11th Cir. 2020), and countless district courts from across the country unanimously agree, see, e.g., Freeman v. Freeman, No. 5:24-CV-351-BO-KS, 2024 WL 5150671, at *2 (E.D.N.C. Nov. 7, 2024) (“[T]he federal criminal statute invoked by Plaintiff, 18 U.S.C. § 228, does not create a private right of action.”); Treadway v. Soc.

Sec. Admin., 2021 WL 694927, at *2 (E.D. Mo. Feb. 23, 2021) (“[T]he CSRA is a criminal statute that... neither confers civil jurisdiction over child support matters, nor implies a private right of action. It therefore provides no basis for this Court’s subject matter jurisdiction.”); Cammack v. 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).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 memeaite- 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