

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

Torm Howse ex rel. the United  
States, et al.,

Plaintiffs,

v.

CASE NO. 8:12-CV-2519-T-17AEP

Planned Parenthood Federation of  
America, et al.,

Defendants,

and

Torm Howse, individually, as a  
taxpayer, and ex rel. each and all  
Fifty (50) of the Several Sister  
States and Commonwealths,

Cross-Plaintiffs,

v.

United States a.k.a. the United States  
Federal Government,

Cross-Defendant.

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ORDER

This cause is before the Court on:

Dkt. 31 Motion for Belated Filing Acceptance of Directed Amended  
Complaint, or Relief in the Alternative

Case No. 8:12-CV-2519-T-17AEP

Plaintiff Howse moves for acceptance of the late filing of Plaintiff's First Amended Complaint, or, in the alternative, for 30-45 days to file a Second Amended Complaint, or for appointment of counsel, and access to Electronic Case Filing System. Plaintiff Howse alleges that the due date of the Amended Complaint was December 13, 2012; the Amended Complaint was filed on December 17, 2012.

The Court dismissed the Verified Complaint without prejudice on November 26, 2012. After consideration, the Court **grants** Plaintiff's Motion for Belated Filing Acceptance of the Directed Amended Complaint. Plaintiff has incorporated documents previously filed by reference into the Amended Complaint.

The Amended Complaint (Dkt. 32) includes allegations which comprise two separate cases. One case, consisting of Count I (Racketeering), Count II (False Claims) and Count III (Fraud), includes allegations asserted by Plaintiff Torm Howse ex relatione the United States and each and all fifty States and Commonwealths against Defendants Planned Parenthood Federation of America, National Abortion Federation, Center for Reproductive Rights, National Network of Abortion Funds, NARAL Pro-Choice America, Choice USA, National Organization for Women, EMILY'S List, Feminist Majority Foundation, Family Planning Councils of America, and all other persons, entities and instruments so similarly situated.

The Court summarizes and paraphrases the allegations of the Amended Complaint:

Count I includes allegations that entities not in compliance with state corporation laws still process paperwork to obtain governmental (federal and state) monies for abortion, contraception and sterilization services, such that Defendants are liable for mail fraud, wire fraud, health care fraud and racketeering.

Case No. 8:12-CV-2519-T-17AEP

Count II includes allegations that Defendants have submitted "false" claims because, although the U.S. Government has provided tax-supported programs for abortion, contraception and sterilization, the availability of abortion, contraception and sterilization services has resulted in fewer citizens, which caused the "economic meltdown of 2008", since the U.S. economy is driven by consumerism.

Count III includes allegations that Defendants made false allegations to Plaintiffs that the provision of abortion, contraception and sterilization services was "safe," which were designed to induce the Government to act, approving programs which sponsor the provision of abortion, contraception and sterilization services to the public. Plaintiff further alleges that Defendants knew that any decrease in the taxpayer base equals the corresponding loss of government revenue, and that any decrease in sales or consumerism directly harms the U.S. Plaintiff alleges that all governmental plaintiffs have suffered direct financial damages in justifiable reliance on the false representation. Plaintiff alleges that all of the Defendants and putative class Defendants are liable to the fifty-one Governmental Co-Plaintiffs for the trillions of dollars in damages sustained in the economic meltdown of 2008.

Plaintiff Howse seeks an injunctive declaration permanently enjoining the practice of abortion, and further seeks a permanent injunction enjoining all government-sponsored programs to fund, practice or promote abortion, contraception, and sterilization, but clarifying that private persons may privately purchase and employ those services. Plaintiff Howse also seeks an award paid by the U.S. Government to Relator in the amount of \$450,000,000, under 31 U.S.C. Sec. 3730(d). Plaintiff Howse, Relator, offers to waive the claims in Counts I and III in exchange for the award of 15% of a single year's worth of "false claims," and voluntarily dismissing all other claims available in Counts I and III for a quick settlement.

Case No. 8:12-CV-2519-T-17AEP

The second case includes the allegations in Count IV, Breach of Contract. Plaintiff Tom Howse asserts Count IV individually, as a taxpayer, and ex relatione the Fifty States and Commonwealths, against the U.S. Government. The allegations of Count IV involve two separate areas: the alleged failure to ensure fair and honest elections, and the alleged failure to ensure reasonable fiscal management of the national economy.

The allegations as to the failure to ensure fair and honest elections involve:

- a. the alleged failure to ensure valid candidates for federal office;
- b. the alleged failure to follow and obey the 12<sup>th</sup> Amendment;
- c. the alleged use of "rigged" voting machines and "rigged" software.

The allegations as to the failure to ensure reasonable fiscal management of the national economy involve:

- a. all birth rate loss issues: the availability of government-sponsored abortion, contraception and sterilization services;
- b. "ObamaCare" is void due to procedural and substantive errors in the legislation;
- c. Welfare must transform itself into a nationwide system of temporary infrastructure job subsidies;
- d. The identity fraud associated with welfare spending must be eradicated;
- e. The United States must return to the "gold standard" for the U.S. dollar;
- f. Other examples: allowing wars to be unilaterally begun by Executive power without Congressional declarations; funding of unlawful wars; creation of unapportioned taxes; enactments of laws impairing the obligations of contracts.

Case No. 8:12-CV-2519-T-17AEP

As to the relief sought, Plaintiff Howse proposes that the States allow Congress 99 days to effect the necessary repairs to the U.S. economy prior to the Court entering declarations in breach of contract:

1. A declaration enforcing the 12<sup>th</sup> Amendment; disqualifying Obama and Romney;
2. A declaration that the sitting "President" must be removed from office and replaced due to lack of constitutional eligibility;
3. The termination of government-sponsored abortion, contraception and sterilization services;
4. The re-installation of the "gold standard";
5. "ObamaCare" is declared procedurally and substantively void;
6. All welfare is transformed from monetary awards into subsidized jobs;
7. The welfare database is required to be "cleaned up," using IRS rebate checks.

I. Standard of Review

A. Rule 12(b)(6)

"Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required, Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007), but the Rule does call for sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," Id., at 570. 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. Id., at 556. Two working principles underlie Twombly. First, the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements. Id., at 555. Second, only a complaint that states a

Case No. 8:12-CV-2519-T-17AEP

plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense. Id., at 556. A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1955-1956 (2009)(quoting Bell Atlantic v. Twombly, 550 U.S. 544 (2007)).

B. Rule 12(b)(1)

A motion to dismiss for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1), Federal Rules of Civil Procedure, can be a facial attack or a factual attack. In a facial attack, the factual allegations of the Complaint are taken as true. In a factual attack, the Court may consider matters outside the Complaint, and is free to weigh evidence and satisfy itself as to the existence of its power to hear the case. In a factual attack, the allegations of the Complaint are not presumptively true. Where the attack on jurisdiction implicates the merits of the plaintiff's federal cause of action, the Court should find that jurisdiction exists and deal with the objection as a direct attack on the merits of plaintiff's case, proceeding under Rule 12(b)(6) or Rule 56. The exceptions to this rule are narrowly drawn, and are intended to allow jurisdictional dismissals only in those cases where the federal claim is clearly immaterial or insubstantial. See Williamson v. Tucker, 645 F.2d 404 (5th Cir.), cert. denied, 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1981).

C. Consideration of Documents Attached to the Complaint or Incorporated

Case No. 8:12-CV-2519-T-17AEP

The Court limits its consideration to well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed. La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004). The Court may consider documents which are central to plaintiff's claim whose authenticity is not challenged, whether the document is physically attached to the complaint or not, without converting the motion into one for summary judgment. Speaker v. U.S. Dept of, 623 F.3d 1371, 1379 (11th Cir. 2010); SFM Holdings, Ltd. v. Bank of Am. Secs., LLC, 600 F.3d 1334, 1337 (11th Cir. 2010); Day v. Taylor, 400 F.3d 1272, 1276 (11th Cir. 2005); Maxcess, Inc. v. Lucent Techs., Inc., 433 F.3d 1337, 1340 n. 3 (11th Cir. 2005).

#### D. Pro Se Status

Because Plaintiff Howse is proceeding pro se, Plaintiff's pleadings are held to a less stringent standard than pleadings drafted by an attorney and will be liberally construed. Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir.2003).

## II. Discussion

The Court dismissed Plaintiff's Complaint, with leave to file an amended complaint. The Court has considered whether the Court has jurisdiction to adjudicate this case. The Court takes no position with regard to the allegations Plaintiff has included in the Second Amended Complaint other than as stated herein.

Plaintiff Howse alleges jurisdiction under 28 U.S.C. Sec. 1331, 28 U.S.C. Sec. 1361, 28 U.S.C. Sec. 2201, 28 U.S.C. Sec. 2202, 28 U.S.C. Sec. 1346(b), and 28 U.S.C. Sec. 2671.

#### A. Counts I, II and III

Case No. 8:12-CV-2519-T-17AEP

Count I and Count II are brought under federal statutes. Count III is a state law cause of action for fraud. The central premise of Counts I, II and III is that the availability of abortion, contraception and sterilization services has resulted in a lower population, which caused the “economic meltdown of 2008,” for which Defendants are liable to the U.S. Government and the state governments.

Three requirements must be satisfied for standing:

[A] plaintiff must show: (1) it has suffered an “injury in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

See White’s Place, Inc. v. Glover, 222 F.3d 1327, 1329 (11<sup>th</sup> Cir. 2000). The burden is on the party seeking to exercise jurisdiction to allege and then to prove facts sufficient to support jurisdiction. Id. Where a plaintiff seeks prospective injunctive relief, plaintiff must demonstrate a real and immediate threat of future injury to satisfy the “injury in fact” requirement.

Count I is brought under 18 U.S.C. Sec. 1961 et seq., the Racketeer Influenced and Corrupt Organizations Act. RICO provides a private right of action for treble damages to “[a]ny person injured in his business or property by reason of a violation” of the Act’s criminal prohibitions. Sec. 1964(c).

Plaintiff alleges that Defendants engaged in a pattern and practice of criminal and civil violations of federal statutes, including mail fraud, 18 U.S.C. Sec. 1341, wire fraud, 18 U.S.C. Sec. 1343, health care fraud, 18 U.S.C. Sec. 1347 and other unidentified statutes.

RICO generally prohibits a person who is affiliated with a broadly-defined “enterprise” from conducting the affairs of that enterprise through a “pattern of



Case No. 8:12-CV-2519-T-17AEP

racketeering activity.” The Court takes the “pattern of racketeering activity” to be the submission of a series of claim forms for reimbursement to the U.S. Government and state governments over a period of time by a person distinct from the “enterprise,” during which time the “enterprise” was not in compliance with state laws requiring the filing of current information. The “enterprise” is required only to be an ongoing organization, formal or informal. 18 U.S.C. Sec. 1961(4) provides:

“[E]nterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity

As the Court notes in U.S. v. Hewes, 729 F.2d 1302, 1309 (11<sup>th</sup> Cir. 1984):

“In defining ‘enterprise,’ Congress made clear that the statute extended beyond conventional business organizations to reach “any...group of individuals” whose association, however loose or informal, furnishes a vehicle for the commission of two or more predicate crimes.....There is no distinction, for “enterprise” purposes, between a duly formed corporation that elects officers and holds annual meetings and an amoeba-like infra-structure that controls a secret criminal network.”

In Count I, Plaintiff does not allege that Defendants submitted claims for services not provided, or not reimbursable. In other words, assuming the truth of Plaintiff’s allegation that Defendants were not in compliance with state statutes requiring current information to be filed, Defendants’ acts of continuing to submit claims to the U.S. Government or state governments do not cause payments to be made to Defendants to which Defendants were not entitled. Proximate causation is a key limitation on the expansive use of civil RICO. Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 266-68 (1992). Plaintiff alleged that the U.S. Government and state governments authorized programs offering family planning services to the public. A plaintiff cannot establish direct injury when a claim for an authorized service is submitted by a

Case No. 8:12-CV-2519-T-17AEP

defendant who has provided the service. Further, the U.S. Government and state governments have not designated Plaintiff Howse to litigate alleged RICO claims on their behalf, and as the alleged victims, they are in the best position to pursue any alleged RICO claims.

In seeking relief as to Count I, Plaintiff requests injunctive declarations enjoining the practice of abortion, forbidding the use of public monies for abortion, and enjoining all government-sponsored programs to fund, practice or promote contraception, sterilization and loss of birth rate in general. Plaintiff has not included a request for damages. The Court has already found that Plaintiff cannot establish proximate causation; therefore Plaintiff cannot meet the requirement of irreparable harm to Plaintiff that is necessary to obtain injunctive relief. Based on Plaintiff's allegations that the U.S. Government and state governments authorized programs which offer abortion, contraception and sterilization services to the public, the Court finds that it would be futile to permit Plaintiff to amend Count I.

The Court dismisses Claim I for failure to state a claim, with prejudice.

Count II is brought under the False Claims Act, 31 U.S.C. Secs. 3729-3732. In Count II, Plaintiff alleges that the Federal Government funded the economic doom of the United States by providing tax-supported programs for abortion, contraception and sterilization services, and alleges this constitutes "a total pattern of acts that must be necessarily deemed as false." (Par. 41). Plaintiff further alleges that Defendants presented claims with the knowledge that such services are "unnatural" and "false." As to the relief sought in Count II, Plaintiff seeks an award of \$450,000,000 to the Relator.

The False Claims Act is a qui tam statute. A qui tam statute assigns part of the government's interest to a relator so that the relator has standing to assert an injury suffered by the government. Vermont Agency of National Resources v. U.S. ex. rel.

Case No. 8:12-CV-2519-T-17AEP

Stevens, 529 U.S. 765 (2000). On a technical level, the allegations of Count II suffice to establish Plaintiff Howse's standing.

The False Claims Act includes mandatory procedural requirements with which Plaintiff has not complied. See 31 U.S.C. Sec. 3730(b)(2). In commencing this case, Plaintiff did not file a motion to file the case in camera, or serve a copy on the Government before attempting service on Defendants. Failure to comply with these procedures results in the dismissal of the relator's suit with prejudice. United States ex rel. LeBlanc v. ITT Indus., 492 F.Supp.2d 303, 305 (S.D.N.Y.2007) (citing United States ex rel. Pinon v. Martin Marietta Corp., 60 F.3d 995, at 999-1000 (2d Cir.1995)).

The Court notes that Plaintiff does not allege that Defendants submitted claims for services that Defendants knew were not reimbursable, or that Defendants engaged in some other form of deceit that would constitute a "false claim" under 31 U.S.C. Sec. 3729. The Court also notes that Plaintiff has not met the particularity requirement of Fed. R. Civ. P. 9. More importantly, the allegations of the Amended Complaint do not establish the possibility of any actual injury to Plaintiff Howse, the U.S. Government or Fifty States and Commonwealths. The economic crisis of 2008 is an undisputed fact; however, Plaintiff's allegation that the "economic meltdown" is due to Defendants' submission of claims for abortion, contraception and sterilization services is far outside the realm of reality. There are innumerable theories as to cause of the "economic meltdown of 2008"; prevailing theories include government intervention in the housing market, manipulation of the financial system by bankers and politicians for personal gain, the securitization of mortgages and concentration of risk in under-capitalized financial institutions which subsequently failed, and which caused other financial institutions to fail in a domino effect. Plaintiff's allegation that the 2008 financial crisis was caused by a lower U.S. population is pure speculation.

The Court concludes that Plaintiff can never establish that financial injury to the

Case No. 8:12-CV-2519-T-17AEP

United States and the Fifty States and Commonwealths is fairly traceable to the challenged action, which is Defendants' submission of claims for authorized services to the U.S. Government and state governments, or that it is likely rather than speculative that the injury to Plaintiffs will be redressed by a favorable decision on Counts I, II and III. Without an injury that Plaintiff can prove, there is no case or controversy. Plaintiff therefore does not have standing to pursue this claim on behalf of the United States and the Fifty States and Commonwealths. The Court **dismisses** Count II for lack of subject matter jurisdiction. The Court further finds that it would be futile to permit Plaintiff to amend Count II.

Count III is a state law claim for fraud. In Count III, Plaintiff alleges that Defendants made false representations that abortion and contraception were "safe," intending to induce the governmental Plaintiffs to act upon the false representations, and all governmental Plaintiffs have suffered direct financial damages in justifiable reliance on the false representations. Plaintiff alleges that Defendants are necessarily liable to the U.S. Government and fifty state governments for the trillions of dollars in damages sustained in the economic meltdown of 2008.

The Court notes that the False Claims Act does not allow relators to assert common law claims on behalf of the United States. United States ex rel. Walsh v. Eastman Kodak Co., 98 F.Supp.2d 141, 149 (D. Mass. 2000). Plaintiff Howse does not allege that Plaintiff Howse was defrauded by Defendants; therefore, the Court will **dismiss** Count III for lack of standing.

After consideration, the Court **dismisses** Count I for failure to state a claim, with prejudice, and **dismisses** Count I and Count III without prejudice for lack of standing. The Court further finds that it would be futile to permit amendment of the Amended Complaint.

Case No. 8:12-CV-2519-T-17AEP

B. Count IV Breach of Contract

In Count IV, Plaintiff, as a taxpayer and on behalf of the Fifty States and Commonwealths, seeks an Order from this Court which would mandate the U.S. Government to carry out certain duties to ensure fair and honest elections, and to ensure reasonable fiscal management of the national economy. This part of the Amended Complaint includes Plaintiff's multi-faceted solution to return the U.S. economy to prosperity, which Plaintiff seeks to compel the United States to adopt. Plaintiff proceeds under 28 U.S.C. Sec. 1361, seeking to compel Defendant U.S. Government to adopt the relief specified in the Amended Complaint, and to enjoin the U.S. Government as specified in the Amended Complaint.

Plaintiff does not explain the source of Plaintiff's authority to act on behalf of the Fifty States and Commonwealths. If it is the False Claims Act, the Act does not permit a relator to pursue common law claims, such as breach of contract claims.

Mandamus is an extraordinary and drastic remedy. The common law writ of mandamus is intended to provide a remedy only if a plaintiff has exhausted all other avenues of relief, and only if the defendant owes him a clear nondiscretionary duty. Heckler v. Ringer, 466 U.S. 602, 616 (1984). Jurisdiction under 28 U.S.C. Sec. 1361 is narrow in scope, and lies only where the defendant owes a clear, ministerial and non-discretionary duty. Richardson v. U.S., 465 F.2d 844 (3d Cir. 1972). An act is ministerial when it "is positively commanded and so plainly prescribed as to be free from doubt. Id. The question of whether an act is discretionary or ministerial is a jurisdictional issue.

1. Ensure Fair and Honest Elections

Case No. 8:12-CV-2519-T-17AEP

A. 12<sup>th</sup> Amendment

Plaintiff Howse seeks a declaration enforcing the 12<sup>th</sup> Amendment, and disqualifying Obama and Romney from the election. The Court previously denied relief as to this issue, which the Court incorporates. (Dkt. 23). The Court dismisses Plaintiff's request for relief as moot.

B. "Birther" Issue

Plaintiff Howse seeks a declaration that President Obama must be removed from office and replaced due to lack of constitutional eligibility. Plaintiff does not have standing to raise this issue, which should be brought in the District of Columbia via a writ of quo warranto by the Attorney General. See Drake v. Obama, 664 F.3d 774 (9<sup>th</sup> Cir. 2011); Kerchner v. Obama, 612 F.3d 204 (3d Cir. 2010); Taitz v. Obama, 707 F.Supp.2d 1 (D.D.C. April 14, 2010).

2. Ensure Reasonable Fiscal Management

A. Enjoin abortion services, state-sponsored contraception, state-sponsored sterilization.

The Court dismissed Count I above with prejudice, and dismissed Counts II and III for lack of subject matter jurisdiction. The Court concluded that the factual basis for Plaintiff's claims is mere speculation that can never be proved. There is no justiciable controversy as to this issue. Plaintiff cannot establish a real threat of future injury. Therefore, there is no basis for the Court to enter an injunction.

B. Declare "ObamaCare" void

Plaintiff requests that "ObamaCare," the 2010 Patient Protection and Affordable

Case No. 8:12-CV-2519-T-17AEP

Care Act, be “vacated” as procedurally void. Plaintiff alleges that the cost to taxpayers defeats the purpose of “saving” money on health care costs. Plaintiff further alleges that the legislation is not “true and valid,” as it is constitutionally void: 1) as an unlawful attempt to implement both of the primary tenets of Communism; 2) for failing parliamentary procedure within the U.S. Senate; 3) as a directly unlawful act of Taxation Without Representation; and 4) for failing to be properly signed into law. Plaintiff further alleges that all prior “ObamaCare cases” are void for lack of required and proper parties.

Plaintiff Howse has not alleged that Plaintiff has suffered or will suffer any direct injury in violation of specific constitutional limitations. “It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action, he must show that he has sustained, or is immediately in danger of sustaining, a direct injury as a result of that action and it is not sufficient that he has merely a general interest common to all members of the public.” Troutman v. Shriver, 417 F.2d 171 (5<sup>th</sup> Cir. 1969). Plaintiff Howse has asserted Plaintiff’s claim on the basis of his status as a taxpayer, but has not coupled his attack with any specific limitation on Congress’ taxing and spending power. Therefore, Plaintiff has not established a logical nexus between Plaintiff’s status as a taxpayer and the precise nature of the constitutional infringement alleged. Frothingham v. Mellon, 262 U.S. 447 (1963).

The Court dismisses Plaintiff’s claim as to this issue for lack of standing.

C. Welfare transformed to work

D. Eradicate identity theft associated with welfare database

Plaintiff has not alleged a concrete and particularized harm to Plaintiff; Plaintiff does not have standing to raise this issue.

Case No. 8:12-CV-2519-T-17AEP

E. Return to “gold standard”

Plaintiff does not have standing to raise this issue. See Keener v. Congress of United States, 467 F.2d 952 (5<sup>th</sup> Cir. 1972).

Plaintiff is attempting to use this forum to air his generalized grievances about the conduct of the Government. The Court has dismissed the 12<sup>th</sup> Amendment issue as moot; the remaining claims Plaintiff asserts in Count IV fall outside the narrow scope of jurisdiction under 28 U.S.C. Sec. 1361. The Court concludes that Plaintiff does not have standing to raise the issues Plaintiff asserts in Count IV. The Court therefore dismisses Count IV in part as moot and in part for lack of subject matter jurisdiction. Accordingly, it is

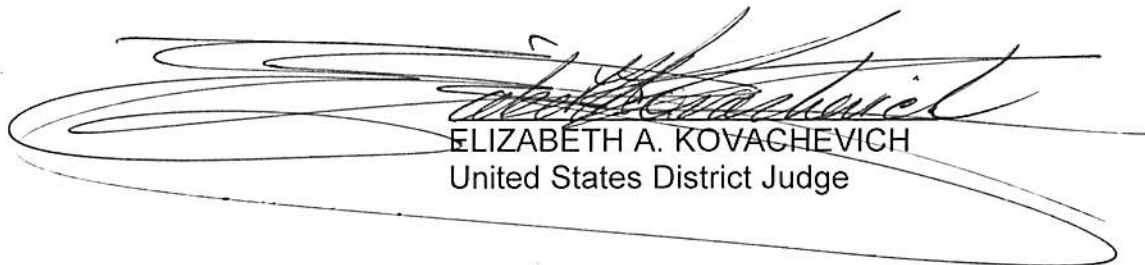
**ORDERED** that Plaintiff’s Motion for Belated Acceptance of Amended Complaint (Dkt. 31) is **granted**; it is further

**ORDERED** that Count I is **dismissed with prejudice** for failure to state a claim; Counts II and III are **dismissed** for lack of subject matter jurisdiction; Count IV is **dismissed** in part as moot and in part for lack of subject matter jurisdiction. The Clerk of Court shall close this case and terminate all pending motions.



Case No. 8:12-CV-2519-T-17AEP

**DONE and ORDERED** in Chambers, in Tampa, Florida on this  
17<sup>th</sup> day of January, 2013.



ELIZABETH A. KOVACHEVICH  
United States District Judge

Copies to:  
All parties and counsel of record