



IT IS SO ORDERED.
Signed April 21, 2014

A handwritten signature in cursive script that reads "Arthur S. Weissbrodt".

Arthur S. Weissbrodt
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re]	Case No. 11-57656-ASW
ROSALIE AUBREE GUANCIONE,]	Chapter 13
Debtor.]	
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ROSALIE. A. GUANCIONE,]	Adv. Proc. No. 13-05105-ASW
Plaintiff,]	
v.]	
STATE OF CALIFORNIA, JOSEPH]	
FARROW, KAMALA HARRIS,]	
KATE SANTILLAN, GEORGE VALVERDE,]	
Defendants.]	

**MEMORANDUM DECISION GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT**

Before the Court is the motion of Defendants State of California, Kamala D. Harris, Kate Santillan, George Valverde, and Joseph A. Farrow ("Defendants") for dismissal of Plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), which are applicable in bankruptcy via Fed. R. Bankr. P. 7012. Defendants are represented by attorney David Hamilton of the Office of the

1 Attorney General. Plaintiff Rosalie Guancione, who appears pro se,
2 opposes the motion.

3 As a threshold matter, Plaintiff has filed a pleading
4 contending that this matter is not properly before the Court, on
5 two bases: First, Plaintiff argues that Defendants are in default
6 and therefore are not permitted to "plead or speak" in this case.
7 However, Plaintiff does not provide any authority for the
8 proposition that a defaulted party may not request relief from
9 default, and the Court has granted Defendants' motion to vacate the
10 clerk's defaults. Second, Plaintiff argues that the pending appeal
11 of the Court's order denying Plaintiff's motion to strike divests
12 the Court of jurisdiction over this matter, but the issues before
13 the Court in this motion are not implicated in the order on appeal.
14 The order on appeal denied Plaintiff's motion to strike a
15 declaration in support of a motion to dismiss that was filed by
16 defendants who were previously dismissed from this case at
17 Plaintiff's request.

18 Plaintiff filed her chapter 13 case on August 15, 2011. On
19 July 22, 2013, Plaintiff filed this adversary proceeding.
20 Plaintiff filed an amended complaint on November 26, 2013 (the
21 "Amended Complaint"). At Plaintiff's request, the Court dismissed
22 several defendants from the adversary proceeding by order entered
23 on January 15, 2014. The moving parties are the only remaining
24 defendants. All of the remaining individual defendants are or were
25 employees of the State of California or one of its agencies: Ms.
26 Harris is the Attorney General for the State of California; Ms.
27 Santillan is an administrator with the California Department of
28 Justice; Mr. Valverde is the former Director of the California

1 Department of Motor Vehicles; and Mr. Farrow is the Commissioner of
2 the California Highway Patrol.

3 The Amended Complaint seeks relief under a number of theories
4 arising out of the towing of Plaintiff's 2005 Kia Optima,
5 apparently for failure to display current registration. According
6 to the Amended Complaint, the vehicle was towed by Rebello's Towing
7 Services, Inc., ("Rebello's"), and Rebello's employees would not
8 return the vehicle to Plaintiff without payment of towing and
9 storage charges. Plaintiff alleges that she contacted the police,
10 who did not order the manager of Rebello's to return the vehicle.
11 (Rebello's, some of its employees, the City of San Jose, and
12 certain individual police officers are among the originally named
13 defendants who were dismissed from this case at Plaintiff's
14 request).

15 Plaintiff alleges that the individual defendants are being
16 sued in their "public and private capacities." However, a careful
17 review of the allegations of the Amended Complaint reveals that
18 there are no substantive claims against any of the individual
19 defendants other than in their capacities as agents for the State
20 of California. The Court notes that, in paragraph 315 of the
21 Amended Complaint, Plaintiff alleges that the individual defendants
22 were acting in their "official capacity." The gist of Plaintiff's
23 allegations against the individual defendants is that they
24 implemented state policies that resulted in damage to Plaintiff.
25 Plaintiff alleges that Ms. Santillan "set the policy and custom to
26 record the KIA status fraudulently as stored in the STATE
27 database," that Ms. Harris "sets custom, policy, financial and
28 personnel budget for the operation of the stolen car database . . .

1 ." and "failed in her sworn obligation to support the federal
2 Constitution and to protect the right to due process"
3 Plaintiff alleges that Mr. Valverde "sets custom and policy for the
4 STATE (DMV) to commit fraud through deception in the collection of
5 unnecessary licensing fees of automobiles" Finally,
6 Plaintiff alleges that Mr. Farrow "has set the policy of
7 misapplication of the California Vehicle Code to coerce individuals
8 operating non-commercial vehicles to have a license plate and
9 registration or be cited and ticketed."

10 The Amended Complaint seeks damages of \$1.5 million in
11 compensatory damages, \$1.5 million in punitive damages, \$2 million
12 for damage to her reputation, costs, and attorney fees (although
13 Plaintiff is not represented by an attorney). The theories under
14 which Plaintiff purports to pray for this relief appear to be:
15 violation of the United States Constitution (4th, 5th, 7th, and 14th
16 amendments); violations of 42 U.S.C. §§ 1983, 1985, and 1986; mail
17 fraud; wire fraud; robbery; and fraud.

18 Defendants move for dismissal for lack of jurisdiction under
19 Fed. R. Civ. P. 12(b)(1), and for failure to state a claim upon
20 which relief may be granted, Fed. R. Civ. P. 12(b)(6). Because the
21 Court finds that it lacks jurisdiction over this adversary
22 proceeding, the Court need not address the sufficiency of the
23 pleadings under Fed. R. Civ. P. 12(b)(6).

24 Under Fed. R. Civ. P. 12(b)(1), the Court must dismiss a
25 complaint for lack of subject matter jurisdiction. This Court
26 lacks jurisdiction over the subject matter of this adversary
27 proceeding because, under the Eleventh Amendment to the United
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1 States Constitution, Defendants are immune from suit in federal
2 court.

3 The Eleventh Amendment provides:

4 The judicial power of the United States shall not be
5 construed to extend to any suit in law or equity,
6 commenced or prosecuted against one of the United States
by Citizens of another State, or by Citizens or Subjects
of any Foreign State.

7 Under the Eleventh Amendment, an unconsenting state is immune
8 to suits brought in federal court by its own citizens as well as by
9 citizens of another state. Edelman v. Jordan, 415 U.S. 651, 662-663
10 (1974).

11 The Eleventh Amendment is an expression of the sovereign
12 immunity enjoyed by the states, and it is absolute unless the state
13 has expressly and unequivocally waived its immunity. Doe by
14 Gonzales v. Maher, 793 F.2d 1470, 1493-1494 (9th Cir. 1986) (citing
15 Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985)). A
16 state's consent to suit in its own courts does not amount to
17 consent to be sued in a federal court. Thus, the State of
18 California's waiver of sovereign immunity with respect to suit in
19 its own courts, see California Government Claims Act, Cal. Gov't
20 Code § 810, et seq., does not constitute consent to be sued in
21 federal court. Riggle v. State of California, 577 F.2d 579, 585-586
22 (9th Cir. 1978).

23 Plaintiff's Amended Complaint names the state of California
24 and its employees as defendants. Absent waiver of its sovereign
25 immunity, the State itself is not subject to suit in the federal
26 courts. Congress has not abrogated the states' sovereign immunity
27 for the claims brought by Plaintiff. See Quern v. Jordan, 440 U.S.

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1 332, 345 (1979) (Congress did not abrogate states' immunity under
2 42 U.S.C. § 1983).

3 The Eleventh Amendment also bars suits in federal court
4 against state officers sued in their official capacities. "[T]he
5 Eleventh Amendment bars actions against state officers sued in
6 their official capacities for past alleged misconduct involving a
7 complainant's federally protected rights, where the nature of the
8 relief sought is retroactive, *i.e.*, money damages, rather than
9 prospective, *e.g.*, an injunction." Bair v. Krug, 853 F.2d 672, 675
10 (9th Cir. 1988) (citations omitted). The Eleventh Amendment bars
11 suits against state officials when the state is the substantial
12 party in interest. Demery v. Kupperman, 735 F.2d 1139, 1146 (9th
13 Cir. 1984). As noted, the individual defendants are being sued in
14 their official capacities, despite Plaintiff's allegation that they
15 are also being sued in their private capacities.¹

16 For all of the foregoing reasons, Defendants' motion is
17 granted. Counsel for Defendants may submit a proposed form of
18 order. The hearing scheduled for April 22, 2014 at 2:15 p.m. is
19 off calendar.

20 *****END OF MEMORANDUM DECISION*****

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26 ¹The Court also notes that the claims brought by Plaintiff do
27 not arise under or in title 11, nor are they related to Debtor's
28 bankruptcy case. See 28 U.S.C. § 157; 28 U.S.C. § 1334. Plaintiff
alleges the vehicle is property of the estate. However, the
vehicle was not listed on Plaintiff's bankruptcy schedules.
Additionally, none of the damages requested appears to be directly
related to the vehicle.

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Court Service List

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