



IT IS SO ORDERED.  
Signed April 25, 2014

*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.	]	
	]	
ROSALIE. A. GUANCIONE,	]	Adv. Proc. No. 13-05105-ASW
	]	
Plaintiff,	]	
	]	
v.	]	
	]	
STATE OF CALIFORNIA, JOSEPH	]	
FARROW, KAMALA HARRIS,	]	
KATE SANTILLAN, GEORGE VALVERDE,	]	
	]	
Defendants.	]	

**CORRECTED MEMORANDUM DECISION RE:  
DEFENDANTS' MOTION TO DISMISS COMPLAINT<sup>1</sup>**

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

<sup>1</sup>This corrected memorandum decision is being issued to clarify that the pending appeal in this adversary proceeding is from the Court's Order Denying Plaintiff's Petition for Writ of Mandate and not from the Court's Order Denying Plaintiff's Motion to Strike (see page 2). The correction does not substantively change the decision.

1 complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), which  
2 are applicable in bankruptcy via Fed. R. Bankr. P. 7012. Defendants  
3 are represented by attorney David Hamilton of the Office of the  
4 Attorney General. Plaintiff Rosalie Guancione, who appears pro se,  
5 opposes the motion.

6 As a threshold matter, Plaintiff has filed a pleading  
7 contending that this matter is not properly before the Court, on  
8 two bases: First, Plaintiff argues that Defendants are in default  
9 and therefore are not permitted to "plead or speak" in this case.  
10 However, Plaintiff does not provide any authority for the  
11 proposition that a defaulted party may not request relief from  
12 default, and the Court has granted Defendants' motion to vacate the  
13 clerk's defaults. Second, Plaintiff argues that the pending appeal  
14 in this adversary proceeding deprives this Court of jurisdiction  
15 over the motion to dismiss. The pending appeal is from the Court's  
16 order denying Plaintiff's Petition for Writ of Mandate Prohibiting  
17 the City of San Jose to Provide Legal Services to Dismissed  
18 Defendants Sued in Private Capacity. The issues in that appeal do  
19 not impact the issues being determined in this decision; therefore  
20 the Court retains jurisdiction to decide this matter. See In re  
21 Padilla, 222 F.3d 1184, 1190 (the filing of a notice of appeal  
22 divests the trial court of control over those aspects of the case  
23 involved in the appeal).

24 Plaintiff filed her chapter 13 case on August 15, 2011. On  
25 July 22, 2013, Plaintiff filed this adversary proceeding.  
26 Plaintiff filed an amended complaint on November 26, 2013 (the  
27 "Amended Complaint"). At Plaintiff's request, the Court dismissed  
28 several defendants from the adversary proceeding by order entered

1 on January 15, 2014. The moving parties are the only remaining  
2 defendants. All of the remaining individual defendants are or were  
3 employees of the State of California or one of its agencies: Ms.  
4 Harris is the Attorney General for the State of California; Ms.  
5 Santillan is an administrator with the California Department of  
6 Justice; Mr. Valverde is the former Director of the California  
7 Department of Motor Vehicles; and Mr. Farrow is the Commissioner of  
8 the California Highway Patrol.

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

21 Plaintiff alleges that the individual defendants are being  
22 sued in their "public and private capacities." However, a careful  
23 review of the allegations of the Amended Complaint reveals that  
24 there are no substantive claims against any of the individual  
25 defendants other than in their capacities as agents for the State  
26 of California. The Court notes that, in paragraph 315 of the  
27 Amended Complaint, Plaintiff alleges that the individual defendants  
28 were acting in their "official capacity." The gist of Plaintiff's

1 allegations against the individual defendants is that they  
2 implemented state policies that resulted in damage to Plaintiff.  
3 Plaintiff alleges that Ms. Santillan "set the policy and custom to  
4 record the KIA status fraudulently as stored in the STATE  
5 database," that Ms. Harris "sets custom, policy, financial and  
6 personnel budget for the operation of the stolen car database . . .  
7 ." and "failed in her sworn obligation to support the federal  
8 Constitution and to protect the right to due process . . . ."  
9 Plaintiff alleges that Mr. Valverde "sets custom and policy for the  
10 STATE (DMV) to commit fraud through deception in the collection of  
11 unnecessary licensing fees of automobiles . . . ." Finally,  
12 Plaintiff alleges that Mr. Farrow "has set the policy of  
13 misapplication of the California Vehicle Code to coerce individuals  
14 operating non-commercial vehicles to have a license plate and  
15 registration or be cited and ticketed."

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

24       Defendants move for dismissal for lack of jurisdiction under  
25 Fed. R. Civ. P. 12(b)(1), and for failure to state a claim upon  
26 which relief may be granted, Fed. R. Civ. P. 12(b)(6). Because the  
27 Court finds that it lacks jurisdiction over this adversary  
28

1 proceeding, the Court need not address the sufficiency of the  
2 pleadings under Fed. R. Civ. P. 12(b)(6).

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

9 The Eleventh Amendment provides:

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

13 Under the Eleventh Amendment, an unconsenting state is immune  
14 to suits brought in federal court by its own citizens as well as by  
15 citizens of another state. Edelman v. Jordan, 415 U.S. 651, 662-663  
16 (1974).

17 The Eleventh Amendment is an expression of the sovereign  
18 immunity enjoyed by the states, and it is absolute unless the state  
19 has expressly and unequivocally waived its immunity. Doe by  
20 Gonzales v. Maher, 793 F.2d 1470, 1493-1494 (9th Cir. 1986) (citing  
21 Atascadero State Hospital v. Scanlon, 473 U.S. 234 (1985)). A  
22 state's consent to suit in its own courts does not amount to  
23 consent to be sued in a federal court. Thus, the State of  
24 California's waiver of sovereign immunity with respect to suit in  
25 its own courts, see California Government Claims Act, Cal. Gov't  
26 Code § 810, et seq., does not constitute consent to be sued in  
27 federal court. Riggle v. State of California, 577 F.2d 579, 585-586  
28 (9th Cir. 1978).

1 Plaintiff's Amended Complaint names the state of California  
2 and its employees as defendants. Absent waiver of its sovereign  
3 immunity, the State itself is not subject to suit in the federal  
4 courts. Congress has not abrogated the states' sovereign immunity  
5 for the claims brought by Plaintiff. See Quern v. Jordan, 440 U.S.  
6 332, 345 (1979) (Congress did not abrogate states' immunity under  
7 42 U.S.C. § 1983).

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

21 For all of the foregoing reasons, the Court will grant  
22 Defendants' motion to dismiss. Counsel for Defendants may submit a  
23 proposed form of order. The hearing scheduled for April 22, 2014  
24 at 2:15 p.m. is off calendar.

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26 <sup>2</sup>The 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.

\*\*\*END OF MEMORANDUM DECISION\*\*\*

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