

United States v. Beverly

United States District Court for the Central District of California

September 23, 2022, Decided; September 23, 2022, Filed

2:22-cv-02780-SSS-MRWx

Reporter

2022 U.S. Dist. LEXIS 219719 *

United States of America v. Russell Alan Beverly, et al.

Prior History: United States v. Beverly, 2020 U.S. Dist. LEXIS 89826 (C.D. Cal., Jan. 28, 2020)

Counsel: 2022 U.S. Dist. LEXIS 219719 at 1 Russell Alan Beverly, Defendant, Pro se, San Luis Obispo, CA.

For United States of America, Plaintiff: Nithya Senra, LEAD ATTORNEY, US Attorneys Office, Los Angeles, CA.

Deborah V. Beverly, Defendant, Pro se, San Luis Obispo, CA.

Judges: SUNSHINE S. SYKES, UNITED STATES DISTRICT JUDGE.

Opinion by: SUNSHINE S. SYKES

Opinion

CIVIL MINUTES—GENERAL

Proceedings: ORDER DENYING DEFENDANTS' MOTION TO DISMISS [DKT. 14] AND VACATING THE SEPTEMBER 30 HEARING [DKT. 18]

Before the Court is *pro se* Defendants Russell Alan Beverly and Deborah V. Beverly's (collectively, "Defendants") Motion to Dismiss Plaintiff the United States of America's ("United States") complaint ("Motion") against them. [Dkt. 14]. On September 9, 2022, the United States filed its opposition brief. [Dkt. 26]. The Defendants did not file a reply brief. A hearing on this Motion is scheduled for September 30, 2022. [Dkt. 18]. The Court deems this Motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15. For the following reasons, the Defendants' Motion is DENIED and the hearing is VACATED.

Motions to dismiss under Federal Rule of Civil Procedure 12(b)(6) test the legal sufficiency of the claims asserted in a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Subject to Rule 12(b)(6), the Court reviews the complaint for facial plausibility. See *Ashcroft v. Iqbal*, 556 U.S. 662, 663, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). "A claim2022 U.S. Dist. LEXIS 219719 at 2 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). To state a plausible claim for relief, the complaint "must contain sufficient allegations of underlying facts" to support its legal conclusions. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). "Factual allegations must be enough to raise a right to relief above the speculative level. . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)" *Twombly*, 550 U.S. at 555 (citations and footnote omitted). To survive a motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," which means that a plaintiff must plead sufficient factual content to "allow[] the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

The Defendants' primary argument is that the United States is unable to "allege any acts or conduct consistent with the legislative intent of the FACTA." [Dkt. 14 at 2]. Defendants further argue that the United States' complaint should be dismissed2022 U.S. Dist. LEXIS 219719 at 3 for lack of subject matter jurisdiction under Rule 12(b)(1). [Dkt. 14 at 4]. The United States argues dismissal is improper because its claim against the Defendants is pursuant to 31 U.S.C. § 5321(a)(5) for failure to file a Report of Foreign Bank and Financial Accounts ("FBAR"), not the FACTA as Defendants contend. [Dkt. 26 at 9, ¶1]. Further, the United States

argues its complaint is not lacking in subject matter jurisdiction. [Dkt. 26 at 9, ¶2].

United States citizens having a financial interest in, or authority over, a foreign bank account must report that relationship, each year it exists, in an FBAR. See 31 U.S.C. § 5314; 31 C.F.R. § 1010.350(a). The Secretary of the Treasury may impose civil penalties for a failure to file an FBAR. 31 U.S.C. §§ 5321(a)(5)(A), (b)(2). If an individual willfully violates the FBAR reporting requirements, the government may impose a civil penalty as high as the greater of \$100,000 or 50% of the balance in the account at the time of the violation. 31 U.S.C. § 5321(a)(5)(C)(i). "Willfulness under § 5321 'cover[s] not only knowing violations of a standard, but reckless ones as well.'" *United States v. Herscovici*, No. 2:21-cv-06150-CAS-ASx, 2021 WL 1556092, at *5 (C.D. Cal. May 16, 2022) (citing *Bedrosian v. United States of America, et al.*, 912 F.3d 144, 152 (3d Cir. 2018)). To state a claim for willful violation of the requirement to file an FBAR, the United States must show that: (1) defendant is a U.S. person, (2) who has or had an interest in or authority over2022 U.S. Dist. LEXIS 219719 at 4 the subject foreign accounts, which (3) has or had an aggregate value of \$10,000 or more, and (4) that he willfully failed to file an FBAR Form for the accounts. *United States v. Hughes*, No. 18-cv-05931, 2021 U.S. Dist. LEXIS 197522, 2021 WL 4768683, at *12 (N.D. Cal. Oct. 13, 2021).

Here, the United States' plausibly alleges a complaint against the Defendants pursuant to 31 U.S.C. §§ 5314 and 5321(a)(5)). [Dkt. 1]. The Defendants are both U.S. citizens, born in the U.S., and currently residing in the U.S. [Dkt. 1 at 2, ¶¶ 3-4]. The Defendants had financial interest in various foreign accounts, including accounts held in Bermuda and Barbados. [Dkt. 1 at 3-4]. The aggregate balance of the Defendant's foreign bank accounts exceeded \$10,000. [Dkt. 1 at 3-4]. The Defendants failed to file FBARs in 2013 and 2014, despite maintaining authority over foreign financial accounts. [Dkt. 1 at 5-8]. Accordingly, the United States has alleged sufficient facts to state a claim pursuant to 31 U.S.C. §§ 5314 and 521(a)(5). See *United States v. Hughes*, No. 18-cv-05931, 2021 U.S. Dist. LEXIS 197522, 2021 WL 4768683, at *12 (N.D. Cal. Oct. 13, 2021).

As for the Defendants argument that the United States' complaint fails to show subject matter jurisdiction, the Court finds this argument meritless. Because the United States' complaint is based on federal law, 31 U.S.C. §§ 5314 and 5321(a)(5), this Court has subject matter

jurisdiction. See 28 U.S.C. § 1331 ("The district court shall have original jurisdiction of all civil actions arising2022 U.S. Dist. LEXIS 219719 at 5 under the Constitution, laws, or treaties of the United States.").

Accordingly, Defendants' Motion to Dismiss is **DENIED** and the September 30, 2022 hearing is **VACATED**. Defendants are hereby **ORDERED** to file an Answer to the United States' complaint [Dkt. 1] on or before **October 24, 2022**.

IT IS SO ORDERED.

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