IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MICHAEL SAMMONS, **Plaintiff,** **v.** **UNITED STATES OF AMERICA,** **Defendant.**	**CIVIL NO. SA-16-CA-1054-FB**

UNITED STATES OF AMERICA'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

The Defendant, the United States, hereby responds to Plaintiff's Objection to Magistrate's Report and Recommendation ("Objections"), ECF No. 31, and urges the Court to adopt in full United States Magistrate Judge Elizabeth S. Chestney's Report and Recommendation ("R&R"), ECF No. 30.

On February 7, 2017, Magistrate Judge Chestney issued her R&R recommending that Plaintiff's Motion for Declaratory Judgment on Jurisdiction be denied, that the United States' Motion to Dismiss be granted in part, insofar as it argues for dismissal based on lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), and that Plaintiff's case be dismissed without prejudice. Judge Chestney's R&R correctly concludes that, pursuant to the Tucker Act's clear directive, a district court lacks jurisdiction to hear a takings claim seeking more than $10,0000 against the United States. The Court of Federal Claims, a body established under Article I for the purpose of hearing non-tort monetary claims by private individuals against the federal government, has exclusive jurisdiction over such claims, as consistently recognized in decades of federal decisions.

The R&R correctly concludes that adjudication of Plaintiff's claim by an Article I entity is consistent with constitutional separation of powers. As the R&R point out, cases—like Plaintiff's—that arise "between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments," *Crowell v. Benson*, 285 U.S. 22, 50 (1932), have long been subject to adjudication outside of Article III. R&R at 10–11, ECF No. 30. Plaintiff's claim does not involve the type of "prototypical" exercise of judicial power—defined by the Supreme Court as involving "entry of a final, binding judgment *by a court* with broad substantive jurisdiction, on a common law cause of action, when the action neither derives from nor depends upon any agency regulatory regime," *Stern v. Marshall*, 564 U.S. 462, 494 (2011)—that is exclusively reserved to the Article III judiciary.

Filed just hours after Magistrate Judge Chestney entered her R&R, Plaintiff's Objections do not assert any legitimate argument against any specific error in the R&R and should be overruled. A district judge is only required to conduct de novo review "of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). "An 'objection' that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection,' as that term is used in this context." *Morris-Johnson v. Barnhart*, No. Civ.SA-04-CA-0527-FB, 2005 WL 1979351, at *2 (W.D. Tex. Aug. 12, 2005) (quoting *Aldrich v. Bock*, 327 F. Supp. 2d 743, 747–48 (E.D. Mich. 2004)).

Here, Plaintiff's Objections primarily reassert the arguments considered and rejected in the R&R, including his continued insistence that a single law review article—which neither the Magistrate Judge nor this Court are under any obligation to follow—should override decades of

practice and precedent recognizing the Court of Federal Claims' legitimate jurisdiction over takings claims against the federal government. To the extent Plaintiff's cursory rehash of rejected arguments warrants any level of review, the United States incorporates by reference its Motion to Dismiss and Opposition to Plaintiff's Motion for Declaratory Judgment on Jurisdiction, ECF No. 15, and Reply Brief in Support of its Motion to Dismiss, ECF No. 29, in response.

The remainder of Plaintiff's Objections mischaracterize the R&R and reflect Plaintiff's continuing misunderstanding of the Takings Clause, Article III, and the Court of Federal Claims. The United States argued for dismissal on two grounds: (1) under Federal Rule of Civil Procedure 12(b)(1) because the Tucker Act divests this Court of jurisdiction over Plaintiff's takings claim; and (2) under Federal Rule of Civil Procedure 12(b)(6) because even assuming jurisdiction was proper, Plaintiff's Complaint fails to state a cognizable takings claim. Magistrate Judge Chestney's R&R is based exclusively on the jurisdictional argument and expressly passes no judgment on the merits of Plaintiff's takings claim. *See* R&R at 13, ECF No. 30 (recommending that this Court grant the United States' motion to dismiss on 12(b)(1) grounds and dismiss it as moot with respect to the 12(b)(6) argument). Plaintiff's contention that the R&R somehow "suspends" the Takings Clause, Pl.'s Obj. at 2-3, ECF No. 31, thus misses the mark entirely. Following the R&R would merely apply the Tucker Act and direct Plaintiff's claim to the appropriate forum, the Court of Federal Claims, an entity designated by statute to hear takings claims.[1] *See Preseault v. I.C.C.*, 494 U.S. 1, 12 (1990) ("If there is a taking, the claim is 'founded

[1] Plaintiff very well may be unable to obtain relief before that forum for many of the reasons outlined in the United States' Motion to Dismiss. *See* ECF No. 15 at 21–30. Such a determination is ultimately the province of the Court of Federal Claims, however, and Plaintiff is free to file a takings claim in that forum and attempt to persuade that court of the merits of his claim.

upon the Constitution' and within the jurisdiction of the [Court of Federal Claims] to hear and determine." (citation omitted)).

Because Plaintiff's claim does not involve "the stuff of the traditional actions at common law tried by the courts at Westminster in 1789," *Stern*, 564 U.S. at 484, there is no requirement that it be decided before an Article III court alone. Accordingly, this Court should follow the clear command of the Tucker Act and dismiss this case for lack of subject matter jurisdiction. This is the result recommended by Magistrate Judge Chestney, and Plaintiff, in his Objections, has once again failed to provide any basis upon which this Court could assume jurisdiction over the present matter. As such, this Court should overrule the Objections and adopt the Magistrate Judge's well-reasoned R&R in its entirety.

Dated: February 17, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2017, a copy of the foregoing pleading was filed electronically via the Court's ECF system which sent notification of such filing to counsel of record.

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