IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLAN DOUGLAS WILSON, Plaintiff, v. DERRICK BRENT, *et al.*, Defendants.	Civil Action No. 25-3561 (RDM)

UNITED STATES' MOTION TO DISMISS

The United States, as the real party in interest, moves under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss all claims against the defendants. In support, the United States submits an accompanying memorandum of law, declaration and exhibit, and proposed order.

Dated: April 22, 2026

<u>/s/ Stephen S. Ho</u>
STEPHEN S. HO
Trial Attorney, Eastern Trial Section
Civil Division, Tax Litigation Branch
U.S. Department of Justice
P.O. Box 227 - Ben Franklin Station
Washington, D.C. 20044
(202) 616-8994
Email: stephen.s.ho@usdoj.gov
Counsel for United States

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLAN DOUGLAS WILSON, Plaintiff, v. DERRICK BRENT, *et al.*, Defendants.	Civil Action No. 25-3561 (RDM)

UNITED STATES' MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

Defendant the United States of America, improperly named and sued as "Derrick Brent, in his official capacity as . . . Acting Director of the United States Patent and Trademark Office; Frank Bisignano, in his official capacity as Chief Executive Officer of the Internal Revenue Office; and DOES 1–10," submits this brief in support of its motion to dismiss the complaint for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim on which relief can be granted under Fed. R. Civ. P. 12(b)(6). Compl. (ECF No. 1 (cleaned up).)

BACKGROUND

According to Plaintiff Allan Douglas Wilson, this action arises from the wrongful denial of two separate refund requests: one to the United States Patent and Trademark Office, and one to the Internal Revenue Service. Compl. (ECF No. 1. ¶ 1.)

Plaintiff first alleges that he filed a utility patent application with the USPTO and paid $200.[1] (*Id.* ¶¶ 10–11.) Because the USPTO had not processed his application by a certain time, Plaintiff then

[1] The USPTO fee schedule is available at https://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule. At a minimum, the lowest fees that apply for an applicant is $400: a $70 basic filing fee, a $154 utility search fee, and a $176 utility examination fee.

requested a refund of the $200. (*Id.* ¶¶ 15–16.) The USPTO rejected that request. (*Id.* at 1-1 (Ex. E) (citing 37 C.F.R. § 1.26(a)).)

Plaintiff next alleges that he filed his 2020 income tax return on April 3, 2025, claiming the Recovery Rebate Credit, also known as the Economic Impact Payment, in the amount of $1,800. (ECF No. 1 ¶ 28.) He was told that he would not get the rebate because his claim was over three years late, although his 2020 return would be processed. (*Id.* ¶¶ 36, 40.)

Based on these allegations, Plaintiff, proceeding *pro se*, raises eight causes of action in his complaint: one constitution claim made under *Bivens* against each agency (Counts I and II);[2] one claim for declaratory relief against each agency (Counts III and IV); one claim for injunctive relief against each agency (Counts V and VI); one claim against both agencies for violations of the Administrative Procedure Act (Count VII); and one claim against both agencies for violations of consumer protection principles and fair dealing (Count VIII). (ECF No. 1 ¶¶ 55–94.)

As for relief, Plaintiff seeks a judgment declaring that he is entitled to a refund of $200 from the PTO and $1,800 from the IRS, plus interest, and ordering the agencies to pay him that amount. (ECF No. 1 at 18.) He also seeks compensatory and punitive damages. (*Id.* at 18–19.)

LEGAL STANDARDS

<u>Rule 12(b)(1)</u>

When evaluating a motion to dismiss under Rule 12(b)(1), courts "assume the truth of all material factual allegations in the complaint and 'construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged.'" *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005)). Courts need not accept inferences that are unsupported by the facts alleged in the complaint

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[2] *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

or legal conclusions. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). Each plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). To determine the existence of subject matter jurisdiction, courts may look beyond the complaint's allegations and consider affidavits and other extrinsic information and ultimately weigh the conflicting evidence. *Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992); *see also All. for Democracy v. FEC*, 362 F. Supp. 2d 138, 142 (D.D.C. 2005) ("[I]n deciding a Rule 12(b)(1) motion, it is well established in this Circuit that a court is not limited to the allegations in the complaint, but may also consider materials outside of the pleadings[.]").

Rule 12(b)(6)

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a), "in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Rule 12(b)(6) authorizes parties to challenge the sufficiency of a complaint on the ground that it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When presented with a Rule 12(b)(6) motion, the district court must accept as true the well-pleaded factual allegations contained in the complaint. *Atherton v. D.C. Off. of Mayor*, 567 F. 3d 672, 681 (D.C. Cir. 2009). Although "detailed factual allegations" are not necessary to withstand a motion to dismiss, to provide the "grounds" of "entitle[ment] to relief," a plaintiff must furnish "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009) (quoting *Twombly*, 550 U.S. at 557). Instead, a complaint must contain sufficient factual allegations that, if accepted as true, "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. 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. The tenet that a court must accept allegations as true does not apply to recitals of the elements of a cause of action supported only by conclusory statements. *Iqbal*, 556 U.S. at 678–79 (citing *Twombly*, 550 U.S. at 555); *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994) ("[T]he court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint . . . [n]or must the court accept legal conclusions cast in the form of factual allegations.").

ARGUMENT

I. Plaintiff fails to state a claim against the USPTO

Congress has comprehensively promulgated legislation with respect to patent fees, and in so doing, provided for a refund of fees in only certain circumstances. *See* 35 U.S.C. §§ 42(d) ("The Director may refund any fee paid by mistake or any amount paid in excess of that required"), 41(a)(2)(C), 41(d)(1)(D). Pursuant to 37 C.F.R. § 1.26(a), the USPTO may refund a fee "paid by mistake or in excess of that required." Section 1.26(a) goes on to state that USPTO will not refund a fee "when a party desires to withdraw a patent filing for which the fee was paid." *Id.*

Plaintiff alleges he paid $200 in fees to the USPTO for a utility patent application. That amount was not in excess of that required, nor was that fee paid by mistake. He is therefore not entitled to a refund of that fee. *See Christy, Inc. v. United States*, 141 Fed. Cl. 641, 669 (2019), *aff'd*, 971 F.3d 1332 (Fed. Cir. 2020); *see also KHOLLE Magnolia 2015, LLC v. Vidal, No. CV H-22-1974*, 2024 WL 1076840, at *4 (S.D. Tex. Jan. 31, 2024), *report and recommendation adopted*, No. 4:22-CV-01974, 2024 WL 1481428 (S.D. Tex. Mar. 10, 2024).

Plaintiff's claims against the USPTO (Counts II, III, V, VII,[3] and VIII) should therefore be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

II. Plaintiff's tax claims fail as a matter of law

Plaintiff's claims against the IRS fare no better.

a. This Court lacks jurisdiction over Plaintiff's tax claims because the amount of his allowable refund is zero

The United States, its agencies, and its officials are generally immune from civil suit unless the United States explicitly waives its sovereign immunity. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). Thus, the United States cannot be sued unless it has waived its sovereign immunity and the claim against the United States falls within the terms of the waiver. *United States v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 7 (2008); *United States v. Dalm*, 494 U.S. 596, 607 (1990). The plaintiff bears the burden to show "that an unequivocal waiver of sovereign immunity exists and that none of the statute's waiver exceptions apply to his particular claim." *Welch v. United States*, 409 F.3d 646, 651 (4th Cir. 2005). When sovereign immunity has not been waived, the Court lacks subject-matter jurisdiction, and the case must be dismissed under Rule 12(b)(1). *Dalm*, 494 U.S. at 608–10.

To establish a waiver of sovereign immunity and federal court jurisdiction over a claim for refund under 28 U.S.C. § 1346(a)(1), a taxpayer must duly file a timely claim for a refund with the Internal Revenue Service. *Beckwith Realty, Inc. v. United States*, 896 F.2d 860, 862 (4th Cir. 1990) (citing 26 U.S.C. § 7422(a)).

While Plaintiff does not invoke § 7422 except in passing, that is the operative statute to the extent he seeks a refund. And before bringing a suit for refund pursuant to 26 U.S.C. § 7422, a taxpayer must first file a claim with the IRS for a tax refund. 26 U.S.C. § 7422(a). The refund claim

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[3] As stated below in addressing Plaintiff's claims against the IRS, Plaintiff's APA claims against the USPTO must also be dismissed because the APA provides only for "relief other than money damages." 5 U.S.C. § 702.

and the refund suit must be brought within the respective statutory periods. 26 U.S.C. §§ 6511(a), 6532(a). To be timely, a taxpayer's refund claim is required to be filed within the later of three years from the time the original return was filed, or two years from the time the tax was paid. 26 U.S.C. § 6511(a). Notably, for refund claims, any allowable refund is limited to "the portion of the tax paid during [either] the 2 [or 3] years immediately preceding the filing of the claim." 26 U.S.C. § 6511(b)(2).

Here, Plaintiff acknowledges that he filed his 2020 income tax return in April 2025. He has not alleged any payment of tax for 2020 in the two or three years immediately preceding the filing of his claim.[4] Indeed, the account transcript for his 2020 income tax year shows no payments at all. (Declaration of Devry Gillens & Ex. A.) Accordingly, because no tax has been paid in the three years immediately preceding his refund claim, Plaintiff is not entitled to a refund of any amount under § 6511(b)(2). *See Musungayi v. United States*, 86 Fed. Cl. 121, 124 (2009) (dismissing for lack of jurisdiction taxpayer's complaint as time-barred under § 6511(b)(2)(A)). His tax claims (Counts I, IV, VI, VII, and VIII) must therefore be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) or for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Id.*; *cf Polk v. United States*, 167 Fed. Cl. 731, 754–60 (2023) (addressing whether § 6511 is jurisdictional).

In the alternative, to the extent the Court relies on information provided outside the pleadings,[5] the United States requests that the Court enter summary judgment in its favor under Federal Rule of

[4] "Refundable tax credit programs are structured to create the legal fiction that recipients make 'overpayments' on their taxes, thereby entitling them to the resulting tax 'refunds,' as a mechanism for achieving certain social policy goals." *Gravenstein 116, LLC v. United States*, 180 Fed. Cl. 292, 294 (2026) (quoting *Sarmiento v. United States*, 678 F.3d 147, 152 (2d Cir. 2012).)

[5] "Generally, when a defendant challenges subject matter jurisdiction via a Rule 12(b)(1) motion to dismiss, the district court may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Mowery v. Nat'l Geospatial-Intel. Agency*, 42 F.4th 428, 433 (4th Cir. 2022) (quoting *Velasco v. Gov't of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004)).

Civil Procedure 12(d) and 56(a).

b. The declaratory relief Plaintiff seeks is affirmatively barred by statute

As for Count IV, in which he seeks a declaratory judgment that he is entitled to a tax refund, Plaintiff runs afoul of the Declaratory Judgment Act because Congress has explicitly prohibited taxpayers from seeking this type of relief. The Declaratory Judgment Act authorizes federal courts in most types of cases to "declare the rights and other legal relations" of interested parties. 28 U.S.C. § 2201(a). But the Act carves out controversies "with respect to Federal taxes" from those in which a federal court can issue a declaratory judgment. *Id.* The Act thus independently bars any declaratory relief sought by Plaintiff in this case. *See also S.E.C. v. Credit Bancorp, Ltd.*, 297 F.3d 127, 137 (2d Cir. 2002) (Declaratory Judgment Act "explicitly excludes from any such waiver [of sovereign immunity] the power to declare rights or obligations with respect to federal taxes.").

c. The Court lacks APA jurisdiction over Plaintiff's tax claims because he has other adequate remedies

Turning to Plaintiff's tax claims under Counts VI and VII, the APA allows judicial review of agency action under certain circumstances, with 5 U.S.C. § 702 waiving sovereign immunity for suits seeking declaratory or injunctive relief, and 5 U.S.C. § 704 providing for judicial review of final agency action. Section 704 of the APA conditions judicial review on the requirement that "there is no other adequate remedy in a court." 5 U.S.C. § 704; *see Sherman v. Black*, 510 F. Supp. 2d 193, 198 (E.D.N.Y. 2007), *aff'd*, 315 F. App'x 347 (2d Cir. 2009) (existence of another adequate remedy deprived court of jurisdiction). The alternative remedy need not provide relief identical to that available under the APA, so long as the alternative remedy offers relief of the "same genre." *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009).

Here, § 7422 provides a perfectly adequate remedy for Plaintiff whereby he may seek a refund. *See Starr Int'l Co. v. United States*, 910 F.3d 527, 536 (D.C. Cir. 2018) (holding the taxpayer did not have a "cause of action under the APA" because the taxpayer had an adequate remedy under § 7422(a) of the Internal Revenue Code (collecting cases)). The APA thus does not provide jurisdiction for his tax claims, and the Court should dismiss Counts VI and VII for lack of subject matter jurisdiction. In any event, the APA provides only relief for "relief other than money damages," 5 U.S.C. § 702, so Plaintiff's claims under the APA must also be dismissed. *See Howard v. United States*, 949 F. Supp. 2d 54, 56–57 (D.D.C. 2013), *aff'd sub nom. In re Howard*, No. 13-5261, 2014 WL 4628254 (D.C. Cir. July 14, 2014).

d. Plaintiff's Bivens claims are not cognizable

As for Count I of the complaint, *Bivens* provides a limited avenue for plaintiffs to seek damages against federal employees in their individual capacities for violations of certain constitutional rights. *See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Mr. Bisignano, however, is sued in his official capacity, and claims against government officials in their official capacities are construed as claims against the United States. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.")

As for the defendants identified as DOES 1-10, Plaintiff fails to state a *Bivens* claim. There is no suggestion that these defendants were doing anything not authorized by the Internal Revenue Code. But even if DOES 1-10 were sued in their individual capacities, *Bivens* remedies are an "extraordinary thing that should rarely if ever be applied in 'new contexts.'" *Arar v. Ashcroft*, 585 F.3d 559, 571 (2d Cir. 2009) (en banc). And it is particularly inappropriate here where the conduct at issue already is "governed by comprehensive procedural and substantive provisions [of law] giving meaningful remedies against the United States," *Bush v. Lucas*, 462 U.S. 367, 388-90 (1983). "The D.C. Circuit, and numerous other circuits, have repeatedly held that the Internal Revenue Code is a comprehensive remedial scheme that forecloses a plaintiff's ability to state a claim for a *Bivens* remedy." *Bucholz v. Mnuchin*, No. CV 19-1730 (ABJ), 2020 WL 5440550, at *5 (D.D.C. Sept. 10, 2020) (citation omitted), *aff'd sub nom. Bucholz v. Yellen*, No. 20-5338, 2021 WL 3668242 (D.C. Cir. July 23, 2021).

Among other things, the Internal Revenue Code authorizes the plaintiff to bring a suit in a district court based on 26 U.S.C. §§ 7422 (for refund) or 7433(a) (for damages regarding legal violations). *Id.* Plaintiff's tax claims based on *Bivens* (Count I) must therefore be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6). *Id.*

e. Count VIII fails to identify a waiver of sovereign immunity

Finally, Plaintiff's generic claim against the IRS based on violation of consumer protection principles and fair dealing (Count VIII) fails to identify a waiver of sovereign immunity. As discussed above, the plaintiff bears the burden of proving "an unequivocal waiver of sovereign immunity." *Walen v. United States*, 246 F. Supp. 3d 449, 457 n.6 (D.D.C. 2017) (citing, *inter alia*, *Welch*, 409 F.3d 646, 651 (4th Cir. 2005)). When sovereign immunity has not been waived, the Court lacks subject-matter jurisdiction, and thus, Count VIII of Plaintiff's complaint must be dismissed. *Dalm*, 494 U.S. at 608–10; *see also Giordano v. Hohns*, 714 F. Supp. 3d 564, 581 (E.D. Pa. 2024), *aff'd*, 159 F.4th 179 (3d Cir. 2025).

CONCLUSION

For these reasons, the United States respectfully requests that Plaintiff's complaint be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1) and for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Dated: April 22, 2026

Respectfully submitted,

/s/ Stephen S. Ho
STEPHEN S. HO
Trial Attorney, Eastern Trial Section
Civil Division, Tax Litigation Branch
U.S. Department of Justice
P.O. Box 227 - Ben Franklin Station
Washington, D.C. 20044
(202) 616-8994
Email: stephen.s.ho@usdoj.gov
Counsel for United States

CERTIFICATE OF SERVICE

I certify that on April 22, 2026, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties registered to receive it.

/s/ Stephen S. Ho
STEPHEN S. HO
Trial Attorney, Eastern Trial Section

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLAN DOUGLAS WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
DERRICK BRENT, *et al.*,	)	No. 1:25-cv-03561-RDM
	)	
Defendant.	)	
	)	

CERTIFICATE OF AUTHENTICITY OF DOMESTIC BUSINESS RECORDS PURSUANT TO FEDERAL RULE OF EVIDENCE 902(11)

I, Devry J. Gillens, declare as follows:

1. I am employed by the IRS Office of Chief Counsel, and by reason of my position, I am authorized and qualified to make this declaration. I am a custodian of records or other qualified individual and have personal knowledge of the IRS's record keeping systems.

2. Attached hereto as **Exhibit A** is a copy of Allan Douglas Wilson's account transcript for the taxable year 2020 as accessed through the IRS's Employee User Portal ("EUP") on April 22, 2026.

3. I further certify that the document attached hereto is a true copy of records that were:

a. made at or near the time of the occurrence of the matters set forth therein by, or from information transmitted by, a person with knowledge of those matters;

b. kept in the course of the IRS's regularly conducted business activity;

c. made by the regularly conducted business activity as a regular practice; and

d. duplicates of the original records, if not original records.

4. The foregoing facts are known to me to be true. I would be competent to testify to such facts if I were to appear in court as a witness at the trial of this matter.

5. This certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing declaration is true and correct.

Executed on this 22 day of April 2026.

DEVRY I. GILLENS
Paralegal Specialist
IRS Office of Chief Counsel
1111 Constitution Ave., NW
Building K, M/S 2602
Washington, DC 20224

EXHIBIT A

Internal Revenue Service
United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

Form 1040 Account Transcript

Request Date:	04-22-2026
Response Date:	04-22-2026
Tracking Number:	110274594215

Form Number:	1040
Report for Tax Period Ending:	12-31-2020
Taxpayer Identification Number:	9

ALLA D WILS

--- Any minus sign shown below signifies a credit amount ---

Account balance:	-$1,238.55		
Accrued interest:	$0.00	As of:	05-04-2026
Accrued penalty:	$0.00	As of:	05-04-2026
Account balance plus accruals (this is not a payoff amount):	-$1,238.55		

**** Information from the return or as adjusted ****

Exemptions:	01
Filing status:	Single
Adjusted gross income:	$48,836.00
Taxable income:	$33,942.00
Tax per return:	$0.00
SE taxable income taxpayer:	$0.00
SE taxable income spouse:	$0.00
Total self employment tax:	$0.00
Return due date or return received date (whichever is later):	04-09-2025
Processing date:	06-09-2025

TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE	DATE	AMOUNT
150	Tax return filed 20221-109-11805-5	20252105	06-09-2025	$3,866.00
766	Credit to your account		04-15-2021	-$1,800.00
166	Penalty for filing tax return after the due date 06-09-2035	20252105	06-09-2025	$516.50
196	Interest charged for late payment	20252105	06-09-2025	$722.05
971	Notice issued CP 0011		06-09-2025	$0.00
767	Reduced or removed credit to your account		04-15-2021	$561.45
291	Reduced or removed prior tax assessed 98254-602-05075-5		08-11-2025	-$3,866.00
167	Reduced or removed penalty for filing tax return after the due date		08-11-2025	-$516.50
197	Reduced or removed interest charged for late payment		08-11-2025	-$722.05
971	Notice issued CP 0021		08-11-2025	$0.00

This Product Contains Sensitive Taxpayer Data

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALLAN DOUGLAS WILSON,

Plaintiff,

v.

DERRICK BRENT, *et al.*,

Defendants.

Civil Action No. 25-3561 (RDM)

[PROPOSED] ORDER

UPON CONSIDERATION of Defendant's motion to dismiss, any opposition thereto, and the entire record herein, it is hereby

ORDERED that Defendant's motion is GRANTED, and it is further

ORDERED that this action is DISMISSED.

SO ORDERED:

Date

RANDOLPH D. MOSS
United States District Judge