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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MICHAEL LOUIS OVERTON,)	No. CV 13-05646-R (VBK)
)	
Plaintiff,)	ORDER TO SHOW CAUSE RE DISMISSAL
)	
v.)	
)	
SOCIAL SECURITY ADMINISTRATION,)	
et al.,)	
)	
Defendants.)	
)	
)	
)	

On July 23, 2013, Michael Louis Overton (hereinafter referred to as "Plaintiff") filed a "Notice of Motion and Motion to Recover Entitled Benefits Under 28 U.S.C. 4207 and 42 U.S.C. 1997" ("Complaint") against Defendants United States Social Security Administration Head; Veterans Administration Head Official; and West Point Military Academy in the United States District Court for the Northern District of California.

On July 30, 2013, an Order of Transfer was issued by United States District Judge William Alsup transferring this action to the United States District Court for the Central District of California.

On August 16, 2013, an Order re Leave to File Action Without

1 Prepayment of Full Filing Fee was issued, and Plaintiff's Complaint
2 was filed in United States District Court for the Central District of
3 California. It was noted that Plaintiff had failed to authorize
4 disbursements from his prison trust account to pay the filing fee;
5 failed to provide a certified copy of trust fund statement for the
6 last six months and made an inadequate showing of indigency. (Docket
7 No. 7.)

8
9 **ALLEGATIONS IN PLAINTIFF'S COMPLAINT**

10 Plaintiff, a state prisoner incarcerated at the California Men's
11 Colony-East, alleges that he is an attorney licensed by the California
12 State Bar and has a paralegal degree from Hastings School of Law.
13 (Complaint at 3.) In Claim One, Plaintiff contends that he has a
14 vested interest and entitlement to receive Social Security benefits
15 "on behalf" of [his] wife" and an additional interest in his
16 "deceased brother's-survivor's benefits" as of June 1997. (Id. at 3-
17 4.) In Claim Two, Plaintiff alleges that the United States Air Force,
18 Veterans Administration and Military Induction Center violated a
19 breach of trust in fraudulently attempting to locate Lieutenant Major
20 Mike Overton who was in prison during the time in question. (Id. at
21 5.)

22 In Claim Three, Plaintiff states that he was inducted into West
23 Point Academy during the 1973 Vietnam conflict. Plaintiff was
24 commissioned on his first tour to Hanoi and a second tour in Saigon.
25 (Id. at 5.) Plaintiff alleges his induction rank was Lieutenant
26 Major; however, he was diagnosed with a heart murmur and given an
27 honorable discharge. Plaintiff seeks an award of benefits. (Id.)

28 //

1 **DISCUSSION**

2 For all of the following reasons, Plaintiff's Complaint should be
3 dismissed without leave to amend.
4

5 **A. Plaintiff Has Failed to State a Claim Against Defendants.**

6 Plaintiff seeks to recover benefits against Defendants pursuant
7 to 28 U.S.C. § 4207 and 42 U.S.C. § 1997 and alleges jurisdiction
8 pursuant to these sections of the United States Code. However, 28
9 U.S.C. § 4207 does not exist in the United States Code. Further,
10 while 42 U.S.C. § 1997 defines the term "institution" to encompass any
11 facility, including a jail, it does not establish subject matter
12 jurisdiction.

13 Plaintiff's allegations and the nature of his claims are unclear
14 and Plaintiff fails to identify the specific theories upon which the
15 asserted claims against the Defendants are based. Accordingly,
16 Plaintiff has failed to state a constitutional violation or a
17 violation of a federal statute against Defendants that would confer
18 jurisdiction upon this Court.
19

20 **B. A United States Agency Cannot Be Sued Unless There Is a**
21 **Waiver of Sovereign Immunity.**

22 A United States officer cannot be sued in his official capacity
23 nor a United States agency be sued, unless there is a waiver of
24 sovereign immunity. Any waiver of sovereign immunity must be express.
25 Doe v. Attorney General of United States, 941 F.2d 780, 788 (9th Cir.
26 1991). The doctrine of sovereign immunity bars claims for monetary
27 damages against federal actors in their official capacities. See,
28 e.g., Thomas Lazear v. Federal Bureau of Investigation, 851 F.2d 1202,

1 1207 (9th Cir. 1988) ("The United States has not waived its sovereign
2 immunity in actions seeking damages for constitutional violations").

3 This Court lacks subject matter jurisdiction to consider a
4 constitutional damage claim against the United States, because the
5 United States has not waived sovereign immunity with respect to such
6 claims. Cato v. United States, 70 F.3d 1103, 1110 (9th Cir. 1995);
7 Rivera v. United States, 924 F.2d 948, 951 (9th Cir. 1991); Clemente
8 v. United States, 766 F.2d 1358, 1363 (9th Cir. 1985), cert. denied,
9 474 U.S. 1101 (1986); Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th
10 Cir. 1985).

11 Sovereign immunity also extends to the agencies of the federal
12 government. See Federal Deposit Insurance Corp. v. Meyer, 510 U.S.
13 471, 486 (1993) (holding that a Bivens claim cannot be brought against
14 a federal agency); Daly-Murphy v. Winston, 837 F.2d 348, 356 (9th Cir.
15 1987) (same).

16 "[A] person attempting to sue a federal agency or officer must
17 demonstrate that the claim is covered by specific statutory
18 authorization to sue the United States, or that in effect [the
19 complaint] is not a suit against the United States. This is a
20 fundamental subject matter jurisdictional requirement." 14 Wright
21 Miller and Cooper, Federal Practice and Procedure, Jur. 3d §3655
22 (1998). Any waiver of sovereign immunity must be express. Doe v.
23 Attorney General of the United States, 941 F.2d 780, 788 (9th Cir.
24 1991). It is clear that this Court has no subject matter jurisdiction
25 over money damage claims against official actors brought pursuant to
26 Bivens. See Daly-Murphy v. Winston, 837 F.2d 348, 355 (9th Cir.
27 1987). Therefore, due to the doctrine of sovereign immunity, this
28 Court lacks the power to hear Plaintiff's claims against Defendants.

1 Plaintiff can obtain damages against the Defendants under only
2 one of two theories: a claim under the Federal Tort Claims Act, 28
3 U.S.C. §§1346, 2671-2680; or an implied cause of action under the
4 principles of Bivens v. Six Unknown Agents, 403 U.S. 388 (1977).

5 In order to file a claim under the Federal Tort Claims Act,
6 Plaintiff must have exhausted his administrative remedies. Graham v.
7 United States, 96 F.3d 446, 447 (9th Cir. 1996). Specifically, 28
8 U.S.C. §2675(a) provides in part:

9 "An action shall not be instituted upon a claim against
10 the United States for money damages for injury or loss of
11 property or personal injury or death caused by the negligent
12 or wrongful act or omission of any employee of the
13 Government while acting within the scope of his office or
14 employment, unless the claimant shall have first presented
15 the claim to the appropriate federal agency and his claim
16 shall have been finally denied by the agency in writing and
17 sent by certified or registered mail. The failure of an
18 agency to make final disposition of a claim within six
19 months after it is filed, at the option of the claimant any
20 time thereafter, be deemed a final denial of the claim for
21 purposes of this section..."

22
23 A federal court may not exercise subject matter jurisdiction over
24 a claim under the Federal Tort Claims Act until administrative
25 remedies have been exhausted. 28 U.S.C. §2675(a); McNeil v. United
26 States, 508 U.S. 106, 112-13 (1993). There is no indication anywhere
27 that plaintiff exhausted any administrative remedies. This Court may
28 dismiss the Complaint for failure to allege this jurisdictional

1 prerequisite. See Hutchinson v. United States, 677 F.2d 1322, 1327
2 (9th Cir. 1982).

3
4 **ORDER**

5 Accordingly, within 20 days of the date of this Order, Plaintiff
6 is **ORDERED TO SHOW CAUSE**, in writing, why this case should not be
7 dismissed.

8
9 DATED: August 27, 2013

_____/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE