

1 States v. Koonin, 361 F.3d 1250, 1251 (9th Cir. 2004).

2 In his Objections, plaintiff now asserts the Magistrate Judge erred because the
3 claims he alleged in the complaint are directed at the unofficial one-paragraph case
4 summary prepared by LexisNexis that appears at 2004 U.S. App. LEXIS 5535, not
5 the Ninth Circuit's published opinion. However, the Court concurs with the
6 Magistrate Judge's construction of the gravamen of the factual allegations underlying
7 the Bivens and FTCA claims alleged in the complaint. The Court also concurs with
8 the Magistrate Judge that plaintiff's claims are factually frivolous because the Ninth
9 Circuit's published opinion accurately reported that Abel, not plaintiff, was named
10 as the beneficiary in the intended victim's insurance policies. The Court also concurs
11 with the Magistrate Judge that plaintiff's claims are legally frivolous under the
12 judicial immunity doctrine.

13 To the extent that plaintiff now appears to be attempting to recharacterize his
14 claims as not directed at the actions of any Ninth Circuit judicial officers or
15 employees, but rather at the actions of the LexisNexis employee(s) who prepared the
16 inaccurate one-paragraph case summary, the Court notes that the FTCA only provides
17 a remedy for tortious conduct committed by Government employees. See 28 U.S.C.
18 § 2679(b). Moreover, plaintiff cannot allege a viable Bivens claim against the
19 LexisNexis employee(s) who prepared the inaccurate one-paragraph case summary
20 because Bivens does not extend to alleged wrongs committed by privately employed
21 individuals alleged to have denied a plaintiff's constitutional rights where state tort
22 law provides adequate alternative remedies. See Minneci v. Pollard, - U.S. -, 132 S.
23 Ct. 617, 620, 181 L. Ed. 2d 606 (2012).

24 The Court therefore also concurs with the Magistrate Judge that the pleading
25 deficiencies of the complaint are incapable of being cured by amendment.

26 The Court's comments above are not intended to be responsive to every single
27 argument made by plaintiff. However, having made a de novo determination of those
28 portions of the R&R to which objections have been made, the Court accepts the

1 findings and recommendation of the Magistrate Judge.

2 IT THEREFORE IS ORDERED that Judgment be entered dismissing the
3 complaint with prejudice.

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5 DATED: MARCH 29, 2015

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ANDREW J. GUILFORD
UNITED STATES DISTRICT JUDGE