

1 has replied. (ECF Nos. 45 & 46.) On September 13, 2017, the motion was submitted without
2 oral argument.

3 As before, plaintiff claims that defendant Ballon, a Social Security Administration
4 manager in Stockton, California, personally violated her federal due process rights under Bivens
5 v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).¹ Plaintiff alleges
6 that Ballon responded to a 2014 letter from Senator Boxer’s Department of Constituent Services
7 concerning plaintiff’s inquiry into unpaid support. Defendant allegedly “denied having been
8 properly served . . . and denied that there was ever a valid Earnings Assignment Order[.]” (SAC,
9 ¶ 25.) In its July 26, 2017 order, the court explained why plaintiff failed to state a Bivens claim
10 against defendant, and the SAC does not cure the pleading defects discussed in that order.

11 Plaintiff asserts a cause of action under 42 U.S.C. § 659, which governs federal
12 garnishment for purposes of enforcing child support and alimony allegations. Any alleged
13 violation of these provisions does not give rise to a Bivens claim, however, as plaintiff has not
14 alleged intentional conduct amounting to a constitutional tort. Nor do defendant’s alleged
15 violations of state law give rise to a Bivens claim. Although the court may exercise supplemental
16 jurisdiction over state law claims, plaintiff must first have a cognizable claim for relief under
17 federal law. See 28 U.S.C. § 1367.

18 Because plaintiff has failed to state a cognizable claim after multiple attempts and it
19 appears that further leave to amend would be futile, the undersigned will grant defendant’s
20 motion and dismiss this action with prejudice.

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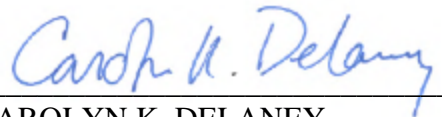
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25 ¹ Bivens is the federal analog to suits brought against state officials under 42 U.S.C. § 1983.
26 Ashcroft v. Iqbal, 556 U.S. 662, 676-76 (2009). “Because vicarious liability is inapplicable to
27 Bivens and § 1983 suits, a plaintiff must plead that each Government-official defendant, through
28 the official’s own individual actions, has violated the Constitution.” Id. at 676. “Only federal
officials who actually participate in alleged violations are subject to a Bivens-type suit.” O’Neal
v. Eu, 866 F.2d 314 (9th Cir. 1989) (collecting cases). “A plaintiff must plead more than merely
a negligent act by a federal official in order to state a colorable claim under Bivens.” Id.

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In accordance with the above, IT IS HEREBY ORDERED that:

- 1. Defendant Ballon’s motion to dismiss (ECF No. 43) is granted; and
- 2. This action is dismissed with prejudice.

Dated: September 12, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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