

United States District Court  
For the Northern District of California

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**\*E-Filed 07/23/2010\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

KENYATTA CARTER,  
Plaintiff,

**No. C 10-00939 RS**

**ORDER GRANTING MOTION TO  
DISMISS**

v.

SOCIAL SECURITY ADMINISTRATION,  
Defendant.

\_\_\_\_\_ /  
This case, in which plaintiff Kenyatta Carter is proceeding *pro se*, is before the Court on a motion to dismiss by Defendant United States of America, through its attorney, Joseph Russoniello, United States Attorney for the Northern District of California. The motion was filed on June 4, 2010 and a hearing was held on July 15, 2010. Carter did not appear at the hearing, nor has he filed an opposition to the motion to dismiss.

On January 27, 2010, Carter filed a Claim and Order to Go to Small Claims Court in Alameda County Superior Court (“Plaintiff’s Complaint”) against Defendants Social Security Administration, Loraine Smith dba Social Security, and Russ Van Dyre, District Manager (“SSA”). Plaintiff’s Complaint alleges that SSA, through the acts of District Manager Russ Van Dyre and Loraine Smith, “[sent] my check to a closed acct on purpose,” which resulted in “harassment, discrimination, gas, late fees and bills.” Compl. at 2. Defendants removed the case to this Court on March 5, 2010.

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Defendants moved to dismiss for a lack of subject matter jurisdiction and for failure to state a claim, under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), respectively. Plaintiff bears the burden of establishing subject matter jurisdiction, *see Kokkonen v. Guardian Life Ins. Co. of America* (1994) 511 US 375, 377. A motion to dismiss for lack of subject matter jurisdiction may be made on the grounds that the lack of jurisdiction appears from the “face of the complaint.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). Dismissal under Rule 12(b)(6) may be based either on the “lack of a cognizable legal theory” or on “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). Under Rule 8(a)(2), 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)(2). While “detailed factual allegations are not required,” a complaint must have sufficient factual allegations to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 US 544, 570(2007)).

Here, as an initial matter, defendants are entitled to dismissal for lack of opposition. Moreover, Plaintiff’s Complaint sets forth no facts establishing a basis for jurisdiction, nor does it identify a legal basis for which relief would be plausible on its face. Additionally, plaintiff makes no averments that he filed an administrative claim with the SSA prior to filing his suit, which is required under the Federal Tort Claims Act. 28 U.S.C. § 2401; *see Blain v. United States*, 552 F.2d 289, 291 (9th Cir. 1977). Therefore, the motion to dismiss is granted without leave to amend.

IT IS SO ORDERED.

Dated: 07/23/2010

  
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RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

