

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLARENCE A. BRANCH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No.16-cv-03811-JSC

**ORDER DISMISSING ACTION**

Re: Dkt. No. 18

Plaintiff Clarence A. Branch, proceeding pro se, brings this action against the United States of America. The Court previously granted Plaintiff's application to proceed in forma pauperis and reserved to a later time evaluation of the Complaint under 28 U.S.C. § 1915. (Dkt. No. 3.) The Court thereafter issued an Order to Show Cause because mail sent to Plaintiff at his last known address had been returned as undeliverable. (Dkt. No. 8.) Plaintiff responded to the Order to Show Cause, provided his new address, and consented to the jurisdiction of the undersigned magistrate judge. (Dkt. No. 10.) The Court then reviewed the complaint under Section 1915 and dismissed it for failure to state a claim because Plaintiff had failed to identify a cognizable legal theory. (Dkt. No. 11.) On the deadline to do so, Plaintiff filed a document captioned "Amendment." (Dkt. No. 14.) The Court construed this filing as First Amended Complaint and again dismissed the complaint for failure to state a claim under Section 1915. (Dkt. No. 15.) Plaintiff had until December 19, 2016 to file a Second Amended Complaint. Instead, on December 16, Plaintiff filed a notice of appeal. (Dkt. No. 16.) Plaintiff thereafter filed a motion to proceed in forma pauperis on appeal which the Court denied because the dismissal order was not a final appealable order. (Dkt. Nos. 18 & 21.)

1           Given Plaintiff's failure to timely file an amended complaint, the Court dismisses this  
2 action without prejudice. Plaintiff may file an appeal of this order, but he must do so within 30  
3 days. *See* Fed. R. App. Pro. 4(a)(1)(A).

4           However, the Court certifies that any appeal of the dismissal of this action is frivolous  
5 pursuant to 28 U.S.C. § 1915(a)(3) because Plaintiff's First Amended Complaint presents "no  
6 cognizable legal theory [and] an absence of sufficient facts alleged to support a cognizable legal  
7 theory." *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010).  
8 Further, the Court granted Plaintiff leave to amend to cure these deficiencies, but he failed to do  
9 so. (Dkt. No. 21.)

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11           **IT IS SO ORDERED.**

12           Dated: January 17, 2017

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15           JACQUELINE SCOTT CORLEY  
16           United States Magistrate Judge  
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**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 17, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Clarence A. Branch  
391 Ellis Street  
General Delivery  
San Francisco, CA 94102

Dated: January 17, 2017

Susan Y. Soong  
Clerk, United States District Court

By:   
Ada Means, Deputy Clerk to the  
Honorable JACQUELINE SCOTT CORLEY