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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ADRIAN REYNARD SMITH,
Plaintiff,
v.
SOCIAL SECURITY
ADMINISTRATION DEPARTMENT
OF CALIFORNIA, et al.,
Defendants.

Case No. [17-cv-03768-JCS](#) (PR)

ORDER OF DISMISSAL

INTRODUCTION

Plaintiff alleged in his original civil rights complaint that the Social Security Administration failed to notify him that his Social Security number had been misused.¹ The complaint was dismissed for failure to state a claim for relief.

The amended complaint, the subject of this order, similarly fails to state a claim. Accordingly, this federal civil rights action is **DISMISSED**.

¹ Plaintiff consented to magistrate judge jurisdiction. (Dkt. No. 5.) The magistrate judge, then, has jurisdiction to issue this order, even though defendants have not been served or consented to magistrate judge jurisdiction. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

1 **DISCUSSION**

2 **A. Standard of Review**

3 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
4 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
5 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
6 plausibility when the plaintiff pleads factual content that allows the court to draw the
7 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
8 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
9 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
10 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55
11 (9th Cir. 1994).

12 **B. Legal Claims**

13 **1. Original Complaint**

14 Plaintiff alleged in his original complaint that his “Social Security number has been
15 used wrongfully for filing taxes, for which I did not give permission to file.” (Compl. at
16 3.) He further alleged that “The Social Security Administration . . . has not contacted me
17 regarding these incidents that occur[r]ed” in 2014, 2015, and 2016. (*Id.*)

18 These allegations were insufficient to state a claim for relief. First, plaintiff failed
19 to show any liability on the part of the Social Security Administration (“SSA”). It appears
20 that some person or persons misused his Social Security number (“SSN”). The fault,
21 therefore, lies with such persons, not with the SSA.

22 Second, plaintiff did not identify any law that requires that the SSA contact him
23 when fraudulent use of his SSN occurs. The Court directed plaintiff to identify in his
24 amended complaint what law or legal theory forms the basis of the SSA’s liability.

25 Third, plaintiff’s allegations were bare of specifics, such as what amounts he
26 believes are owed to him because of the misuse of his SSN. The Court directed plaintiff to
27 provide greater detail in his amended complaint.
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2. Amended Complaint

The amended complaint fails to correct the deficiencies of the first. Plaintiff fails to identify any law or legal theory on which he bases the SSA's liability.² Accordingly, his claims against the SSA are DISMISSED.

Plaintiff adds a new defendant, Bank of America. The bank cannot be sued under section 1983 because it is a private, not a state, actor. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). Accordingly, his claims against Bank of America are DISMISSED.

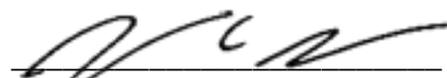
CONCLUSION

This federal civil rights action is DISMISSED.

The Clerk shall enter judgment in favor of defendants, and close the file.

IT IS SO ORDERED.

Dated: November 7, 2017



JOSEPH C. SPERO
Chief Magistrate Judge

² Identifying the correct law or legal theory was particularly important here because the SSA, as a federal entity, cannot be sued under section 1983, which provides a method by which a person can sue a state actor.

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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 November 7, 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.

Adrian Reynard Smith ID: #567942
3554 17th Street, Apt. 2
San Francisco, CA 94110

Dated: November 7, 2017

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO