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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FRANKIE HILL,	
vs.	Plaintiff,
UNITED STATES OF AMERICA, et al.,	
	Defendant.

CASE NO. 08CV1905  
**ORDER GRANTING  
DEFENDANT’S MOTION TO  
DISMISS**  
(Doc. No. 22.)

Presently before the Court is Defendant United States of America’s (Defendant or United States) motion to dismiss Plaintiff’s second amended complaint. (Doc. No. 22.) Also before the Court is Plaintiff’s opposition to the motion to dismiss (Doc. No. 24.) and Defendant’s reply (Doc. No. 25.) For the reasons stated below, the Court hereby **GRANTS** Defendant’s motion to dismiss.

**BACKGROUND**

Plaintiff initiated this action on October 14, 2008. Plaintiff amended the original complaint, and the amended complaint was dismissed soon thereafter. Plaintiff then filed a second amended complaint on June 21, 2010. (Doc. No. 21 (SAC).)

Plaintiff asserts in his second amended complaint that his “action is being brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and is being brought against the defendants in their individual and official capacity.” (SAC ¶ 2.) In support of his *Bivens* claim, Plaintiff recounts the following events.

1 On February 1, 2006, Plaintiff was transferred from the U.S. Penitentiary at Terre Haute,  
2 Indiana (USP Terre Haute), to the Metropolitan Corrections Center (MCC) in San Diego,  
3 California. (*Id.* ¶ 4.) His personal property followed soon thereafter. (*Id.*) Upon arrival at MCC,  
4 Plaintiff was given access to his belongings. And at that point, Plaintiff noticed that the containers  
5 holding his property had been “ripped-open.” (*Id.* ¶ 5.) Plaintiff alleges that when he complained  
6 about “missing legal papers, pleadings, opinions, and research material,” two  
7 defendants—correction officers Delrozaro and Lethey—ignored his complaints. (*Id.*) And when  
8 Plaintiff filed inmate grievances, defendants R.T. Luna, Robert McFadden, Harold Watts, Harlan  
9 Penn, and Harley Lappin violated 18 U.S.C. §§ 1018 & 1028 by filing responses filled with false  
10 facts. (*Id.* ¶ 6.)

11 Plaintiff alleges that the false responses caused unnecessary delay, resulting in the  
12 dismissal of a lawsuit in the U.S. District Court for the Western District of Virginia. (*Id.* ¶ 7.) The  
13 dismissal caused Plaintiff injury “in the sum of Ten Million Dollars, plus interest.” (*Id.*) On top  
14 of the dismissed case, Plaintiff also “suffered injury in the sum of One Million Dollars” as a result  
15 of the defendant’s actions. (*Id.* ¶ 8.) For these two injuries, Plaintiff requests judgment totaling  
16 eleven-million dollars.

### 17 LEGAL STANDARD

18 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the defense that  
19 the complaint “fail[s] to state a claim upon which relief can be granted,” generally referred to as a  
20 motion to dismiss. The Court evaluates whether a complaint states a cognizable legal theory and  
21 sufficient facts in light of Federal Rule of Civil Procedure 8(a), which requires a “short and plain  
22 statement of the claim showing that the pleader is entitled to relief.” Although Rule 8 “does not  
23 require ‘detailed factual allegations,’ . . . it [does] demand[] more than an unadorned, the-  
24 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, – US — , 129 S. Ct. 1937, 1949  
25 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a  
26 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than  
27 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”  
28 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). “Nor does a

1 complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Iqbal*,  
2 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 557).

3 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,  
4 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*,  
5 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible when the facts  
6 pled “allow[] the court to draw the reasonable inference that the defendant is liable for the  
7 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 556). That is not to  
8 say that the claim must be probable, but there must be “more than a sheer possibility that a  
9 defendant has acted unlawfully.” *Id.* Facts “‘merely consistent with’ a defendant’s liability” fall  
10 short of a plausible entitlement to relief. *Id.* (quoting *Twombly*, 550 U.S. at 557). Further, the  
11 Court need not accept as true “legal conclusions” contained in the complaint. *Id.* This review  
12 requires context-specific analysis involving the Court’s “judicial experience and common sense.”  
13 *Id.* at 1950 (citation omitted). “[W]here the well-pleaded facts do not permit the court to infer  
14 more than the mere possibility of misconduct, the complaint has alleged—but it has not  
15 ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.*

## 16 ANALYSIS

17 In *Bivens*, the Supreme Court recognized an “implied private action for damages against  
18 federal officers alleged to have violated a citizen’s constitutional rights.” *Corr. Servs. Corp. v.*  
19 *Malesko*, 534 U.S. 61, 66 (2001). But *Bivens*-type actions are limited to federal officers and  
20 cannot be brought against federal agencies. *FDIC v. Meyer*, 510 U.S. 471, 484–85 (1994). And  
21 by extension, they cannot be brought against the United States. Even assuming Plaintiff set forth a  
22 plausible constitutional violation, Plaintiff fails to state a claim upon which relief can be granted  
23 because Plaintiff cannot assert a *Bivens*-type action against the United States.

## 24 CONCLUSION

25 For the reasons stated above, Defendant’s motion to dismiss is **GRANTED**. Plaintiff’s  
26 Second Amended Complaint is **DISMISSED WITH PREJUDICE** as to Defendant United States.

27 **IT IS SO ORDERED.**

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1 **DATED: October 12, 2010**

*Janis L. Sammartino*  
Honorable Janis L. Sammartino  
United States District Judge

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