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

TIMOTHY WAYNE MAPP,

Plaintiff,

vs.

STATE OF NORTH CAROLINA, et al.,

Defendants.

CASE NO. 09cv0292 DMS (WMC)

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS**

**[Docket No. 18]**

This case comes before the Court on Defendant's motion to dismiss Plaintiff's First Amended Complaint. Plaintiff filed an opposition to the motion. Defendant did not file a reply. For the reasons set out below, the Court grants the motion.

Plaintiff filed his original complaint on February 17, 2009, along with a motion to proceed *in forma pauperis* ("IFP"). The original complaint alleged that the State of North Carolina violated Plaintiff's rights to due process when it intercepted his federal tax return in an effort to collect child support payments for Plaintiff's ex-wife, who is a resident of North Carolina. The Court granted Plaintiff's motion to proceed IFP, and dismissed the complaint without prejudice pursuant to 28 U.S.C. 1915(e)(2)(B)(ii). Specifically, the Court found the State of North Carolina was not a person within the meaning of 42 U.S.C. § 1983, therefore Plaintiff had failed to state a legally cognizable claim.

In response to the Court's previous order, Plaintiff filed a First Amended Complaint realleging his due process claim. However, instead of naming the State of North Carolina as a Defendant,

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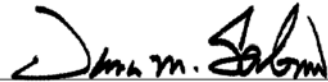
2 Plaintiff now names Shauna Simmons as a Defendant. Plaintiff alleges Ms. Simmons is a case worker  
3 for the child support enforcement agency in Mecklenburg County in the State of North Carolina.

4 Although Plaintiff does not state explicitly whether he is suing Ms. Simmons in her individual  
5 or official capacity, it is clear from the entirety of the First Amended Complaint that Ms. Simmons  
6 is being sued in her official capacity only. The United States Supreme Court has held “that neither  
7 a State nor its officials acting in their official capacities are ‘persons’ under § 1983.” *Will v. Michigan*  
8 *Dep’t of State Police*, 491 U.S. 58, 71 (1989). Accordingly, Plaintiff has failed to state a legally  
9 cognizable claim. The Court therefore grants Defendant’s motion to dismiss, and consistent with the  
10 Court’s previous order, dismisses this case with prejudice.

11 **IT IS SO ORDERED.**

12 DATED: January 27, 2010

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HON. DANA M. SABRAW  
United States District Judge

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