

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Kevin L. Olson,

Plaintiff,

-vs-

Social Security Administration, Nancy
A. Berryhill, Acting Commissioner, and
Department of the Treasury, Steven T.
Mnuchin, Secretary of the Treasury,

Defendants.

Case No. 3:16-cv-93

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Pursuant to 28 U.S.C. § 636, the court has received a Report and Recommendation from the Honorable Alice R. Senechal, United States Magistrate Judge.¹ The Report and Recommendation recommends that the defendants' motion to substitute the United States as the sole defendant be granted and that Olson's complaint be dismissed in its entirety without prejudice. Olson timely filed objections to the Report and Recommendation.² The United States responded to the objections on March 21, 2017. The written submissions that have been authorized by the magistrate judge are now complete.

In his objections, Olson claims the magistrate judge improperly sequenced and commingled the "Acts, Laws, and Relief" he relies on in his documents; he generally objects to the magistrate judge's finding that the United States should be the sole defendant in this action; he asserts the magistrate judge failed to distinguish two "conditions of 'official capacities'", namely ministerial duties by oath and discretionary duties of office; he believes the magistrate judge improperly applied the doctrine of sovereign immunity; he repeats

¹ Doc. #35.

² Doc. #36.

previous arguments he made in the documents already on file with the court; and he requests that all motions by the defendants be denied and that he be granted his requested relief. The undersigned reviews objections to the Report and Recommendation *de novo*.

Olson has commenced this action challenging the constitutionality of religious exemptions contained in the Patient Protection and Affordable Care Act (“ACA”) and the Federal Insurance Contributions Act (“FICA”). A careful review of Olson’s submissions and the applicable case law establishes that Olson has failed to state a plausible claim that would entitle him to relief under the ACA or FICA. The court has considered the case law, Olson’s objections, the magistrate judge’s Report and Recommendation, and the entire record. Upon review, the court finds the magistrate judge’s analysis and recommendations for disposition are appropriate. None of Olson’s objections persuade the undersigned that the magistrate judge erred in her recommendations for disposition. The undersigned hereby adopts the Report and Recommendation in its entirety. For the reasons stated therein, **IT IS HEREBY ORDERED** as follows:

- (1) The defendants’ motion to substitute the United States³ as the sole defendant is **GRANTED**.
- (2) The defendants’ motion to dismiss for lack of subject matter jurisdiction⁴ is **GRANTED** as to (a) any Bivens claims, (b) Olson’s claim for refunds of the SRP and FICA/SECA taxes, (c) Olson’s claim for monetary damages, (d) Olson’s claim for injunctive and declaratory relief under the FICA/SECA, and (e) any ADA claims.

³ Doc. #17.

⁴ Doc. #17.

- (3) The defendants' motion to dismiss for lack of subject matter jurisdiction⁵ is **DENIED** as to Olson's claims for injunctive and declaratory relief regarding the ACA.
- (4) The defendants' motion to dismiss for failure to state a claim⁶ is **GRANTED** as to (a) Olson's claim that the SRP is an unconstitutional tax, (b) Olson's Establishment Clause claim regarding the ACA, (c) Olson's Free Exercise Clause claim regarding the ACA, and (d) his Equal Protection Clause claim regarding the ACA.
- (5) The defendants' motion to dismiss for lack of personal jurisdiction and insufficient service of process⁷, or alternatively for failure to state a claim is **GRANTED** as to all claims raised against other governmental entities and employees.
- (6) Any claims raised after the filing of the complaint or supplement to the complaint have not been properly pled, and even if properly pled, the claims fail to state a plausible claim and are subject to dismissal.
- (7) Olson's complaint is **DISMISSED** in its entirety without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 22nd day of March, 2017.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

⁵ Doc. #17.

⁶ Doc. #17.

⁷ Doc. #17.