

attenuated or unsubstantial claims divest the district court of jurisdiction); *In re Bendectin Litig.*, 857 F.2d 290, 300 (6th Cir. 1988) (recognizing that federal question jurisdiction is divested by unsubstantial claims).

The Corrections Corporation of America is a private prison corporation that contracts with state and federal agencies for incarceration of those agencies' inmates. *Home v. Corrections Corp. of America*, 2006 WL 1722307, at *1 (D. Ariz. Jun. 20, 2006). Although civil rights actions under 42 U.S.C. § 1983 are not available to federal prisoners, a federal prisoner may bring an action against a federal employee at that prison under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). However, a *Bivens* action is analogous to a § 1983 claim. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948 (2009); see *Browning v. Pennerton*, 633 F. Supp. 2d 415, 431 n.11 (E.D. Ky. 2009). When *Bivens* is involved, a court uses § 1983 case law. *Tavarez v. Reno*, 54 F.3d 109, 110 (2d Cir. 1995); *Hallock v. Bonner*, 567 F. Supp. 2d 334, 337 (N.D. N.Y. 2008). Just as in a § 1983 case, a defendant cannot be held liable based on the theory of *respondeat superior*. *Browning*, 633 F. Supp. 2d at 431; *Okoro v. Scibana*, 63 Fed. Appx. 182, 184 (6th Cir. 2003). Prison supervisory responsibility alone cannot constitute liability. *Lyons v. United States*, 2009 WL 997300, at *18 (N.D. Ohio Apr. 14, 2009). Plaintiff has not sued any individual. It follows that NEOCC is not liable under *Bivens*.

An inmate has a due process right concerning his prison trust account. *Hampton v. Hobbs*, 106 F.3d 1281, 1287 (6th Cir. 1997); *Vance v. Barrett*, 345 F.3d 1083, 1089 n.6 (9th Cir. 2003); *Boyer v. Taylor*, 2009 WL 2338173, at *5 (D. Del. Jul. 30, 2009). In order to prove a procedural due process claim under § 1983, a plaintiff must show that: 1) he has a protectable life, liberty or property interest; 2) the state deprived him of this interest; and 3) the state did not

afford him adequate procedural rights prior to this deprivation. *Hahn v. Star Bank*, 190 F.3d 708, 716 (6th Cir. 1999); *Horen v. Board of Educ.*, 594 F. Supp. 2d 833, 842-843 (N.D. Ohio 2009). The third element of a procedural due process claim requires that a plaintiff show that the constitutional right was not adequately protected by state-law post-deprivation remedies. *Gardner v. City of Cleveland*, 2009 WL 2591621, at *5 (N.D. Ohio Aug 20, 2009) (citing *Parratt v. Taylor*, 451 U.S. 527, 543-44 (1981) (a § 1983 action is unavailable for deprivation of property without procedural due process where there exists a state remedy that comports with due process), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986). Plaintiff has not alleged that state remedies for return of his money are inadequate. *See Braley v. Pontiac*, 906 F.2d 220, 225 (6th Cir. 1990) (dismissing a § 1983 procedural due process claim because the plaintiff's state court tort action provided adequate procedural due process by post-deprivation redress).

Accordingly, this action is **DISMISSED** pursuant to 28 U.S.C. § 1915A. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: November 30, 2009



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE