

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ALBERT RICHARD, BOP #38190-079, §
Plaintiff, §
v. § CIVIL ACTION NO. H-15-0947
JOHN DOE, §
Defendant. §

MEMORANDUM OPINION AND ORDER

Federal prison inmate Albert Richard (BOP #38190-079), who has filed a complaint under 42 U.S.C. § 1983, states that he is incarcerated for theft of funds from Chase Bank. Richard alleges that an unidentified individual ("John Doe") is actually responsible for most of the money taken. Richard proceeds pro se and has not paid the filing fee. After reviewing all of the pleadings as required by 28 U.S.C. § 1915A, the court concludes that this case should be dismissed for reasons that follow.

Richard is currently in custody at FCI Pollock, a federal correctional institution. Court records show that Richard was convicted in this court of conspiracy to commit bank fraud. See United States v. Albert Richard, No. H-11-CR-477-4 (S.D. Tex. 2012). Richard has previously filed pleadings in which he has admitted that he was involved in a credit skimming conspiracy from January of 2011 through June of 2011. See Richard v. Doe,

No. H-14-3701 (S.D. Tex.) (habeas); Richard v. Doe, No. H-15-0021 (S.D. Tex.) (civil rights). In the prior actions Richard alleged that Chase Bank sent him a Form 1099 reporting that he had received \$8,319.00. Id. Richard further alleged that at approximately the same time a presentence report was issued, which held him liable for \$191,340.61. Richard complained that his sentence was based on the higher dollar amount and that he was ordered to pay restitution based on the presentence report. He claimed that he was damaged in the amount of \$183,021.61 (the difference between the two reports). These prior actions were dismissed as having no basis in law.

Richard raises identical claims in the present action. He seeks a judgment against an unidentified defendant who cannot be held liable because he is not a state actor. See Morris v. Dillard Dep't Stores, Inc., 277 F.3d 743 (5th Cir. 2001). Moreover, his claim that he is illegally incarcerated is barred by Heck v. Humphrey, 512 U.S. 477 (1994). Richard's complaint must therefore be dismissed as frivolous because it has no basis in law. 28 U.S.C. § 1915(e); 28 U.S.C. § 1915A; Berry v. Brady, 192 F.3d 504, 507 (5th Cir. 1999). Moreover, Richard's allegations and claims are duplicative of those raised in his prior actions and are subject to dismissal as malicious. Lewis v. Secretary of Public Safety and Corrections, 508 F. App'x 341, 344 (5th Cir. 2013), citing Pittman v. Moore, 980 F.2d 994, 994-95 (5th Cir. 1993); Wilson v. Lynaugh, 878 F.2d 846, 850 (5th Cir. 1989); Bailey v. Johnson, 846 F.2d 1019, 1021 (5th Cir. 1988).

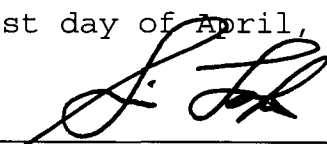
Richard must pay the filing fee, and the Bureau of Prisons Inmate Trust Fund will be ordered to withdraw the fee from Richard's account pursuant to 28 U.S.C. § 1915(b). See Hatchet v. Nettles, 201 F.3d 651 (5th Cir. 2000).

Conclusion

Based on the foregoing, the court **ORDERS** as follows:

1. Officials at the Bureau of Prisons Inmate Trust Fund are **ORDERED** to deduct funds from the inmate trust account of Albert Richard [BOP #38190-079] and forward them to the Clerk on a regular basis, in compliance with the provisions of 28 U.S.C. § 1915(b), until the entire filing fee (\$350.00) has been paid.
2. The Initial Pretrial and Scheduling Conference set for September 10, 2015 (Docket Entry No. 2), is **CANCELED**.
3. Richard's Civil Fraud Complaint Under 28 U.S.C. §1331 and §1332 (Docket Entry No. 1) is **DISMISSED with prejudice** under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim upon which relief can be granted.
4. Richard is admonished that he may face monetary sanctions if he continues to file duplicative and frivolous complaints or pleadings with the courts.
5. The Clerk is directed to provide a copy of this Memorandum Opinion and Order to the parties. The Clerk will also provide a copy of this Order by regular mail, facsimile transmission, or e-mail to (1) the Inmate Trust Fund Officer, Pollock FCI Medium, PO Box 4050, Pollock, LA 71467; and (2) the District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, on this 21st day of April, 2015.



SIM LAKE
UNITED STATES DISTRICT JUDGE