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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT B. KEENAN,

Plaintiff - Appellant,

v.

FIRST CALIFORNIA BANK,

Defendant - Appellee.

No. 06-56481

D.C. No. CV-06-01793-GPS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George P. Schiavelli, District Judge, Presiding

Submitted April 22, 2008 \*\*

Before: GRABER, FISHER, and BERZON, Circuit Judges.

Robert B. Keenan appeals the district court's order dismissing his action alleging claims under 42 U.S.C. § 1983 for violations of 42 U.S.C. § 407(a), as well as state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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de novo a dismissal pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), *Arrington v. Wong*, 237 F.3d 1066, 1069 (9th Cir. 2001), and we reverse.

The district court erred in dismissing the complaint with regard to Keenan's § 1983 claims because he sufficiently alleged that First California Bank deprived him of his rights under 42 U.S.C. § 407(a), and acted under the color of state law by surrendering Social Security funds in his bank account at the explicit direction of the California Franchise Tax Board. *See Franklin v. Terr*, 201 F.3d 1098, 1100 (9th Cir. 2000) (explaining that a § 1983 plaintiff must allege deprivation of a right under federal law and that defendant acted under color or state authority); *Carlin Communications, Inc. v. Mountain States Tel. & Tel. Co.*, 827 F.2d 1291, 1295 (9th Cir. 1987) (concluding that where the state commanded a phone company to take specific action with regard to a customer it "converted its otherwise private conduct into state action for purposes of § 1983").

Contrary to First California Bank's contentions, California Revenue and Taxation Code § 18674(a) does not provide immunity from Keenan's § 1983 claims. *See Kimes v. Stone*, 84 F.3d 1121, 1126-27 (9th Cir. 1996) ("the existence of § 1983 immunities is a matter of federal law" and "[c]onduct by persons acting

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under color of state law which is wrongful under 42 U.S.C. § 1983 or § 1985(3) cannot be immunized by state law”).

Because it is unclear whether the district court premised dismissal of the state law claims on dismissal of the § 1983 claims, we reinstate the state claims and remand to the district court for further proceedings.

**REVERSED and REMANDED.**

**United States Court of Appeals for the Ninth Circuit**  
**Office of the Clerk**  
95 Seventh Street; San Francisco, California 94103

**General Information**  
**Judgment and Post-Judgment Proceedings**

**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the file stamp date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1, 2)**

- The mandate will issue seven (7) calendar days after the expiration of the time for filing a petition for rehearing or seven (7) calendar days from the denial of a petition for rehearing, unless the court directs otherwise. If a stay of mandate is sought, an original and four (4) copies of the motion must be filed. The mandate is sent only to the district court or agency, we do not provide a copy to the parties.

**Publication of Unpublished Disposition (9th Cir. R. 40-2)**

- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency, or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**

**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to 4)**

**(1) A. Purpose (Panel Rehearing):**

- A petition for panel rehearing should only be made to direct the Court's attention to one or more of the following situations:
  - ▶ A material point of fact or law overlooked in the decision;
  - ▶ A change in the law which occurred after the case was submitted and which appears to have been overlooked by the panel;
  - ▶ An apparent conflict with another decision of the court which was not addressed in the opinion.
- Petitions which merely reargue the case should not be filed.

- If a petition for panel rehearing does not include a petition for rehearing en banc, the movant shall file an original and 3 copies.
- If the petition for panel rehearing includes a petition for rehearing en banc, the movant shall file an original and 50 copies.

#### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The bill of costs must be filed within 14 days after entry of judgment.
- See attached form for additional information.

#### **Attorney's Fees**

- Circuit Rule 39-1 describes the content and due dates for attorney fee applications.
- Any relevant forms are available on our website [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) or by telephoning 415 355-7806.

#### **Petition for Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourtus.gov](http://www.supremecourtus.gov)

#### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please notify **in writing within 10 days**:
  - ▶ West Publishing Company; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Kathy Blesener, Senior Editor), and
  - ▶ Clerk, U.S. Court of Appeals; PO Box 193939; San Francisco, CA 94119-3939 (Attn: Opinions Clerk).

**B. Purpose (Rehearing En Banc)**

- Parties should seek en banc rehearing only if one or more of the following grounds exist:
  - ▶ Consideration by the full court is necessary to secure or maintain uniformity of its decisions; or
  - ▶ The proceeding involves a question of exceptional importance; or
  - ▶ The opinion directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- ▶ A petition for rehearing may be filed within fourteen (14) days from entry of judgment. Fed. R. App. P. 40 (1)
- ▶ If the United States or an agency or officer thereof is a party in a civil appeal, the time for filing a petition for rehearing is 45 days from entry of judgment. Fed. R. App. P. 40 (1)
- ▶ If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- ▶ *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- ▶ *See* 9th Cir. R. 40-2 (motion to publish unpublished disposition)

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies**

- The format is governed by 9th Cir. R. 40-1 and Fed. R. App. P. 32(c)(2).
- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.
- The petition or answer must be accompanied by a certificate of compliance found at Form 11.