

JAN 14 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BILLY D. FOWLER,

Plaintiff - Appellant,

v.

U.S. BANK NATIONAL
ASSOCIATION, et al.,

Defendants - Appellees.

No. 08-35025

D.C. No. CV-07-5589-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted December 8, 2009**
Seattle, Washington

Before: GOULD and TALLMAN, Circuit Judges, and BENITEZ,*** District
Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

*** The Honorable Roger T. Benitez, United States District Judge for the Southern District of California, sitting by designation.

Billy D. Fowler appeals pro se from a district court's judgment finding no violation of Fowler's rights under the United States or Washington State Constitutions. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo a district court's dismissal, grant of summary judgment, and denial of remand to state court. *Proctor v. Vishay Intertechnology, Inc.*, 584 F.3d 1208, 1218 (9th Cir. 2009) (citations omitted). We affirm.

Fowler alleged, in a state court complaint removed to federal court, that defendants accessed his bank records in violation of his rights under the United States and Washington State Constitutions. Fowler's bank records were accessed in the course of a criminal investigation pursuant to orders issued by a state court judge.

The district court correctly concluded that Fowler's claims under the United States and Washington State Constitutions failed. *United States v. Miller*, 425 U.S. 435, 442-43 (1976) (finding no reasonable expectation of privacy in bank records); *Reid v. Pierce County*, 961 P.2d 333, 343 (Wash. 1998) (refusing to create a cause of action under article I, § 7 of the Washington Constitution). The district court also properly dismissed claims against the bank defendants because they are not state actors. *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 837-38 (9th Cir. 1999). Finally, the district court properly denied Fowler's motion to remand

to state court because the complaint stated federal claims. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001) (finding 42 U.S.C. § 1983 must be utilized to raise a violation of a constitutional right).

AFFIRMED.