UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 07-22346-CIV-GRAHAM

DEBORAH SERRANO,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.
_____/

DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO THE MOTION TO DISMISS COMPLAINT OR FOR A MORE DEFINITE STATEMENT

Defendant, United States of America, hereby replies to Plaintiff's Response to its Motion to Dismiss or for a More Definite Statement. Plaintiff's response to the government's Motion to Dismiss essentially ignores the crux of the government's argument: the facts alleged in the Complaint, even if accepted as true, fail to establish the United States of America is liable to Plaintiff.

Plaintiff alleges that she was involved in an automobile accident with an employee of the Miccosukee Tribe of Indians of Florida. Plaintiff has sued the United States under the Federal Tort Claims Act, which waives the government's immunity from lawsuits "for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment . . ." 28 U.S.C. §1346(b)(1) (underscore added). Plaintiff does not allege that Maria Perez is an employee of the United States government. Nor does Plaintiff allege any facts indicating that Ms. Perez was employed and acting in the scope the Miccosukee Tribe's administration, pursuant to "self-determination contracts" with the Secretary of the Interior and the Secretary of Health and Human Services, of programs or services that otherwise would have been

administered by the federal government. *See* 25 U.S.C. §450f(a). Without any indication of the nature of Ms. Perez's employment by the Tribe, the Complaint fails to establish that the United States would be liable under the FTCA for Ms. Perez's alleged negligence. Plaintiff appears to be operating under the mistaken assumption that all Tribal employees are covered by the Federal Tort Claims Act. As explained in the Motion to Dismiss, that simply is not the case.

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions . . . ." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (internal quotations and citations omitted). "Rule 8(a)(2) . . . requires a 'showing,' rather than a blanket assertion, of entitlement to relief. Without some factual allegations in the complaint, it is hard to see how a claimant could satisfy the requirement of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." *Id*. at 1965 n.3 (clarifying *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Plaintiff's Complaint here gives absolutely no indication why the United States of America is liable for her alleged damages. "[P]ursuant to *Twombly*, to survive a motion to dismiss, a complaint must now contain factual allegations which are 'enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true.'" *Berry v. Budget Rent a Car Systems, Inc*., 497 F. Supp. 2d 1361, 1364 (S.D. Fla. 2007) (quoting *Twombly*, 127 S. Ct. at 1965). If Plaintiff's Complaint is not dismissed pursuant to Rule 12(b)(6), Plaintiff should, at a minimum, be required to provide a more definite statement of her claim pursuant to Rule 12(e).

WHEREFORE, Defendant respectfully moves for dismissal of Plaintiff's Complaint or for an order requiring Plaintiff to file a more definite statement of her claim.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: /s Carlos J. Raurell

Carlos J. Raurell
Assistant U.S. Attorney
Fla. Bar No. 529893
Federal Justice Building
99 N.E. 4th Street, Third Floor
Miami, Florida 33132-2111
Tel. (305) 961-9243
carlos.raurell@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2007, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

s/ Carlos Raurell
Assistant United States Attorney