

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

Renee Kay Martin, et al.,

Plaintiffs,

v.

United States of America, et al.,

Defendants.

Case No. 3:22-cv-136

**UNITED STATES' REPLY IN SUPPORT
OF MOTION TO DISMISS FTCA
CLAIM**

The United States of America by Mac Schneider, United States Attorney for the District of North Dakota, and Michael D. Schoepf, Assistant United States Attorney, submits this Reply in Support of its Motion to Dismiss (Doc. 58). Any tort claims asserted against the United States or employees of the United States in their official capacities should be dismissed for lack of jurisdiction.

As the United States explained in its opening brief (Doc. 59), the Federal Tort Claims Act (“FTCA”) allows suits against the sovereign¹ with respect to certain tort claims only if the prospective plaintiff first presents and exhausts her administrative remedies. 28 U.S.C. § 2675(a) (“An [FTCA] action shall not be instituted . . . unless the claimant shall have first presented the claims to the appropriate Federal agency and his claim shall have been finally denied by the agency”); see also McNeil v. United States, 508 U.S. 106, 111–13 (1993) (holding that administrative claims must be presented and finally denied before bringing suit under the FTCA). Plaintiff Renee Kay Martin (“Plaintiff”) did not exhaust her administrative remedies with respect to her individual FTCA claims or any FTCA claims she attempted to bring on behalf

¹ Suits against federal employees in their official capacities are treated as suits against the United States. See 28 U.S.C. §§ 2675(a) and 2679(b)(1); Coleman v. Espy, 986 F.2d 1184, 1189 (8th Cir. 1993).

of TRL and BRW. See Declaration of Rebecca Pock (Doc. 60). She filed an individual administrative claim on August 19, 2022, but the United States had not yet acted on the administrative claim when she initiated this lawsuit four days later. See id. ¶¶ 6(a)–(b). No administrative claims were filed on behalf of TRL or BRW. See id. ¶ 10. Because no administrative claims were presented and exhausted before commencing this lawsuit, the Court lacks jurisdiction over any FTCA claims. McNeil, 508 U.S. at 111–13.

Plaintiff’s response to the United States’ Motion to Dismiss includes allegations about the actions of certain federal employees. However, the actions of the federal employees are irrelevant because there has been no exhausted administrative claim. See 28 U.S.C. § 2675(a); McNeil, 508 U.S. at 111–13. The United States cannot be sued in tort for the actions of its employees absent an exhausted administrative claim.

For the foregoing reasons, and the reasons explained in the United States’ opening brief (Doc. 59), Martin’s claims against the United States; Bureau of Indian Affairs Officers Kelan Gourneau, Michael Slater, Evan Parisien, Earl Charbonneau, and Heather Baker, in their official capacities; and FBI Agent Reed Mesman, in his official capacity, should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

Dated: July 24, 2023

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