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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

MARGARET BAKER

Plaintiff,

vs.

COLTON HOWARD, RICHARD AXTMAN,
TRUSTEE OF THE KOOTENAI JAIL-
JEREMY HYLE,

Defendants.

No. 2:25-cv-00136-BLW

**MEMORANDUM IN SUPPORT OF THE
UNITED STATES OF AMERICA'S
MOTION TO BE SUBSTITUTED AS THE
DEFENDANT AND TO DISMISS
PLAINTIFF'S COMPLAINT**

The United States of America (United States) respectfully submits this memorandum in support of its motion to: (1) substitute the United States as the defendant for all claims asserted against Officer Colton Howard (Howard) and Lieutenant Richard Axtman (Axtman), and (2) dismiss with prejudice the Complaint of Plaintiff Margaret Baker (Baker), ECF No. 1-2.

INTRODUCTION

Baker seeks tort damages based on allegations that, on May 9, 2024, two employees of the Coeur d' Alene Tribe, Howard and Axtman, violated Idaho Code § 18-9201 (False Imprisonment), Idaho Code § 18-905 (Aggravated Assault), and Idaho Code § 49-1406 (Failure to Take a Person without Unnecessary Delay before the Proper Magistrate). ECF No. 1-2 at 2. Because Howard and Axtman were acting within the scope of their employment in carrying out an Indian Self-

Determination and Education Assistance Act (ISDEAA) contract when they participated in the
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traffic stop underlying Baker's claims, Baker's claims are, as a matter of law, "deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act[.]" Pub. L. 101-512, Title III, § 314, Nov. 5, 1990, 104 Stat. 1959, as amended Pub. L. 103-138, Title III, § 308, Nov. 11, 1993, 107 Stat. 1416. Accordingly, the United States should be substituted as the defendant for all claims alleged against Howard and Axtman.

Baker's claims must be dismissed as to the United States for lack of subject matter jurisdiction for at least three reasons. *First*, the Federal Tort Claims Act (FTCA) does not waive sovereign immunity for claims "arising out of assault, battery, false imprisonment, false arrest...[and] abuse of process" unless those torts are committed by "investigative or law enforcement officers of the United States," 28 U.S.C. §2680(h). While Howard and Axtman are considered federal employees for purposes of the FTCA, they are not investigative or law enforcement officers of the United States. Accordingly, the United States has not waived sovereign immunity as to Baker's assault and false imprisonment claims. *Second*, Baker's claim that Howard and Axtman violated Idaho Code § 49-1406 fails because the FTCA waives sovereign immunity only "under circumstances where the United States, if a *private person*, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. 1346(b)(1) (emphasis added). A private person cannot be held liable under Idaho Code § 49-1406 because it does not provide a private cause of action and, on its face, it only applies to "peace officers." *Third*, Baker's claims must be dismissed because she has not pleaded facts establishing that she exhausted administrative remedies before filing this lawsuit—a jurisdictional prerequisite for all FTCA cases. 28 U.S.C. §2675(a).

Accordingly, the United States respectfully requests that it be substituted as the defendant for all claims alleged against Howard and Axtman and that the entirety of Baker's Complaint be

dismissed with prejudice as to the United States.

BACKGROUND

Under the ISDEAA, tribes enter into “self-determination contracts” with the United States Department of Interior’s Bureau of Indian Affairs (BIA) to administer programs or services that would otherwise be administered by the federal government. *See* 25 U.S.C. § 5301, *et seq.* The Coeur d’Alene Tribal Law Enforcement Services (LES) program is operated under an ISDEAA self-determination contract – also known as a 638 contract. *See* Declaration of Charles Taylor at ¶4-8. ISDEAA funding for the Coeur d’ Alene Tribal LES program was first awarded by the BIA in 2008. *See* Ex A Coeur d'Alene Tribe LES 638 Contract. On the date of the conduct alleged by Baker, May 9, 2024, the Coeur d’Alene 638 contract was in effect. *See* Declaration of Charles Taylor at ¶9, Ex A Coeur d'Alene Tribe LES 638 Contract, and Ex B Modification to Coeur d'Alene Tribe LES 638 Contract.

The Coeur d’Alene Tribe’s law enforcement functions are funded pursuant to the 638 contract with the BIA. Declaration of Charles Taylor at ¶ 8. The Tribe’s police enforce the Coeur d’Alene tribal code and Idaho state traffic code and regulations. *See* Ex A Coeur d'Alene Tribe LES 638 Contract, P. 33. The Tribe’s police maintain safe roads within the Coeur d’Alene reservation through traffic checks and carry out patrol duties to ensure protection of life, property, and crime prevention. *Id.* The Tribe’s police are authorized, upon reasonable cause, to enforce Idaho state laws related to the operation of motor vehicles within the state. *See* Idaho Code § 49-235).

Only Tribal law enforcement personnel that have been deputized as Special Law Enforcement Commissioned (SLEC) Officers by the BIA are authorized to enforce federal statutes; tribal Police are generally not authorized to enforce federal law unless they have been deputized by BIA with an SLEC. *See* Ex. A Coeur d'Alene Tribe LES 638 Contract, P. 58.

Howard and Axtman are employed by the Coeur d'Alene LES program. Declaration of Charles Taylor at ¶10. BIA has not, however, issued an SLEC to either Axtman or Howard; neither held an SLEC on the date of the traffic stop underlying Baker's Complaint. Declaration of Charles Taylor at ¶10-11.

On May 9, 2024, Howard and Axtman participated in a traffic stop of a vehicle being driven by Baker. *See generally* ECF No. 1-2 at 6. Baker subsequently sued Howard and Axtman in the District Court of the First Judicial District for the State of Idaho, County of Kootenai, alleging that in connection with this traffic stop Howard and Axtman violated Idaho Code § 18-9201 (False Imprisonment), Idaho Code § 18-905 (Aggravated Assault), and Idaho Code § 49-1406 (Failure to Take a Person without Unnecessary Delay before the Proper Magistrate) . ECF No. 1-2.

After certifying that Howard and Axtman were acting within the scope of their employment, the United States removed to Federal Court under 28 U.S.C. § 2679(d)(2). *See* ECF No. 1.

ARGUMENT

I. Legal Standards

A. Motion to Dismiss for Lack of Subject Matter Jurisdiction

A motion to dismiss under Rule 12(b)(1) challenges a court's subject-matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A lack of jurisdiction is presumed unless the contrary affirmatively appears. *Id.* A Rule 12(b)(1) motion can present either a facial or factual attack on jurisdiction. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). When deciding a facial attack, the court assumes the plaintiff's allegations are true. *Ojo v. Farmers Grp., Inc.*, 565 F.3d 1175, 1183 (9th Cir. 2009). Conversely, in a factual attack, "the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004).

In deciding a Rule 12(b)(1) motion, “the district court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony to resolve factual disputes concerning the existence of jurisdiction.” *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988); *see also Ass’n of Am. Med. Colls. v. United States*, 217 F.3d 770, 778 (9th Cir. 2000). The court may resolve factual disputes concerning the existence of jurisdiction without converting the motion to one for summary judgment. *Land v. Dollar*, 330 U.S. 731, 735 (1947).

Once a challenge to jurisdiction has been raised, the party opposing the motion to dismiss must “satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction.” *Id.* (quoting *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)).

B. Sovereign Immunity

“It is elementary that the United States, as sovereign, is immune from suit save as it consents to be sued ..., and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit.” *United States v. Mitchell*, 445 U.S. 535, 538 (1980). Waivers of sovereign immunity must be “unequivocally expressed in the statutory text[,] ... strictly construed in favor of the United States, and not enlarged beyond what the language of the statute requires.” *United States v. Idaho*, 508 U.S. 1, 6–7 (1993) (internal citations and quotations omitted). Sovereign immunity is a defense properly raised under Rule 12(b)(1). *Tobar v. United States*, 639 F.3d 1191, 1194 (9th Cir. 2011).

II. The United States should be Substituted as the Defendant for All Claims Against Howard and Axtman Because those Claims are Deemed to Be an Action Against the United States

Congress extended FTCA coverage and protections to tribal employees acting in the scope of their employment in carrying out self-determination contracts. *See* Pub. L. 101-512, Title III, § 314, Nov. 5, 1990, 104 Stat. 1959, as amended Pub. L. 103-138, Title III, § 308, Nov. 11, 1993, 107 Stat. 1416 (“Section 314”). In doing so, Congress provided that:

With respect to claims resulting from the performance of functions. . . under a contract . . . authorized by the Indian Self-Determination and Education Assistance Act of 1975 . . . an Indian tribe is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of Interior . . . while carrying out any such contract . . . and its employees are deemed employees of the Bureau . . . while acting within the scope of their employment in carrying out the contract or agreement [and that] any civil action or proceeding involving such claims brought hereafter against any . . . tribal employee covered by this provision *shall be deemed to be an action against the United States* and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act[.]

Id. (emphasis added).

Here, Howard and Axtman were acting within the scope of their employment and carrying out an ISDEAA contract when they participated in the traffic stop underlying Baker’s claims. As a result, they are immune from tort suit and Baker’s claims against them are deemed to be an action against the United States. Accordingly, the United States should be substituted as the defendant for all claims asserted by Baker against Howard and Axtman.

III. Plaintiff’s Intentional Tort Claims Must Be Dismissed for Lack of Subject Matter Jurisdiction

The FTCA provides a limited waiver of sovereign immunity for torts committed by federal employees. *See* 28 U.S.C. §§ 1346(b); *United States v. Orleans*, 425 U.S. 807, 813 (1976). This waiver is subject to exceptions. *See* 28 U.S.C. § 2680. One of these exceptions, set forth in 28 U.S.C. § 2680(h), specifies that the United States retains sovereign immunity as to “[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process” and other enumerated intentional torts. *Id.* This exception is often referred to as the “intentional tort exception.”

The intentional tort exception is limited by what is known as the law enforcement exception, which permits intentional tort claims “with regard to acts or omissions of investigative or law enforcement officers of the United States Government[.]” 28 U.S.C. § 2680(h). “For the purpose of this subsection, ‘investigative or law enforcement officer’ means any officer of the United States

who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.” 28 U.S.C. § 2680(h).

“Tribal law enforcement officers operating under a BIA contract or compact are not automatically commissioned as Federal officers; however, they may be commissioned on a case-by-case basis.” *See* 25 C.F.R. § 12.21(b). Accordingly, numerous courts have held that tribal officers who have not been issued SLEC and are not enforcing federal law are not “investigative or law enforcement officers of the United States” within the meaning of 28 U.S.C. § 2680(h). *See Dry v. United States*, 235 F.3d 1249, 1257-58 (10th Cir. 2000); *see also, Etsitty-Thompson v. United States*, Case No. 2:13-cv-159 TS, 2013 WL 4052621 (D. Utah Aug. 12, 2013); *Williams v. Naswood*, Case No. CV-10-8080-PCT-FJM, 2011 WL 867520 (D. Ariz. March 14, 2011); *Henderson v. United States*, Case No. 11-0168 MV/ACT, 2012 WL 4498871 (D. N.M. Sept. 19, 2012); *Henin v. Cancel*, 708 F. Supp. 2d 1315, 1319 (S.D. Fla. 2010); *Boney v. Valline*, 597 F. Supp. 2d 1167, 1178-1181 (D. Nev. 2009); *Washakie v. United States*, Case No. CV-05-462-E-BLW, 2006 WL 2938854 (D. Idaho Oct. 13, 2006); *Trujillo v. United States*, 313 F. Supp. 2d 1146, 1151 (D. N.M. Nov. 14, 2003).

Here, neither Axtman nor Howard has been issued a SLEC. In addition, they were enforcing state law, not federal law, when they participated in the traffic stop underlying Baker’s claims. Therefore, Baker’s intentional tort claims do not fall within the law enforcement exception to the intentional tort exception. Accordingly, her intentional tort claims must be dismissed for lack of subject matter jurisdiction because the United States has not waived sovereign immunity as to those claims.

IV. Plaintiff’s Idaho Code § 49-1406 Claim Must Be Dismissed for Lack of Subject Matter Jurisdiction Because a Private Person Could not be Held Liable Under the Alleged Circumstances

The FTCA waives sovereign immunity only “under circumstances where the United States, if a *private person*, would be liable to the claimant in accordance with the law of the place where

the act or omission occurred.” 28 U.S.C. 1346(b)(1) (emphasis added); *see also Woodbridge Plaza v. Bank of Irvine*, 815 F.2d 538, 543 (9th Cir. 1987) (explaining that the FTCA waives sovereign immunity “only if state law would impose liability on private persons under similar circumstances”). Baker’s claim that Howard and Axtman violated Idaho Code § 49-1406 does not fall within this waiver of sovereign immunity because a private person cannot be held liable under Idaho Code 49-1406 for two reasons. First, there is not private cause of action under Idaho Code § 49-1406. *See, e.g., Baker v. Schriro*, Case No. CIV 07-353-PHX-SMM, 2007 WL 3046764, at *5 (D. Ariz. 2007) (“Sections 1701 to 1704 of Title 18 makes it a crime to obstruct mail in a variety of ways. However, these statutes are criminal in nature, and do not provide a private right of action. These sections are penal in nature. Violation of a penal statute does not alone support an allegation of federal question civil jurisdiction.” (citations and quotation marks omitted)). Second, Idaho Code § 49-1406 states: “Whenever any person is halted by a *peace officer* for any violation of the provisions of this title not amounting to a misdemeanor and demands an immediate appearance before a magistrate, he shall be taken without unnecessary delay before the proper magistrate[.]” (emphasis added). Therefore, on its face, Idaho Code 49-1406 applies only to “peace officers,” not private persons. *Id.* Accordingly, Baker’s Idaho Code 49-1406 claim must be dismissed for lack of subject matter jurisdiction.

V. Plaintiff’s Complaint Must Be Dismissed for Failure to Exhaust Administrative Remedies

“The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies.” *McNeil v. United States*, 508 U.S. 106 (1993); *see also* 28 U.S.C. §2675(a) (“An action shall not be instituted upon a claim against the United States for money damages 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, unless the claimant shall have first presented the claim to the appropriate

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Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail.”). This administrative claim requirement “is jurisdictional in nature and may not be waived.” *Burns v. United States*, 764 F. 2d 722, 724 (9th Cir. 1985); *Blain v. United States*, 522 F. 2d 289 (9th Cir. 1977). Consequently, an action filed before exhaustion of administrative remedies is premature and must be dismissed. *See Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980) (“[S]trict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law”).

Here, Baker does not even allege that she filed an administrative claim, much less that her claim was exhausted. ECF No. 1-2, *passim*. Accordingly, this action is premature and must be dismissed. *See McNeil*, 508 U.S. at 110.

VI. Conclusion

For the foregoing reasons, the United States should be substituted as the defendant for all claims alleged against Howard and Axtman and those claims should be dismissed with prejudice for lack of subject matter jurisdiction.

DATED this 4th day of April 2025.

JUSTIN D. WHATCOTT
ACTING UNITED STATES ATTORNEY
By:

/s/ Elliot B. Wertheim
ELLIOT B. WERTHEIM
Assistant United States Attorney

Certificate of Service

I hereby certify that on April 4, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

And to the following non-CM/ECF participants:

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