

1 David Weaver
2 336 S. Thompson
3 P.O. Box 566
4 Tipton, CA 93272
5 (559) 752-4132

FILED

APR 01 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY  DEPUTY CLERK

David Weaver, In Pro Per Litigant

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11 DAVID LEE WEAVER

12 Plaintiff,

13 vs.

14 UNITED STATES DEPARTMENT
15 OF AGRICULTURE, FOREST
16 SERVICE, MICHAEL JAMES
17 RYAN, and DOES 1 through 100,

Defendants.

Case No. 1:10-CV-01523-AWI-SMS

**AMENDED COMPLAINT FOR
NEGLIGENCE AND PERSONAL
INJURY (MOTOR VEHICLE)**

Weaver v. USDA Forest

Doc. 12 Att. 3

18
19 Plaintiff, David Weaver alleges:

I

VENUE

22 Venue is appropriate in this Court under 28 U.S.C. section 1391(b) as a substantial part of
23 the acts and events giving rise to the claim occurred within this judicial district.

JURISDICTION

25 Jurisdiction is proper under 28 U.S.C. 2675 since this is a civil action against an agency
26 the U.S.D.A. Forest Service and its employee Mike Ryan for personal injuries and property
27 damage by plaintiff David Weaver.

28 ///

II

COMMON ALLEGATIONS

1. Plaintiff, is and at all times herein mentioned, was a resident in the State of California, County of Tulare.

2. Defendant, Michael James Ryan, is and at all times herein mentioned, was a resident in the State of California, County of Kern.

3. Defendant, United States Department of Agriculture. Forest Service is an agency organized by the United States Federal Government authorized to transact, and is transacting business in the State of California, County of Kern.

4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1 through 100, inclusive and, therefore, sues said Defendants and each of them by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named Defendants is negligently responsible in some manner for the occurrences herein alleged, and that Plaintiffs injuries as herein alleged were proximately caused by that negligence.

5. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, each of the Defendants was the agent and employee of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the course and scope of said agency and employment.

6. Plaintiff is informed and believes, and thereon alleges, that on or about May 4, 2009 said Defendant, Michael James Ryan, was the operator of a certain 2006 Ford Expedition bearing California license No. A318284.

7. Defendant, United States Department of Agriculture. Forest Service was the owner of the 2006 Ford Expedition and employed Defendant Michael James Ryan who was within scope and course of said employment when the within acts alleged in Plaintiff's complaint occurred.

8. At all times herein mentioned, Highway 99 is a public street and/or highway

1 within the County of Kern, State of California.

2 9. That on or about May 4, 2009 Plaintiff was traveling on Highway 99 in Kern
3 County, California, South of Whistler Rd. in a northerly direction, operating his 1993 BMW
4 license No. 4ZGF161. At that time and place, Defendants, and each of them, so negligently and
5 carelessly entrusted, owned, managed, employed maintained, drove and operated their motor
6 vehicle, so as to legally cause said motor vehicle to collide with the motor vehicle which
7 contained Plaintiff by making an unsafe lane change and as a result thereof, caused the injuries
8 and damages as described below.

9 10. On September 26, 2009 a timely governmental claim for damages pursuant to
10 Title 28 U.S.C. Section 2401(b) was presented to the United States Department of Agriculture
11 Forest Service for the injuries and damages suffered by Plaintiff, which was rejected by them on
12 February 22, 2010 and March 22, 2011 and served upon Plaintiff on March 16, 2010 and March
13 25, 2011 thus making the within action timely against the Defendants in compliance with Title
14 28 U.S.C. Section 2675. (See Exhibit "A" Attached)

15 **FIRST CAUSE OF ACTION**

16 **(Negligence)**

17 **(As to all Defendants and Does 1 through 100)**

18
19 11. Plaintiff realleges and incorporates in this cause of action paragraphs 1
20 through 10 of the Common Allegations, above, as fully set forth herein again.

21 12. That on or about May 4, 2009 Plaintiff was traveling on Highway 99 in Kern
22 County, California, south of Whistler Rd. in a northerly direction. At that time and place,
23 Defendants, and each of them, so negligently and carelessly entrusted, managed, maintained,
24 drove and operated their motor vehicle, so as to legally cause said motor vehicle to collide with
25 the motor vehicle which contained Plaintiff, and as a result thereof, caused the injures and
26 damages as described below.

27 13. As a result of the negligence of Defendants, and each of them, Plaintiff was hurt
28 and injured in Plaintiffs health, and strength and activity, sustaining injury to Plaintiffs nervous

1 system and person, all of which injuries have caused, and continue to cause, Plaintiff great
2 mental, physical and nervous pain and suffering. Plaintiff is informed and believes and thereon
3 alleges that such injuries will result in some permanent disability.

4 14. As a further result of the negligence of Defendants, and each of them, Plaintiff has
5 incurred, and will continue to incur, medical and related expenses for emergency and general
6 medical care and treatment as well as for future surgery in excess of \$75,000.00 to \$120,000.00..

7 15. As a further result of the negligence of Defendants, and each of them, Plaintiffs
8 earning capacity has been greatly impaired, both in the past and the present in an amount
9 according to proof.

10 16. As a further result of the negligence of Defendants, and each of them, Plaintiffs
11 motor vehicle was damaged in an amount according to proof as it was deemed a total loss from
12 the accident in the amount of \$5,595.00.

13 **WHEREFORE**, Plaintiff prays judgment against Defendants, and each of them for all
14 causes of action, as follows:

- 15 1. For general damages in an amount according to proof;
- 16 2. For medical and incidental expenses in an amount according to proof;
- 17 3. For loss of earnings in an amount according to proof;
- 18 4. For property damage/rental charges in the amount of \$5,595.00;
- 19 5. For interest as allowed by law;
- 20 6. For all costs of suit herein incurred; and
- 21 7. For all other and further relief as the Court deems just and reasonable.

22
23 Date: 4-1-2011

David Weaver
David Weaver, Plaintiff

FEB 22 2010

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. David Weaver
336 South Thompson
Tipton, California 93272

Dear Mr. Weaver:

Subject: Claim of David Weaver, Forest Service

The claim that you submitted on September 26, 2009, to the Forest Service, United States Department of Agriculture, filed pursuant to the Federal Tort Claims Act (FTCA), has been reviewed carefully by this office. Our review discloses no liability on the part of the United States. The claim, therefore, is denied.

The FTCA is a limited surrender of the sovereign immunity of the United States. United States v. Orleans, 425 U.S. 807, 813 (1976). The United States, as sovereign, is immune from suit, except to the extent it consents to be sued. The FTCA provides that the United States shall be liable for death, personal injury, or property damage caused by the negligent or wrongful act or omission of any employee of the agency acting within the scope of his or her office or employment, under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred. 28 U.S.C. 1346(b), 2674. Our review discloses no negligence or wrongful act on the part of an employee of the Government acting within the scope of his employment, and so your claim is denied.

You are advised of your right to file suit in an appropriate United States District Court within six months of the date of the mailing of this letter if you are dissatisfied with the results of this determination.

Sincerely,



L. Benjamin Young, Jr.
Assistant General Counsel
General Law Division

Exhibit "A"

2/22/10

a7B

2/22/10

1/20/22

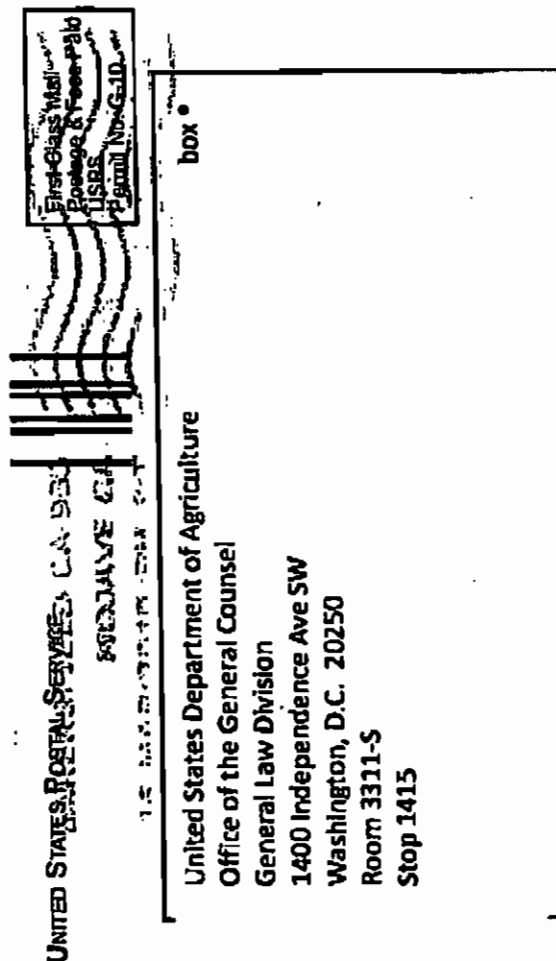
2

bcc: Janet Skeen
Tort Claims Contact
Forest Service

Kelly/Berry

mtj\berry 2/22/2010

V:\DRAFTMEMOS\WEAVERDEN.



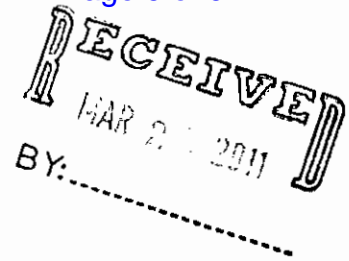
SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to: Mr. David Warner P.O. Box 566 Tipton, California 93272</p>		<p>A. Signature X David Warner <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>2. Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>B. Received by (Printed Name) David Warner C. Date of Delivery 3-28-11</p>	
<p>3. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>4. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail <input type="checkbox"/> Registered Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> C.O.D.</p>		<p>A. Restricted Delivery? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. AV (M) PSF</p>		<p>479 10295-02-44-1540</p>	



United States
Department of
Agriculture

Office of the
General
Counsel

Washington,
D.C.
20250-1400



CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Joseph C. Durante, Jr., Esq.
1007 North Demaree Street, Suite B
Visalia, California 93291

MAR 22 2011

Dear Mr. Weaver:

Subject: Claims of David Weaver; Forest Service

I am sending you this letter pursuant to my understanding, based on your letter dated March 9, 2011, to AUSA Jeffrey Lodge, that you have been retained to represent Mr. Weaver in this matter. This letter is to clarify that the certified letter of February 22, 2010, from this office to Mr. Weaver denying the personal injury and property damage claims that he submitted on September 26, 2009, to the Forest Service, United States Department of Agriculture, filed pursuant to the Federal Tort Claims Act, denied both his personal injury claim for \$120,000 of May 4, 2009, and his property damage claim of \$5595.00 of May 4, 2009. Both claims were received in the Forest Service Claims Management Unit on September 26, 2009. Our review prior to the denial letter of February 22, 2010, disclosed no liability on the part of the United States as to either claim. Mr. Weaver's claims, therefore, were denied in our letter of February 22, 2010. To the extent that our letter of February 22, 2010, could be considered a denial of only one, but not both, of his claims of September 26, 2009, this letter is the denial of the other claim.

You are advised of your client's right to file suit in an appropriate United States District Court within six months of the date of the mailing of this letter if he is dissatisfied with the results of this determination.

Sincerely,

for L. BENJAMIN YOUNG, JR.
Assistant General Counsel
General Law Division