

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 AIMAN ABUHAMDIEH,

6 Plaintiff,

7 v.

8 UNITED STATES POSTAL SERVICE,

9 Defendant.

Case No. 15-cv-05770-DMR

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS, OR IN THE
ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

Re: Dkt. No. 6

10 Pro se Plaintiff Aiman Abuhamdieh filed this lawsuit seeking damages related to a lost
11 mail package. Defendant United States Postal Service ("USPS") moves pursuant to Federal Rules
12 of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss the complaint, or in the alternative, for
13 summary judgment pursuant to Rule 56. [Docket No. 6.] The court held a hearing on the motion
14 on March 24, 2016. For the following reasons, the court grants Defendant's motion.

15 **I. BACKGROUND**

16 Plaintiff filed the present suit in San Mateo County Small Claims Court seeking damages
17 related to USPS's alleged loss of a package addressed to Plaintiff that contained a car part.
18 Plaintiff alleges that USPS owes him the total value of the lost car part plus taxes (\$428.45 +
19 \$38.65), as well as the incidental expenses he incurred to store his vehicle for eight days (8 x
20 \$95.00), for a total of \$1,227.01. Compl. ¶ 3. USPS sent Plaintiff a check for \$104.81, which
21 Plaintiff refused to cash because he believes it is not the correct amount owed. Compl. ¶ 4.

22 Defendant removed the action to this court. Defendant now moves to dismiss Plaintiff's
23 complaint. In the alternative, Defendant moves for summary judgment.

24 **II. ANALYSIS**

25 Plaintiff does not clearly plead the legal basis for his complaint. His claim can be
26 construed as either a tort claim, or as one for breach of an insurance contract with USPS. The
27 court will analyze both possibilities. See, e.g., *Anderson v. United States Postal Serv.*, 761 F.2d
28 527, 528 (9th Cir. 1985) (construing a similar claim as either tort or breach of insurance contract

1 claim); *Brandofino v. United States Postal Serv.*, 14 F. Supp. 2d 1160, 1162-63 (D. Ariz. 1998)
2 (same).

3 **A. Tort Claim**

4 Plaintiff's complaint can be interpreted as a claim that USPS lost Plaintiff's package
5 through negligence or other tortious act. Defendant argues that to the extent Plaintiff brings a tort
6 claim, the court lacks subject matter jurisdiction because USPS has not waived sovereign
7 immunity for such a claim. A motion to dismiss pursuant to Rule 12(b)(1) challenges the court's
8 subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). A court will dismiss a party's claim for
9 lack of subject matter jurisdiction "only when the claim is so insubstantial, implausible, foreclosed
10 by prior decisions of th[e Supreme] Court, or otherwise completely devoid of merit as not to
11 involve a federal controversy." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998)
12 (citation and quotation marks omitted); see Fed. R. Civ. P. 12(b)(1).

13 The USPS is an "independent establishment of the executive branch of the Government of
14 the United States," and is therefore "part of the Government." *United States Postal Serv. v.*
15 *Flamingo Indus.*, 540 U.S. 736, 744 (2004). Therefore, a suit against the USPS is a suit against
16 the United States. *Anderson*, 761 F.2d at 528. As a sovereign, the United States is immune from
17 suit and can be sued only to the extent it has waived its sovereign immunity. *United States v.*
18 *Mitchell*, 445 U.S. 535, 538 (1980). A waiver of sovereign immunity must be unequivocally
19 expressed and narrowly construed; it cannot be implied or liberally interpreted. *Al-Haramain*
20 *Islamic Found., Inc. v. Obama*, 705 F.3d 845, 850 (9th Cir. 2012). Absent an explicit waiver of
21 sovereign immunity, a district court has no jurisdiction over actions against the federal
22 government. *Mitchell*, 445 U.S. at 538.

23 Tort claims against the United States are governed by the Federal Tort Claims Act
24 ("FTCA"), 28 U.S.C. § 1346(b), which waives immunity from certain torts. 39 U.S.C. § 409(c).
25 The test to determine if a federal government entity is subject to suit is: (1) whether there is waiver
26 and (2) whether the entity is subject to the substantive law. *FDIC v. Meyer*, 510 U.S. 471, 476
27 (1994). This two-step analysis applies to inquiries into USPS' amenability to suit. *Carrier v.*
28 *Potter*, 379 F.3d 716, 724 (9th Cir. 2004).

1 Here, Plaintiff alleges that USPS failed to deliver a mail package that was addressed to
2 him. His claim does not pass the first prong of the Meyer test, because USPS is specifically
3 exempted from liability from tort claims “arising out of loss, miscarriage, or negligent
4 transmission of letters or postal matter.” 28 U.S.C. § 2680(b); see, e.g., Anderson, 761 F.2d at
5 528; Brandofino, 14 F. Supp. 2d at 1163. Such a claim is therefore barred by the doctrine of
6 sovereign immunity. The court grants Defendant’s Rule 12(b)(1) motion to the extent that
7 Plaintiff brings a tort claim.

8 **B. Breach of Contract Claim**

9 The complaint may also be construed as alleging that USPS breached its insurance contract
10 with Plaintiff. Under this construction, Defendant argues that Plaintiff’s complaint fails to state a
11 claim upon which relief may be granted, and thus must be dismissed under Rule 12(b)(6). In the
12 alternative, Defendant argues that it is entitled to summary judgment under Rule 56.

13 When a court considers matters outside the pleadings on a motion under Rule 12(b)(6), it
14 must convert the motion into a Rule 56 motion for summary judgment, and in so doing, the court
15 must give “[a]ll parties . . . a reasonable opportunity to present all the material that is pertinent to
16 the motion.” Fed. R. Civ. P. 12(d); see also San Pedro Hotel Co., Inc. v. City of L.A., 159 F.3d
17 470, 477 (9th Cir. 1998) (“In providing notice to the parties, ‘a district court need only apprise the
18 parties that it will look beyond the pleadings to extrinsic evidence and give them an opportunity to
19 supplement the record.’” (citation omitted)).

20 At the hearing, the court informed Plaintiff that to the extent he was suing USPS for breach
21 of contract, the court would convert Defendant’s Rule 12(b)(6) motion into a motion for summary
22 judgment. The court provided Plaintiff with notice of the requirements for opposing a motion for
23 summary judgment, (Docket No. 15), and also offered Plaintiff additional time to submit evidence
24 to support his claim. Plaintiff declined the opportunity, stating that he did not have any
25 supplemental evidence.

26 In support of its motion, Defendant submitted the declarations of Carole P. Johnson
27 Brown, Customer Experience Specialist for Defendant’s Office of the Consumer Advocate, and
28 Sandra L. Beverly, the Domestic Claims Manager at Defendant’s Accounting Service Center in St.

1 Louis, Missouri. [Docket Nos. 6-1, 6-2.] Both declarations contain evidence regarding Plaintiff's
2 submission of an administrative claim to USPS.

3 Defendant also submitted its Domestic Mail Manual ("DMM"), which contains the
4 regulations for all domestic mail. [Docket Nos. 6, 6-3, Request for Judicial Notice ("RJN"), Ex.
5 A.] The DMM is incorporated by reference into the Code of Federal Regulations and deemed
6 published into the Federal Register. A plaintiff is presumed to have notice of its contents.
7 *Gelbfish v. United States Postal Serv.*, 51 F. Supp. 2d 252, 254 (E.D.N.Y. 1999) (citations
8 omitted). Defendant attached the relevant portions of the DMM to its motion. RJN, Ex. A. Since
9 the DMM is published in the Federal Register and is publicly available, there is no likelihood of
10 reasonable dispute of the DMM's existence and its content. Accordingly, the court takes judicial
11 notice of the DMM pursuant to Federal Rule of Evidence 201(b).

12 A court shall grant summary judgment "if . . . there is no genuine dispute as to any material
13 fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The burden
14 of establishing the absence of a genuine issue of material fact lies with the moving party, see
15 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), and the court must view the evidence in the
16 light most favorable to the non-movant. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255
17 (1986) (citation omitted). A genuine factual issue exists if, taking into account the burdens of
18 production and proof that would be required at trial, sufficient evidence favors the non-movant
19 such that a reasonable jury could return a verdict in that party's favor. *Id.* at 248. The court may
20 not weigh the evidence, assess the credibility of witnesses, or resolve issues of fact. See *id.* at 249.

21 To defeat summary judgment once the moving part has met its burden, the nonmoving
22 party may not simply rely on the pleadings, but must produce significant probative evidence, by
23 affidavit or as otherwise provided by Federal Rule of Civil Procedure 56, supporting the claim that
24 a genuine issue of material fact exists. *TW Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809
25 F.2d 626, 630 (9th Cir. 1987).

26 The USPS is liable only to the extent that it agrees to be liable. *Brandofino*, 14 F. Supp. 2d
27 at 1164 (citation omitted). The DMM allows for insurance coverage of up to \$100.00 for
28 packages bearing an "Intelligent Mail" package barcode. DMM § 503.4.2(a) (at ECF p. 4).

1 Plaintiff's package bore the required code, and Plaintiff was therefore eligible to receive \$100.00
2 in insurance coverage under the DMM. Beverly Decl. ¶ 3, Ex. B (at ECF p. 7). Plaintiff
3 exhausted the administrative claim procedures outlined in the DMM. See DMM § 609 et seq.;
4 Brown Decl. ¶ 2; Beverly Decl. ¶¶ 2-3. Defendant paid Plaintiff \$104.81, which was the
5 maximum insurance amount plus postage. Brown Decl. ¶ 4. Plaintiff does not dispute that he
6 received a check for \$104.81. Compl. ¶ 4. USPS is not liable in excess of this amount. See
7 Green v. Hill, No. C93-2700-MHP, 1994 WL 10018, at *2 (N.D. Cal. Jan. 12, 1994) (granting
8 summary judgment on a claim against USPS for the value of a damaged package because USPS
9 had paid plaintiff the full amount of insurance coverage). Accordingly, since Plaintiff has failed to
10 show a genuine dispute of material fact as to his breach of contract claim, the court grants
11 summary judgment on that claim.

12 **III. CONCLUSION**

13 For the foregoing reasons, Defendant's motion to dismiss, or in the alternative, motion for
14 summary judgment, is GRANTED.

15
16 **IT IS SO ORDERED.**

17 Dated: April 29, 2016

