

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CARMEN NIEVES,)	CASE NO. 1:12 CV 1814
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
UNITED STATES POSTAL SERVICE,)	<u>AND ORDER</u>
)	
Defendant.)	

On July 16, 2012, this case was removed from the Cleveland Municipal Court, Small Claims Division, pursuant to 28 U.S.C. § 1442(a), by the Defendant United States Postal Service. The action removed was filed by Plaintiff *pro se* Carmen Nieves, who seeks damages in the amount of \$200 for an insured package he alleges was not delivered by Defendant.

It is a jurisdictional prerequisite to a federal lawsuit that a claimant who seeks recovery from the United States must first file an administrative claim under the Federal Tort Claims Act (“FTCA”). *Rogers v. United States*, 675 F.2d 123, 124 (6th Cir. 1982). As there is no allegation Plaintiff presented an administrative claim to the appropriate federal agency, the Complaint is fatally deficient. *Altman v. Connally*, 456 F.2d 1114, 1116 (2d Cir. 1972).

Further, even had Plaintiff exhausted his administrative remedies, “[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter,” 28 U.S.C. § 2680, is barred by the doctrine of sovereign immunity. This is because such claims are specifically excluded under the FTCA. *Davric Maine Corp. v. United States Postal Service*, 238 F.3d 58, 62 (1st Cir.

2001).

Accordingly, this action is dismissed. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

s/ Christopher A. Boyko
CHRISTOPHER A. BOYKO
UNITED STATES DISTRICT JUDGE

DATED: September 20, 2012