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Defendant.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

RICARDO JOSE HUERTAS BAUZA"
Plaintiff,
v.
OSCAR P. FOURNIER GONZALEZ,
OSCART. FOURNIER GONZALEZ,

Civil No. 13-1254 (GAG)

MEMORANDUM OPINION AND ORDER

On October 5, 2012, Ricardo Huertas Bauza ("Plaintiff") filed this motion against Oscar Fournier Gonzalez ("Fournier") and Universal Insurance Company (collectively "Defendants") in the Court of First Instance. (Docket No. 7-1.) Plaintiff claimed Fournier negligently operated his vehicle in a manner that caused a collision with Plaintiff's vehicle. (See id. at 1.) On March 27, 2013, Defendants removed the case to federal court citing the court's exclusive jurisdiction to adjudicate claims arising under the Federal Torts Claims Act ("FTCA"), 28 U.S.C. 1346(b). On 15 May 16, 2013, Defendants filed a motion to dismiss claiming Plaintiff failed name the United States 16 as the defendant and to exhaust his administrative remedies. (See Docket No. 8.) Plaintiff never responded to the motion. Accordingly, the court **GRANTS** Defendants motion to dismiss.

I. Discussion

19 The FTCA is the exclusive remedy for a plaintiff to sue the government or an employee of 20 the government for tortious actions. 28 U.S.C. \S 1346(b)(1). The proper defendant in a suit under 21 the FTCA is the United States. See 28 U.S.C. § 2679; Nieves-Romero v. U.S., 715 F.3d 375, 378 22 (1st Cir. 2013). Claims against government agencies or employees are improperly brought under 23 the FTCA and must be dismissed. See McCloskey v. Mueller, 446 F.3d 262, 266 (1st Cir. 2006). 24 Additionally, a plaintiff alleging violations of the FTCA must exhaust all available administrative 25 remedies. See 28 U.S.C. § 2675(a); Ortiz-Lebron v. U.S., Civil No. 10-1513 (SEC), 2012 WL 26 6552782, at *4 (Dec. 14, 2012). "Exhaustion of administrative remedies is a jurisdictional, 27 non-waivable prerequisite to the prosecution of a FTCA claim." Id. (citing Santiago-Ramirez v. 28

Civil No. 13-1325 (GAG)

1 Sec'y of Dept. of Def., 984 F.2d 16, 8 (1st Cir.1993)).

Plaintiff has presented no argument that he has exhausted his administrative remedies.
Similarly, Plaintiff has not communicated with the court his desire to amend his complaint to sue
the United States as required. Therefore, the court must GRANT Defendants' motion to dismiss
and DISMISSES Plaintiff's claims without prejudice.

SO ORDERED.

In San Juan, Puerto Rico this 1st day of August 2013.

s/Gustavo A. Gelpí

GUSTAVO A. GELPI United States District Judge