

1  
2  
3  
4  
UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

MARÍA MARTÍNEZ MEDINA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE – RURAL  
DEVELOPMENT, THROUGH ITS  
DIRECTOR JOSÉ A. OTERO-GARCÍA,

Defendant.

Civil No. 3:15-CV-01859 (JAF)

5  
6  
**ORDER**7  
8  
9  
This matter is before the court on the motion to dismiss filed by Defendant United States Department of Agriculture-Rural Development through its director José A. Otero-García (“USDA-RD”) (ECF No. 12).10  
11  
12  
13  
14  
On May 15, 2015, Plaintiff María Martínez-Medina (“Martínez”) filed a complaint in Puerto Rico Court of First Instance in Toa Alta against the USDA-RD, claiming \$1,000,000 in damages, \$50,000 in attorney’s fees, and for reimbursement of \$21,000 of insurance proceeds paid by Cooperativa de Seguros Múltiples. Defendant USDA-RD removed the matter to federal court.15  
16  
17  
18  
19  
On August 25, 2015, Defendant USDA-RD moved to dismiss Plaintiff Martínez’s complaint. (ECF No. 12). In its motion, USDA-RD argues that this court lacks jurisdiction under Fed. R. Civ. P. 12(b)(1), since the named defendant USDA-RD is not a proper party in an action brought under the Federal Tort Claims Act, and because Plaintiff Martínez failed to exhaust her administrative remedies. Additionally, Defendant

1 USDA-RD asserts dismissal is warranted under Fed. R. Civ. P. 12(b)(6). Plaintiff  
2 Martínez failed to oppose the motion to dismiss.

3 “[I]t is within the district court’s discretion to dismiss an action based on a party’s  
4 unexcused failure to respond to a dispositive motion when such response is required by  
5 local rule,” so long as the result “does not clearly offend equity.” *See NEPSK, Inc. v.*  
6 *Town of Houlton*, 283 F.3d 1, 7 (1st Cir.2002) Under Loc. R. 7(b), “[u]nless within  
7 fourteen (14) days after the service of a motion the opposing party files a written  
8 objection to the motion, incorporating a memorandum of law, the opposing party shall be  
9 deemed to have waived objection.”

10 The court also finds merit to Defendant USDA-RD’s motion to dismiss. Plaintiff  
11 Martínez failed to properly name the United States as the proper party defendant. *See*  
12 *Roman v. Townsend*, 224 F.3d 24, 28 (1st Cir. 2000) (citing *Allgeier v. United States*, 909  
13 F.2d 869, 871 (6th Cir.1990) (“Failure to name the United States as defendant in an  
14 FTCA suit results in a fatal lack of jurisdiction.”) (citations omitted)). “[T]he United  
15 States is the only proper party defendant under the FTCA, and federal courts lack subject  
16 matter jurisdiction as to purported FTCA claims brought against federal agencies or their  
17 employees.” *Barros-Villahermosa v. United States*, No. CIV. 06-1491, 2007 WL  
18 4149805, \*4 (D.P.R. Nov. 19, 2007) (citing *Aviles-Diaz v. United States*, 194 F .Supp.2d  
19 85, 86 (D.P.R. 2002).

20 Accordingly, Defendant United States Department of Agriculture-Rural  
21 Development’s motion to dismiss for lack of subject matter jurisdiction (ECF No. 12) is

1 GRANTED. Plaintiff María Martínez-Medina's complaint is dismissed. Judgment shall  
2 enter accordingly.

3 **IT IS SO ORDERED.**

4 San Juan, Puerto Rico, this 16th day of November, 2015.

5  
6  
7

S/José Antonio Fusté  
JOSE ANTONIO FUSTE  
U. S. DISTRICT JUDGE