HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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| DAN A. RYAN,<br><br>Plaintiff,<br><br>v.<br><br>UNITED STATES OF AMERICA,<br><br>Defendant. | CASE NO. C13-5521 RBL<br><br>ORDER GRANTING MOTION TO DISMISS<br><br>[Dkt. #8] |

## I. INTRODUCTION

THIS MATTER is before the Court on Defendant United States of America's Motion to Dismiss [Dkt. #8]. Plaintiff Dan A. Ryan, through the State of Washington, brought a claim against the United States under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, for bodily injuries sustained in an accident at Naval Base Kitsap-Bangor. On April 5, 2010, Ryan was driving a large truck through a security gate when the security system accidentally activated and large bollards rose up under the truck. [Dkt. #1, Complaint at ¶3.1]. This caused the truck to stop abruptly, injuring Ryan's chest and right wrist. [*Id.*]. Ryan received worker's compensation benefits for his injuries from the Washington State Department of Labor and

Industries. [Dkt. #10, Response at 1-2]. He then assigned his potential FTCA claims against the federal government to the State. [*Id.* at 2].

On May 19, 2010, the State advised the Navy that it would be seeking recovery of general and special damages from the Navy on behalf of Ryan. [*Id.*]. The Navy responded with a blank Standard Form 95 (SF 95), which is the Navy's recommended (but not required) method for claimants to submit claims. [*Id.*].

On March 1, 2011, Terry Lumsden was named a Special Assistant Attorney General of the State of Washington for the purpose of pursuing Ryan's FTCA claim. [*Id.*]. From April 2011 to December 2011, Lumsden sent four letters to the Navy regarding Ryan's claim. [Dkt. #1, Ex. A]. Two of these letters included medical records and bills totaling $4850.15. [*Id.*, Ex. A at2-4]. Lumsden itemized these bills in the letters, and totaled the bills under the heading "Current Medical Specials." [*Id.*]. In each letter, below the total Lumsden stated, "[m]y demand, including a medical summary, will follow shortly under separate cover." [*Id.*]. The December 2011 letter did not include any figure, but instead indicated that Ryan was diagnosed with permanent arthritis in his right thumb, and that Lumsden would forward more receipts and bills as he received them. [*Id.*, Ex. A at 5].

Lumsden did not contact the Navy again until January 24, 2013, when he submitted an SF 95 with a sum certain demand of $500,000. [*Id.*, Ex. B]. Because of Ryan's continued problems with arthritis, this figure was substantially higher than the previous "current medical specials." On March 13, 2013, the United States rejected the claim, stating that the perfected

claim was filed on January 30, 2013[1], and the two-year statute of limitations on FTCA claims had run on April 4, 2012. [*Id.*, Ex. C].

Ryan filed this action on June 25, 2013, arguing that the claim was perfected when the Navy received the letters specifying current medical specials at $4850.15, and the updated figure of $500,000 was a proper amendment of the claim, allowed under 28 C.F.R. § 14.2(c) ("[A properly presented claim] may be amended by the claimant at any time prior to final agency action…"). The United States argues that the letters and medical bills supplied by Lumsden did not claim a "sum certain" as required to perfect a claim under the FTCA. The United States argues that the claim was not perfected until January 30, 2013, some nine months after expiration of the statute of limitations.

## II. DISCUSSION

"The FTCA waives the sovereign immunity of the United States for actions in tort." *Jerves v. United States*, 966 F.2d 517, 518 (9th Cir. 1992). An action against the United States for damages resulting from the tortuous conduct of a government agency or employee must be brought under the FTCA, 28 U.S.C. §§ 1346(b), 2671-2680. Before filing an FTCA action against the government, a plaintiff must first satisfy the administrative claim requirements set forth in 28 U.S.C. § 2675 by presenting "(1) a written statement sufficiently describing the injury to enable the agency to begin its own investigation, and (2) a sum certain damages claim." *Blair v. Internal Revenue Serv.*, 304 F.3d 861, 868 (9th Cir. 2002) (quoting *Warren v. United States Dep't of Interior Bureau of Land Mgmt.*, 724 F.2d 776, 780 (9th Cir. 1984)).

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[1] The parties dispute whether the SF 95 was filed on January 24, 2013, or January 30, 2013. This dispute does not matter for purposes of this Order, as both dates are well after the statute of limitations expiration date of April 4, 2012.

The primary purpose of the requirements is "to facilitate settlement of these disputes." *Caidin v. United States*, 564 F.2d 284, 287 (9th Cir. 1977). To that end, an administrative claim must be presented to the appropriate agency within two years, or "it shall be forever barred." 28 U.S.C. § 2401(b). These jurisdictional requirements are strictly construed and must be satisfied before a district court can acquire subject-matter jurisdiction over an FTCA claim. *See, e.g.*, *Vacek v. United States Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006) ("[w]e have repeatedly held that the exhaustion requirement is jurisdictional and must be interpreted strictly."); *Bailey v. United States*, 640 F.2d 344, 346 (9th Cir. 1981) ("in construing the states of limitations, which is a condition of [the FTCA's] waiver requirement, we should not take it upon ourselves to extend the waiver beyond that which Congress intended") (internal quotations omitted).

Ryan failed to present a claim for a sum certain within two years after the April 5, 2010, accident. Ryan's perfected his claim when he submitted an SF 95 in January 2013 for a sum certain of $500,000—nine months after the statute of limitations expired.

Ryan argues that his counsel's letters to the Navy, which referenced medical costs totaling $4850.15, "supply all the information required in 28 U.S.C. § 2675(a)." [Dkt. #1 at ¶ 4.1]. But the submission of medical invoices alone does not satisfy the sum certain requirement of the FTCA. *Blair*, 304 F.3d at 869-70; *Bailey*, 642 F.2d at 347; *Nigh v. United States*, 534 F. Supp. 2d 1170, 1178 (D. Mont. 2008) ("submission of medical or other bills to the appropriate federal agency does not, by itself, satisfy the sum certain requirement"); *Kokotis v. United States Postal Serv.*, 223 F.3d 275, 279 (4th Cir. 2000).

Here, the "current medical specials" Ryan's counsel totaled in two letters do not amount to a sum certain because current medical specials are only one portion of an overall damages claim and the letters indicate that a "demand" will follow later. The State told the Navy it would

seek to recover special *and general* damages. [Dkt. #11, Decl. of Terry E. Lumsden, Ex. 1 at 2]. In multiple letters, Ryan's counsel clearly articulated that a "demand" would be forthcoming. [Dkt. #1, Ex. A at 1, 3, 4]. Moreover, the "current medical specials" contemplate only past medical expenses, not future expenses. Although there are examples in which an amount claimed in a letter will be considered sum certain, the $4850.15 total presented in these letters was nothing more than a total of medical expenses to date. There is no plausible evidence indicating that this figure was ever meant to be a sum certain damages claim, and the Court will not construe it as such now.

While dismissing Ryan's otherwise proper claim on a procedural technicality is not the Court's preferred *modus operandi*, the purpose of the claim presentation requirement makes clear why dismissal is appropriate. The FTCA links both the authority to settle a claim and the source of settlement funds to the amount of the underlying claim. 28 U.S.C. § 2672; *Kokotis*, 223 F.3d at 279. By failing to present a timely claim for a sum certain, Ryan prevented the Navy from assessing the settlement value of his claim, undermining the settlement goals of the FTCA. The United States Motion to Dismiss is GRANTED. [2]

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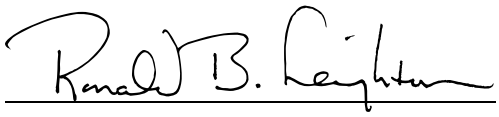
[2] Because the Court determines that Ryan failed to present a claim for a sum certain, the Court need not discuss Ryan's additional argument that his January 2013 submission of an SF 95 was an amendment to his earlier claim.

## III. CONCLUSION

The United States' Motion to Dismiss [Dkt. #8] is **GRANTED**. Ryan's claim is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated this 10th day of December, 2013.



RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE