

1 HONORABLE RONALD B. LEIGHTON

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5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 DOUGLAS J. BALL,

10 Plaintiff,

v.

11 UNITED STATES OF AMERICA,

12 Defendant.

CASE NO. C17-5056RBL

ORDER

13  
14 THIS MATTER is before the Court on the Government's Motion to Dismiss Plaintiff's  
15 Claims Pursuant to Fed. R. Civ. P. 12(b)(1) and Rule 56. The Court has reviewed the record, and  
16 for set forth during oral argument and the reasons below, the motion is **GRANTED** and the  
17 Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

18 On July 26, 2014, Plaintiff Ball was injured in a motorcycle accident on Skate Creek  
19 Road in the Gifford-Pinchot National Forest ("GPNF"). He sued under the Federal Tort Claims  
20 Act ("FTCA"). Ball claims the Forest Service ("FS") was negligent in designing, constructing, or  
21 maintaining the road where the accident occurred. Specifically, Plaintiff alleges that the road (1)  
22 should have had a guardrail; (2) should have had a smooth even surface; and (3) the FS  
23 improperly set the speed limit on the road at 45 miles per hour.

1 The United States argues that the discretionary function exception to the FTCA bars  
2 Ball's claims for negligent design, reconstruction, and maintenance of a FS Road. FS employees  
3 must exercise their judgment and discretion in managing and maintaining FS Roads in GPNF,  
4 based on a multitude of factors, all while balancing and weighing various competing policy  
5 considerations that implicate concerns about the environment, public access and safety, resource  
6 allocation, topography, and preservation of natural and cultural resources. Several courts have  
7 found that these are exactly the type of decisions that Congress has determined should be  
8 shielded from liability.

9 The United States also claims it is entitled to summary judgment on Ball's claim that the  
10 FS negligently set the speed limit at 45 miles per hour, because the speed limit on the curve  
11 where he crashed was properly set at 25 miles per hour. The speed limit on the FS road where the  
12 accident occurred is 35 miles per hour, unless otherwise posted. The area where Ball crashed was  
13 clearly marked with a yellow warning sign indicating curves ahead and setting the speed limit at  
14 25 miles per hour for the next mile. Ball testified he was going between 30 and 40 miles per hour  
15 when he crashed on the final curve in the one-mile 25 mile per hour zone; he was exceeding the  
16 posted speed limit and driving too fast for conditions.

## 17 I. FACTS

### 18 A. Roads in the National Forest System.

19 Congress mandated the creation of the NFS forest transportation system. It declared that  
20 the "construction and maintenance" of an "adequate system of roads and trails within and near  
21 the national forests and other lands administered by the FS" is "essential if increasing demands  
22 for timber, recreation, and other uses of such lands are to be met," and that such a system is  
23 "essential to enable the Secretary of Agriculture ... to provide for intensive use, protection,  
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1 development, and management of these lands under principles of multiple use and sustained  
2 yields of products and services.” *See* 16 U.S.C. § 532.

3 Through this system, the FS manages the roads under its authority and control. Congress  
4 provides funds for the NFS and appropriations are generally used to construct and maintain FS  
5 roads and routes. Construction and maintenance work on forest transportation facilities with  
6 appropriated funds are used for what is “necessary and economically justified for the protection,  
7 administration, development, and multiple-use management of the federally owned lands and  
8 resources served.” 36 C.F.R. § 212.4(a).

9 The GPNF is one of the oldest national forests in the United States, and garners an  
10 average of 1,210,000 visitors per year. Established in 1908, the GPNF provides clean water,  
11 timber, food, wildlife habitat, diverse recreational opportunities, and a place to enjoy solitude in  
12 a busy world. The GPNF encompasses 1,368,300 acres, 180,600 of which are wilderness areas,  
13 and includes the Cowlitz Valley Ranger District, the Mt. Adams Ranger District, and the  
14 Mount St. Helens Monument.

15 The GPNF has 3,285 miles of roads open to highway-legal vehicles. The  
16 GPNF Visitor Guide includes a section on safe driving on Forest  
17 System roads:

18 Once you know your route, it is important to stay safe! Most roads are gravel,  
19 many are narrow, and some are accessible only by high-clearance vehicles. Drive  
at safe speeds and respect the limitations of your vehicle!

20 \*\*\*

21 Keep in mind that most roads on the forest are unpaved and many are closed in  
22 the winter season. Roads are also subject to heaving and pot holes, thanks to a lot  
of Freezing and thawing throughout colder months, as well as our abundance of  
23 loosely packed soils from volcanic eruptions. Drive slowly and stay safe.

24 [Pages 3&6]

1 The Visitor Guide also encourages drivers to obtain a free copy of the Motor Vehicle  
2 Use Map (“MVUP”). The 2014 GPNF MVUP explains operator responsibilities:

3 Motor vehicle use, especially off-highway vehicle use, involves inherent risks that  
4 may cause property damage, serious injury, and possibly death to participants.  
5 Drive cautiously and anticipate rough surfaces and features such as snow, mud,  
6 vegetation, and water crossings common to remove driving conditions. By your  
7 participation, you voluntarily assume full responsibility for these damages, risks,  
8 and dangers. Take care at all times to protect yourself and those under your  
9 responsibility.

10 [Page 3].

11 Skate Creek Road, (also known as Forest Road 52) travels east and west, between  
12 Packwood and Elbe. FR 52 travels through low elevation forest following Skate Creek. The  
13 forest contains evergreen and deciduous trees and offers fall colors and plenty of cooler  
14 temperatures in the summer. The area offers several dispersed camping sites and fishing in the  
15 creek. In the winter, FR 52 is frequently closed (and gated) when the snow gets too deep to drive  
16 safely. FR 52 is listed on the GPNF website as an opportunity for nature viewing, but visitors are  
17 warned: “FR 52 is a paved road that has had low maintenance for a number of years. Please  
18 watch your speed. There are a number of slumps and potholes in the road.”

19 “Level 3” FS roads like FS 52 are “open and maintained for travel by a prudent driver in  
20 a standard passenger car, but user comfort and convenience are not considered priorities.” Level  
21 3 roads are typically low speed, single lane roads with turnouts and spot surfacing. Some roads  
22 may be fully surfaced with either native or processed material. Some surface roughness is  
23 tolerated on Level 3 roads. User comfort and convenience is a low priority. Level 3 roads have  
24 low to moderate traffic volume, typically connect to arterial and collectors roads, a combination  
of dips and culverts provide drainage, and potholing or wash-boarding may occur. The  
Guidelines include pictures of typical Level 3 roads.

1           Because it is not possible to maintain every GPNF road each year, a schedule of road  
2 maintenance is developed based on staff input, road classifications, and any unforeseen  
3 circumstances. FS employees develop a road maintenance plan, based on the condition of roads  
4 within GPNF, and determine which roads require maintenance during the upcoming year. After  
5 compiling a complete list of each road that will be maintained in a given year, the FS designates  
6 roads that have priority and which must be maintained prior to all other roads. Priority is  
7 determined on factors such as safety, road condition, anticipated and historical road use, road  
8 surface, and availability of funding for road projects. These maintenance decisions are included  
9 in the annual road maintenance plan, and road crews then implement that plan. The plan is fluid  
10 must be adaptable when issues or needs emerge throughout the year.

11           Under the 2014 GPNF Road Maintenance Plan, the highest priority work is based on the  
12 operational maintenance level. The Plan’s work schedule depends on seasonal and GPNF  
13 priorities. Emergency response is the highest priority. Other road maintenance work is performed  
14 “as required.” The Plan also vests FS employees with discretion to perform road maintenance “as  
15 needed.” Thus, FS employees have discretion to maintain FR 52 as needed, and as required, after  
16 considering all of the competing FS interests, while operating within the budgetary constraints  
17 for any given year.

18           FR 52 was closed the winter of 2013-2014, due to snow levels that made it unpassable. In  
19 April, 2014, prior to opening the road for the season, the road crew inspected FR 52 and  
20 performed road maintenance consistent with that performed on Level 3 roads. First, they  
21 performed surface and roadway maintenance, asphalt surface maintenance, and pothole patching;  
22 they used a cold patch to patch any potholes or potholes that are forming. Second, they did  
23 surface cleaning; they broomed FR 52 from fog line to fog line. Third, they performed  
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1 maintenance on and cleaned the ditch and drainage structures; they cleaned out the ditch lines of  
2 the debris that develops over the winter and cleaned all of the inlets and outlets of the culvert so  
3 water will flow freely. Fourth, they performed maintenance on signs, traffic control devices and  
4 sign markers; they replaced any signs that were unreadable, damaged, or missing. On July 24,  
5 2014, FR 52 was maintained in manner consistent with a Level 3 FS road.

6 Sarah Rockey, District Engineer for Gifford Pinchot National Forest, testified that the  
7 condition of FR 52 on the corner where the accident occurred, as depicted in the pictures Ball  
8 took a few days after the accident, was consistent with a Level 3 road. Rockey testified that the  
9 entire 17.9 miles of the road that the FS maintains has the type of bumps depicted in the  
10 photographs. FR 52 has been a rough road, consistent with the photographs, since Rockey began  
11 working at GPNF in 2005. As a result of weather conditions, vehicle traffic, and other factors,  
12 FR 52 has always had rough and uneven surfaces and other irregularities consistent with a Level  
13 3 road. On July 26, 2014, Ball embarked on an “annual three pass motorcycle ride” with friends  
14 from Yakima through Chinook, Cayuse, and White Pass, returning to Yakima. The trip normally  
15 takes between five to six hours. Ball was riding a Harley-Davidson, one friend was riding a  
16 Yamaha, and another friend followed in a car. Ball testified that the road conditions were clear  
17 and dry; it was “gorgeous.” The group decided to take FR 52 toward Paradise, in Mt. Rainier  
18 National Park. Somewhere between milepost 13 and milepost 14 Ball’s motorcycle bottomed out  
19 and he lost control and went down an embankment. Ball testified that he was going 30 to 40  
20 miles per hour at the time of the crash.

## 21 **II. STANDARD OF REVIEW**

### 22 **A. Subject Matter Jurisdiction**

23 Fundamentally, federal courts are of limited jurisdiction. *Kokkonen v. Guardian Life Ins.*  
24 *Co.*, 511 U.S. 375, 377 (1994). “A federal court is presumed to lack jurisdiction in a particular

1 case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes*, 873  
2 F.2d 1221, 1225 (9th Cir. 1989). Limits on federal jurisdiction must neither be disregarded nor  
3 evaded. *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). A plaintiff bears  
4 the burden to establish that subject matter jurisdiction is proper. *Kokkonen*, 511 U.S. at 377.

5 When a defendant challenges jurisdiction “facially,” all material allegations in the  
6 complaint are assumed true, and the question for the court is whether the lack of federal  
7 jurisdiction appears from the face of the pleading. *Thornhill Publishing Co. v. General*  
8 *Telephone Electronics*, 594 F.2d 730, 733 (9th Cir. 1979). A defendant may also attack the  
9 existence of subject matter jurisdiction apart from the pleadings. In such a case, a court may rely  
10 on evidence extrinsic to the pleadings and resolve factual disputes relating to jurisdiction. *St.*  
11 *Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989); *Roberts v. Corrothers*, 812 F.2d 1173,  
12 1177 (9th Cir. 1987); *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). Here, the  
13 United States’ challenge is factual.

#### 14 **B. Summary Judgment.**

15 Summary judgment is appropriate if there is no genuine issue as to any material fact, and  
16 the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving  
17 party has the initial burden of demonstrating that summary judgment is proper. *Adickes v. S.H.*  
18 *Kress & Co.*, 398 U.S. 144, 157 (1970). The moving party must identify the pleadings,  
19 depositions, affidavits, or other evidence that it “believes demonstrates the absence of a genuine  
20 issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). “A material issue of  
21 fact is one that affects the outcome of the litigation and requires a trial to resolve the parties’  
22 differing versions of the truth.” *S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

1 The burden then shifts to the opposing party to show that summary judgment is not appropriate.  
2 *Celotex*, 477 U.S. at 324. The opposing party’s evidence is to be believed, and all justifiable  
3 inferences are to be drawn in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255  
4 (1986). However, to avoid summary judgment, the opposing party cannot rest solely on  
5 conclusory allegations. *Berg v. Kincheloe*, 794 F.2d 457, 459 (9th Cir. 1986). Instead, it must  
6 designate specific facts showing there is a genuine issue for trial. *Id.*; *see also Butler v. San*  
7 *Diego District Attorney’s Office*, 370 F.3d 956, 958 (9th Cir. 2004).

### 8 III. ANALYSIS

#### 9 A. Discretionary Function Exception to the FTCA.

10 The FTCA waives sovereign immunity allowing tort claims against the government for  
11 the negligent or wrongful act or omission of an employee acting within the scope of his or her  
12 office or employment. 28 U.S.C. § 1346(b). This waiver of immunity is limited when the  
13 government is performing a discretionary function. The discretionary function exception to the  
14 FTCA precludes government liability for any claim based upon the exercise or performance, or  
15 failure to exercise or perform, a discretionary function or duty, even if the discretion involved is  
16 abused. *See* 28 U.S.C. § 2680(a).

17 The exception restores the government’s immunity in situations where its employees are  
18 carrying out governmental or regulatory duties. *See Chadd v. United States*, 794 F.3d 1104, 1108  
19 (9th Cir. 2015); *Blackburn v. United States*, 100 F.3d 1426, 1428 (9th Cir. 1996); *Faber v.*  
20 *United States*, 56 F.3d 1122, 1124 (9th Cir. 1995). Because the waiver of sovereign immunity is  
21 jurisdictional, the court lacks subject matter jurisdiction over a claim that falls within the  
22 discretionary function exception. *See GATX/Airlog Co. v. United States*, 286 F.3d 1168, 1173  
23 (9th Cir. 2002). The exception applies regardless of whether the government agent was negligent  
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1 in his duties, so long as his duties were discretionary. *Kennewick Irrigation District v. United*  
2 *States*, 880 F.2d 1018, 1029 (9th Cir. 1989).

3 The Supreme Court set forth a two part test to govern application of the discretionary  
4 function exception in *Berkovitz v. United States*, 486 U.S. 531, 536 (1988), and expounded on  
5 the test in *United States v. Gaubert*, 499 U.S. 315, 324 (1991). The Ninth Circuit has adopted the  
6 *Berkovitz* test. See *Olson v. United States*, 362 F.3d 1236, 1239 (9th Cir. 2004) (overruled on  
7 other grounds). The test is:

- 8 1. Whether the challenged conduct is discretionary - whether it involves an element  
9 of judgment or choice; and
- 10 2. Whether the judgment is of the kind that the discretionary function was designed  
to shield one based on considerations of public policy.

11 Here, the challenged conduct is FS officials' management and maintenance of FR 52.  
12 Ball alleges general negligence in "designing, constructing, and/or maintaining" the road. Ball's  
13 administrative claim to the FS claimed that FR 52 was improperly designed, constructed, and  
14 maintained, without guardrails and with an uneven surface.

15 The issue is whether controlling statutes, regulations and administrative policies  
16 mandated that FS officials design, construct, and maintain FR 52 in a certain manner. If they do  
17 not, then The FS officials' decisions are protected by the discretionary function exception, so  
18 long as the decisions were "susceptible" to policy analysis.

19 Directives are issued through the FS Directive System, which is comprised of the FS  
20 Manual ("FSM") and related FS Handbooks ("FSH") published by the Office of the Chief. The  
21 FSM relevant to design, reconstruction, and maintenance of FS roads is FSM 7700, Travel  
22 Management. The pertinent sections are Chapter 7700 – Zero Code, Chapter 7710 - Travel  
23 Planning, and Chapter 7730 - Road Operation and Maintenance. The FSH relevant to design,  
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1 reconstruction, and maintenance of FS roads is FSH 7709.59 - Road System Operations and  
2 Maintenance Handbook.

3           FSM 7700 does not contain any mandatory directives directing FS officials to design,  
4 construct, and maintain FS roads in a certain manner. Rather, it provides broad policy objectives  
5 and “General Considerations” that specifically vest discretion with the FS employees in making  
6 decisions regarding management of the Forest transportation system. FS employees have  
7 discretion to provide a Forest transportation system that best achieves the desired conditions  
8 identified in the applicable land management plan. They are tasked with identifying the  
9 minimum road system needed for safe and efficient travel and for administration, utilization, and  
10 protection of NFS lands. They give priority to maintaining and reconstructing the most heavily  
11 used roads to provide safe and efficient travel and to reduce environmental impacts.

12           FSM 7710 does not contain any mandatory directives directing FS officials to design,  
13 construct, and maintain FS roads in a certain manner. Instead, it gives FS employees discretion  
14 to:

- 15           (1) provide for a safe and cost-effective transportation system;
- 16           (2) provide for orderly improvement and management of the forest transportation system;
- 17           (3) determine the minimum road system needed for sustainable public and agency access  
18 to achieve the desired conditions in the applicable land management plan to promote ecosystem  
19 health; and to address public safety and efficiency of operations in an environmentally sensitive  
20 manner within current and anticipated funding levels;
- 21           (4) determine appropriate motor vehicle uses of NFS roads;
- 22           (5) designate NFS roads for motor vehicle use;

1 (6) provide for and manage an appropriate range of motorized recreational experiences,  
2 while minimizing conflicts among uses; and

3 (7) provide access for the use and enjoyment of NFS lands.

4 FSM 7730 also does not contain any mandatory directives directing FS officials to  
5 operate and maintain FS roads in a certain manner. Rather, FS employees have discretion to  
6 maintain FS roads to accommodate their intended use safely and in accordance with maintenance  
7 criteria contained in the road management objectives. They develop annual road maintenance  
8 plans for all NFS roads based on road management objectives, travel analysis, and expected  
9 travel. *Id.* at pg. 26. In developing these plans, they consider both short-term and long-term needs  
10 and all sources of maintenance funding available during the fiscal year. In case of a funding  
11 shortfall, FS employees allocate available funds in order of priority established in road  
12 maintenance plans.

13 Nor does FSH 7709.59 contain any mandatory directives requiring FS employees to  
14 design, construct, and maintain FS roads in a certain manner. Rather, it “provides guidance for  
15 conducting planning, traffic management, investment sharing (cost share), highway safety, traffic  
16 studies, road maintenance, and other road system operations and maintenance activities.” FS  
17 employees have discretion to operate and maintain the NFS road system in a manner that  
18 provides for user safety; support for resource programs; implementation of management area  
19 direction; protection of road investment, the environment, and adjacent resources; and meeting  
20 applicable air and water quality standards. FS employees develop road management objectives  
21 from the appropriate management area direction, access management objectives, and similar  
22 sources of resource management direction, standards, and guidelines. When developing road  
23 management objectives, FS employees consider (1) environmental and resource considerations;

1 (2) legal requirements; (3) road users; (4) vehicle characteristics; (5) traffic requirements; (6)  
2 safety; and (7) economics.

3 Finally, the Guidelines for Road Maintenance Levels and the GPNF Road Maintenance  
4 Plan for 2014 are relevant to the maintenance of GPNF FS roads. The Guidelines do not contain  
5 any mandatory directives for determining maintenance levels. Rather, they were developed “for  
6 the guidance” to FS employees. The Guidelines are designed to help FS employees achieve  
7 consistent application of road management and maintenance standards. They are designed as a  
8 guideline to enable the operation and maintenance of byways within the FS system in a manner  
9 which takes account of public use, including safety and enjoyment, the environment and adjacent  
10 natural and cultural resources, and agency constrains, including budget and personnel. The  
11 Guidelines track FSH 7709.58 (above), and similarly do not contain mandatory directives with  
12 respect to design, reconstruction, or maintenance of FS Roads.

13 In short, there are no mandatory statutes, regulations, or policies requiring FS employees  
14 to take a specific course of action in managing, designing, reconstructing, or maintaining GPNF  
15 FS roads in, or specifically FR 52.

16 **B. Forest Service Officials’ Decisions Regarding Road Design, Reconstruction, and**  
17 **Maintenance Level Classification Decisions are Susceptible to Policy Analysis.**

18 The second, policy-based prong of the *Berkovitz* test is grounded in the notion that the  
19 discretionary function exception is designed to “prevent judicial ‘second guessing’ of legislative  
20 administrative decisions grounded in social, economic, and political policy through the medium  
21 of an action in tort.” *Kelly v. United States*, 241 F.3d 755, 760 (9<sup>th</sup> Cir. 2001) (citing *Gaubert*,  
22 499 U.S. at 323). The relevant inquiry is not whether an explicit balancing is proved, but whether  
23 a decision is susceptible to policy analysis. *Kennewick*, 880 F.2d at 1028; *see also Prescott v.*  
24 *United States*, 973 F.2d 696, 703 n.5 (9th Cir. 1992); *Childers v. United States*, 40 F.3d 973, 974

1 n.1 (9th Cir. 1994). The decision, or non-decision, must be one that is susceptible to policy  
2 judgment and involves an exercise of political, social, or economic judgment. *Gaubert*, 499 U.S.  
3 at 325. When government policy allows a government agency to exercise its discretion, it must  
4 be presumed that the agent’s acts are grounded in policy when exercising that discretion. *Id.* at  
5 324; *Miller v. United States*, 163 F.3d 591, 593-94 (9th Cir. 1998).

6 Pursuant to FSM 7700, FS employees must consider the following objectives when  
7 managing the Forest transportation system and motor vehicle use on NFS roads:

- 8 • To provide sustainable access in a fiscally responsible manner to NFS lands for  
9 administration, protection, utilization, and enjoyment of NFS lands and resources  
10 consistent with the applicable land management plan.
- 11 • To manage the Forest transportation system, including motor vehicle use on NFS roads  
12 within the environmental capabilities of the land.
- 13 • To provide an appropriate range of recreation opportunities on NFS lands and to  
14 minimize conflicts among users of NFS lands.
- 15 • To manage the Forest transportation system to address user safety and convenience and  
16 efficiency of operations in an environmentally responsible manner and, where needed, to  
17 restore ecosystems along NFS roads designed for motor vehicle use, within the limits of  
18 current and anticipated funding levels.

19 FS employees “[b]alance Forest transportation facility investments and maintenance costs with  
20 current and future budgets to maintain the health of the land and water quality; provide for user  
21 safety; and provide public and administrative access.” They consider and minimize effects of  
22 construction, reconstruction, maintenance, and decommissioning of Forest roads on natural and  
23 cultural resources. They identify the benefits of public access to NFS lands and the  
24 environmental costs of road-associated effects, taking into account public safety, affordability,  
and management efficiency. Additionally, they “ensure that road management decisions are  
based on consideration of environmental, social, and economic impacts.”

Pursuant to FSM 7710, FS employees also “determine the minimum road system needed  
for sustainable public and agency access to achieve the desired conditions in the applicable land

1 management plan; to promote ecosystem health; and to address public safety and efficiency of  
2 operations in an environmentally sensitive manner within current and anticipated funding  
3 levels.” They “consider and minimize effects of transportation facility construction,  
4 reconstruction, maintenance, and decommissioning on heritage resources, ecological processes,  
5 and ecosystem health, diversity, and productivity.”

6 The discretion allowed under the FSMs, the FSHs, the Guidelines, and the Annual Plan,  
7 for design, reconstruction, and maintenance of FS Road 52, is of the type that Congress intended  
8 to be protected from liability and is susceptible to policy analysis. And GPNF employees  
9 specifically considered numerous policy concerns in making road maintenance decisions in  
10 2014. Therefore, the second prong of the discretionary function exception has been met as a  
11 matter of law. Accordingly, the discretionary function exception to the FTCA applies and Ball’s  
12 FTCA action is barred. The Defendants’ motion to dismiss is **GRANTED**.

13 **C. The United States is Entitled to Summary Judgment on Plaintiff’s Speed Limit Claim.**

14 Ball’s administrative claim included an expert opinion that the FS negligently set the  
15 speed limit where the accident occurred at 45 miles per hour. But the speed limit on FR 52 is 35  
16 miles per hour, unless otherwise posted, and the curve where plaintiff crashed was posted at 25  
17 miles per hour. As soon as Ball crossed over from the portion of FR 52 that was maintained by  
18 Lewis County, onto the portion maintained by the FS (at milepost 3.44) a posted speed limit sign  
19 stated, “Speed Limit 35 on All Roads Within the National Forest, Unless Otherwise Posted.” At  
20 milepost 10.96, the speed was posted at 45 miles per hour. At milepost 12.93, the posted speed  
21 limit was reduced to 25 miles per hour for the next mile, with a warning sign notifying drivers of  
22 curves ahead for the next mile. At milepost 14.01, the posted speed limit increased to 35 miles  
23 per hour. Ball’s accident occurred on the last curve in the one-mile warning area between  
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1 milepost 13 and 14. Thus, Ball was warned to travel 25 miles per hour between milepost 13 and  
2 14 where the crash occurred.

3 The FS posts signs with speeds that they expect people to follow and that they believe are  
4 a reasonable and safe speed on the road. They place warning signs to warn motorists of corners,  
5 hazards, or recommended speeds. Plaintiff admitted that he saw warning sign and 25 mile per  
6 hour speed limit sign at milepost 12.93, and he believed he was required to follow it. When  
7 asked what he understood the warning sign to mean he testified, “[w]ell, especially on the bike,  
8 the 25 means 25.” He stated, “[t]hey—you have to abide by that, because if you go through a  
9 corner at 25 miles per hour—that, if you go through it at 30 or 35, you’re feeling it. You’re  
10 braking. You’re doing things you shouldn’t be doing.”

11 The speed limit at the accident scene is 25 miles per hour. Ball has presented no evidence  
12 that 25 miles per hour is not an appropriate speed for that section of FR 52. As such, the  
13 defendants’ motion for summary judgment on this point is **GRANTED**.

#### 14 **IV. CONCLUSION**

15 FS employees’ decisions concerning the design, construction and maintenance of FR 52  
16 all involve discretion of the kind that implicate the discretionary function exception to the FTCA.  
17 The Motion to Dismiss is **GRANTED**. The speed limit posted, together with the warning sign

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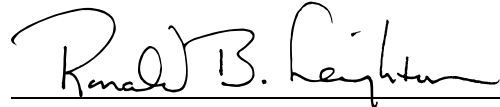
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1 posted, for the precise spot of the accident advises the plaintiff of reducing his speed. There is no  
2 dispute about these facts. The Motion for Summary Judgment is on this point is **GRANTED**.

3 Plaintiff Ball's claims are **DISMISSED WITH PREJUDICE**.

4 **IT IS SO ORDERED.**

5 Dated this 28<sup>th</sup> day of August, 2018.

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8 Ronald B. Leighton  
9 United States District Judge  
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