

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

KEVIN ICKES,

Plaintiff,

v.

CASE NO. 07-3252-SAC

UNITED STATES,
et al.,

Defendants.

O R D E R

This complaint under the Federal Torts Claim Act, 28 U.S.C. 2671, et seq. (FTCA), was filed and the filing fee was paid by an inmate at the United States Penitentiary, Marion, Illinois. Plaintiff seeks compensation for damage he believes was done by mailroom personnel at the United States Penitentiary, Leavenworth, Kansas, to a Bible he ordered from a publishing company while he was an inmate at Leavenworth.

Upon screening the complaint, the court found this FTCA action may proceed only against the United States, and should be dismissed as against the four additional defendants improperly named by plaintiff. The court additionally found plaintiff's recovery in this case will be limited to the amount set forth in his administrative claim, which was the amount he paid for the Bible: \$95.48. 28 U.S.C. § 2675(b). The court further found, pursuant to 42 U.S.C. § 1997e(e), that plaintiff's claim for damages in the amount of \$24,994.52 for mental or emotional injury should be dismissed. Plaintiff was given thirty (30) days to show

cause why all defendants other than the United States and his claim for punitive damages should not be dismissed from this action.

Plaintiff has filed a "Motion to Amend Civil Action" (Doc. 3) in which he moves the court to allow amendment of his complaint in response to the court's prior Order. Therein, he requests to amend his complaint to retain the United States as defendant and dismiss the other named defendants; to dismiss his claim for punitive damages; and to amend his request for damages to the replacement cost of the Bible (\$95.48), the filing fee paid herein and other costs allegedly incurred by him in bringing this action.

The court finds plaintiff's motion to amend should be sustained, and the complaint should be amended and supplemented as stated therein. The court further finds a responsive pleading is required to the complaint.

IT IS THEREFORE ORDERED that plaintiff's Motion to Amend Complaint (Doc. 3) is granted and the complaint is amended and supplemented as stated in the motion; that this action is dismissed as against all named defendants except the United States, and that plaintiff's claim for punitive damages in the amount of \$24,994.52 is dismissed.

IT IS FURTHER ORDERED THAT the clerk of the court shall prepare summons and waiver of service forms pursuant to Rule 4(d) of the Federal Rules of Procedure, to be served on defendant by a United States Marshal or a Deputy Marshal at no cost to plaintiff absent a finding by the court that plaintiff is able to pay such

costs.

IT IS FURTHER ORDERED that the screening process under 28 U.S.C. § 1915A having been completed, this matter is returned to the clerk of the court for random reassignment pursuant to D.Kan.R. 40.1.

Copies of this Order shall be transmitted to plaintiff, to defendant, and to the United States Attorney for the District of Kansas.

IT IS SO ORDERED.

Dated this 27th day of December, 2007, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge