

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

WILLIE FOXX,

Plaintiff,

v.

CASE NO. 11-3020-SAC

UNITED STATES OF AMERICA, et al.,

Defendants.

O R D E R

Plaintiff, a prisoner incarcerated in the United States Penitentiary in Leavenworth, Kansas, proceeds pro se in this civil action. Plaintiff has paid the initial partial filing fee assessed by the court under 28 U.S.C. § 1915(b)(1), and is granted leave to proceed in forma pauperis. Plaintiff remains obligated to pay the remainder of the \$350.00 district court filing fee in this civil action, through payments from his inmate trust fund account as authorized by 28 U.S.C. § 1915(b)(2).

Having reviewed the complaint, the court finds plaintiff is seeking damages from the United States under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.*, on allegations of negligence in the prison medical care provided him by Dr. McCollum. The court finds a response to the FTCA complaint is required,¹ and further

¹Plaintiff broadly suggests the negligence of Dr. McCollum, combined with policies and practices of the Bureau of Prisons, has resulted in medical care being withheld from plaintiff in violation of the Eighth Amendment. The court finds this bare statement is insufficient to establish any plausible constitutional claim for damages under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against Dr. McCollum. Also, the

finds the United States is the sole appropriate defendant in this matter, as the FTCA authorizes suits only against the United States, and not against individual defendants or agencies. 28 U.S.C. § 2680(a)

IT IS THEREFORE ORDERED that plaintiff's motion for leave to proceed in forma pauperis (Doc. 4) is granted, with payment of the remainder of the \$350.00 district court filing fee to proceed as authorized by 28 U.S.C. § 1915(b)(2), and that summons issue according to law.

IT IS FURTHER ORDERED that Dr. McCollum is dismissed as a defendant, and that the United States remains as the sole defendant in this action.

IT IS SO ORDERED.

DATED: This 8th day of September 2011 at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge

United States has not waived sovereign immunity to allow a suit for damages against the Bureau of Prisons under *Bivens*. See *F.D.I.C. v. Meyer*, 510 U.S. 471, 485 (1994)(claim for damages arising from alleged constitutional violations cannot be asserted against United States agencies).