

# United States Court of Federal Claims

No. 09-795C

April 28, 2010

UNPUBLISHED

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**JO ANN MARSHBURN WILSON,**

*Plaintiff,*

**v.**

**UNITED STATES OF AMERICA,**

*Defendant.*

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*Jo Ann Marshburn Wilson, pro se.*

*Gregg Paris Yates, Civil Division, Commercial Litigation Branch, United States Department of Justice, Washington, DC, for defendant.*

## OPINION AND ORDER

**Block, Judge.**

*Pro se* plaintiff, Jo Ann Marshburn Wilson<sup>1</sup>, brings this suit for a litany of grievances against the United States, various departments of the federal government, and a number of private parties. Defendant has moved for dismissal of the complaint for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Rules of the United States Court of Federal Claims, or, in the alternative, for a more definite statement. After reviewing plaintiff's pleadings, numerous exhibits, and "[d]efinite statement," and drawing all reasonable inferences in plaintiff's favor, the court finds that it lacks jurisdiction over plaintiff's claims. In particular, plaintiff's claims do not arise under any money-mandating constitutional or statutory provision, but, rather, sound in tort, and otherwise implicate the actions of private parties. Accordingly, defendant's motion to dismiss is granted.

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<sup>1</sup> Although plaintiff has not submitted a formal application to proceed *in forma pauperis*, her complaint includes an apparent request to do so, along with documents demonstrating need. Accordingly, plaintiff's request to proceed *in forma pauperis* is GRANTED.

## I. BACKGROUND

Plaintiff's complaint consists of five hand-written pages and over eighty pages of exhibits.<sup>2</sup> In response to defendant's motion to dismiss, plaintiff filed an equally lengthy and largely duplicative pleading. Thereafter, plaintiff filed what she variably called a "second reply" and "[d]efinite statement," which filing the court allowed as a sur-reply to defendant's motion. *See* Pl.'s Sur-Reply at 1–2. The court has waded through plaintiff's filings and their voluminous attachments and has discerned the following.

Plaintiff is a 54-year old, honorably discharged veteran who receives workers' compensation benefits due to a hearing injury sustained as "a result of her work for the Federal Government," specifically, the U.S. Postal Service, which employment ended in 1988. Compl. Ex. 1 at 2, 40, 63, 65. No stranger to the courts, plaintiff has previously been involved, in some capacity, in no fewer than eight legal proceedings. *See* Compl. Ex. 1 at 56, 61, 79; Pl.'s Sur-Reply Ex. 1 at 10–11.

Plaintiff's instant complaint recounts a host of grievances with several private parties. One such grievance is with Florence Marshburn, plaintiff's sister-in-law, and apparently traces back to a dispute over certain real property that plaintiff inherited following the death of her mother in 2000. *See, e.g.*, Compl. at 2, 4; Pl.'s Resp. at 3, Ex. 1 at 15; Pl.'s Sur-Reply at 1. Plaintiff alleges—as she has previously done in multiple venues, including in a prior case before this court<sup>3</sup>—that Florence Marshburn stole a large insurance-policy payment out of plaintiff's mailbox. Compl. Ex. 1 at 24, 61, 79. Plaintiff also accuses Michael Steven Watson, the father of plaintiff's youngest daughter, of "marriage fraud." Pl.'s Resp. at 4–5. Relatedly, plaintiff alleges that the federal government prevented some requests for child support from reaching Watson, while he was stationed with the military. *Id.*

More broadly, plaintiff alleges that the United States—through the actions of numerous federal agencies and departments, as well as federal and state courts—supported and conspired with Florence Marshburn, Michael Steven Watson, and others, in their endeavors to defraud plaintiff. *See, e.g.*, Compl. at 1, 4; Pl.'s Sur-Reply at 2–3. In truth, plaintiff alleges a veritable conspiracy among the executive branch of the federal government and the private parties. *See, e.g.*, Compl. at 2 ("Defendant with help of executive departments help conceal implied contract of marriage with the United States government"), 3 ("the executive branch of government help to defraud Plaintiff"); Pl.'s Resp. at 3 ("state and federal office of personnel management, act of U.S. Postal Service and Veterans Affairs has force plaintiff to abandon and surrender all asset for the Defendant Debt [sic]"). Plaintiff also suggests that Florence Marshburn, with the complicity of the federal government, "defraud[ed] [plaintiff] . . . of military [and] federal civil . . . disab[ility]" benefits. Compl. at 4; *see also* Pl.'s Resp. at 4.

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<sup>2</sup> For ease of reference, the court has numbered these attached pages sequentially, 1–84, starting with the first page after the Index. The court has similarly numbered the pages attached to plaintiff's response and sur-reply to defendant's motion to dismiss.

<sup>3</sup> *See* Pl.'s Resp. Ex. 1 at 29 (Order by Judge Margolis, filed February 17, 2005, in *Wilson v. United States*, No. 04-1460, dismissing complaint for lack of jurisdiction).

In support of her request for “appropriate injunctive act declaratory relief,” Pl.’s Sur-Reply at 3, plaintiff relies upon the Fourteenth Amendment of the United States Constitution, because it “cite[s] [the] definition of citizenship [and] [g]uarantees due process and protection against action,” Compl. at 4. In her “[d]efinite statement,” plaintiff recites—for the first time and with no reference to any supporting factual allegations—additional claims purportedly arising under several state and federal statutes. Pl.’s Sur-Reply at 2–3. Specifically, plaintiff claims violations of two federal statutes, the Truth in Lending Act and the Home Ownership and Equity Protection Act, *id.* at 2 (citing 15 U.S.C. § 1601 et seq.; 15 U.S.C. § 1639 et seq.), as well as two California state statutes, *id.* at 3 (citing the California Business and Professional Code, Cal. Bus. & Prof. Code §§ 17200, 17500, and the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 et seq.).

## II. DISCUSSION

In considering defendant’s motion to dismiss the instant complaint, the court is mindful of its limited statutory jurisdiction. The Tucker Act grants the court jurisdiction over “any claim *against the United States* founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases *not sounding in tort*.” 28 U.S.C. § 1491(a)(1) (emphasis added). Three limits on this jurisdictional grant are pertinent to the instant matter. First, the court may only hear claims against the United States, *id.*, and “is without jurisdiction [over] any suit brought against private parties,” *United States v. Sherwood*, 312 U.S. 584, 588 (1941). Second, in order for a constitutional provision, statute, or regulation to give rise to a claim within the court’s jurisdiction, it must “expressly create[] a substantive right enforceable against the federal government *for money damages*.” *LeBlanc v. United States*, 50 F.3d 1025, 1028 (Fed. Cir. 1995) (citing *United States v. Testan*, 424 U.S. 392, 398 (1976)) (emphasis added). Third, the court is without power to adjudicate any claims against the United States based in tort; such claims are within the exclusive jurisdiction of the district courts. *Rick’s Mushroom Serv., Inc. v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008); *L’Enfant Plaza Props., Inc. v. United States*, 645 F.2d 886, 892 (Cl. Ct. 1981).

For the purpose of the instant decision, the court accepts as true all factual allegations in plaintiff’s complaint and construes them in favor of plaintiff. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Global Computer Enters., Inc.*, 88 Fed. Cl. 350, 402 (2009) (citing *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). The court also recognizes plaintiff’s *pro se* status and affords plaintiff leniency when construing her pleadings. *See, e.g., Erickson*, 551 U.S. at 94 (“a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers”). However, the lenient pleading standards afforded to a *pro se* plaintiff cannot forgive the failure to state a claim that falls within the court’s jurisdiction. *See Henke v. United States*, 60 F.3d 795, 799 (Fed. Cir. 1995) (noting that the fact that a litigant “acted *pro se* in the drafting of h[er] complaint may explain its ambiguities, but it does not excuse its failures”). When the court’s jurisdiction is challenged, the burden of establishing the same resides with “the party seeking to invoke it,” i.e., the plaintiff. *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 189 (1936). And plaintiff must meet this burden “by a preponderance of the evidence.” *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988).

As explained below, plaintiff's claims fall beyond the court's limited jurisdictional reach because they: (1) primarily implicate the actions of private parties; (2) do not arise under any federal statute or constitutional provision that creates a right to money damages from the United States; and (3) otherwise sound in tort.

First, to the extent that plaintiff's claims are directed against the private parties named in the complaint—whether Florence Marshburn, Michael Steven Watson, or others—they fall outside the court's jurisdiction. *See Sherwood*, 312 U.S. at 588; *McGrath v. United States*, 85 Fed. Cl. 769, 771 (2009) (dismissing claim against state and county officials).

Second, none of the constitutional or statutory provisions that plaintiff invokes creates a right enforceable against the United States for money damages. *See LeBlanc*, 50 F.3d at 1028. It is well established that the Fourteenth Amendment cannot be read to mandate payment of money by the federal government. *E.g.*, *Rutledge v. United States*, 72 Fed. Cl. 396, 401 (2006). The same is true of the statutes cited in plaintiff's sur-reply. Pl.'s Sur-Reply at 2–3. As noted above, two of these are state statutes; as such, they do not constitute “Act[s] of Congress or regulation[s] of an executive department” of the United States. 28 U.S.C. § 1491(a)(1). While the two federal statutes that plaintiff cites—the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and the Home Ownership and Equity Protection Act, § 1639 et seq.—certainly constitute “Acts of Congress,” they only authorize enforcement actions by the Federal Trade Commission against private lenders. *See* 15 U.S.C. § 1607(c). Because these statutes do not create any *private* right of action enforceable against the federal government for money damages, any claim arising under them falls outside the court's jurisdiction. *See LeBlanc*, 50 F.3d at 1028; *Akinro v. United States*, 91 Fed. Cl. 650, 655 (2010) (finding “no basis for jurisdiction in this court” under 15 U.S.C. § 1601). For these reasons, the court is without power to adjudicate any claims founded upon the referenced statutes or upon the Fourteenth Amendment, even if plaintiff's factual allegations could support such claims.

Third, notwithstanding plaintiff's “[d]efinite statement” that “this is not a tort case,” Pl.'s Sur-Reply at 1, the court must conclude otherwise. Plaintiff alleges that the United States engaged in “misrepresentation and fraud[ul]ent inducement,” Pl.'s Sur-Reply at 3, and conspired with the named private parties to defraud plaintiff, *e.g.*, Compl. at 2, 3. These claims are of a tortious nature, and, therefore, beyond the court's jurisdiction. *See* 28 U.S.C. § 1491(a)(1) (excluding from the court's jurisdiction those cases “sounding in tort”); *L'Enfant Plaza Props.*, 645 F.2d at 892 (dismissing claims of fraud and misrepresentation because they sound in tort).

Finally, plaintiff's passing references to her disability benefits do not include any suggestion that the federal government ever denied her claim for, or failed to remit, such duly owed benefits. *See* Compl. at 4; Pl.'s Resp. at 4. Rather than constituting a claim for unpaid disability benefits—which claim might well fall within the court's jurisdiction, *see, e.g.*, *Dean v. United States*, \_\_Fed. Cl. \_\_, 2010 WL 1270187 at \*6 (Fed. Cl. Mar. 29, 2010)—these references are an extension of plaintiff's conspiracy and fraud claims. *See* Compl. at 4 (alleging that the United States conspired with Florence Marshburn to “defraud [plaintiff] . . . of military [and] federal civil . . . disab[ility]” benefits). As such, plaintiff's claims relating to her disability benefits likewise sound in tort and cannot be entertained by this court. *See L'Enfant Plaza Props.*, 645 F.2d at 892. Moreover, even if such claims rested upon the fraudulent acts of

individual employees or agents of the United States, they would *still* fall outside the court's jurisdiction, because "the *only* proper defendant for any matter before this court is the United States, not its officers, nor any other individual." *Stephenson v. United States*, 58 Fed. Cl. 186, 190 (2003).

### III. CONCLUSION

For the foregoing reasons, defendant's MOTION TO DISMISS the complaint for lack of jurisdiction is GRANTED. The Clerk is directed to take the necessary steps to dismiss this matter.

**IT IS SO ORDERED.**

*s/ Lawrence J. Block*

**Lawrence J. Block**  
**Judge**