

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FAULK COMPANY, INC.,

Plaintiff,

v.

UNITED STATES OF AMERICA,
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, XAVIER BECERRA,
in his official capacity as Secretary of HHS, and
CHIQUITA BROOKS-LASURE, in her official
capacity as Administrator of Centers for Medicare
& Medicaid Services (CMS),

Defendants.¹

Case No. 4:24-cv-00609

**UNITED STATES' MOTION TO DISMISS FOR
LACK OF JURISDICTION AND FAILURE TO STATE
A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

The United States of America, pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6), moves the Court to dismiss Plaintiff Faulk Company, Inc.'s complaint because the complaint fails to state a claim upon which relief may be granted as to counts I and II and this Court lacks jurisdiction over counts III and IV. This motion is based on the allegations in the complaint and the United States' supporting brief filed contemporaneously with this motion.

¹ Plaintiff names as defendants the United States, the United States Department of Health and Human Services, and two HHS employees, in their official capacities. The United States is the real party in interest. *See* 26 U.S.C. § 7422(f)(1) (providing that tax refund claims "be maintained only against the United States"); *St Tammany Parish v. Fed. Emergency Mgmt. Agency*, 556 F.3d 307, 317 (5th Cir. 2009) ("Section 702 of the APA authorizes suits against the United States through a limited waiver of sovereign immunity for 'relief other than money damages' related to an agency's regulatory action.") (citing 5 U.S.C. § 702).

Dated: November 1, 2024

Respectfully submitted,

DAVID A. HUBBERT
Deputy Assistant Attorney General

/s/ Mary Elizabeth Smith
MARY ELIZABETH SMITH
Maryland Bar No. 0712110235
Trial Attorney, Tax Division
U.S. Department of Justice
717 N. Harwood, Suite 400
Dallas, Texas 75201
(214) 880-9779 (v)
(214) 880-9741 (f)
Mary.E.Smith@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on November 1, 2024, I filed the foregoing document with the Clerk of Court using the CM/ECF electronic filing system, which will send notification to all counsel of record.

/s/ Mary Elizabeth Smith
MARY ELIZABETH SMITH