

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

PATRICIA A. CAVES,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION 08-0619-KD-M
)	
UNITED STATES OF AMERICA,)	
EUSTACIA Y. WEIST)	
)	
Defendants.)	

ORDER

This matter is before the court on the parties’ “Joint Motion to Dismiss Without Prejudice” (doc. 14).¹ The parties stipulate to the dismissal of this action without prejudice, with each party to bear their own costs.² The stipulation is signed by all parties who appeared in this action. Upon consideration of the stipulation and pursuant to the provisions of Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure, this action is **DISMISSED without prejudice**. As stipulated by the parties, the dismissal is pursuant to 28 USC § 2679(d)(5)³ for

¹ Although entitled a joint motion to dismiss, the court construes the document as a joint stipulation for dismissal.

² The pending motion to dismiss for lack of subject matter jurisdiction (doc. 7) is rendered MOOT by the parties’ filing of the joint stipulation for dismissal.

³ Section 2679 of the Tort Claims Procedure, entitled “Exclusiveness of Remedy” provides, in part:

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be

failure to timely present a proper administrative claim to the United States Coast Guard, with each party to bear her or its own costs.

No other order shall be forthcoming from the court except upon application by either party for final judgment as prescribed by Rule 58, Federal Rules of Civil Procedure. The Clerk of the Court is directed to close this file. Each party shall bear their own costs as stipulated.

DONE and ORDERED this 28th day of January, 2009.

/s/ Kristi K. DuBose _____
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE

timely presented under section 2401(b) of this title if--

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.