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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

K.P. by and through her Guardian Ad Litem, KERI PARNOW,

Plaintiff,

v.

UNITED STATES OF AMERICA,
PEACH TREE LINDA, and KENNETH FORSYTHE, M.D.,

Defendants.

No. 2:17-cv-02130-TLN-EFB

ORDER GRANTING DEFENDANT UNITED STATES OF AMERICA'S MOTION TO DISMISS

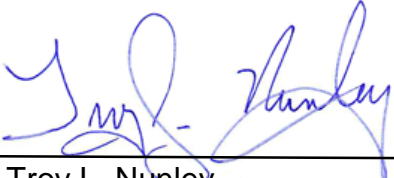
This case involves a claim under the Federal Tort Claims Act and is before the Court on Defendant United States of America's ("Defendant") Motion to Dismiss. (ECF No. 8.) Defendant seeks to dismiss the action for lack of subject matter jurisdiction because Plaintiff K.P. ("Plaintiff") did not exhaust her administrative remedies by filing a claim with the United States Department of Health and Human Services before filing this action. (ECF No. 8-1 at 1.) Plaintiff filed a statement of non-opposition agreeing to a dismissal without prejudice of Defendant and remanding the action to state court to proceed against Defendant Kenneth Forsythe.¹ (ECF No. 9.) Having carefully considered the motion and non-opposition, the Court

¹ The United States determined Kenneth Forsythe was not an employee for the purposes of the Federal Tort Claims Act and Forsythe is represented by separate counsel. (ECF No. 8-1 at 2 n.2.)

1 finds it lacks jurisdiction in light of Plaintiff's failure to exhaust her administrative remedies and
2 hereby DISMISSES without prejudice Defendant United States of America. This matter is
3 REMANDED to the Superior Court of California, County of Yuba to continue against the sole
4 remaining Defendant, Kenneth Forsythe.

5 IT IS SO ORDERED.

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7 Dated: December 5, 2017

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11 Troy L. Nunley
12 United States District Judge
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