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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODNEY LOVE *et al*,

No. C 08-00223 SI

Plaintiffs,

**ORDER DISMISSING CASE FOR
FAILURE TO PROSECUTE AND
FAILURE TO EXHAUST
ADMINISTRATIVE REMEDIES.**

v.

ELCO ADMINISTRATIVE SERVICES, *et al*,

Defendants.

Plaintiff filed this complaint in the Alameda County small claims court on October 26, 2007. The complaint sought \$4,000 in damages incurred in an auto collision with Claudia Noble-Livingston. The United States has submitted a certification by the Chief of the Civil Division stating that Ms. Noble-Livingston was acting in the scope of her federal employment at the time of the collision. On the basis of that certification, the United States asserted jurisdiction under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), substituted in as defendant, and removed the case to district court on January 14, 2008. Since removal of the case, plaintiffs Rodney Love and Rosie Lee Venson have made no appearances before this Court. On April 23, 2008, Magistrate Judge Maria-Elena James issued an Order to Show Cause as to why the case should not be dismissed for failure to prosecute. Plaintiffs failed to respond to that Order or appear at the May 15, 2008 Order to Show Cause hearing. Accordingly, on October 30, 2008, Magistrate Judge James recommended that this Court dismiss the case for failure to prosecute. On December 19, 2008, the United States filed a motion to dismiss, which plaintiffs have not opposed. Based on this record, the Court finds it appropriate to dismiss this action for failure to prosecute.

In addition, the Court finds dismissal is warranted because plaintiffs have not exhausted administrative remedies as required by the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b), 2679(d).

1 The United States has submitted the declaration of John A. Carlo, the Director of the Division of
2 Contracts and Claims of the Social Security Administration where Ms. Noble-Livingston worked, which
3 states that plaintiffs have not filed any administrative claims with the Administration. Based on this
4 record, the Court finds it appropriate to dismiss this action for failure to exhaust administrative
5 remedies.

6 Accordingly, the Court ADOPTS the Report and Recommendation of Magistrate Judge James
7 (Docket No. 22), GRANTS defendant's Motion to Dismiss (Docket No. 24), and DISMISSES this
8 action without prejudice. The Court therefore VACATES the February 6, 2009 hearing.

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IT IS SO ORDERED.

Dated: February 2, 2009



SUSAN ILLSTON
United States District Judge