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8 Attorneys for Defendant
UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 OLLIE DUNLAP, III,) No. C 08-05412 EMC
13)
Plaintiff,)
14)
v.) STIPULATION TO DISMISS
15 UNITED STATES OF AMERICA,) COMPLAINT WITHOUT PREJUDICE;
16) [PROPOSED] ORDER
Defendant.)
17)

18 Parties stipulate to the following, subject to the approval of the Court:

19 WHEREAS, on June 6, 2008, plaintiff Ollie Dunlap, III, filed a medical malpractice
20 complaint in the San Francisco County Superior Court seeking damages from Philip A. Starr,
21 M.D. ("Dr. Starr"), and Nader Sanai, M.D. ("Dr. Sanai") for negligence;

22 WHEREAS, on August 26, 2008, plaintiff filed an administrative claim with the United
23 States Department of Veterans Affairs concerning the incidents alleged in the complaint in this
24 action;

25 WHEREAS, on December 2, 2008, the state court action was removed to federal court;

26 WHEREAS, on December 5, 2008, the United States was substituted as the party
27 defendant for Dr. Starr and Dr. Sanai pursuant to 28 U.S.C. § 2679(d);

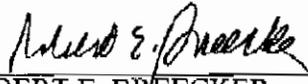
28 WHEREAS, the complaint in this action is premature pursuant to 28 U.S.C. § 2675(a)

STIPULATION TO DISMISS COMPLAINT WITHOUT PREJUDICE; [PROPOSED] ORDER
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1 because the administrative claim has not been finally denied in writing and six months have not
2 passed since its filing;

3 THEREFORE, Plaintiff's complaint in this action is hereby dismissed without prejudice,
4 so that Plaintiff may pursue administrative remedies under the Federal Tort Claims Act. The
5 parties agree that this dismissal is without prejudice to Plaintiff's refileing this action after
6 Plaintiff has properly exhausted said administrative remedies.

7
8 DATED: December 10, 2008


ROBERT E. BREECKER
Attorney for Plaintiff

10
11 JOSEPH P. RUSSONIELLO
12 United States Attorney

13 DATED: 12/11/08


NEILL T. TSENG
Assistant United States Attorney
Attorneys for Federal Defendant

17 PURSUANT TO STIPULATION, IT IS SO ORDERED:

21 DATED: 12/17/08

HON. EDWARD M. CHEN
United States District Judge

