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United States District Court
For the Northern District of California

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

ASTARTE DAVIS-RICE,

No. C 11-3203 MMC

Plaintiff,

**ORDER DIRECTING SUPPLEMENTAL
BRIEFING; CONTINUING HEARING**

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Before the Court is defendant United States of America's ("the government") Motion to Dismiss and Motion for Pre-filing Screening Order or, in the Alternative, Motion to Transfer Case, filed September 7, 2011 ("Motion"). Plaintiff Astarte Davis-Rice ("Davis-Rice") has filed opposition thereto, to which the government has replied.

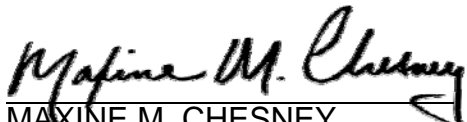
By the instant action, Davis-Rice alleges a number of claims under the Federal Tort Claims Act ("FTCA"). In its Motion, the government states Davis-Rice previously filed two FTCA cases, and argues the instant complaint is "substantially similar" to the complaints in those prior cases. (See Mot. at 7:26-28.) One of the cases, Davis-Rice v. United States, et al., 07-6483 (N.D. Cal.), was before the undersigned and was dismissed without prejudice by reason of Davis-Rice's failure to pay the filing fee. The other, Davis-Rice v. United States, et al., 07-2072 (D. D.C.), was filed in the District of Columbia ("the D.C. Case"); the government states the District of Columbia thereafter transferred the case to the District of

1 the Virgin Islands, but does not provide any information regarding the status of the case
2 after said transfer. (See Mot. at 6:15-7:1.) Whether the D.C. Case is still pending and, if
3 not, the manner in which the case was resolved, may bear on the Court's determination as
4 to whether the above-titled case should proceed. (See Order Re Application to Proceed in
5 Forma Pauperis, filed July 7, 2011 (granting Davis-Rice's application)); Cato v. United
6 States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (holding, under 28 U.S.C. § 1915, action
7 brought in forma pauperis subject to dismissal where complaint "merely repeats pending or
8 previously litigated claims").

9 Accordingly, the government is hereby DIRECTED to file a supplemental brief, no
10 later than November 4, 2011, addressing the status of the D.C. Case after its transfer to the
11 District of the Virgin Islands. Davis-Rice shall file any supplemental opposition no later than
12 November 18, 2011. In light of this order, the hearing on the Motion, currently scheduled
13 for October 21, 2011, is hereby CONTINUED to December 9, 2011 at 9:00 a.m. The Case
14 Management Conference, currently scheduled for October 21, 2011 is hereby
15 CONTINUED to January 27, 2012 at 10:30 a.m.

16 **IT IS SO ORDERED.**

17
18 Dated: October 18, 2011


MAXINE M. CHESNEY
United States District Judge