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 Secretary, Department of Commerce

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

11 MATTHEW A. I. UA CRUADHLAOICH,

12 Plaintiff,

13 v.

14 PENNY S. PRITZKER, , SECRETARY,
 15 U.S. DEPARTMENT OF COMMERCE,

16 Defendant.

Case No. C 12-02723 EDL

**~~PROPOSED~~ ORDER DENYING
 PLAINTIFF'S MOTION FOR LEAVE
 TO FILE AMENDED COMPLAINT,
 AS MODIFIED**

DATE: September 17, 2013
 TIME: 2:00 p.m.
 Courtroom E, 15th Floor
 Hon. Elizabeth D. Laporte

17 Plaintiff's motion for leave to file an amended complaint came on for hearing, as noticed by
 18 Plaintiff, on September 17, 2013. Plaintiff did not appear. Defendant appeared through Assistant United
 19 States Attorney Claire Cormier.

20 The Court hereby denies plaintiff's motion.

21 Plaintiff's complaint alleges claims for discrimination and retaliation under Title VII, defamation,
 22 and failure to comply with the California Labor code. The complaint also seeks punitive damages. Prior
 23 to reassigning the case to this Court, Judge White dismissed Plaintiff's defamation and California Labor
 24 Code claims with prejudice, leaving only the Title VII claims. Plaintiff then moved for leave to file an
 25 amended complaint continuing to allege discrimination and retaliation under Title VII and seeking to add
 26 a claim for intentional infliction of emotional distress.

1 Though leave to amend a complaint is liberally granted, where, as here, the amendment would be
2 futile, the Court should deny leave to amend. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296
3 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th
4 Cir. 1990).

5 As previously noted by Judge White in his Order Denying in Part and Granting in Part
6 Defendant's Motion to Dismiss (Doc. No. 27 at 6), Plaintiff has not met the administrative exhaustion
7 requirements for his intentional infliction of emotional distress claim against the United States. An action
8 under the Federal Tort Claims Act requires that the plaintiff first exhaust his administrative remedies. 28
9 U.S.C. § 2675(a). "The claim requirement of section 2675 is jurisdictional in nature and may not be
10 waived." *Burns v. United States*, 764 F.2d 722, 724 (9th Cir. 1985). Where a plaintiff has not exhausted
11 the administrative claims procedure required under the FTCA, plaintiff's complaint must be dismissed for
12 lack of subject matter jurisdiction. *McNeil v. United States*, 508 U.S. 106, 113 (1993). Plaintiff's
13 assertion in his reply to the motion that his Equal Employment Opportunity complaint and related
14 documents should be viewed as FTCA claims is not persuasive.

15 Finally, Defendant has noted that Plaintiff's complaint includes a prayer for punitive damages.
16 Such damages are not available against the federal government. 42 U.S.C. § 1981a(b)(1). Accordingly,
17 Plaintiff's prayer for punitive damages is hereby stricken.

18 Plaintiff's proposed amendments to his complaint are futile because of his failure to exhaust
19 administrative remedies. Plaintiff's motion for leave to file an amended complaint is therefore denied. In
20 addition, Plaintiff's prayer for punitive damages is stricken. Plaintiff is limited to his claims of
21 discrimination and retaliation under Title VII, as stated in his original complaint.

22
23 Dated: October 24, 2013

24 
25 ELIZABETH D. LAPORTE
26 United States Magistrate Judge
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