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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

VANCE S. ELLIOT,

No. C 14-80009 RS

Plaintiff,

v.

**ORDER GRANTING PERMISSION  
TO PROCEED IN FORMA PAUPERIS  
AND DISMISSING COMPLAINT  
WITH LEAVE TO AMEND**

THE DEPARTMENT OF VETERANS  
AFFAIRS,

Defendant.

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In January 2014, plaintiff filed a complaint alleging slander against the Department of Veterans Affairs. In an order issued January 27, 2014, Elliot's request to proceed in forma pauperis was denied because his complaint was largely illegible. (ECF No. 3). Plaintiff then lodged an amended complaint on February 4, 2014. (ECF No. 4). While parts of the new complaint are still difficult to read, the document is sufficiently legible to communicate the legal theory underpinning Elliot's claim. Elliot, a veteran of the Korean War, met with a psychiatrist employed at a VA medical facility. According to the complaint, the VA psychiatrist diagnosed Elliot with schizophrenia. She then entered his diagnosis into the VA medical database, "from which it could be retrieved by anyone keying into his/her computer the last 4 digits of plaintiff's Social Security Number[.]" (Compl. ¶ 3). This, Elliot claims, constitutes the tort of slander.

1           When a federal employee acts within the scope of his or her employment and commits a tort,  
2 any relief for that tort must be sought against the United States under the Federal Tort Claims Act,  
3 28 U.S.C. §§ 2671, *et seq.* Before a claimant can assert an FTCA claim in federal court, he must  
4 first exhaust administrative remedies. § 2675(a); *McNeil v. United States*, 508 U.S. 106, 113  
5 (1993). In particular, he must present the claim “in writing to the appropriate Federal agency within  
6 two years after such claim accrues.” § 2401(b). If the agency denies the claim in writing, the  
7 claimant can then file an FTCA action in federal court. *Id.* He must do so, however, within six  
8 months of the administrative denial. *Id.*

9           Plaintiff has apparently failed to comply with the procedural requirements of the FTCA.  
10 First, the complaint pleads no facts indicating that Elliot exhausted his administrative remedies  
11 before the VA. If he presented a claim in writing to the agency, no legible portion of his complaint  
12 indicates as much. Second, even if Elliot filed an administrative claim with the VA, relief would be  
13 barred unless said claim was lodged by May 2012. Third, assuming he *did* file a timely complaint  
14 with the VA, this federal lawsuit would nonetheless be time-barred unless it was filed within six  
15 months of the VA’s written denial of his administrative claim. Because the complaint contains no  
16 suggestion that Elliot exhausted his administrative remedies in a timely fashion, it must be  
17 dismissed. *See Dyniewicz v. United States*, 742 F.2d 484, 485 (9th Cir. 1984).

18           Plaintiff is granted leave to amend his complaint to the extent he can plead facts indicating  
19 that he satisfied the FTCA’s procedural requirements. Any amended complaint must be filed within  
20 thirty (30) days of the date of this order. In the meantime, Elliot’s request to proceed in forma  
21 pauperis is granted.

22  
23 IT IS SO ORDERED.

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25 Dated: 4/2/14

26   
27 RICHARD SEEBORG  
28 UNITED STATES DISTRICT JUDGE

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**THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

Vance S. Elliott  
640 Eddy Street, #219  
San Francisco, CA 94109

DATED: 4/2/14

/s/ Chambers Staff  
Chambers of Judge Richard Seeborg