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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION
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8 LINDA ANN WRIGHT,

9 Plaintiff,

10 vs.

11 PETRA KUHFAHL, BRIAN OGDEN CRAIG,
12 M.D., NANCY CRAIG, KIM S. ERVIN,
13 KUSUM STOKES, PATRICIA FITZGERALD,
14 SAINT JOSEPH HOSPITAL, and DANIEL
15 DEWSNUP, D.O., M.S.,

16 Defendants.

Case No: C 09-5752 SBA

**ORDER TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

16 Plaintiff Linda Ann Wright (“Plaintiff”), acting pro se, filed the instant action in
17 Humboldt County Superior Court against various defendants, including Dr. Daniel Dewsup, a
18 physician employed by the United States Department of Veteran Affairs. Pursuant to 26
19 U.S.C. § 2679(d)(2), the United States certified that Dr. Dewsup was acting in the course and
20 scope of his federal employment at the time of the incident ostensibly giving rise to the action.
21 Upon that certification, the United States of America (“United States”) was substituted in place
22 of Dr. Dewsup by operation of law, which then removed the action to this Court.

23 The United States filed a motion to dismiss under Federal Rule of Civil Procedure
24 12(b)(1) for lack of subject matter jurisdiction based on Plaintiff’s failure to exhaust
25 administrative remedies under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 2675(a).
26 The Court granted the motion and dismissed the FTCA claim without prejudice. The Court
27 also declined to assert supplemental jurisdiction over the remaining state law causes of action
28 alleged against the other defendants, and remanded the remainder of the action to state court.

1 Plaintiff has now filed a request to proceed in forma pauperis on appeal. Title 28
2 U.S.C. § 1915(a)(3) states: “An appeal may not be taken in forma pauperis if the trial court
3 certifies in writing that it is not taken in good faith.” The good faith requirement is satisfied if
4 the petitioner seeks review of any issue that is “not frivolous.” Gardner v. Pogue, 558 F.2d
5 548, 551 (9th Cir. 1977) (quoting Coppedge v. United States, 369 U.S. 438, 445 (1962)). An
6 action is “frivolous” for purposes of section 1915 if it lacks any arguable basis in law or fact.
7 Neitzke v. Williams, 490 U.S. 319, 325, 327 (1989); Franklin v. Murphy, 745 F.2d 1221, 1225
8 (9th Cir. 1984).

9 Plaintiff’s appeal of the Court’s order dismissing her claim against the United States is
10 frivolous. Nowhere in the voluminous briefs and exhibits submitted by Plaintiff did she
11 dispute, let alone demonstrate, that she ever made any attempt to exhaust her administrative
12 remedies. Under settled law, the failure to exhaust requires dismissal of an FTCA claim. See
13 Brady v. United States, 211 F.3d 499, 502 (9th Cir. 2000) (affirming dismissal of action for
14 lack of subject matter jurisdiction where plaintiff “failed to comply with that statute’s
15 jurisdictional requirement that she file an administrative claim”). The Court’s dismissal was
16 appropriately without prejudice to leave open the possibility for Plaintiff to reassert her FTCA
17 claim if and when she properly exhausts her administrative remedies.

18 For the reasons stated above, the Court CERTIFIES that Plaintiff’s appeal is not taken
19 in good faith within the meaning of 28 U.S.C. § 1915(a)(3). Plaintiff’s request to proceed in
20 forma pauperis on appeal is DENIED. This Order terminates Docket 91.

21 IT IS SO ORDERED.

22 Dated: June 23, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge

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1 UNITED STATES DISTRICT COURT
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4 WRIGHT et al,
5
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7 v.

8 KUHFAHL et al,
9
10 Defendant.

Case Number: CV09-05752 SBA

CERTIFICATE OF SERVICE

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on June 24, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
17 located in the Clerk's office.

18 Linda Ann Wright
19 4579 Cummings Road
20 Eureka, CA 95503

Dated: June 24, 2010

Richard W. Wieking, Clerk

By: LISA R CLARK, Deputy Clerk