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2
3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5 OAKLAND DIVISION
6

7 JADEN DAVIDSON, a minor, by
8 CHRISTINA DAVIDSON, his guardian ad
9 litem,

10 Plaintiff,

11 vs.

12 UKIAH VALLEY MEDICAL CENTER and
13 KAREN CRABTREE, M.D.,

14 Defendants.

Case No: C 11-06147 SBA

ORDER

15 On November 17, 2010, Plaintiff Jaden Davidson, by and through his guardian ad
16 litem, Christina Davidson ("Plaintiff"), brought this medical malpractice action against
17 Defendants Ukiah Valley Medical Center and Karen Crabtree, M.D. ("Dr. Crabtree") in the
18 Superior Court of California, County of Mendocino. Compl., Dkt. 1. The case was
19 removed to this Court on the basis of federal question jurisdiction. Notice of Removal,
20 Dkt. 1. The parties are presently before the Court on Dr. Crabtree's motion for an order
21 substituting the United States as the party defendant under 28 U.S.C. § 2679(a) and to
22 dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure. Dkt. 9. Plaintiff has
23 not filed an opposition or statement of non-opposition as required by Civil Local Rule 7-
24 3(b).

25 Having read and considered the papers filed in connection with these matters and
26 being informed, the Court hereby GRANTS the motion to substitute the United States as
27 the party defendant, and orders Plaintiff to file an opposition or statement of non-opposition
28 to the motion to dismiss by no later than seven (7) days from the date this Order is filed.

1 Plaintiff is warned that the failure to timely comply with this Order will result in dismissal
2 of this action with prejudice. The Court, in its discretion, finds the matters before the Court
3 suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R.
4 7-1(b).

5 **I. BACKGROUND**

6 On November 17, 2010, Plaintiff commenced this action in Mendocino County
7 Superior Court against Ukiah Valley Medical Center and Dr. Crabtree, alleging that, on or
8 about November 19, 2009, Defendants negligently "caused a serious laceration upon
9 Plaintiff's head [during his birth] causing substantial injury." See Notice of Removal ¶ 1,
10 Exh. A. On or about November 22, 2011, the United States Attorney's Office received a
11 copy of the summons and complaint from the United States Department of Health and
12 Human Services. Id. ¶ 2.

13 On December 7, 2011, the United States, on behalf of Dr. Crabtree and upon
14 direction by the Attorney General of the United States, filed a notice of removal pursuant to
15 the Federally Supported Health Centers Assistance Act ("FSHCAA"), 42 U.S.C. § 233, on
16 the ground that Dr. Crabtree is an employee of the Mendocino Community Health Clinic,
17 Inc., a federally deemed health center. Notice of Removal ¶¶ 1, 4. According to the United
18 States, under FSHCAA, the health center and its employees are covered under the Federal
19 Tort Claims Act ("FTCA"), which is the exclusive remedy for alleged negligent actions
20 caused by employees of a deemed health center. Id. ¶ 4. The United States also removed
21 this action pursuant to 28 U.S.C. § 2679(d)(2) because the Chief of the Civil Division of the
22 United States Attorney's Office for the Northern District of California certified that Dr.
23 Crabtree was acting within the course and scope of her employment at all times relevant to
24 Plaintiff's claim. See id. ¶ 5; Certification Pursuant to 28 U.S.C. 2679(d) ¶¶ 1-2, Dkt. 3.

25 The certification states, among other things, that Joann Swanson, Chief of the Civil
26 Division of the United States Attorney's Office for the Northern District of California,
27 certifies that she has reviewed the summons and complaint in the instant action and that
28 under the provision of 28 U.S.C. § 2679(d) certifies that pursuant to the FSHCAA,

1 Mendocino Community Health Clinic, Inc. and its employees are covered under the FTCA
2 and Dr. Crabtree is an employee of the health center and was acting within the scope of her
3 employment at all times material to the incident alleged in the complaint. Certification
4 Pursuant to 28 U.S.C. 2679(d) ¶¶ 1-2.¹

5 **II. DISCUSSION**

6 **A. Substitution of the United States as the Party Defendant**

7 Under 28 U.S.C. 2679(d)(2), once a defendant is certified as acting within the scope
8 of federal employment during the incident in question, such a claim will be considered an
9 action against the United States. Section 2679(d)(2) expressly states:

10 Upon certification by the Attorney General that the defendant employee was
11 acting within the scope of his office or employment at the time of the incident
12 out of which the claim arose, any civil action or proceeding commenced upon
13 such claim in a State court shall be removed without bond at any time before
14 trial by the Attorney General to the district court of the United States for the
15 district and division embracing the place in which the action or proceeding is
16 pending. Such action or proceeding shall be deemed to be an action or
proceeding brought against the United States under the provisions of this title
and all references thereto, and the United States shall be substituted as the
party defendant.

17 Here, Dr. Crabtree has been certified as having been acting within the scope of her
18 federal employment at the time of the incident giving rise to the claim alleged in the
19 complaint. See Dkt. 3. Accordingly, the request to substitute the United States as the party
20 defendant is GRANTED.

21 **B. Motion to Dismiss**

22 Under Local Rule 7-3, Plaintiff's opposition or statement of non-opposition to the
23 motion to dismiss was due no later than twenty-one (21) days before the hearing date, i.e.,
24 on or before March 20, 2012. See Civ. L.R. 7-3(a). This Court's Standing Orders
25 specifically warn that "failure of the opposing party to file a memorandum of points and

26 _____
27 ¹ The Court notes that Ms. Swanson, as the Chief of the Civil Division, has the
28 authority to make the statutory certification that Dr. Crabtree was acting within the scope of
her employment with the federal government at the time of the incident out of which the
suit arose. See 28 C.F.R. § 15.4

1 authorities in opposition to any motion shall constitute a consent to the granting of the
2 motion.” Civil Standing Orders at 5. Notwithstanding the requirements of Civil Local
3 Rule 7-3 and this Court’s Standing Orders, Plaintiff has not filed a response to the motion
4 to dismiss.

5 The failure to file an opposition to a motion to dismiss in the manner prescribed by
6 the Court's Local Rules is grounds for dismissal. Ghazali v. Moran, 46 F.3d 52, 53 (9th
7 Cir. 1995) (per curiam) (failure to file an opposition to a motion to dismiss in violation of a
8 local rule is a proper ground to grant the motion). Here, although Plaintiff’s failure to file
9 an opposition is a proper ground to grant the motion to dismiss, the Court will afford
10 Plaintiff the opportunity to file a response to the motion by no later than seven (7) days
11 from the date this Order is filed. The Court, however, warns Plaintiff that the failure to file
12 a timely response will result in dismissal of this action with prejudice under Rule 41(b) of
13 the Federal Rules of Civil Procedure. Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.
14 1992) (pursuant to Rule 41(b), a district court may dismiss an action for failure to comply
15 with any order of the court).

16 **III. CONCLUSION**

17 For the reasons stated above, IT IS HEREBY ORDERED THAT:

18 1. The request to substitute the United States as the party defendant is
19 GRANTED.

20 2. Plaintiff shall file an opposition or statement of non-opposition to the motion
21 to dismiss by no later than seven (7) days from the date this Order is filed. Upon the filing
22 of Plaintiff’s response, the matter will be taken under submission without oral argument. In
23 the event Plaintiff fails to timely comply with this Order, this action will be dismissed with
24 prejudice under Rule 41(b).

25 IT IS SO ORDERED

26 Dated: 5/1/12

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28 SAUNDRA BROWN ARMSTRONG
United States District Judge

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