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

VANCE S. ELLIOTT,

Plaintiff,

v.

DEPARTMENT OF VETERANS,

Defendant.

No. C 14-02678 JSW

No. C 14-02679 JSW

**ORDER OF DISMISSAL**

Now before the Court are the motions to dismiss for lack of subject matter jurisdiction in the two above-captioned matter. Plaintiff Vance S. Elliot (“Plaintiff”) did not file an opposition to the motions to dismiss in either case. In Case No. C 14-02678, the Court issued an Order to Show Cause (“OSC”) in writing by no later than August 20, 2013 why the pending motion to dismiss should not be granted in light of his failure to file a timely opposition or statement of non-opposition and to show cause why his case should not be dismissed for failure to prosecute. Plaintiff was admonished that his failure to respond this Order by August 20, 2014, would result in a dismissal of this action without further notice. Plaintiff did not file a response to the OSC. Accordingly, the Court finds that based on his failure to oppose the motions to dismiss and his failure to respond to the OSC, that these two cases should be dismissed for failure to prosecute.

Moreover, the Court finds that the motions to dismiss are meritorious. In both cases, Plaintiff brings a libel claim against the United States Department of Veterans Affairs. The United States can only be sued where it has expressly waived its rights to sovereign immunity. *Lane v. Pena*, 518 U.S. 187, 192 (1996). The Federal Tort Claims Act (“FTCA”) constitutes a

1 limited waiver of the United States' sovereign immunity for claims that are based on its  
2 negligent or wrongful acts. *Yanez v. United States*, 63 F.3d 870, 872 (9th Cir. 1995). The  
3 FTCA provides that the government may be sued for torts caused by the negligence or wrongful  
4 acts or omissions by any government employee acting within the course and scope of his  
5 employment. 28 U.S.C. § 1346(b)(1). Where, as here, Plaintiff has sued government  
6 employees acting in the scope of their employment, the FTCA is the exclusive remedy against  
7 the United States for his alleged tort. *See* 28 U.S.C. § 2679(b)(1). However, the FTCA  
8 specifically excludes libel from the government's general waiver of sovereign immunity. *See*  
9 28 U.S.C. § 2680(h); *Mundy v. United States*, 983 F.2d 950, 952 (9th Cir. 1993) ("When a claim  
10 falls within a statutory exception to the FTCA's waiver of sovereign immunity, the court is  
11 without subject matter jurisdiction to hear the case."). Because the United States has not  
12 waived its sovereign immunity for claims of libel, the Court lacks subject matter jurisdiction  
13 over Plaintiff's claims. The Court thus grants the pending motions to dismiss with prejudice.

14 **IT IS SO ORDERED.**

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16 Dated: September 3, 2014

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19 JEFFREY S. WHITE  
20 UNITED STATES DISTRICT JUDGE  
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2 UNITED STATES DISTRICT COURT  
3 FOR THE  
4 NORTHERN DISTRICT OF CALIFORNIA  
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6 VANCE S ELLIOTT et al,  
7 Plaintiff,

Case Number: CV14-02678 JSW  
Case Number: CV14-02679 JSW

8 v.

**CERTIFICATE OF SERVICE**


9 DEPARTMENT OF VETERANS et al,  
10 Defendant.  
11 \_\_\_\_\_ /

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

13 That on September 3, 2014, I SERVED a true and correct copy(ies) of the attached, by  
14 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter  
15 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an  
inter-office delivery receptacle located in the Clerk's office.  
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17

18 Vance S. Elliott  
640 Eddy Street  
19 Room 219  
San Francisco, CA 94109

20 Dated: September 3, 2014

  
21 Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk  
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