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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LUIS MANUEL NAVARRETE MEZA,
Plaintiff,
vs.
JONATHAN DAVIS,
Defendant.

CASE NO. 09cv365 WQH (RBB)
ORDER

HAYES, Judge:

The matter before the Court is the Motion to Dismiss Complaint (Doc. #8).

Background

On November 12, 2008, Plaintiff Luiz Manuel Navarrete Meza (“Meza”) initiated this action by filing a claim against Jonathan Davis (“Davis”) in San Diego Small Claims Court *Not. of Removal*, Exhibit A. Meza sought to recover \$7,500.00 from Davis for property damage resulting from a motor vehicle accident. On February 25, 2009, the United States removed the action to this Court (Doc. #1), pursuant to 28 U.S.C. §§ 1442(a)(1) and 2679(d)(2). The Notice of Removal alleges that Davis was active duty United States Navy; that the San Diego Small Claims Court entered a judgment against Davis; and that Davis appealed the judgment to San Diego Superior Court. The Notice of Removal alleges that the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671, *et. seq.*, is the exclusive remedy for a person, such as Meza, with a claim for loss of property allegedly resulting from the negligent or wrongful actions of federal employees, such as Davis.

1 On April 23, 2009, the United States filed the Motion to Dismiss for lack of subject
2 matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (Doc.
3 #8). The United States contends that Meza did not submit an administrative claim to the
4 Department of the Navy prior to filing this civil action. In support of this contention, the
5 United States submitted the Declaration of Patricia A. Leonard, the Director of the Claims and
6 Tort Litigation Division, Office of the Judge Advocate General, Department of the Navy.
7 Leonard attests that she is responsible for the supervision and monitoring of the practices and
8 procedures relative to all administrative claims presented to the Department of the Navy
9 arising under the FTCA. Leonard attests that “all reasonable searches have failed to reveal that
10 the plaintiff, Luiz Manuel Navarrete Meza, has filed such an administrative claim and, to the
11 best of my knowledge and belief, the plaintiff, Luiz Manuel Navarrete Meza, has not filed an
12 administrative claim with or against the Department of the Navy based on the subject matter
13 of this action.” *Leonard Decl.*, pp.1-2. Defendant states:

14 Prior to filing his property damage action against Jonathan Davis, Plaintiff was
15 required to present an administrative claim to the Navy. His failure to exhaust
16 this remedy divests this Court of subject matter jurisdiction to hear this case. As
the result, Defendant respectfully requests that this case be dismissed.

17 *Mot. to Dismiss*, p. 7.

18 Plaintiff has not filed any opposition to the Motion to Dismiss.

19 Applicable Law

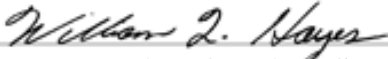
20 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows a defendant to move for
21 dismissal on grounds that the court lacks jurisdiction over the subject matter. Fed. R. Civ. P.
22 12(b)(1). The burden is on the plaintiff to establish that the court has subject matter
23 jurisdiction over an action. *Assoc. of Medical Colleges v. United States*, 217 F.3d 770, 778-
24 779 (9th Cir. 2000). In resolving an attack on a court’s jurisdiction, the court may go outside
25 the pleadings and consider evidence beyond the complaint relating to jurisdiction without
26 converting the motion to dismiss into a motion for summary judgment. *Safe Air For Everyone*
27 *v. Doyle*, 373 F.3d 1035, 1039 (9th Cir. 2004).

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1 jurisdiction on grounds that Meza failed to exhaust his administrative remedies. The Court
2 grants the Motion to Dismiss.

3 IT IS HEREBY ORDERED that the Motion to Dismiss (Doc. # 8) is **GRANTED**. The
4 above-captioned action is **DISMISSED**.

5 DATED: June 5, 2009

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7 **WILLIAM Q. HAYES**
8 United States District Judge

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