ANCEL AND ZELLNED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

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§	Case No. 4:12cv198
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MEMORANDUM OPINION AND ORDER REGARDING SUBSTITUTION OF UNITED STATES AS DEFENDANT AND ORDER DISMISSING SUIT WITHOUT PREJUDICE

The Court held a hearing in the above-referenced matter on May 17, 2012. Pro se Plaintiffs Angela and Ivan Zellner and counsel for the Government appeared at the hearing. Having heard the arguments presented and reviewed the record in this matter, the United States of America's Motion to Substitute, in part, as Party Defendant (Dkt. 4) is GRANTED. The Court accordingly ORDERS that the United States be, and hereby is, SUBSTITUTED as the proper party defendant in this case. Defendants Felix Chen, Thomas Simmons, and Cora Estep are accordingly DISMISSED as parties.

Further, the Court heard argument regarding Defendant United States of America's Motion to Dismiss for Insufficient Service of Process Under Rule 12(b)(5), for Lack of Personal Jurisdiction Under Rule 12(b)(2), and for Lack of Subject Matter Jurisdiction Under Rule 12(b)(1) (Dkt. 5). Defendant argues that Plaintiffs have failed to exhaust their administrative remedies. Plaintiffs

¹After the hearing, all parties consented to trial by a magistrate judge and the case was referred to the undersigned for final disposition. *See* Dkt. 15.

stated at the hearing that they do not oppose dismissal of this suit for failure to exhaust remedies.²

Therefore, Defendant United States of America's Motion to Dismiss for Insufficient Service of Process Under Rule 12(b)(5), for Lack of Personal Jurisdiction Under Rule 12(b)(2), and for Lack of Subject Matter Jurisdiction Under Rule 12(b)(1) (Dkt. 5) is GRANTED, and this matter is DISMISSED without PREJUDICE.

This matter shall be closed on the Court's docket, and all costs shall be borne by the party incurring same.

SO ORDERED.

SIGNED this 12th day of June, 2012.

DON D. BUSH

UNITED STATES MAGISTRATE JUDGE

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²A minor Plaintiff is also named in the suit. Plaintiffs Angela and Ivan Zellner are parents of M.Z. and filed the suit on her behalf. At the hearing, the Court cautioned Plaintiffs that they cannot represent the interests of another *pro se*. Nonetheless, because Plaintiffs did not object to dismissal of this suit and because they filed it on her behalf, it will be dismissed without prejudice as to her purported claims as well.