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9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA
 11 WESTERN DIVISION

13
 14 LARRY KLAYMAN, an Individual,
 15 Plaintiff,
 16 v.
 17 DANFORTH AUSTIN, an individual,
 18 and DOES 1 through 25, inclusive,
 19 Defendants.
 20

No. CV10-7306 MMM (VBKx)

21 NOTICE OF MOTION AND
 MOTION TO DISMISS;
 22 MEMORANDUM OF POINTS
 AND AUTHORITIES;
 23 DECLARATION OF APRIL
 BENNETT CABRAL IN
 SUPPORT THEREOF

[Fed.R.Civ.P. 12(b)(1)]

Hearing Date: January 10, 2011

Time: 10 a.m.

Courtroom 780

Hon. Margaret M. Morrow

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Plaintiff's action is barred by the Federal Tort Claims Act because Plaintiff
4 failed to present a tort claim to the appropriate federal agency within two years of
5 the alleged claim accruing. 28 U.S.C. §§ 2401(b), 2675(a). Specifically, Plaintiff
6 has not filed an administrative tort claim with the Broadcasting Board of
7 Governors ("BBG"), a federal agency. Accordingly, this Court lacks subject
8 matter jurisdiction over Plaintiff's Complaint and should dismiss it with prejudice.

9 STATEMENT OF FACTS

10 On August 27, 2010, Larry Klayman ("Plaintiff"), an attorney licensed in
11 the State of Florida and appearing Pro Se before this Court, filed this Complaint in
12 Los Angeles County Superior Court for claims of tortious interference of a
13 contractual relationship and interference with attorney-client relationship and
14 prospective economic advantage. Plaintiff seeks damages in an unspecified
15 amount from the United States of America ("United States"), alleging that
16 Danforth Austin, as Director of the Voice of America ("VOA"), communicated
17 with Plaintiff's client, who was at that time a VOA employee, without Plaintiff's
18 knowledge or consent. (Exhibit A, ¶¶ 11-13). VOA is an international multimedia
19 broadcasting service funded and overseen by the BBG, a federal agency.

20 Plaintiff originally sued Mr. Austin in Los Angeles Superior Court, but on
21 September 30, 2010, the BBG removed the case to this Court and requested that
22 the United States be substituted as the defendant pursuant to 28 U.S.C. § 1442(a)
23 and §2679(d)(2). To date, Plaintiff has not filed an administrative tort claim with
24 the Broadcasting Board of Governors. Declaration of April Cabral ("Cabral
25 Decl.") at ¶ 6.

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ARGUMENT

A. The Court Lacks Subject Matter Jurisdiction Over Plaintiff's Claims Because Plaintiff Failed to File An Administrative Tort Claim Prior To Commencing Suit.

The Court lacks subject matter jurisdiction over Plaintiff's Complaint against the United States because Plaintiff failed to satisfy the requirements of the Federal Tort Claims Act ("FTCA"). The FTCA requires the timely exhaustion of administrative remedies before the commencement of a tort suit in court against the United States Government. 28 U.S.C. § 2675(a); McNeil v. United States, 508 U.S. 106, 113 (1993); Cadwalder v. United States, 45 F.3d 297, 300-01 (9th Cir. 1995). Among other things, a claimant must present an appropriate claim to the federal agency at issue within two years of the events giving rise to the injury. 28 U.S.C. § 2675(a). Pursuant to 28 U.S.C. § 2401(b), a tort claim filed in court against the United States "shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues...").

Plaintiff alleges that Mr. Austin tortiously interfered with his attorney client relationship by communicating with Plaintiff's alleged client without Plaintiff's knowledge and/or consent, at some point after Plaintiff began representing her in or around January, 2010. Ex. A, ¶¶ 12-13. Plaintiff further alleges that as a result of this communication Plaintiff is entitled to damages. Ex. A, ¶¶ 16-17, 22-23. Plaintiff has not filed an administrative tort claim with the BBG related to the allegations in his Complaint. Cabral Decl. at ¶ 6. Thus, Plaintiff has not satisfied the FTCA's claim presentation requirement and is therefore barred from bringing this claim. As such, this Court lacks subject matter jurisdiction over this action and it must be dismissed in its entirety. McNeil, 508 U.S. at 112-113; see also McGraw v. United States, 281 F. 3d 997, 1001, as amended by 298 F.3d 754 (9th Cir. 2002); see also United States v. California Care Corp., 709 F.2d 1241, 1248 (9th Cir. 1983).

1 CONCLUSION

2 For the foregoing reasons, the United States respectfully requests that the
3 Court dismiss Plaintiff's Complaint for lack of subject matter jurisdiction pursuant
4 to Federal Rule of Civil Procedure 12(b)(1).

5 DATED: October 7, 2010. Respectfully submitted,

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7 ANDRÉ BIROTTE JR.

8 United States Attorney
9 LEON W. WEIDMAN
10 Assistant United States Attorney
11 Chief, Civil Division

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13 MATTHEW P. LANE
14 Special Assistant United States Attorney
15 Attorneys for Defendant
16 United States of America
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DECLARATION OF APRIL BENNETT CABRAL

I, APRIL BENNETT CABRAL, declare as follows:

1. I am currently employed as an Assistant General Counsel in the Office of the General Counsel (“OGC”), the Broadcasting Board of Governors (“BBG” or “Agency”). I have held my current position since November 2006.

2. I am currently responsible for various legal matters for the Agency. These matters include handling employment and labor issues and litigation, advising management on various legal issues and in particular the Agency’s Office of Security and processing claims the Agency receives under the Federal Tort Claims Act (“FTCA”). Accordingly, I have personal knowledge of the Agency’s regulations, policies and practices with respect to claims filed with the Agency under the FTCA. The information contained herein is based on my personal knowledge.

3. BBG is the Agency that provides all non-military international broadcasting for the U.S. Government. The BBG oversees the International Broadcasting Bureau, which is comprised of the Voice of America (hereinafter “VOA”), the Office of Cuba Broadcasting (hereinafter “OCB”), and other support elements. The VOA Charter, which is applicable to all broadcasting entities under the BBG, ensures the journalistic independence of the broadcasters. *See* 22 U.S.C. § 6202. The VOA’s mission is to report news and information.

4. VOA broadcasts more than 1,000 hours of news, information, educational, and cultural programming every week in over 43 languages to an estimated worldwide audience of more than 115 million people. As a news organization, the VOA, by statute, is required to serve as a consistently reliable and authoritative source of news, which must be accurate, objective and comprehensive. 22 U.S.C. § 6202(c). VOA is also required to present “a balanced and comprehensive projection of significant American thought and institutions.”

1 VOA also must present the policies of the United States clearly and effectively.

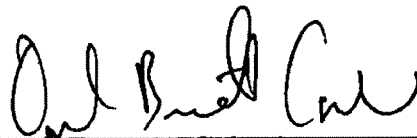
2 *Id.* This is done through editorials that are prepared by the Office of Policy.

3 5. The Agency's regulations for filing a claim under the FTCA are located
4 at 22 C.F.R. Part 511¹. I am familiar with these regulations as I have handled
5 claims filed with the Agency under this provision. I am familiar with the claims
6 filed with the Agency under these procedures for a minimum of the past year.

7 6. I have reviewed the records of claims filed and I have no record of Mr.
8 Klayman filing any claim with the Agency under the FTCA within the past year.

9
10 I declare under the penalty of perjury that the foregoing is true and
11 correct to the best of my knowledge, information and belief.

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14 Executed this 6th of October, 2010, in Washington, D.C.

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18 April Bennett Cabral
19 Assistant General Counsel
20 Office of the General Counsel
21 Broadcasting Board of Governors

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23
24 ¹ I note that the address for BBG's Office of the General Counsel listed at 5
25 C.F.R. § 511.4 is the old address for the OGC, which is across the street from its
26 current location. Offices of the Department of State are now located at that
27 address and any mail delivered erroneously to that address is forwarded to the
28 Agency. In addition, I am aware that Plaintiff has filed other court papers with
OGC at its correct address, which is listed at 5 C.F.R. § 510.1.

PROOF OF SERVICE BY CERTIFIED MAIL

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On **October 7, 2010**, I served:

NOTICE OF MOTION AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF APRIL BENNETT CABRAL IN SUPPORT THEREOF

on each person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection for certified mail on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for certified mail. On the same day that correspondence is placed for collection and certified mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of certified mailing: **October 7, 2010**. Place of certified mailing: Los Angeles, California.

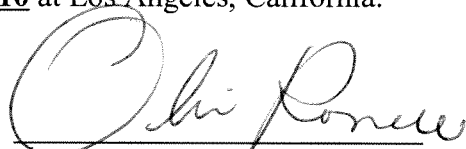
Person(s) and/or Entity(s) to Whom mailed:

**Larry E. Klayman
5779 Rolling Road
Woodland Hills, CA 91367**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: **October 7, 2010** at Los Angeles, California.


OLIVIA ROMERO