

1 Act, 28 U.S.C. § 2679(d). (Doc. # 1). In the Notice of Removal, the United States asserts that
2 Byrnes and Newberry were acting within the scope of their employment as federal employees
3 with respect to the events giving rise to the allegations in Plaintiffs' Complaint. The United
4 States concurrently filed a Notice of Substitution of United States of America as Defendant,
5 and a Certification of Scope of Employment pursuant to 28 U.S.C. § 2879(d). (Docs. # 2, 3).

6 On April 6, 2009, Plaintiffs filed a response and objection to the notice of substitution
7 of United States of America as Defendant. (Doc. # 9).

8 On May 14, 2009, the Court issued an Order finding that Byrnes and Newberry were
9 acting within the scope of their employment and ordering that "the United States shall be
10 substituted as a Defendant in place of David Byrnes and Carl Newberry, and that the title of
11 the action be amended accordingly." (Doc. # 12).

12 On June 12, 2009, the United States filed a Motion to Dismiss Plaintiffs' Complaint on
13 the grounds that the United States is immune from slander and libel claims, and Plaintiffs
14 failed to exhaust their administrative remedies prior to filing suit. (Doc. # 13).

15 Plaintiffs have not responded to the Motion to Dismiss.

16 DISCUSSION

17 "The basic rule of federal sovereign immunity is that the United States cannot be sued
18 at all without the consent of Congress." *Block v. North Dakota*, 461 U.S. 273, 287 (1983).
19 Absent a Congressional waiver of sovereign immunity, a claim against the United States must
20 be dismissed for lack of subject matter jurisdiction. *See Gerritsen v. Consulado General de*
21 *Mexico*, 989 F.2d 340, 343 (9th Cir. 1993); *Gilbert v. Da Grossa*, 756 F.2d 1455, 1458 (9th
22 Cir. 1985).

23 The Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.*, provides
24 a remedy for persons injured by the tortious activity of an employee of the United States,
25 where the employee was "acting within the scope of his ... employment." 28 U.S.C. § 1346(b).
26 "[T]here are certain limitations to the right to bring suit against the United States under the
27 FTCA.... First, 28 U.S.C. § 2680(h) specifically excepts from the FTCA '[a]ny claim arising
28 out of ... libel, slander,' Section 2680(h)'s exceptions are jurisdictional in nature."

1 *Meridian Int'l Logistics, Inc. v. United States*, 939 F.2d 740, 742-43 (9th Cir. 1991) (citing
2 *Morrill v. United States*, 821 F.2d 1426, 1426-27 (9th Cir. 1987)). “Second, 28 U.S.C. §
3 2675(a) establishes that a FTCA action ‘shall not be instituted’ against the United States unless
4 the claimant first presents his claim to the ‘appropriate Federal agency’ and the claim is denied.
5 The claim requirement of § 2675(a) is a jurisdictional limitation.” *Id.* at 743 (citing *Blain v.*
6 *United States*, 552 F.2d 289, 291 (9th Cir. 1977)).

7 The sole claims alleged in the Complaint are for slander and libel. (Doc. # 1 at 3-8).
8 Plaintiffs’ claims are explicitly covered by section 2680(h)’s exception from the FTCA, and
9 therefore the claims are barred. *See* 28 U.S.C. § 2680(h); *Roundtree v. United States*, 40 F.3d
10 1036, 1039 n.2 (9th Cir. 1994) (defamation); *Waggy v. United States*, 2009 WL 1764515, at
11 *3 (E.D. Wash., June 18, 2009) (“Plaintiff’s defamation and libel claims are explicitly covered
12 by section 2680(h)’s intentional-tort exception and therefore barred.”); *Crump v. Social*
13 *Security Admin.*, 2008 WL 3850804, at *4 (E.D. Cal., Aug. 14, 2008) (“[P]laintiff’s claim
14 against the United States includes the torts of libel and slander, which are excluded torts under
15 § 2680(h). Accordingly, defendants’ motion to dismiss should be granted with regard to
16 plaintiff’s claim for libel and slander.”).


17 The Complaint does not allege that Plaintiffs filed an administrative claim with the
18 United States prior to filing suit. For this additional reason, the Complaint must be dismissed.
19 *See* 28 U.S.C. § 2675(a) (“An action shall not be instituted upon a claim against the United
20 States unless the claimant shall have first presented the claim to the appropriate Federal agency
21 and his claim shall have been finally denied by the agency in writing and sent by certified or
22 registered mail [or languished for more than six months.]”); *Jerves v. United States*, 966 F.2d
23 517, 521 (9th Cir. 1992) (“Because Jerves failed to comply with the administrative claim
24 requirements of the FTCA, the district court correctly dismissed her suit for lack of subject
25 matter jurisdiction.”); *Waggy*, 2009 WL 1764515, at *3 (“Defendant argues that an alternative
26 basis for dismissal exists because Plaintiff has not alleged that he exhausted his administrative
27 remedies by presenting his claim to the appropriate federal agency before filing suit, a
28 necessary precursor to an FTCA action. After review, the Court agrees.”).

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CONCLUSION

IT IS HEREBY ORDERED that the Motion to Dismiss (Doc. # 13) is **GRANTED**. This action is **DISMISSED** for lack of subject matter jurisdiction. The Clerk shall enter judgment in favor of Defendant and against Plaintiffs.

DATED: July 28, 2009


WILLIAM Q. HAYES
United States District Judge