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

ANGELICA CORREA *et al.*,
Plaintiffs,
v.
UNITED STATES *et al.*,
Defendants.

Case No: 16-cv-1795-L-NLS

ORDER OF DISMISSAL

Pending before the Court in this action under the Federal Tort Claims Act, 28 U.S.C. §§1346(b) & 2671-2680 ("FTCA"), is the Government's unopposed motion to dismiss for lack of subject matter jurisdiction. For the reasons stated below, the Government's motion is granted. This action is dismissed without prejudice for lack of subject matter jurisdiction. Plaintiffs are granted leave to amend to allege federal jurisdiction for their claim against the remaining Defendant, Scripps Mercy Hospital, Chula Vista ("Scripps").

Plaintiffs filed a medical malpractice action in State court against Scripps and four doctors. The Government substituted into the action in place of the doctors and removed the action to this Court under 42 U.S.C. §233.

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1 Pursuant to Federal Rule of Civil Procedure 12(b)(1), the Government filed
2 a motion to dismiss the claims asserted against it because Plaintiffs did not file an
3 administrative claim as required by 28 U.S.C. §2675(a). Plaintiffs were served
4 with the motion (*see* doc. no. 3-3 & 4-1), but did not file an opposition. The
5 Government's motion to dismiss is therefore granted as unopposed. Civ. Loc. R.
6 7.1.f.3; *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995). In the alternative, the
7 motion is granted because the FTCA "requirement of an administrative claim is
8 jurisdictional." *Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000). The
9 record does not show that Plaintiffs filed an administrative claim. Accordingly, the
10 claims asserted against the Government are dismissed without prejudice for lack of
11 subject matter jurisdiction.

12 Remaining in this action are the claims against Scripps. Unlike State courts,
13 "Federal courts are courts of limited jurisdiction. They possess only that power
14 authorized by Constitution and statute, which is not to be expanded by judicial
15 decree. It is to be presumed that a cause lies outside this limited jurisdiction, and
16 the burden of establishing the contrary rests upon the party asserting jurisdiction."
17 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations
18 omitted). Federal courts are constitutionally required to raise issues related to
19 federal subject matter jurisdiction and may do so *sua sponte*. *Arbaugh v. Y&H*
20 *Corp.*, 546 U.S. 500, 514 (2006). A federal court must satisfy itself of its
21 jurisdiction over the subject matter before proceeding to the merits of the case.
22 *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577, 583 (1999). Plaintiff bears
23 the burden of demonstrating that jurisdiction is properly before the Court. *See*
24 *Thornhill Publ'g Co. v. General Tel. & Elec. Corp.*, 594 F.2d 730, 733 (9th Cir.
25 1979).

26 Nothing in the record supports federal subject matter jurisdiction over the
27 claims asserted against Scripps. The claims against Scripps are therefore
28 dismissed without prejudice for failure to establish subject matter jurisdiction.

1 Pursuant to 28 U.S.C. § 1653, Plaintiffs are granted leave to amend to allege
2 federal jurisdiction as to Scripps. If Plaintiffs choose to file an amended
3 complaint, they must do so no later than **March 30, 2017**.

4 For the foregoing reasons it is **ORDERED** as follows:

- 5 1. The Government's motion to dismiss is granted.
- 6 2. This action is dismissed without prejudice for lack of subject matter
7 jurisdiction.
- 8 3. Plaintiffs are granted leave to amend the complaint to allege federal
9 jurisdiction for claims against Scripps Mercy Hospital, Chula Vista. If Plaintiffs
10 choose to file an amended complaint, they must do so no later than **March 30,**
11 **2017**.

12 **IT IS SO ORDERED.**

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14 Dated: March 9, 2017

15 
16 Hon. M. James Lorenz
17 United States District Judge

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