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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 THOMAS LEWIS and LETICIA
12 LEWIS,
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14 Plaintiffs,
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16 v.
17 UNITED STATES OF
18 AMERICA, WILLIAM GORE,
19 DIANE JACOB, and HELEN
20 MEYERS,
21
22 Defendants.

Case No.: 18-cv-0843-WQH-NLS

ORDER

19 HAYES, Judge:

20 The matter before the Court is the Motion to Dismiss filed by Defendant United
21 States of America (ECF No. 3).

22 **I. Background**

23 On March 29, 2018 Plaintiffs Thomas Lewis and Leticia Lewis initiated this action
24 by filing a form Complaint (ECF No. 1-2) against Bill McGowan,¹ William Gore, Diane
25 Jacob, and Helen Meyers in the Superior Court of California, County of San Diego. The
26 boxes on the Complaint for “intentional tort” and “business tort/unfair business practice”
27

28 ¹ Plaintiffs incorrectly spelled Bill McGowan’s last name “McGowen.” See ECF No. 2

1 are checked. (ECF No. 1-2 at 4, 8). The Complaint alleges that the Defendants “aided and
2 abetted [a] racist bigoted hostile hate group” and “supported and empowered doe pilots
3 acting in a racist bigoted host[ile] group directed towards our family.” *Id.* at 5. The
4 Complaint alleges that the actions of the Defendants infringed upon Plaintiffs’ “right[] to
5 live in peace without fear” and prevented Plaintiffs from “[o]perat[ing their] licensed
6 childcare facility as [they] had done for the past 30 years.” *Id.*

7 On May 1, 2018, the United States of America, “as the party to be substituted in this
8 action for William J. McGowan III,” removed this case to this Court. (ECF No. 1). On
9 May 16, 2018, the United States of America was substituted for William McGowan. (ECF
10 No. 2). On May 29, 2018, the United States filed a Motion to Dismiss Plaintiffs’ claim
11 against it under Federal Rule of Civil Procedure 12(b)(1). (ECF No. 3). On June 22, 2018,
12 Plaintiffs filed a Response to the Motion to Dismiss. (ECF No. 5). On June 25, 2018, the
13 United States filed a Reply in Support of the Motion to Dismiss. (ECF No. 6).

14 **II. Legal Standard**

15 A motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(1) is a
16 challenge to the court’s subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). “Federal
17 courts are courts of limited jurisdiction. They possess only that power authorized by
18 Constitution and statute It is to be presumed that a cause lies outside this limited
19 jurisdiction, and the burden of establishing the contrary rests upon the party asserting
20 jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)
21 (citations omitted).

22 A plaintiff suing in a federal court must show in his pleading, affirmatively
23 and distinctly, the existence of whatever is essential to federal jurisdiction,
24 and, if he does not do so, the court, on having the defect called to its attention
25 or on discovering the same, must dismiss the case, unless the defect be
corrected by amendment.

26 *Tosco Corp. v. Communities for a Better Env’t*, 236 F.3d 495, 499 (9th Cir. 2001) (quoting
27 *Smith v. McCullough*, 270 U.S. 456, 459 (1926)) *abrogated on other grounds by* *Hertz*
28 *Corp. v. Friend*, 559 U.S. 77 (2010).

1 **III. Discussion**

2 The United States contends that Plaintiffs’ claim against the United States should be
3 dismissed because the United States has not waived its sovereign immunity from Plaintiffs’
4 claim. (ECF No. 3-1 at 4). Plaintiffs’ Response to the Motion to Dismiss does not address
5 whether the United States has waived its sovereign immunity. *See* ECF No. 5.

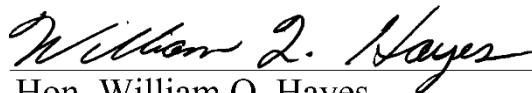
6 District courts have subject matter jurisdiction over “action[s] against the United
7 States only to the extent that the government waives its sovereign immunity.” *Valdez v.*
8 *United States*, 56 F.3d 1177, 1179 (9th Cir. 1995). The Federal Tort Claims Act includes
9 a general waiver of the United States’ immunity from claims for injuries “caused by the
10 negligent or wrongful act or omission of any employee of the Government while acting
11 within the scope of his office or employment.” 28 U.S.C. § 1346. A “plaintiff bears the
12 burden of persuading the court that it has subject matter jurisdiction under the FTCA’s
13 general waiver of immunity.” *Prescott v. United States*, 973 F.2d 696, 701 (9th Cir. 1992).

14 The only allegations concerning the cause of Plaintiffs’ injuries are that the
15 Defendants “aided and abetted [a] racist bigoted hostile hate group” and “supported and
16 empowered doe pilots acting in a racist bigoted host[ile] group directed towards our
17 family.” (ECF No. 1-2 at 5). The factual allegations in the Complaint do not establish that
18 Plaintiffs’ claim against the United States is for injuries “caused by the negligent or
19 wrongful act or omission of any employee of the Government while acting within the scope
20 of his office or employment.” 28 U.S.C. § 1346. Consequently, Plaintiffs have failed to
21 “show in [their] pleading, affirmatively and distinctly, the existence of whatever is essential
22 to federal jurisdiction.” *Tosco*, 236 F.3d at 499.

23 **III. Conclusion**

24 The Motion to Dismiss (ECF No. 3) is GRANTED. Plaintiffs’ claim against the
25 United States is DISMISSED without prejudice.

26 Dated: August 6, 2018

27 
28 Hon. William Q. Hayes
United States District Court