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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LETICIA CONTRERAS,

 Plaintiff,

 v.

FRESNO COUNTY EMPLOYEES’
RETIREMENT ASSOCIATION,

 Defendant.

No. 1:17-cv-00329-DAD-MJS

ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS

(Doc. No. 8)

 This matter came before the court on June 20, 2017, for hearing of defendant’s motion to dismiss pursuant to Federal Civil Procedure Rules 12(b)(1) and 12(b)(5) for lack of subject matter jurisdiction and improper service of process. (Doc. No. 8.) Plaintiff Leticia Contreras, proceeding pro se and *in forma pauperis*, appeared telephonically on her own behalf. Attorney Gale Hearst appeared on behalf of defendant Fresno County Employees’ Retirement Association. After oral argument, the motion was taken under submission. For the reasons stated below, defendant’s motion will be granted.

FACTUAL BACKGROUND

 On March 7, 2017, plaintiff Leticia Contreras commenced this action against defendant Fresno County Employees’ Retirement Association (“FCERA”). (Doc. No. 1.) The action now

1 proceeds on plaintiff's First Amended Complaint ("FAC"), filed on April 18, 2017. (Doc. No. 5.)
2 In her complaint, plaintiff alleges claims under California Government Code §§ 31534 and
3 31725. (Doc. No. 1-1 at 1.)

4 Plaintiff was an employee of defendant FCERA who worked in the Department of Social
5 Services. (Doc. No. 5 at 1–2.) On October 19, 2009, plaintiff was hit by a county vehicle while
6 walking through a county parking lot. (*Id.* at 2.) She suffered multiple injuries that were
7 documented by healthcare providers, including providers at Clovis Community Hospital. (*Id.* at
8 2.)

9 On October 21, 2009, plaintiff returned to work, with certain job duties modified to
10 accommodate her work restrictions. (*Id.*) On January 9, 2012, defendant FCERA placed plaintiff
11 on a leave of absence. (*Id.*)

12 Plaintiff applied for disability retirement on January 19, 2012. (*Id.*) The application was
13 denied by the Board of Retirement on November 6, 2013. (*Id.*) Plaintiff submitted an appeal of
14 this decision on November 13, 2013. (*Id.*) The appeal was denied on June 17, 2015. (*Id.*)
15 Plaintiff then filed a Petition for Writ of Mandate with the Fresno County Superior Court, seeking
16 to have the decision overturned. (*Id.*) The petition was denied on February 14, 2017. (*Id.*)

17 On May 5, 2017, defendant filed the instant motion to dismiss. (Doc. No. 8.) Plaintiff
18 filed her opposition on May 19, 2017. (Doc. No. 15.) Defendant did not file a reply in support of
19 their motion.

20 LEGAL STANDARDS

21 A. Federal Rule of Civil Procedure Rule 12(b)(1).

22 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to raise the defense, by
23 motion, that the court lacks jurisdiction over the subject matter of an entire action or of specific
24 claims alleged in the action. Federal district courts generally have subject matter jurisdiction over
25 civil cases through diversity jurisdiction, 28 U.S.C. § 1332, or federal question jurisdiction, 28
26 U.S.C. § 1331. *See Peralta v. Hispanic Bus., Inc.*, 419 F.3d 1068 (9th Cir. 2005). In a motion to
27 dismiss for lack of subject jurisdiction, a defendant may either attack the allegations of the
28 complaint or the existence of subject matter jurisdiction in fact. *Thornhill Publ'g Co. v. Gen. Tel.*

1 & *Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

2 Here, defendant argues that the allegations of the FAC are insufficient to invoke federal
3 subject matter jurisdiction. (Doc. No. 8-1.) When a party brings a facial attack to subject matter
4 jurisdiction, that party contends that the allegations of jurisdiction contained in the complaint are
5 insufficient on their face to demonstrate the existence of jurisdiction. *See Safe Air for Everyone*
6 *v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a Rule 12(b)(1) motion of this type, the
7 plaintiff is entitled to safeguards similar to those applicable when a Rule 12(b)(6) motion is made.
8 *See Sea Vessel Inc. v. Reyes*, 23 F.3d 345, 347 (11th Cir. 1994); *Osborn v. United States*, 918
9 F.2d 724, 729 n.6 (8th Cir. 1990). Accordingly, the factual allegations of the complaint are
10 presumed to be true, and the motion is granted only if the plaintiff fails to allege an element
11 necessary for subject matter jurisdiction. *Savage v. Glendale Union High Sch. Dist.*, No. 205,
12 343 F.3d 1036, 1039 n.1 (9th Cir. 2003); *Miranda v. Reno*, 238 F.3d 1156, 1157 n.1 (9th Cir.
13 2001). Nonetheless, district courts “may review evidence beyond the complaint without
14 converting the motion to dismiss into a motion for summary judgment” when resolving a facial
15 attack. *Safe Air for Everyone*, 373 F.3d at 1039.

16 ANALYSIS

17 In its motion to dismiss, defendant argues that plaintiff’s FAC should be dismissed under
18 Federal Civil Procedure Rule 12(b)(1) because the allegations of the complaint do not support
19 either diversity or federal question jurisdiction. (Doc. No. 8-1.) Plaintiff opposes dismissal of the
20 complaint. (Doc. No. 15 at 4.)

21 Here, in her FAC plaintiff alleges that she is a resident of California and a longtime
22 employee of FCERA. (Doc. No. 1-1 at 1.) As such, the court construes the FAC to allege that
23 plaintiff is a citizen of California. *See Kanter v. Warner–Lambert Co.*, 265 F.3d 853, 857 (9th
24 Cir. 2001) (“A person’s domicile is her permanent home, where she resides with the intention to
25 remain or to which she intends to return”); *CarMax Auto Superstores Cal. LLC v. Hernandez*, 94
26 F. Supp. 3d 1078, 1091 n.38 (C.D. Cal. 2015) (finding allegations of a party’s extensive and
27 continuous period of residence and employment in a state sufficient to establish the party’s
28 citizenship in that state). Plaintiff brings claims against defendant FCERA, a government entity

1 that is also a citizen of California.¹ *See Moor v. County of Alameda*, 411 U.S. 693, 717 (1973)
2 (noting that local governments are citizens of the states in which they are located). Because both
3 parties are California citizens, there is no diversity of citizenship, and plaintiff cannot justify
4 federal jurisdiction on this basis. *See* 28 U.S.C. § 1332(a)(2).

5 Plaintiff also does not identify a federal question or cite a federal statute giving the court
6 jurisdiction over the subject matter described in the complaint. Rather, plaintiff's complaint
7 alleges two claims under the California Government Code, both challenging Board of
8 Retirement's denial of her application for disability benefits. (Doc. No. 1-1 at 1.) Plaintiff also
9 does not assert that her state law claims necessarily require resolution of substantial federal
10 issues. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005)
11 (explaining that an action "arises under" federal law pursuant to § 1331 if the cause of action (i) is
12 created by federal law, or (ii) necessarily requires resolution of a substantial question of federal
13 law.). At the hearing on the pending motion plaintiff argued that the sole basis for her assertion
14 of federal jurisdiction over her claims brought under the California Government Code was her
15 contention that the decision of the Board of Retirement to deny her application for disability
16 benefits was inconsistent with the finding that she was disabled made by Social Security
17 Administrative Law Judges. However, this contention provides no basis upon which to find that
18 this court has jurisdiction over the claims set forth in plaintiff's FAC. Accordingly, the court
19 concludes that the allegations of plaintiff's complaint are insufficient to demonstrate federal
20 question jurisdiction.

21 In the absence of a federal claim or diversity, this court lacks jurisdiction over plaintiff's
22 complaint. The court therefore must dismiss the action. *See Mamigonian v. Biggs*, 710 F.3d 936,
23 942 (9th Cir. 2013) ("If jurisdiction is lacking at the outset, the district court has no power to do
24 anything with the case except dismiss."); *see generally* Fed. R. Civ. P. 12(h)(3). Defendant's
25 motion to dismiss will be granted, and plaintiff's complaint will be dismissed without leave to

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28 ¹ The court takes judicial notice of the fact that Fresno County is located in the state of
California. *See* Fed. R. Evid. 201; 28 U.S.C. § 84(b).

1 amend.² *See Hagans v. Lavine*, 415 U.S. 528, 542–43 (1974) (dismissal for want of jurisdiction
2 appropriate where the claim does not involve a federal controversy within the jurisdiction of the
3 district court).

4 **CONCLUSION**

5 For the reasons set forth above,

- 6 1. Defendant’s motion to dismiss (Doc. No. 8) is granted;
7 2. Plaintiff’s FAC (Doc. No. 5) is dismissed without leave to amend; and
8 3. The clerk of the court is directed to close this case.

9 IT IS SO ORDERED.

10 Dated: June 21, 2017

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13 UNITED STATES DISTRICT JUDGE

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27 ² In its motion to dismiss, defendant also argues that plaintiff’s complaint should be dismissed
28 for “insufficient service of process” under Federal Rule of Civil Procedure 12(b)(5). (Doc. No. 8-
1 at 4.) Having found that dismissal is appropriate based on Federal Civil Procedure Rule
12(b)(1), the court does not now address defendant’s arguments concerning improper service.