

1 BACKGROUND

2 Because defendants' present motion does not challenge the merits of plaintiff's
3 substantive claims, the court only briefly outlines the background facts, whether disputed or
4 undisputed, as necessary to understand the factual backdrop for defendants' jurisdictional
5 arguments.

6 In 2009, plaintiff Matilda Webb, through her business Webb Resources, entered into a
7 contract with the United States Postal Service ("USPS") to provide rural route carrier services.
8 Plaintiff alleges that, on two separate occasions (October 25, 2013, and October 24, 2014), shots
9 were fired at plaintiff's vehicle while delivering mail, causing physical damage to her rental
10 vehicle and psychological damage to plaintiff. According to plaintiff, the postmaster failed to
11 warn plaintiff of hunting excursions along the route, placing plaintiff in danger of serious injury
12 or death. Thereafter, in December 2014, plaintiff's contract was suspended and ultimately
13 terminated based on various alleged service irregularities such as misdeliveries, failure to follow
14 directions, and failure to adhere to the schedule. Plaintiff strongly disputes the alleged
15 irregularities, claiming that the postmaster had no interest in ensuring plaintiff's success on the
16 particular route. (See generally ECF No. 1-1 & Exs. A-E.)

17 Subsequently, on January 8, 2016, plaintiff filed an action in the Solano County Superior
18 Court raising: (1) a contract claim based on the USPS's termination of plaintiff's contract, for
19 which plaintiff seeks \$20,500 in financial damages and an order quashing the \$5,172.69 in fees
20 assessed by the USPS related to that contract; and (2) a tort claim based on harm plaintiff
21 allegedly suffered as a result of the above-mentioned shootings, for which plaintiff seeks a total
22 of \$50,000 in pain and suffering damages for herself and her assistant as well as payment for 5
23 years of psychological services for herself and her assistant. (See ECF No. 1-1 at 2-8.) On July
24 6, 2016, defendants removed the action to this court. (ECF No. 1.) The instant motion to dismiss
25 for lack of subject matter jurisdiction followed. (ECF No. 4.)

26 DISCUSSION

27 "Federal courts are courts of limited jurisdiction. They possess only that power
28 authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be

1 presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the
2 contrary rests upon the party asserting jurisdiction.” Kokkonen v. Guardian Life Ins. Co. of Am.,
3 511 U.S. 375, 377 (1994) (internal citations omitted and internal punctuation modified).³
4 Furthermore, as the Ninth Circuit Court of Appeals observed, “[s]overeign immunity is an
5 important limitation on the subject matter jurisdiction of federal courts. The United States, as
6 sovereign, can only be sued to the extent it has waived its sovereign immunity. The Supreme
7 Court has frequently held that a waiver of sovereign immunity is to be strictly construed, in terms
8 of its scope, in favor of the sovereign.” Vacek v. U.S. Postal Serv., 447 F.3d 1248, 1250 (9th Cir.
9 2006) (internal citations omitted and internal punctuation modified).

10 With the above principles in mind, the court addresses the court’s potential jurisdiction
11 over each of plaintiff’s claims separately below.

12 Contract Claim

13 Defendants argue that the court lacks subject matter jurisdiction over plaintiff’s contract
14 claim, because the dispute involves a procurement contract for services and can only be heard
15 before the Postal Service Board of Contract Appeals or in the Court of Federal Claims. That
16 argument has merit.

17 The Contract Disputes Act (“CDA”) generally governs procurement contracts with the
18 federal government, including contracts for services such as plaintiff’s contract to provide rural
19 carrier services for the USPS. See 41 U.S.C. § 7102(a)(2); 39 C.F.R. § 601.109 (USPS regulation
20 implementing the CDA). In this case, the contract itself also expressly provides that it is
21 governed by the CDA. (See Declaration of Howard E. Bruner, ECF No. 4-2 [“Bruner Decl.”] ¶ 2,
22 Ex. A [Contract, Section C.3.4. at p. 18].) Significantly, it is well established that a party to a

23 ³ Where, as in this motion, a defendant launches a factual attack on subject matter jurisdiction,
24 plaintiff’s allegations are not presumed true, disputed material facts do not preclude the court
25 from evaluating for itself the merits of the jurisdictional claims, and the plaintiff has the burden of
26 proof that jurisdiction does in fact exist. See Thornhill Publ’g. Co. v. Gen. Tel. & Elects. Corp.,
27 594 F.2d 730, 733 (9th Cir. 1979); see also Savage v. Glendale Union High School, 343 F.3d
28 1036, 1039-40 n.2 (9th Cir. 2003) (“Once the moving party has converted the motion to dismiss
into a factual motion by presenting affidavits or other evidence properly brought before the court,
the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its
burden of establishing subject matter jurisdiction.”).

1 contract governed by the CDA cannot bring its contractual dispute before a United States District
2 Court, but must appeal to the Postal Service Board of Contract Appeals or bring an action in the
3 Court of Federal Claims. Tritz v. United States Postal Serv., 721 F.3d 1133, 1139 (9th Cir.
4 2013). Indeed, in this case, plaintiff has already elected to appeal the contractual dispute to the
5 Postal Service Board of Contract Appeals, where the matter remains pending. (Bruner Decl. ¶ 3.)
6 In her opposition, plaintiff does not appear to dispute that this court lacks subject matter
7 jurisdiction over the contract claim and instead requests that the court permit her appeal before
8 the Postal Service Board of Contract Appeals to continue. (ECF No. 10 at 2.)

9 Therefore, the court recommends that plaintiff's contract claim in this action be dismissed
10 for lack of subject matter jurisdiction.

11 Tort Claim

12 As noted above, plaintiff also asserts some type of tort claim against defendants arising
13 from the shootings that allegedly took place on plaintiff's mail route. Defendants correctly note
14 that the United States is the only proper defendant for that claim. See FDIC v. Craft, 157 F.3d
15 697, 706 (9th Cir. 1998) (noting that the Federal Tort Claims Act ("FTCA") is "the exclusive
16 remedy for tortious conduct by the United States, and it only allows claims against the United
17 States. Although such claims can arise from the acts or omissions of United States agencies, an
18 agency itself cannot be sued under the FTCA.").

19 However, more fundamentally, defendants contend that the court lacks subject matter
20 jurisdiction over plaintiff's tort claim, because plaintiff failed to exhaust her administrative
21 remedies. For the reasons discussed below, the court agrees.

22 As the Ninth Circuit has explained, the FTCA:

23 waives the sovereign immunity of the United States for certain torts
24 committed by federal employees under circumstances where the
25 United States, if a private person, would be liable to the claimant in
26 accordance with the law of the place where the act or omission
27 occurred. The Act provides that an "action shall not be instituted
upon a claim against the United States for money damages" unless
the claimant has first exhausted administrative remedies. 28 U.S.C.
§ 2675(a).

28 We have repeatedly held that the exhaustion requirement is
jurisdictional in nature and must be interpreted strictly: This is

1 particularly so since the Act waives sovereign immunity. Any such
2 waiver must be strictly construed in favor of the United States.
3 Section 2675(a) establishes explicit prerequisites to the filing of suit
4 against the Government in district court. It admits of no exceptions.
5 Given the clarity of the statutory language, we cannot enlarge that
6 consent to be sued which the Government, through Congress, has
7 undertaken so carefully to limit. We are not allowed to proceed in
8 the absence of fulfillment of the conditions merely because
9 dismissal would visit a harsh result upon the plaintiff. With regard
10 to the exhaustion requirement, the Supreme Court has stated that in
11 the long run, experience teaches that strict adherence to the
12 procedural requirements specified by the legislature is the best
13 guarantee of even-handed administration of the law.

14 Vacek, 447 F.3d at 1250 (internal citations omitted and internal punctuation modified).

15 More specifically, to exhaust administrative remedies, a plaintiff is required to present an
16 administrative tort claim to the appropriate federal agency. 28 U.S.C. § 2675(a). “A claim is
17 deemed presented for purposes of § 2675(a) when a party files (1) a written statement sufficiently
18 describing the injury to enable the agency to begin its own investigation, and (2) a sum certain
19 damages claim.” Blair v. I.R.S., 304 F.3d 861, 864 (9th Cir. 2002). The claim is deemed
20 presented when received by the agency. Vacek, 447 F.3d at 1251-52. An action in federal court
21 “shall not be instituted” until the agency has issued a final denial in writing or until six months
22 after the administrative tort claim is filed. 28 U.S.C. § 2675(a).

23 In her opposition to the present motion, plaintiff contends that Exhibits A, B, C, and E to
24 her opposition comprise plaintiff’s administrative tort claim. (ECF No. 10 at 3.) These exhibits
25 contain numerous documents related to plaintiff’s contract with the USPS, including the award of
26 the contract, reports of alleged problems with plaintiff’s performance under the contract, the
27 USPS’s decision to terminate the contract, and correspondence between plaintiff and the USPS
28 concerning the contract and its termination, including plaintiff’s appeal of the contract
29 termination decision. (ECF No. 10, Exs. A-C, E.)

30 As an initial matter, although some of those documents reference the shootings that
31 allegedly took place on plaintiff’s mail route, the nature of the documents, and the fact that they
32 were submitted as part of plaintiff’s contract dispute (and not in accordance with the USPS’s
33 regulation pertaining to tort claims, see 39 C.F.R. § 912.4), render it highly unlikely that the
34 USPS could have plausibly interpreted those documents as an administrative tort claim.

1 Nevertheless, even assuming, without deciding, that the documents could be broadly
2 construed as an administrative tort claim, they did not satisfy the FTCA’s administrative
3 exhaustion requirement. Only two of the documents (a July 30, 2015 Notice of Appeal and
4 Complaint on Appeal in the Postal Service Board of Contract Appeals case, and a September 22,
5 2015 Claim for Damages in that same case) even arguably referenced specific damages numbers.⁴
6 See Blair, 304 F.3d at 868 (affirming dismissal of medical expenses claim in a FTCA action
7 where plaintiff did not provide a sum certain of medical expenses, but instead stated that medical
8 expenses were still being incurred and attached medical bills); Burns v. United States, 764 F.2d
9 722, 724 (9th Cir. 1985) (“The only document submitted by Burns, or on his behalf, to the V.A.
10 which could arguably be called an administrative claim for money damages, is the letter written
11 to Senator Baucus. While it might convincingly be asserted that this letter did not afford the V.A.
12 sufficient notice of an imminent lawsuit to enable them to initiate their own investigation, we
13 need not consider this contention because it is clear that nowhere in the letter is contained the
14 requisite sum certain claim.”). And even assuming that those documents presented a proper sum
15 certain damages claim, plaintiff filed this lawsuit too early by filing it on January 8, 2016, before
16 six months had elapsed. See Jerves v. United States, 966 F.2d 517, 519, 521 (9th Cir. 1992) (“A
17 tort claimant may not commence proceedings in court against the United States without first
18 filing her claim with an appropriate federal agency and either receiving a conclusive denial of the
19 claim from the agency or waiting for six months to elapse without a final disposition of the claim
20 being made.”).⁵

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22 ⁴ In the July 30, 2015 Notice of Appeal and Complaint on Appeal, plaintiff sought \$50,000.00 in
23 pain and suffering damages for herself and her assistant, along with 5 years of psychological
24 assistance for herself and her assistant at an unspecified cost. (ECF No. 10 at 14.) In the
25 September 22, 2015 Claim for Damages, plaintiff sought various itemized damages, but stated
26 that such damages resulted from the suspension and termination of the contract. (ECF No. 10 at
116-17 (“The aforementioned [damages], as a result of your decision, Mr. Bruner, to suspend
(December 23, 2014) and consequent termination (effective December 26, 2014) this HCR 94567
Contract has caused irreparable harm both physically and financially [sic].))

27 ⁵ Notably, the USPS Contracting Officer’s November 23, 2015 response to plaintiff’s September
28 22, 2015 Claim for Damages was not a conclusive denial of any administrative tort claim. (ECF
No. 10 at 126-27.) In that letter, the Contracting Officer merely stated that some of the damages

1 Consequently, plaintiff failed to properly exhaust her administrative remedies, and the
2 court thus lacks jurisdiction over plaintiff's tort claim.

3 CONCLUSION

4 For the reasons outlined above, plaintiff's claims are subject to dismissal. Even though
5 the court ordinarily liberally grants *pro se* litigants leave to amend when it appears plausible that
6 pleading deficiencies could be cured, the jurisdictional defects at issue here are not capable of
7 correction through amendment. As such, granting leave to amend would be futile. See Cahill v.
8 Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

9 Accordingly, IT IS HEREBY RECOMMENDED that:

- 10 1. Defendants' motion to dismiss (ECF No. 4) be GRANTED.
11 2. The action be DISMISSED for lack of subject matter jurisdiction.
12 3. The Clerk of Court be directed to close this case.

13 In light of those recommendations, IT IS ALSO HEREBY ORDERED that:

- 14 1. The November 17, 2016 status (pretrial scheduling) conference in this matter is
15 vacated, subject to rescheduling at a later juncture, if necessary.
16 2. All pleading, discovery, and motion practice in this action are stayed pending
17 resolution of these findings and recommendations. With the exception of objections to
18 the findings and recommendations, or non-frivolous motions for emergency relief, the
19 court will not entertain or respond to any motions or filings until the findings and
20 recommendations are resolved.

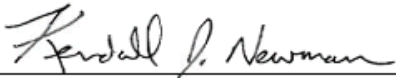
21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
23 days after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
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27 claimed appeared to be tort damages over which the Postal Service Board of Contract Appeals
28 had no jurisdiction. (Id.) Nothing in the Contracting Officer's letter altered plaintiff's ability to
 file a proper administrative tort claim through the appropriate channels.

1 shall be served on all parties and filed with the court within fourteen (14) days after service of the
2 objections. The parties are advised that failure to file objections within the specified time may
3 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
4 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

5 IT IS SO ORDERED AND RECOMMENDED.

6 Dated: October 18, 2016

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KENDALL J. NEWMAN
9 UNITED STATES MAGISTRATE JUDGE

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