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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ELEONOR ASENCIO,  
Plaintiff,  
v.  
CITY OF SAN DIEGO et al.,  
Defendants.

Case No.: 24-CV-2074 W (DDL)

**ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS THE FAC  
[DOC. 15]; DENYING PLAINTIFF’S  
MOTION FOR LEAVE TO FILE A  
SECOND AMENDED COMPLAINT  
[DOC. 18]; AND DENYING  
DEFENDANT’S MOTION TO  
DISMISS THE COMPLAINT AS  
MOOT [DOC. 10]**

The United States (“Defendant”) has moved to dismiss Eleonor Asencio’s (“Plaintiff”) First Amended Complaint (“FAC”). (*Mtn.* [Doc. 15].) Plaintiff opposes. (*Opp’n* [Doc. 16].) The Court decides the matter on the papers submitted and without oral argument pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, the Court **GRANTS** the motion to dismiss the FAC [Doc. 15] **WITHOUT LEAVE TO**

1 **AMEND; DENIES** Plaintiff’s motion to file a Second Amended Complaint [Doc. 18];  
2 and **DENIES** Defendant’s motion to dismiss the Complaint as **MOOT** [Doc. 10].  
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4 **I. BACKGROUND**

5 This lawsuit arises out of an alleged slip and fall at or near 4509 Camino De La  
6 Plaza, San Ysidro, California 92174.<sup>1</sup> (*FAC* at 4, ¶ 22.) Plaintiff brought suit against the  
7 City of San Diego, the County of San Diego, the State of California, the United States of  
8 America, and DOES 1–100 alleging they failed to exercise ordinary and reasonable care  
9 by failing to manage, inspect, maintain, or repair the sidewalk at the Incident Area,  
10 resulting in Plaintiff’s injury. (*Id.* at ¶ 23.)

11 The FAC asserts four causes of action against the defendants: (1) California Gov.  
12 Code § 835 (against the City, County, State, and Does 1–50); (2) Cal. Gov. Code § 815.2  
13 (against the City, County, State, and DOES 51–75); (3) Premises liability (against the  
14 United States and DOES 76–100); and (4) Negligence (against the United States and  
15 DOES 76–100). (*FAC* at 5–13.) The United States has moved to dismiss the claims  
16 against the federal defendants, arguing that Plaintiff lacks standing because the United  
17 States does not own the land mentioned in the FAC, so the injury is not fairly traceable to  
18 the Defendant. (*Mtn.* at 3.)

19 Plaintiff does not dispute in her Opposition that, as currently pled, she lacks  
20 standing. However, Plaintiff asserts that she was mistaken about the original address—  
21 and after leave to amend to correct the address in the FAC—she will have standing.  
22 (*Opp’n* at 5:16–20.) Defendant argues that leave to amend is futile because, even if she  
23 were permitted to change the address, this Court would not have jurisdiction because  
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26 <sup>1</sup> The FAC claims the slip and fall occurred at 4509 Camino De La Plaza, San Ysidro, California 92174.  
27 (*FAC* at 4, ¶ 22.) However, Plaintiff’s Opposition to the Motion to Dismiss the FAC asserts that after  
28 further investigation, Plaintiff discovered the slip and fall actually occurred at 727 East San Ysidro  
Boulevard, San Diego 92173. (*Opp’n* at 5:16–20.) Because only the first address was pled in the FAC,  
the Court will not consider the second address for purposes of Defendant’s Motion to Dismiss the FAC.

1 Plaintiff has not exhausted her administrative remedies. (*Reply* [Doc. 17] at 3:1–6.)  
2 Each argument will be discussed in turn.  
3

## 4 **II. LEGAL STANDARD**

5 Federal courts are courts of limited jurisdiction. *Exxon Mobil Corp. v. Allapattah*  
6 *Servs., Inc.*, 545 U.S. 546, 552 (2005). Limited jurisdiction means that federal courts can  
7 only adjudicate cases that both the Constitution and Congress authorize them to  
8 adjudicate, such as those involving diversity of citizenship, a federal question, or where  
9 the United States is a party. *Id.* See also *Ex parte Bollman*, 8 U.S. 75, 94 (1807) (“To  
10 enable the court to decide on such question, the power to determine it must be given by  
11 written law.”). Federal courts are presumptively without jurisdiction over civil actions,  
12 and the burden of establishing the contrary rests upon the party asserting jurisdiction.  
13 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994).

14 Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may seek  
15 to dismiss a complaint for lack of subject matter jurisdiction. Because subject matter  
16 jurisdiction involves the authority of the court to decide the case, the court cannot reach  
17 the merits of any dispute until it confirms its own subject matter jurisdiction. See *Steel*  
18 *Co. v. Citizens for a Better Environ.*, 523 U.S. 83, 95 (1998). Additionally, lack of  
19 subject matter jurisdiction may be raised either by the parties or *sua sponte* by the court.  
20 See *Washam v. Rabine*, No. 3:12CV2433-GPC-BLM, 2013 WL 1849233, at \*1 (S.D.  
21 Cal. May 1, 2013).

22 When considering a Rule 12(b)(1) motion to dismiss, the district court is free to  
23 hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving  
24 factual disputes where necessary. *Augustine v. United States*, 704 F.2d 1074, 1077 (9th  
25 Cir. 1983). In such circumstances, “[n]o presumptive truthfulness attaches to [a]  
26 plaintiff’s allegations, and the existence of disputed facts will not preclude the trial court  
27 from evaluating for itself the merits of jurisdictional claims.” *Id.* (quoting *Thornhill*  
28

1 *Publishing Co. v. General Telephone & Electronic Corp.*, 594 F.2d 730, 733 (9th Cir.  
2 1979).

3 The Article III standing doctrine is one limitation on a federal court’s subject  
4 matter jurisdiction. *See La Asociacion de Trabajadores de Lake Forest v. City of Lake*  
5 *Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). If a plaintiff fails to satisfy the standing  
6 requirements, the case must be dismissed. *See Foster v. Carson*, 347 F.3d 742, 745–46,  
7 749 (9th Cir. 2003). The party invoking federal jurisdiction bears the burden of  
8 establishing that the standing requirements of Article III are satisfied. *Spokeo, Inc. v.*  
9 *Robins*, 578 U.S. 330, 338 (2016).

10 “[T]he ‘irreducible constitutional minimum’ of standing consists of three  
11 elements.” *Spokeo*, 578 U.S. at 338 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S.  
12 555, 560 (1992)). In order “to satisfy Article III’s standing requirements, a plaintiff must  
13 show (1) they have suffered an ‘injury in fact’ that is (a) concrete and particularized and  
14 (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to  
15 the challenged action of the defendant; and (3) it is likely, as opposed to merely  
16 speculative, that the injury will be redressed by a favorable decision.” *Friends of the*  
17 *Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000) (citing  
18 *Lujan*, 504 U.S. at 560–61).

### 19 20 **III. DISCUSSION**

#### 21 **A. Motion to Dismiss the FAC**

22 In their Motion to Dismiss the FAC, Defendant argues that the United States does  
23 not own the land where Plaintiff’s alleged injury occurred. (*Mtn.* at 3.) Therefore,  
24 Plaintiff lacks standing because any dangerous condition on the property or any injury  
25 she suffered is not “fairly traceable” to Defendant. (*Id.* at 4:8–12.) “An injury is ‘fairly  
26 traceable’ where there is a casual connection between the injury and the defendant’s  
27 challenged conduct.” *Wit v. United Behavioral Health*, 79 F.4th 1068, 1083 (9th Cir.  
28 2023) (citing *Lujan*, 504 U.S. at 560).

1 To support their argument, Defendant asks for judicial notice,<sup>2</sup> citing a Google  
2 Maps internet search showing that “the United States is not a listed occupant of the 4509  
3 Camino De La Plaza location.” (*Mtn. Jud. Notice* [Doc. 15-2] at 2:1–2.)

4 Plaintiff does not dispute that Defendant does not own the land alleged in the FAC,  
5 but instead asserts that after additional investigation, she found that the injury actually  
6 occurred at 727 East San Ysidro Boulevard. In her Opposition, Plaintiff states that she  
7 will file a motion for leave to file a SAC and requests the Court either deny the current  
8 Motion to Dismiss the FAC as moot or stay a ruling on the motion until the Court decides  
9 her motion for leave to file a SAC. (*Opp’n* at 6:16–23.)

10 Plaintiff has failed to oppose Defendant’s argument that she lacks standing.  
11 Specifically, Plaintiff has failed to show that her injury—as alleged in the FAC—is fairly  
12 traceable to the Defendant, so the Motion to Dismiss the FAC will be granted.

13  
14 **B. Leave to Amend**

15 Federal Rule of Civil Rule 15(a)(2) directs that “[t]he court should freely give  
16 leave [to amend a pleading] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “In  
17 exercising its discretion” whether to allow a party to amend, the Court “must be guided  
18 by the underlying purpose of Rule 15—to facilitate decision on the merits rather than on  
19 the pleadings or technicalities.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th  
20 Cir. 1987).

21 Thus, while leave to amend is not guaranteed, it “should be granted with extreme  
22 liberality.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009). Considering the  
23 liberality espoused by the Federal Rules, the Court should not deny a motion to amend  
24 “unless amendment would cause prejudice to the opposing party, is sought in bad faith, is

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27 <sup>2</sup> Under Federal Rule of Evidence 201, the court may—on its own or by request—take judicial notice of  
28 facts not subject to reasonable dispute because they are either generally known in the trial court’s  
territorial or can be accurately and readily determined from a source that cannot be reasonably  
questioned.

1 futile, or creates undue delay.” *Yakama Indian Nation v. State of Wash. Dep’t of*  
2 *Revenue*, 176 F.3d 1241, 1246 (9th Cir. 1999); *see also Foman v. Davis*, 371 U.S. 178,  
3 182 (1962).

4 Defendant argues that leave to amend would be futile because Plaintiff has failed  
5 to demonstrate she has exhausted her administrative remedies. Without a waiver of  
6 sovereign immunity, federal courts lack subject matter jurisdiction over cases against the  
7 United States. *United States v. Mitchell*, 463 U.S. 206, 212 (1983) (“It is axiomatic that  
8 the United States may not be sued without its consent and that the existence of consent is  
9 a prerequisite for jurisdiction.”). Although the Federal Tort Claims Act (“FTCA”)  
10 contains a limited waiver of sovereign immunity, it only does so to the extent that the  
11 plaintiff first exhausts their administrative remedies. *McNeil v. United States*, 508 U.S.  
12 106, 113 (1993) (“The FTCA bars claimants from bringing suit in federal court until they  
13 have exhausted their administrative remedies.”); *D.L. by & through Junio v. Vassilev*,  
14 858 F.3d 1242, 1245 (9th Cir. 2017) (emphasis added) (“In general, the FTCA’s  
15 exhaustion requirement demands that a plaintiff exhaust his administrative remedies  
16 *before* he files an FTCA claim in federal court.”); *Sheehan v. United States*, No.  
17 08CV1658-IEG (POR), 2009 WL 1269989, at \*2 (S.D. Cal. May 7, 2009) (stating that a  
18 claimant’s exhaustion of administrative remedies is a prerequisite to a district court’s  
19 jurisdiction).

20 Plaintiff will not be given leave to amend because it would be futile. Although  
21 Plaintiff states her injury occurred at 727 East San Ysidro, rather than 4509 Camino De  
22 La Plaza, she has not satisfied her burden of showing that an administrative claim was  
23 exhausted under the FTCA. In her Opposition, Plaintiff points out that on “June [*sic*] 21,  
24 2025, Ms. Asencio mailed an **Amended** Claim for damages to the GSA, Border Patrol,  
25 and the Department of Homeland Security.” (*Opp’n* at 6:8–12.) Nevertheless, the  
26 Supreme Court has been clear that a lawsuit filed before exhausting administrative  
27 remedies under the FTCA is premature and should be dismissed. *McNeil*, 508 U.S. at  
28 113. Further, courts in this Circuit have explicitly stated that “permit[ting] the premature

1 filing of an FTCA action to be cured by the filing of an amended complaint upon denial  
2 of the administrative would be inconsistent with both *McNeil* and the rationale behind the  
3 jurisdictional prerequisite mandated by the FTCA . . . .” *Sparrow v. U.S. Postal Serv.*,  
4 825 F. Supp. 252, 254 (E.D. Cal. 1993).

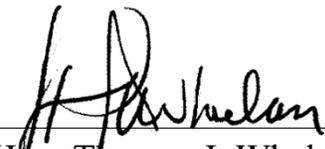
5 Accordingly, leave to amend would be futile. Although Plaintiff states she has  
6 amended her administrative claim, she initiated this lawsuit before filing her  
7 administrative claim for her alleged injury at 727 East San Ysidro. Because the claims  
8 have not been exhausted, they are premature—a jurisdictional defect that cannot be cured  
9 by amendment. Therefore, this Court lacks jurisdiction, Plaintiff’s claims must be  
10 dismissed, and her motion to amend must be denied as futile.

11  
12 **IV. CONCLUSION**

13 Plaintiff has failed to show her injury is “fairly traceable” to Defendant, so she has  
14 failed to satisfy the jurisdictional standing requirements. Therefore, the Court **GRANTS**  
15 Defendant’s Motion to Dismiss the FAC and **ORDERS** the case dismissed [Doc. 15].  
16 Because jurisdictional defects in the FAC cannot be cured by amendment, the case will  
17 be dismissed **WITHOUT LEAVE TO AMEND**, and Plaintiff’s motion to file a SAC  
18 [Doc. 18] will **DENIED**. Finally, because the FAC superseded the original Complaint,  
19 Defendant’s Motion to Dismiss the Complaint is **DENIED** as **MOOT** [Doc. 10].

20  
21 **IT IS SO ORDERED.**

22 Dated: March 11, 2025

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24   
25 Hon. Thomas J. Whelan  
26 United States District Judge  
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