

1 Defendant Hruby, who was acting within the scope of her employment with the Navy
2 Exchange Service Command. Due to Ms. Cuiriz-Lopez's injuries, Lopez seeks damages
3 for loss-of-consortium.

4 **PROCEDURAL HISTORY**

5 Plaintiffs originally filed their Complaint in the Superior Court of California, County
6 of San Diego (Case No. 24CUO19255C), on October 24, 2024 alleging negligence (Ms.
7 Cuiriz-Lopez) and loss-of-consortium (Lopez) against Hruby and the United States Navy.
8 On November 14, 2024, the Navy removed the action to this Court pursuant to 28
9 U.S.C. § 1442(a)(1). Defendant filed a Notice of Substitution accompanied by the
10 Attorney General's delegee's certification that Hruby was acting within the scope of her
11 employment at the time of the accident. This Court approved the substitution on
12 November 20, 2024. Defendant subsequently filed a Motion to Dismiss on January 13,
13 2025.

14 **LEGAL STANDARD**

15 A motion to dismiss under Fed. R. Civ. P. 12(b)(1) challenges the Court's subject-
16 matter jurisdiction. Federal courts are courts of limited jurisdiction, possessing only the
17 power authorized by the Constitution and federal statutes. *Kokkonen v. Guardian Life*
18 *Ins. Co. of Am.*, 511 U.S.375, 377 (1994). Subject-matter jurisdiction is a threshold issue
19 that cannot be forfeited or waived. *Arbaugh v. Y & H Corp.*, 546 U.S.500, 514 (2006).
20 A party may raise a jurisdictional challenge at any stage of litigation. *See Id.* at 506
21 (citing Fed. R. Civ. P. 12(b)(1), 12(h)(3)). Jurisdiction is presumed absent unless the
22 party asserting it affirmatively demonstrates its existence. *See Kokkonen*, 511 U.S. at
23 377. The plaintiff bears the burden of establishing that jurisdiction is proper, even when
24 the defendant moves to dismiss. *Liggett v. Utah Higher Educ. Assistance Auth.*, No.8:19-
25 cv-01589-JLS-ADS, 2020 WL 1972286, at *2 (C.D. Cal. Feb.3, 2020); *see also Sopcak*
26 *v. N. Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir.1995). If the Court
27 determines it lacks subject-matter jurisdiction, dismissal of the claim is mandatory. Fed.
28 R. Civ. P. 12(h)(3).

1 **DISCUSSION**

2 **Federal Tort Claims Act**

3 **1. Waiver of Sovereign Immunity & Exclusive Remedy**

4 The FTCA waives the United States’ sovereign immunity for certain tort claims
5 “under circumstances where the United States, if a private person, would be liable to the
6 claimant” under applicable state law. 28 U.S.C. § 1346(b)(1). It provides the exclusive
7 remedy for tortious conduct by federal employees acting within the scope of their
8 employment. 28 U.S.C. § 2679; *FDIC v. Craft*, 157 F.3d 697, 706 (9th Cir. 1998).

9 **2. Proper Defendant**

10 Under the FTCA, “[t]he United States is the only proper defendant.” *Lance v.*
11 *United States*, 70 F.3d 1093, 1095 (9th Cir. 1995). Federal agencies, such as the United
12 States Navy, cannot be sued *eo nomine* under the FTCA absent explicit statutory
13 authorization, which is not present here. *Allen v. Veterans Admin.*, 749 F.2d 1386, 1388
14 (9th Cir. 1984).

15 Here, Plaintiffs named the United States Navy as a defendant. Because the FTCA
16 designates the United States as the only proper defendant, the Navy must be dismissed
17 from this action. Additionally, following the Attorney General’s delegee’s certification
18 that Hruby acted within the scope of her employment, the United States was statutorily
19 substituted for Ms. Hruby under 28 U.S.C. § 2679(d)(1); *Pauly v. USDA*, 348 F.3d 1143,
20 1150–51 (9th Cir. 2003). This substitution, approved by the Court, requires dismissal of
21 Hruby from the case. *See Id.*

22 **3. Exhaustion Requirement**

23 The FTCA bars suits against the United States unless the claimant first presents an
24 administrative claim and receives a final denial or waits six months without a decision.
25 28 U.S.C. § 2675(a); *McNeil v. United States*, 508 U.S. 106, 111–13 (1993). This
26 exhaustion requirement is jurisdictional and non-waivable. *Jerves v. United States*, 996
27 F.2d 517, 519 (9th Cir. 1992). Additionally, under 28 U.S.C. § 2401(b), the
28 administrative claim must be submitted within two years of the claim’s accrual. Failure

1 to comply with this deadline precludes federal court jurisdiction. *Brady v. United States*,
2 211 F.3d 499, 502 (9th Cir. 1995). Plaintiffs must affirmatively allege and prove
3 compliance with these timeliness requirements. *Gillespie v. Civiletti*, 629 F.2d 637, 640
4 (9th Cir. 1980). Here, Lopez did not file an administrative claim with the Navy for his
5 loss-of-consortium claim within the two-year period following the collision. Because
6 Lopez failed to timely present his claim, the Court lacks jurisdiction over his loss-of-
7 consortium claim.

8 **CONCLUSION**

9 Lopez failed to file and exhaust an administrative claim for loss of consortium
10 within the two years required by 28 U.S.C. § 2401(b), rendering his claim time-barred
11 and depriving this Court of subject-matter jurisdiction. Further, the United States Navy is
12 not a proper defendant under the FTCA, as the United States is the sole permissible
13 defendant. Accordingly, the Court **GRANTS Defendant's Motion to Dismiss as**
14 **follows:**

- 15 1. Lopez's loss-of-consortium claim is **DISMISSED WITH PREJUDICE** for lack of
16 subject-matter jurisdiction.
- 17 2. The United States Navy is **DISMISSED WITH PREJUDICE** from this lawsuit.
- 18 3. Cuiriz-Lopez's negligence claim against the United States remains pending.

19 **IT IS SO ORDERED.**

20 DATED: March 7, 2025



21 **HON.ROGER T.BENITEZ**
22 United States District Judge