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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 MARK BAKER,

11 Plaintiff,

12 v.

13 UNITED STATES FOOD AND DRUG
14 ADMINISTRATION,

15 Defendant.
16

No. 2:25-cv-0250-DAD-CKD (PS)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO DISMISS COMPLAINT FOR LACK OF
SUBJECT MATTER JURISDICTION**

DATE : April 30, 2025
TIME : 10:00 a.m.
CTRM : Courtroom 24, 8th floor
JUDGE: Honorable Carolyn K. Delaney

17
18 **INTRODUCTION**

19 Plaintiff Mark Baker sues under the Freedom of Information Act (“FOIA”), claiming that the
20 United States Food and Drug Administration (“FDA”) improperly withheld records in response to FOIA
21 requests.

22 Baker lacks standing to bring this claim. The FOIA requests at issue were submitted on behalf of
23 a nonprofit corporation, Soft Lights Foundation, not Baker. The law permits only the requester to bring
24 a FOIA claim based on an allegedly deficient response to a FOIA request. Because there is no case or
25 controversy between Baker and FDA, the Court lacks Article III jurisdiction and must dismiss this case
26 for lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).
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BACKGROUND

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2 Plaintiff Mark Baker is the president of Soft Lights Foundation, a nonprofit corporation
3 registered in Oregon. *See* ECF No. 1 at 22 (Ex. H). Soft Lights Foundation states that it has
4 approximately 3,000 members and describes its mission as “advocat[ing] for the protection of people
5 and the environment from the harms of Visible Light radiation emitted by products that use Light
6 Emitting Diodes.” *See* Soft Lights Foundation, <https://www.softlights.org/about/> (last visited March 11,
7 2025).

8 On August 17, 2022, FDA received a FOIA request via its online portal from Soft Lights
9 Foundation. *See* Declaration of Leif M. Collins (“Collins Decl.”) ¶ 10; *id.* Ex. 1. The FOIA form makes
10 clear that it is submitted on behalf of Soft Lights Foundation. Soft Lights Foundation is identified as the
11 Requester. Soft Lights Foundation’s Oregon address is listed as the Requester Address. The Requester
12 Type is “O” for organization. And the request states “[w]e therefore request” when describing the
13 records sought. *Id.* Though Baker signed the request, it was in his capacity as Soft Lights Foundation’s
14 president. *Id.* Likewise, Baker corresponded with FDA’s FOIA office using Soft Lights Foundation
15 letterhead and his correspondence’s signature block identifies him as Soft Lights Foundation’s president.
16 *See, e.g.*, ECF No. 1 at 29 (Ex. L). Soft Lights Foundation submitted a second FOIA request on
17 December 16, 2022. Collins Decl. ¶ 11; *id.* Ex. 2. As with the first request, Soft Lights Foundation is
18 identified as the requester. *Id.* By letter dated September 26, 2024, FDA responded to Soft Lights
19 Foundation’s FOIA requests. ECF No. 1 at 49.

20 In January 2025, Baker filed suit under FOIA. *Id.* In his complaint, Baker alleges that he filed a
21 FOIA request on August 17, 2022, and that FDA responded to his request on September 27, 2024.¹ *Id.* ¶
22 1. His complaint contains few references to Soft Lights Foundation – Baker does not identify himself as
23 Soft Lights Foundation’s president or otherwise explain his connection to the entity.² Baker does not
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25
26 ¹ The letter responding to Soft Light Foundation’s FDA FOIA requests is dated September 26,
2024, though Baker may be referring to the date that he received the response. *Id.* at 49.

27 ² The only references to Soft Lights Foundation in the complaint appear to be allegations
28 explaining that the document provided in response to the FOIA request was a denial of a petition
submitted by Soft Lights Foundation. *See, e.g., id.* ¶¶ 25, 29, 30(f).

1 allege that he filed any separate FOIA requests on his own behalf, and FDA has no record of any FOIA
2 requests filed by Baker. *See* Collins Decl. ¶ 12.

3 LEGAL STANDARDS

4 Federal courts are courts of limited jurisdiction and may hear a case only if authorized to do so
5 by the Constitution and statute. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).
6 An issue of subject-matter jurisdiction is properly decided under Rule 12(b)(1). *See White v. Lee*,
7 227 F.3d 1214, 1242 (9th Cir. 2000); *Association of Am. Med. Colleges v. United States*, 217 F.3d 770,
8 778 (9th Cir. 2000). “A federal court is presumed to lack jurisdiction in a particular case unless the
9 contrary affirmatively appears.” *A-Z Int’l v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003) (citations
10 omitted). Thus, “[w]hen subject-matter jurisdiction is challenged under Federal Rule of [Civil]
11 Procedure 12(b)(1), the plaintiff has the burden of proving jurisdiction in order to survive the motion.”
12 *Tosco Corp. v. Communities for a Better Env’t*, 236 F.3d 495, 499 (9th Cir. 2001); *see also Thornhill*
13 *Pub. Co. v. General Tel. & Electronics. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). Any claim for which
14 the plaintiff fails to establish subject-matter jurisdiction should be dismissed without reference to the
15 merits of the claim. *See Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93 (1998); *see also High*
16 *Country Res. v. FERC*, 255 F.3d 741, 747 (9th Cir. 2001).

17 A challenge to jurisdiction under Rule 12(b)(1) “can be either facial, confining the inquiry to
18 allegations in the complaint, or factual, permitting the court to look beyond the complaint.” *Savage v.*
19 *Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1039-40 n.2 (9th Cir. 2003); *see also White*,
20 227 F.3d at 1242. “In resolving a factual attack on jurisdiction, the district court may review evidence
21 beyond the complaint without converting the motion to dismiss into a motion for summary judgment.”
22 *Safe Air v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Further, the court need not presume the
23 truthfulness of the plaintiff’s allegations. *White*, 227 F.3d at 1242. “Once the moving party has
24 converted the motion to dismiss into a factual motion by presenting affidavits or other evidence properly
25 brought before the court, the party opposing the motion must furnish affidavits or other evidence
26 necessary to satisfy its burden of establishing subject-matter jurisdiction.” *Savage*, 343 F.3d at 1040 n.2.

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ARGUMENT

Baker lacks standing to sue under FOIA and the Court therefore lacks subject-matter jurisdiction over this case. The standing doctrine stems from Article III of the Constitution, which limits federal judicial power to cases and controversies. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). Under that doctrine, to proceed with a case in federal court, a “plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan*, 504 U.S. at 560-61).

In the context of FOIA, standing is conferred on the person whose FOIA request has been denied in whole or part. *Zivotofsky ex rel. Ari Z. v. Sec’y of State*, 444 F.3d 614, 617-18 (D.C. Cir. 2006) (“The requester is injured-in-fact for standing purposes because he did not get what the statute entitled him to receive.”). Thus, the issue of standing in a FOIA suit “boils down” to the “simple question” of “[w]ho was the requester.” *A Better Way for BPA v. United States Dep’t of Energy Bonneville Power Admin.*, 890 F.3d 1183, 1186 (9th Cir. 2018).

This case is straightforward: Soft Lights Foundation is the FOIA requester and Baker therefore lacks standing to sue as the Plaintiff in this lawsuit. The FOIA requests identify Soft Lights Foundation as the requester. And all other indicia (address, type of requester) show that Baker submitted the FOIA requests in his capacity as president of Soft Lights Foundation. *See Collins Decl. Exs. 1-2*. Courts “routinely dismiss” FOIA cases for lack of standing when a person other than the requester attempts to bring a FOIA claim. *Osterman v. U.S. Army Corps of Eng’rs*, 2014 WL 5500396, at *3 (W.D. Wash. Oct. 30, 2014) (plaintiffs had no standing when FOIA requests were made by attorney without naming plaintiffs as requesting parties); *Wingate v. U.S. Department of Homeland Security*, 2012 WL 1964114, *2 (M.D. Fla. May 31, 2012) (same); *Mahtesian v. U.S. Off. Of Pers. Mgmt.*, 388 F. Supp. 2d 1047, 1048 (N.D. Cal. 2005) (same).

Furthermore, Baker’s case should be dismissed without leave to amend. *Hartmann v. Cal. Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when amendment would be futile.”). If Soft Lights Foundation were substituted for Baker as Plaintiff, venue would be improper in this Court. Proper venue for FOIA actions lies in the district where: (1) the

1 requester resides; (2) the requester's principal place of business exists; (3) the agency records are
2 situated; or (4) in the District of Columbia. 5 U.S.C. § 552(a)(4)(B). Because Soft Lights Foundation is
3 domiciled in Oregon, and there are no allegations that the agency records are situated in the Eastern
4 District of California, venue is improper in this Court. *Id.*

5 **CONCLUSION**

6 For these reasons, the United States respectfully requests that the Court dismiss Baker's
7 complaint without leave to amend.

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9 Dated: March 26, 2025

Respectfully submitted,

10 MICHELE BECKWITH
Acting United States Attorney

11 By: /s/ W. Dean Carter
12 W. DEAN CARTER
Assistant United States Attorney

13 Attorneys for Defendant
14 United States Food and Drug Administration