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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

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9 In re Dennis Andrew Ball, personally and) No. CV-08-0746-PHX-GMS
10 as Beneficiary of the Eleanor R. Ball))
IrreLvg Trust 05/10/01.) No. CV-09-0065-PHX-GMS

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18 Pending before the Court is the Motion for Leave to Retain Counsel for Third
19 Amended Complaint of Plaintiff Dennis Andrew Ball (Dkt. # 65), Defendants' Motion to
Dismiss (Dkt. # 67), and Mr. Ball's Response and Motion to Strike (Dkt. # 69).

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27 In this case, the Court has dismissed Mr. Ball's Complaint, Amended Complaint, and
28 Second Amended Complaint, all for failing to properly state legal claims against Defendants.
Mr. Ball was given several thirty-day periods in which to file amended complaints, and he
has also received extensions of time. In its Order dismissing the Second Amended
Complaint, the Court informed Mr. Ball that a Third Amended Complaint would be his last
opportunity to properly plead claims against Defendants and that the Court would grant no
more extensions absent a showing of good cause:

the Court also wishes to make it very clear to Mr. Ball that he
has had ample time to either retain an attorney or to craft a
proper complaint on his own in this matter. Thus, the Court is

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1 disinclined to grant Mr. Ball any additional extensions of time,
2 and will not do so absent a showing of good cause. If Mr. Ball
3 wishes to file a Third Amended Complaint or to retain an
 attorney to do so for him, he should act *promptly* on this matter
 so that he does not miss the filing deadline.

4 (Dkt. # 54 at 17.) On the last day to file a Third Amended Complaint, Mr. Ball filed his
5 motion (Dkt. # 65) requesting yet another thirty-day extension. Mr. Ball has made no
6 attempt to articulate good cause for why he should receive thirty more days. The Court
7 therefore denies the request for a further extension.

8 Mr. Ball goes on to state that “if the Court deems this request unreasonable, then the
9 plaintiff requests the Court [to] Order the Clerk of the Court to process the Lodged Notice
10 of Withdrawal.” (Dkt. # 65 at 2.) The Court interprets this statement as notice of voluntary
11 dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). Because neither an
12 answer nor a motion for summary judgment has been filed, the notice is effective upon this
13 Court’s denial of Mr. Ball’s motion for an extension of time. *Am. Soccer Co., Inc. v. Score*
14 *First Enters.*, 187 F.3d 1108, 1112 (9th Cir. 1999) (“Rule 41 does not authorize a court to
15 make a case-by-case evaluation of how far a lawsuit has advanced to decide whether to
16 vacate a plaintiff’s voluntary dismissal. . . . [I]f the defendant has not served an answer or a
17 motion for summary judgment, the plaintiff may voluntarily dismiss the suit without
18 interference from the district court.”).¹

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20 ¹However, Mr. Ball will not be permitted even more opportunities to replead deficient
21 complaints merely by voluntarily dismissing the case. Mr. Ball has already filed a complaint,
22 a first amended complaint, and a second amended complaint, all of which have been
23 adjudged deficient. The Court has gone to great lengths to explain to Mr. Ball the procedural
24 rules and the deficiencies in his pleadings, and the Court has emphasized that Mr. Ball will
25 have no more chances to advance these claims if he cannot do so properly. Therefore, if Mr.
26 Ball again fails to file proper claims against these Defendants, any such claims will be
27 subject to dismissal with prejudice.

28 To plead proper claims, Mr. Ball must plead “‘enough facts to state a claim to relief
that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th
Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has
facial plausibility when the plaintiff pleads factual content that allows the court to draw the
reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility

1 In light of the voluntary dismissal, Defendants' Motion to Dismiss (Dkt. # 67) is
2 denied as moot insofar as it requests an alternative disposition of this case.² Defendants'
3 motion, however, also requests that the Court impose sanctions and grant attorneys' fees
4 against Mr. Ball. The Court will deny the sanction request, which was made pursuant to
5 Federal Rule of Civil Procedure 11. Because the Court cannot determine the nature of Mr.
6 Ball's claims, the Court is unable to conclude from the face of the complaints themselves that
7 they were brought for an improper purpose, that the legal claims contained therein are
8 frivolous, or that the factual contentions made in the complaints lack evidentiary support.
9 *See* Fed. R. Civ. P. 11(b). While Mr. Ball's repeated reassertion of complaints that share the
10 same deficiencies comes close to sanctionable conduct, *see Leuallen v. Borough of*
11 *Paulsboro*, 180 F. Supp. 2d 615, 617-18 (D.N.J. 2002), the Court gave Mr. Ball one final
12 chance to properly plead his case, and Mr. Ball elected to withdraw his claims rather than
13 attempt to do so. Thus, the Court will not conclude that Mr. Ball's conduct is sanctionable
14 at this time.

15 As to Defendants' request for costs and attorneys' fees, the Court will award
16 Defendants costs but not fees. Defendants are entitled to costs as the prevailing party, Fed.
17 R. Civ. P. 54(d)(1), and will be awarded such costs upon compliance with Local Rule of
18 Civil Procedure 54.1. However, Federal Rule of Civil Procedure 54(d)(2)(B)(ii) requires that
19 any party moving for an award of attorneys' fees "specify . . . the statute, rule, or other
20 grounds entitling the movant to the award." Defendants do not do so in their motion. (*See*
21 Dkt. # 67 at 3.) Therefore, Defendants' request for attorneys' fees is denied.

22 For the foregoing reasons:

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24 standard "asks for more than a sheer possibility that a defendant has acted unlawfully.
25 Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it
26 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.*
(citing *Twombly*, 550 U.S. at 555) (internal citations omitted).

27 ²Mr. Ball moves to strike this motion, but offers no authority or reasoning for doing
28 so. (Dkt. # 69.) The Court will therefore deny Mr. Ball's motion.

