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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Walter C. Peniston,
Plaintiff,
vs.
Sun America LLC,
Defendant.

No. CV10-1380-PHX-NVW

ORDER

Before the Court is Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint. (Doc. 12.) On October 5, 2010, Plaintiff was ordered to file a response no later than 30 days from the date of the Order. (Doc. 14.) The October 5, 2010 Order further stated:

You must timely respond to all motions. The Court may, in its discretion, treat your failure to respond to Defendant’s Motion to Dismiss as a consent to the granting of that Motion without further notice, and judgment may be entered dismissing this action without prejudice pursuant to Rule 7.2(i) of the Local Rules of Civil Procedure.

No response to Defendant’s Motion to Dismiss has been filed to date. Therefore, Plaintiff’s Amended Complaint could be dismissed under Rule 7.2(i) because of Plaintiff’s failure to respond to Defendant’s Motion to Dismiss.

However, the Court has considered the merits of Defendant’s Motion to Dismiss and decides the Motion on the merits. The Motion to Dismiss will be granted pursuant to

1 Rules 8(a) and 12(b)(6) of the Federal Rules of Civil Procedure for the reasons stated in
2 Defendant's Motion to Dismiss. *See Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th
3 Cir. 2009) (complaint "must be plausibly suggestive of a claim entitling the plaintiff to
4 relief").

5 Plaintiff already has amended his complaint once. Further leave to amend the
6 complaint will not be granted. *See Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531,
7 538 (9th Cir. 1989) ("Leave to amend need not be given if a complaint, as amended, is
8 subject to dismissal.").

9 IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss Plaintiff's
10 Amended Complaint (Doc. 12) is granted.

11 IT IS FURTHER ORDERED that Plaintiff's Amended Complaint (Doc. 9) is
12 dismissed.

13 IT IS FURTHER ORDERED directing the Clerk to enter judgment dismissing this
14 action for failing to state a claim upon which relief can be granted. The Clerk shall
15 terminate this case.

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17 DATED this 22nd day of November, 2010.

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22 Susan R. Bolton
23 United States District Judge
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