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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Kathryn Jacobs,

10 Plaintiff,

11 v.

12 Thomas Betlach, Director of the Arizona
13 Health Care Cost Containment System;
14 Richard Kenney; Jessica Lopez; Terry
15 Robbins; Anna Fuentevilla, M.D.; Janine
16 Roumain, M.D.; Arizona Long Term Care
System,

Defendants.

No. CV-14-00974-PHX-BSB

ORDER

17 Defendants Thomas J. Betlach, Director of Arizona Health Care Cost Containment
18 System (AHCCCS), Richard Kenney, Jessica Lopez, Terry Robbins, Ana
19 Fuentavilla, M.D., Janine Roumain, M.D., and the Arizona Long Term Care System
20 (ALTCS) (collectively Defendants), have filed a motion to dismiss the Amended
21 Complaint, pursuant to Rules 8(a), 12(b)(1), and 12(b)(6) of the Federal Rules of Civil
22 Procedure.¹ (Doc. 16.) Plaintiff opposes the motion. (Doc. 20.) For the reasons below,
23 the Court grants Defendants' motion and dismisses this action.

24 **I. Background**

25 On May 7, 2014, Plaintiff, proceeding pro se, filed her initial complaint. (Doc. 1.)
26 Plaintiff later filed a redacted complaint with several exhibits. (Doc. 8.) Plaintiff

27 _____
28 ¹ Plaintiff identifies Anna Fuentevilla as a defendant. (Doc. 20 at 1.) Defendants
spell her name Ana Fuentavilla (Doc. 16 at 1) and the Court adopts that spelling.

1 requested permission to file the exhibits under seal. (Doc. 10.) The Court granted
2 Plaintiff leave to file exhibits A, B, and C to the redacted complaint under seal and
3 permitted Plaintiff leave to refile redacted copies of those exhibits. (Doc. 11.) Plaintiff
4 did not file redacted copies of those exhibits. Instead, on May 27, 2014, she filed an
5 Amended Complaint. (Doc. 12.) Although Plaintiff did not attach any exhibits to the
6 Amended Complaint, that complaint refers to the exhibits filed with the redacted
7 complaint. (*Id.*) Defendants have not objected to Plaintiff’s reliance on her previously
8 submitted exhibits to support her Amended Complaint. Accordingly, the Court may
9 consider Plaintiff’s exhibits when considering the motion to dismiss.²

10 **A. ALTCS Benefits**

11 AHCCCS is the state agency that receives federal funding to ensure provision of
12 health care services to Arizona’s Medicaid clients.³ *Ball v. Biedess*, 2004 WL 2566262,
13 at *1 (D. Ariz. Aug. 13, 2004), *rev’d in part on other grounds*, 492 P.3d 1094 (9th Cir.
14 2007). AHCCCS provides Medicaid long-term care benefits to elderly or disabled
15 persons through ALTCS. *Id.* The allegations in the Amended Complaint involve the
16 denial of Plaintiff’s application for benefits under ALTCS. (Doc. 12.)

17 ALTCS provides eligible persons various health care services, including
18 institutional services, home and community based services (HCBS), acute care, and
19

20 ² On a motion to dismiss the Court may consider documents attached to the
21 complaint as well as “any documents referred to or ‘whose contents are alleged in a
22 complaint and whose authenticity no party questions.’” *McGrath v. Scott*, 250
23 F. Supp. 2d 1218, 1221 (D. Ariz. 2003) (quoting *Branch v. Tunnell*, 14 F.3d 449, 454
24 (9th Cir. 1994) *overruled on other grounds by Galbraith v. Cnty of Santa Clara*, 307 F.3d
25 1119 (9th Cir. 2002)). On review of the motion to dismiss, the Court considers exhibit D
26 attached to the redacted complaint. (Doc. 8-2 at 1-12.)

27 ³ “Congress established the Medicaid program under Title XIX of the Social
28 Security Act. This Act authorizes a state’s participation in a cooperative federal-state
Medicaid program to provide medical assistance to low-income persons. To be eligible
for federal financial assistance, states such as Arizona must administer their programs in
accordance with federal guidelines. Arizona adopted its plan through the waiver program
known as AHCCCS.” *Perry v. Chen*, 985 F. Supp. 1197, 1198-99 (D. Ariz. 1996)
(internal citations omitted).

1 behavioral health services. *Id.* Individuals are eligible for ALTCS if they pass both a
2 financial and a medical screen. *Id.* The medical requirement is that the individual be “at
3 risk of institutionalization.” *Id.* The director of AHCCCS must provide an assessment of
4 functional and medical criteria as a prerequisite to eligibility for long-term care. *See*
5 Ariz. Rev. Stat. §§ 36-2934 and 36-2936, Ariz. Admin. Code R9-28-301. In accordance
6 with these laws, the Director of AHCCCS (the Director) has established the preadmission
7 screening (PAS) program. Ariz. Rev. Stat. § 36-2936. The PAS assessment is designed
8 to determine the skills and needs of the applicant. *See* Ariz. Rev. Stat. § 36-2936; Ariz.
9 Admin. Code R9-28-303 (setting forth the preadmission screening process).

10 **B. Plaintiff’s Applications for ALTCS Benefits**

11 In the Amended Complaint, Plaintiff asserts that she has epilepsy that causes her
12 seizures and “puts her at risk of an assisted living level of care.” (Doc. 12 at 8.) On three
13 separate occasions she applied for ALTCS benefits. For each application, a preadmission
14 screening (PAS) of Plaintiff’s eligibility for ALTCS was conducted. (*Id.* at 4, 5, 7.)

15 On August 15, 2011, as part of Plaintiff’s first application, Richard Kenney gave
16 Plaintiff a functional score of forty and a medical score of zero. (Doc. 12 at 4.) On
17 October 11, 2011, Kenney submitted the PAS assessment for physician review. (*Id.*)
18 Plaintiff asserts that the doctor conducting the review, Ana Fuentavilla, M.D., determined
19 that Plaintiff was “medically complex due to uncontrolled seizure disorder.” (*Id.*)
20 Plaintiff alleges that, on October 29, 2011, Kenney and Dr. Fuentavilla denied Plaintiff’s
21 application for “ALTCS/HCBS” even though they knew her PAS “omitted a required
22 medical score” and that she was a “qualified individual under Title XIX of” the Social
23 Security Act. (*Id.* at 5.)

24 Plaintiff applied for ALTCS/HCBS benefits a second time. (*Id.*) On March 12,
25 2012, Jessica Lopez conducted a PAS of Plaintiff’s eligibility for ALTCS. (*Id.*) She
26 gave Plaintiff a functional score of fifty-two and a medical score of zero. (*Id.*) On June
27 12, 2011, Lopez submitted the PAS assessment for physician review. (*Id.* at 6.) Plaintiff
28 asserts that Janine Roumain, M.D., conducted the review based solely on “summary

1 notes,” that she requested records from a neurologist that Plaintiff had never seen, that
2 she did not review Plaintiff’s “neurological notes and EEG from UCLA,” and she did not
3 discuss Plaintiff’s epilepsy. (Doc. 12 at 6, 8.) Plaintiff alleges that on June 12, 2012,
4 Lopez and Dr. Roumain denied Plaintiff’s application for “ATLCS/HCBS” even though
5 they knew her PAS “omitted a required medical score” and that she was a “qualified
6 disabled individual under Title XIX of” the Social Security Act. (*Id.* at 6.)

7 Plaintiff applied for ALTCS/HCBS benefits a third time. On January 2, 2013,
8 Terry Robbins conducted a PAS of Plaintiff’s eligibility for ALTCS. (*Id.* at 7.) Robbins
9 gave Plaintiff a functional score of forty-seven and a medical score of zero. (*Id.*) On
10 March 5, 2013, Robbins submitted the PAS assessment for physician review. (*Id.*)
11 Plaintiff asserts that on review Dr. Roumain found that Plaintiff had a normal
12 neurological examination, but did not physically examine Plaintiff, review her
13 neurological records, or discuss her epilepsy. (*Id.* at 7, 8.) Plaintiff alleges that on March
14 22, 2013, Robbins and Dr. Roumain denied her application for “ALTCS/HCBS” even
15 though they knew her PAS “omitted a medical score required by PAS policy” and that
16 she was a “qualified disabled individual according to Title XIX of” the Social Security
17 Act. (*Id.* at 7.)

18 After AHCCCS denied Plaintiff’s application for ALTCS/HCBS benefits in
19 March 2013, Plaintiff requested an administrative hearing to review AHCCCS’s decision.
20 AHCCCS forwarded that request to the Office of Administrative Hearings for an
21 evidentiary hearing. (Doc. 8-2 at 7.) On October 8, 2013, after a hearing before an
22 Administrative Law Judge (ALJ), which Plaintiff attended with counsel, the ALJ
23 recommended affirming AHCCCS’s denial of Plaintiff’s application for ALTCS benefits.
24 (Doc. 8-2 at 7-10.) The Director then reviewed the ALJ’s decision and adopted it.
25 (Doc. 8-2 at 1-4.) The Director’s decision, which was mailed to Plaintiff on October 31,
26 2013, advised Plaintiff that she could appeal that decision to the Arizona Superior Court
27 (superior court or state court), pursuant to Ariz. Rev. Stat. § 12-901 through 12-914,
28 within thirty-five days after the mailing of the Director’s decision. (Doc. 8-2 at 4.)

1 **C. Plaintiff's Claims**

2 Plaintiff did not file an appeal in the state court, but commenced a separate action
3 in this Court. Liberally construed, the Amended Complaint raises the following claims
4 for relief: (1) the ALTCS pre-admission screening policy for “HCBS” is unconstitutional
5 on its face and as applied to Plaintiff (Doc. 12 at 8-10, 12 (citing Appendix 10A of the
6 PAS policy)); (2) Plaintiff was denied due process during the PAS process because her
7 applications for ALTCS benefits were considered without a physical examination, review
8 of available neurological records, and without consulting Plaintiff’s primary care doctor
9 (Doc. 12 at 12); and (3) Defendants breached their agreement with “Medicaid Section
10 1115” by denying Plaintiff reasonable access to ALTCS and HCBS. (*Id.* at 13.) Plaintiff
11 seeks “[d]eclaratory and injunctive relief,” costs, and attorney’s fees. (*Id.*) She also
12 seeks monetary damages for “emotional stress and humiliation,” “gross negligence and/or
13 deliberate indifference,” and for a violation of Ariz. Rev. Stat. § 36-2954.⁴ (*Id.*)

14 Defendants move to dismiss the Amended Complaint for lack of jurisdiction,
15 failure to state a claim, and for failure to comply with the pleading requirements of
16 Rule 8. Because the Court finds dismissal appropriate under Rule 12(b)(1) or (6), it does
17 not address Defendants’ Rule 8 argument.

18 **II. Motions to Dismiss for Lack of Jurisdiction and Failure to State a Claim**

19 **A. Rule 12(b)(1)**

20 Rule 12(b)(1) “allows litigants to seek the dismissal of an action from federal
21 court for lack of subject matter jurisdiction.” *Tosco Corp. v. Cmtys. for a Better Env’t*,
22 236 F.3d 495, 499 (9th Cir. 2001). The Court should address arguments raised under

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24 ⁴ Although the Amended Complaint refers to the denial of HCBS benefits, in her
25 response to the motion to dismiss, Plaintiff states that she “has received HCBS personal
26 care/homemaker and transportation and supervisory care services ongoing to the present
27 day since relocating to Arizona.” (Doc. 20 at 7.) Similarly, during the administrative
28 proceedings, the Director denied Plaintiff’s appeal of “AMS [AHCCCS Medical
Services]” benefits as moot because AHCCCS “reopened the matter and approved
[Plaintiff] for those benefits.” (Doc. 8-2 at 10.) Accordingly, it appears that Plaintiff no
longer challenges the denial of HCBS benefits and that such a challenge would be moot.
Additionally, Plaintiff’s claims based on the alleged denial of HCBS benefits should be
dismissed for reasons set forth in this Order.

1 Rule 12(b)(1) before addressing other arguments for dismissal because if the complaint is
2 dismissed for lack of subject matter jurisdiction, other defenses become moot. *Kinlichee*
3 *v. United States*, 929 F. Supp. 2d 951, 954 (D. Ariz. 2013) (citing Wright and Miller,
4 *Federal Practice and Procedure: Civil 2d* § 1350, 209-10 (1990)). Furthermore, “[t]he
5 party asserting jurisdiction [i.e., Plaintiff] has the burden of proving all jurisdictional
6 facts.” *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1092 (9th Cir. 1990) (citing
7 *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). The court
8 presumes lack of jurisdiction until the plaintiff proves otherwise. *Stock West, Inc. v.*
9 *Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

10 **B. Rule 12(b)(6)**

11 Dismissal for insufficiency of a complaint is proper if the complaint fails to state a
12 claim on its face. *Lucas v. Bechtel Corp.*, 633 F.2d 757, 759 (9th Cir. 1980); *see also*
13 Fed. R. Civ. P. 12(b)(6). Although a complaint “does not need detailed factual
14 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
15 requires more than labels and conclusions, and a formulaic recitation of the elements of a
16 cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
17 (citations omitted).

18 Dismissal under Rule 12(b)(6) for failure to state a claim can be based on either
19 (1) the lack of a cognizable legal claim, or (2) insufficient facts to support a cognizable
20 legal claim. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990);
21 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). When
22 considering a motion to dismiss, the court takes all allegations of material fact as true and
23 construes them in the light most favorable to the non-moving party. *Clegg v. Cult*
24 *Awareness Network*, 18 F.3d 752, 754 (9th Cir. 1994). “[F]or a complaint to survive a
25 motion to dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from
26 that content, must be plausibly suggestive of a claim entitling the plaintiff to relief.”
27 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Ashcroft v. Iqbal*,
28 556 U.S. 662 (2009)). In other words, the complaint must contain enough factual content

1 “to raise a reasonable expectation that discovery will reveal evidence” of the claim.
2 *Twombly*, 550 U.S. at 556.

3 **III. Grounds for Dismissal**

4 **A. Failure to File a Notice of Claim**

5 Defendants move to dismiss Plaintiff’s claims for monetary damages because she
6 did not comply with the notice requirements of Arizona Revised Statute § 12-821.01(A).
7 (Doc. 16 at 4.) Under Arizona’s notice of claim statute, a plaintiff with a claim against a
8 public entity or employee must first file a notice of claim, with the person authorized to
9 accept service on behalf of that entity or employee, within 180 days after the cause of
10 action accrues.⁵ *Id.* “The claim shall contain facts sufficient to permit the public entity
11 or public employee to understand the basis upon which liability is claimed.”
12 Ariz. Rev. Stat. § 12-821.01(A). The statute also requires the plaintiff to include in the
13 notice of claim “a specific amount for which the claim can be settled and the facts
14 supporting that amount.” *Id.*

15 The notice of claim statute protects the government from excess or unwarranted
16 liability, and gives public entities and employees a chance to avoid litigation expenses by
17 investigating and settling before the plaintiff files a complaint. *See Deer Valley Unif.*
18 *Sch. Dist. No. 97 v. Houser*, 152 P.3d 490, 492 (Ariz. 2007). Compliance with the notice
19 provision is a “mandatory and essential prerequisite,” and a claim that does not comply
20 with § 12-821.01 is statutorily barred. *Falcon v. Maricopa County*, 144 P.3d 1254, 1256
21 (Ariz. 2006); *but see Martineau v. Maricopa County*, 86 P.3d 912, 914 (Ariz. Ct. App.
22 2004) (concluding that the notice of claim requirements do not apply to claims for
23 declaratory relief).

24 In her Amended Complaint, Plaintiff asserts state law claims for monetary
25 damages based on “emotional stress and humiliation,” “gross negligence,” and a violation

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27 ⁵ For purposes of § 12-821.01(A), “a cause of action accrues when the damaged
28 party realizes he or she has been damaged and knows or reasonably should know the
cause, source, act, event, instrumentality or condition which caused or contributed to the
damage.” Ariz. Rev. Stat. §12-821.01(B).

1 of Ariz. Rev. Stat. § 36-2954. (Doc. 12 at 13.) Defendants argue that they are entitled to
2 dismissal of these state law claims for damages because Plaintiff did not serve them or
3 the State with a notice of claim as Ariz. Rev. Stat. § 12-821.01(A) requires.⁶ Plaintiff's
4 Amended Complaint does not allege that she complied with the notice of claim
5 requirement of § 12-821.01(A). (Doc. 12.) Similarly, in response to Defendants' motion
6 to dismiss, Plaintiff does not allege that she filed a notice of claim or otherwise address
7 the requirements of § 12-821.01(A). (Doc. 20.)

8 According to the Amended Complaint, the Director denied Plaintiff's appeal of
9 her denial of ALTCS benefits on October 8, 2013. (Doc. 12 at 8.) The Director's
10 decision was mailed to Plaintiff on October 31, 2013. (Doc. 8-2 at 1-4.) Thus, around
11 October 31, 2013, Plaintiff knew or "should have known" that the Director had affirmed
12 the denial of her application for ALTCS benefits. However, Defendants assert that there
13 is no evidence that Plaintiff filed a notice of claim and Plaintiff does not dispute that
14 assertion. (Doc. 20.) Thus, because Plaintiff did not comply with the State's notice of
15 claim procedures, as Ariz. Rev. Stat. § 12-821.01(A) mandates, the Court grants
16 Defendants' motion to dismiss Plaintiff's claims for monetary relief based on emotional
17 stress and humiliation, gross negligence, and a violation of Ariz. Rev. Stat. § 36-2954.⁷

18 **B. Failure to Exhaust Remedies**

19 Defendants also move to dismiss the Amended Complaint based on Plaintiff's
20 failure to file an action in the superior court to appeal AHCCCS's decision denying her
21 application for ALTCS benefits under the Administrative Review Act. Defendants argue

22 ⁶ Although defendants moved to dismiss based on Rules 12(b)(1) and (6), because
23 the statutory notice requirements of Ariz. Rev. Stat. § 12-821.01(A) are procedural, rather
24 than jurisdictional, the Court treats this aspect of Defendants' motion as an unenumerated
25 12(b) motion, thus allowing it "to look beyond the pleadings to consider the
allegations . . . contained within Defendants' Motion and Plaintiff's Response." *See*
Martinez v. Maricopa Cnty, 2006 WL 2850332, at *2 (D. Ariz. Oct. 4, 2006).

26 ⁷ The Court also dismisses Plaintiff's claims based on an alleged violation of
27 Ariz. R. Stat. § 36-2954 because that statute requires AHCCCS to reimburse a "provider
28 or noncontracting provider" for unreimbursed services provided to a person who was
erroneously determined to be ineligible for ALTCS benefits. That section does not
provide for payment to the person who was incorrectly determined to be ineligible for
those benefits. *See* Ariz. Rev. Stat. § 36-2954.

1 that because Plaintiff did not file an action in the superior court, she did not exhaust her
2 remedies. (Doc. 16 at 2.) Plaintiff asserts that she was not required to file a claim in
3 superior court to exhaust her administrative remedies. (Doc. 20 at 2.)

4 As previously stated, after AHCCCS denied Plaintiff's application for ALTCS
5 benefits, she requested an administrative hearing to review AHCCCS's decision. After
6 conducting a hearing, an ALJ recommended affirming AHCCCS's denial of Plaintiff's
7 application for ALTCS benefits. (Doc. 8-2 at 7-10.) The Director reviewed and adopted
8 the ALJ's decision. (Doc. 8-2 at 1-4.) The Director's decision, which was mailed to
9 Plaintiff on October 31, 2013, advised Plaintiff that she could appeal that decision to the
10 superior court, pursuant to Ariz. Rev. Stat. §§ 12-901 through 12-914, within thirty-five
11 days after the mailing of the Director's decision. (Doc. 8-2 at 4.) Plaintiff did not seek
12 an appeal pursuant to Ariz. Rev. Stat. § 12-901 in the superior court.⁸ (Doc. 16 at 3;
13 Doc. 20.) Rather, she filed a separate complaint in this Court.

14 Defendants argue that Plaintiff did not exhaust her administrative remedies
15 because she did not appeal the Director's decision to the superior court. (Doc. 16 at 2.)
16 To support their argument, Defendants cite *Samaritan Health Sys. v. Ariz. Health Care*
17 *Cost Containment Sys. Admin.*, 11 P.3d 1072, 1077 (Ariz. Ct. App. 2000). In that case,
18 the court found that the superior court lacked jurisdiction over the plaintiff's claim for
19 declaratory relief against AHCCCS because, before filing suit in the superior court, the
20 plaintiff did not seek administrative review of AHCCCS's decision and, thus, did not
21 exhaust its administrative remedies. *Id.* at 1076-77. The procedural posture of this case
22 is distinguishable from *Samaritan*. Unlike the plaintiff in *Samaritan*, after AHCCCS
23 denied Plaintiff's application for ALTCS benefits, she sought administrative review by
24 requesting an evidentiary hearing before the Office of Administrative Hearings. After the

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27 ⁸ Arizona Revised Statute § 41-1092.08(H) provides that “[a] party may appeal a
28 final administrative decision pursuant to title 12, chapter 7, article 6” The
procedures for judicial review of administrative decisions in title 12 are found at Ariz.
Rev. Stat. §§ 12-901 through 12-914.

1 hearing, the ALJ recommended affirming AHCCCS’s denial of Plaintiff’s application for
2 ALTCS benefits and the Director adopted that recommendation.

3 However, the procedural posture of this case is similar to *Pfeffer v. Arizona Health*
4 *Care Cost Containment System*, 2011 WL 4543955 (D. Ariz. 2011). In *Pfeffer*,
5 defendants moved to stay the plaintiff’s motion for preliminary injunction, which was
6 based on AHCCCS’s denial of the plaintiff’s application for ALTCS benefits, “pending a
7 consideration on the merits through the administrative process.” *Id.* at *4. The court
8 denied the motion to stay finding that the plaintiff had “already exhausted her
9 administrative remedies.” *Id.* The court noted that the plaintiff had an administrative
10 hearing and the Director exercised his authority not to certify the ALJ’s
11 recommendations. *Id.* The court further noted that the plaintiff had *not* appealed the
12 Director’s decision to the superior court pursuant to Ariz. Rev. Stat. § 12-901 through
13 § 12-914, and that no state proceedings were pending. The issue before the court in
14 *Pfeffer*, however, was not specifically whether the plaintiff had exhausted her
15 administrative remedies, but whether the state court had concurrent jurisdiction over
16 plaintiff’s claims. *Id.* at *4.

17 Although not directly on point, the *Pfeffer* decision suggests that Plaintiff may
18 have exhausted her administrative remedies by seeking administrative review of the
19 denial of her application for ALTCS, even though she did not appeal that decision to the
20 superior court. However, as discussed below, even if Plaintiff exhausted her
21 administrative remedies, her failure to appeal the Director’s decision to the superior court
22 precludes relief in this Court.

23 **C. Claim Preclusion/Res Judicata**

24 Defendants argue that because Plaintiff did not file an action in superior court
25 under the Arizona Administrative Review Act to appeal the Director’s decision denying
26 her ALTCS benefits, res judicata and claim preclusion apply and preclude her from
27 bringing her claims in this Court. (Doc. 16 at 5.) Claim preclusion provides that “[w]hen
28 a state agency acts in a judicial capacity to resolve disputed issues of fact and law

1 properly before it, and when the parties have had an adequate opportunity to litigate those
2 issues, federal courts must give the state agency's fact-finding and legal determinations
3 the same preclusive effect to which it would be entitled in that state's courts." *Olson v.*
4 *Morris*, 188 F.3d 1083, 1086 (9th Cir. 1999) (citing *Univ. of Tenn. v. Elliott*, 478 U.S.
5 788, 798- 99 (1986)). However, the district court must first independently assess the
6 adequacy of the state's administrative forum. "The threshold inquiry . . . is whether the
7 state administrative proceeding was conducted with sufficient safeguards to be equated
8 with a state court judgment. The minimum criteria, articulated in *United States v. Utah*
9 *Construction & Mining Co.*, 384 U.S. 394 (1966), requires that: (1) the administrative
10 agency act in a judicial capacity; (2) that the agency resolve disputed issues of fact
11 properly before it; and (3) the parties have an adequate opportunity to litigate. *Utah*
12 *Construction*, 384 U.S. at 422.

13 After AHCCCS denied Plaintiff's application for ALTCS benefits, she requested
14 an administrative hearing to review AHCCCS's decision. An ALJ with the Office of
15 Administrative Hearings conducted the hearing. (Doc. 8-2 at 1-12.) Plaintiff appeared
16 before the ALJ and was represented by counsel. (Doc. 8-2 at 7.) Plaintiff's counsel
17 made arguments on Plaintiff's behalf regarding the denial of her application for ALTCS
18 benefits based on AHCCCS's determination that she was medically ineligible. (*Id.* at 9.)
19 The ALJ issued a decision setting forth findings of fact, conclusions of law, and a
20 recommendation. (Doc. 8-2 at 10.) After the ALJ's decision issued, the Director
21 reviewed and adopted it. (Doc. 8-2 at 1-4.) Therefore, the Court finds that the
22 administrative hearing met the criteria set out in *Utah Construction*. The record also
23 reflects that Plaintiff was informed of her right to file an appeal with the state court
24 pursuant to Arizona's Administrative Review Act, Ariz. Rev. Stat. §§ 12-901 through 12-
25 914, within thirty-five days after delivery or mailing of the Director's decision (Doc. 8-2
26 at 4), and Plaintiff did not do so.

27 "Under Arizona law, a party's failure to appeal a final administrative decision
28 makes that decision final and res judicata." *Olson*, 188 F.3d at 1086. "Under the

1 doctrine of res judicata, a judgment on the merits in a prior suit involving the same
2 parties or their privies bars a second suit based on the same cause of action.” *Id.* (citing
3 *Gilbert v. Bd. of Medical Exam’rs of the State of Ariz.*, 745 P.2d 617 (Ariz. 1987),
4 *superseded by statute on other grounds as stated in Goodman v. Samaritan Health Sys.*,
5 990 P.2d 1061, 1067 n.7 (Ariz. Ct. App. 1999)). Additionally, the doctrine of res
6 judicata, “binds the same party standing in the same capacity in subsequent litigation on
7 the same cause of action, not only upon facts actually litigated but also upon those points
8 that might have been litigated.” *Olson*, 188 F.3d at 1086. Moreover, “[i]n Arizona, the
9 failure to seek judicial review of an administrative order precludes collateral attack of the
10 order in a separate complaint. If no timely appeal is taken, the [administrative]
11 decision . . . is ‘conclusively presumed to be just, reasonable and lawful.’” *Id.* (quoting
12 *Gilbert*, 745 P.2d at 624). “This principle applies even to alleged constitutional errors
13 that might have been corrected on proper application to the court which has jurisdiction
14 of the appeal.” *Olson*, 188 F.3d. at 1086; *see also Dommissse v. Napolitano*, 474 F. Supp.
15 2d 1121, 1128 (D. Ariz. 2007) (same).

16 Additionally, under the doctrine of collateral estoppel, “a party may also be
17 precluded from relitigating an issue against someone who was not a party to the original
18 action, provided there was a full and fair opportunity to litigate the issue in the original
19 action.” *Gilbert*, 745 P.2d at 176. Accordingly, a plaintiff is precluded from relitigating
20 an issue against defendants who were not named parties to the administrative action when
21 the “pivotal issue[s]” have already been litigated and decided against the plaintiff during
22 the administrative proceeding, and when the plaintiff failed to appeal the administrative
23 proceedings. *See Gilbert*, 745 P.2d at 623.

24 Defendants argue that because Plaintiff did not appeal the administrative decision
25 to the state court, she is precluded from pursuing her present claims. The Court agrees.
26 If Plaintiff wished to challenge the denial of her application for ALTCS benefits, she was
27 required to appeal pursuant to the Administrative Review Act, which she did not do. The
28 determination that Plaintiff was ineligible for ALTCS benefits is conclusively established

1 because Plaintiff did not appeal the Director’s decision, and Plaintiff is precluded from
2 challenging that decision in this proceeding. *See Olson*, 188 F.3d at 1083, *Dommissse*,
3 474 F. Supp. 2d at 1121. Therefore, Plaintiff fails to state a claim upon which relief can
4 be granted. *See Gorney v. Ariz. Bd. of Regents*, 2014 WL 4354837, at *13 (D. Ariz. Sept.
5 3, 2014) (finding that plaintiff failed to state a claim upon which relief could be granted
6 when his failure to appeal an administrative decision to the state court precluded review
7 of that decision).

8 The Amended Complaint asserts several claims based on the denial of Plaintiff’s
9 application for ALTCS benefits, including allegations that Defendants breached an
10 agreement with Medicaid, that the denial of her application for ALTCS benefits was
11 “grossly negligent,” and that it caused her emotional stress and humiliation. (Doc. 12 at
12 13.) Plaintiff could have raised these claims during the administrative proceedings or on
13 appeal to the state court. Accordingly, she is precluded from bringing these claims in this
14 proceeding. *See Olson*, 188 F.3d at 1086-87 (stating that under res judicata, an
15 unappealed final administrative decision precludes litigation upon facts that were actually
16 litigated and also “upon those points that might have been litigated.”); *Dommissse*, 474 F.
17 Supp. 2d at 1128 (when the plaintiff failed to appeal the final administrative decision, he
18 was precluded from raising constitutional claims and claims of extrinsic fraud in the
19 district court because he could have raised those claims in the state proceeding).

20 Plaintiff’s Amended Complaint also asserts that the denial of her application for
21 ALTCS benefits was “discriminatory” and unconstitutional. (Doc.12 at 8-13.) Plaintiff
22 essentially recasts her challenge to the denial of her application for ALTCS benefits as
23 claims that Defendants violated her rights under the Due Process and Equal Protection
24 Clauses, and a claim that the ALTCS pre-admission screening policy is unconstitutional
25 on its face and as applied. A failure to appeal under the Administrative Review Act can
26 preclude the later filing of a constitutional claim in a separate action. *See Dommissse*, 474
27 F. Supp. 2d at 1128 (a general challenge to the constitutionality of a disciplinary scheme
28 was barred by res judicata). The constitutional issues Plaintiff raises in the Amended

1 Complaint could have been brought before the ALJ or on appeal before the state court.
2 *See Olson*, 188 F.3d at 1083 (res judicata barred section 1983 action against members of
3 the Arizona Board of Psychologist Examiners); *Dommissie*, 474 F. Supp. 2d at 1128
4 (plaintiff’s failure to appeal barred his constitutional claims).

5 Finally, although Plaintiff’s Amended Complaint names “agents” of AHCCCS as
6 defendants (Defendants Kenney, Lopez, Robbins, Fuentavilla, and Roumain), these
7 parties (who participated in the review of Plaintiff’s ALTCS applications) were privies
8 with AHCCCS in the matters litigated in the administrative proceeding and Plaintiff is
9 precluded from pursuing an action against these Defendants because she did not appeal
10 the administrative proceedings to the state court. *See Dommissie*, 474 F. Supp. 2d 1121;
11 *Gilbert*, 745 P.2d at 617.

12 In summary, to seek relief based on the claims raised in the Amended Complaint,
13 Plaintiff was required to file an appeal of the Director’s decision denying her application
14 for ALTCS benefits, pursuant to the Administrative Review Act, and she did not do so.
15 Accordingly, Plaintiff is precluded from raising her claims in a separate lawsuit in this
16 Court. Considering the preclusive effect of the Director’s decision, the Court dismisses
17 Plaintiff’s Amended Complaint without leave to amend because she cannot cure the
18 defects that are present. *See Cook, Perkiss and Liehe, Inc. v. Northern Calif. Collection*
19 *Serv., Inc.*, 911 F.2d 242, 247 (9th Cir. 1990) (the court need not grant leave to amend
20 when amendment would not cure the defects in the pleading). Therefore, the Court
21 grants Defendants’ motion to dismiss and does not consider Defendants’ other arguments
22 supporting its motion.⁹

23 Accordingly,

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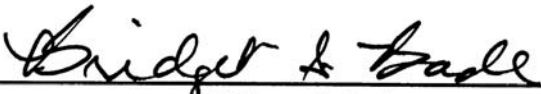
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27 ⁹ Defendants also argue that Plaintiff’s claims are barred by the Eleventh
28 Amendment, that her individual claims fail to state a claim upon which relief can be
granted, and that the Amended Complaint does not comply with Rule 8. (Doc. 16.)

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IT IS ORDERED that Defendants’ Motion to Dismiss (Doc. 16) is **GRANTED** and that the Amended Complaint (Doc. 12) is dismissed. The Clerk of Court shall terminate this action.

Dated this 10th day of December, 2014.



Bridget S. Bade
United States Magistrate Judge