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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Joseph Michael Barbera,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-17-03862-PHX-ESW

ORDER

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16 This Order sets forth the Court's rulings on three pending Motions (Docs. 23, 28,
17 29).

18 **I. DISCUSSION**

19 **A. Plaintiff's "Notice & Motion for Discovery" (Doc. 23)**

20 In his March 9, 2018 filing (Doc. 23), Plaintiff requests that the Court allow him to
21 conduct discovery. For the following reasons, the Court will deny Plaintiff's request.

22 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §
23 405(g). Section 405(g) provides:

24 Any individual, after any final decision of the Commissioner
25 of Social Security made after a hearing to which he was a
26 party, . . . may obtain a review of such decision by a civil
27 action Such action shall be brought in the district court
28 of the United States for the judicial district in which the
plaintiff resides As part of the Commissioner's answer,
the Commissioner of Social Security shall file a certified copy
of the transcript of the record including the evidence upon

1 which the findings and decision complained of are based. The
2 court shall have power to enter, upon the pleadings and
3 transcript of the record, a judgment affirming, modifying, or
4 reversing the decision of the Commissioner
5 of Social Security, with or without remanding the cause for a
6 rehearing. The findings of the Commissioner
7 of Social Security as to any fact, if supported by substantial
8 evidence, shall be conclusive The court may . . . at any
9 time order additional evidence to be taken before the
10 Commissioner of Social Security, but only upon a showing
11 that there is new evidence which is material and that there is
12 good cause for the failure to incorporate such evidence into
13 the record in a prior proceeding

14 While § 405(g) does not explicitly preclude discovery, the Court's review is
15 generally limited to the administrative record. *See Brown v. Sullivan*, 916 F.2d 492, 494
16 (9th Cir. 1990) (stating that "discovery is not ordinarily available in social security
17 matters"); *Higbee v. Sullivan*, 975 F.2d 558, 561-62 (9th Cir. 1992) ("An adequate
18 hearing record is indispensable because a reviewing court may consider only the
19 Secretary's final decision, the evidence in the administrative transcript on which the
20 decision was based, and the pleadings."); *Harman v. Apfel*, 211 F.3d 1172, 1177 (9th Cir.
21 2000) ("As in other administrative law contexts, judicial review in cases under
22 the Social Security Act is limited to a review of the administrative record for a
23 determination of whether the Commissioner's decision is supported by substantial
24 evidence in the record."); *Papendick v. Sullivan*, 969 F.2d 298, 302 (7th Cir. 1992) ("It is
25 clear from the statute that a district court may not consider evidence outside the certified
26 record. But that is what Papendick's discovery requests sought. The court, therefore, did
27 not abuse its discretion.").

28 The Court does not find good cause to allow Plaintiff to conduct discovery in this
 case. In due course, the Court will decide Plaintiff's request presented in his Motion for
 Remand (Doc. 29) that the Court remand the matter to the Commissioner for
 consideration of new evidence. Plaintiff's "Notice & Motion for Discovery" (Doc. 23)
 will be denied.

1 **B. Plaintiff’s “Motion to Verify Timeliness of Defendant’s Answer” (Doc. 28)**

2 In a March 22, 2018 Motion (Doc. 28), Plaintiff requests that the Court verify
3 whether Defendant’s Answer (Doc. 24) filed on March 12, 2018 is timely. The Court
4 will grant Plaintiff’s Motion (Doc. 28) to the extent set forth herein.

5 Federal Rule of Civil Procedure 12(a)(2) provides that a “United States, a United
6 States agency, or a United States officer or employee sued only in an official capacity
7 must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after
8 service on the United States attorney.” The Summons and Complaint were served on the
9 United States Attorney on January 9, 2018. (Doc. 12). As Defendant correctly states,
10 sixty days from January 9, 2018 is Saturday, March 10, 2018. (Doc. 31 at 2). In
11 accordance with Federal Rule of Civil Procedure 6(a)(1)(C), the answering deadline was
12 extended to Monday, March 12, 2018. Therefore, Defendant’s Answer (Doc. 24) filed on
13 March 12, 2018 is timely.

14 Finally, contrary to Plaintiff’s assertion (Doc. 34 at 3), Defendant timely served
15 the Answer on Plaintiff as it was mailed to Plaintiff on March 12, 2018. (Doc. 28 at 6;
16 Doc. 34 at 5). Federal Rule of Civil Procedure 5(b)(2)(C) provides that when service is
17 made by mail to the person’s last known address, “service is complete upon mailing.”

18 **C. Plaintiff’s “Motion for Remand so that New Evidence Can Be Considered,
19 & Counterarguments to ECF No. 27, Defendant’s Response to ECF No. 23
20 & ECF No. 26” (Doc. 29)**

21 Local Rule of Civil Procedure 16.1 and the Court’s Scheduling Order (Doc. 3) set
22 forth a briefing procedure to be followed in this matter. The parties are required to
23 follow that briefing procedure “rather than filing motions/cross-motions for summary
24 judgment.” LRCiv 16.1.

25 On March 27, 2018, Plaintiff filed a “Motion for Remand so that New Evidence
26 Can Be Considered, & Counterarguments to ECF No. 27, Defendant’s Response to ECF
27 No. 23 & ECF No. 26” (Doc. 29). Defendant has responded (Doc. 31). Because
28 Plaintiff’s Motion for Remand (Doc. 29) is an unauthorized filing under LRCiv 16.1 and
the Court’s Scheduling Order, the Court may strike it from the record. *See* Fed R. Civ. P.

1 16(f), 37(b)(2)(A). However, in the interest of judicial economy, the Court will instead
2 construe Plaintiff's Motion for Remand (Doc. 29) as Plaintiff's Opening Brief.

3 **II. CONCLUSION**

4 Based on the foregoing,

5 **IT IS ORDERED** denying Plaintiff's "Notice & Motion for Discovery" (Doc.
6 23).

7 **IT IS FURTHER ORDERED** granting Plaintiff's "Motion to Verify Timeliness
8 of Defendant's Answer" (Doc. 28) to the extent set forth herein.

9 **IT IS FURTHER ORDERED** construing Plaintiff's "Motion for Remand so that
10 New Evidence Can Be Considered, & Counterarguments to ECF No. 27, Defendant's
11 Response to ECF No. 23 & ECF No. 26" (Doc. 29)" as Plaintiff's Opening Brief. The
12 Clerk of Court shall amend the docket accordingly.

13 Dated this 25th day of April, 2018.

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16 Eileen S. Willett
17 United States Magistrate Judge
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