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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 Bartlett Elliott,  
9

10 Plaintiff,

11 v.

12 Social Security Administration,  
13

14 Defendant.

No. CV 12-08105-PCT-JAT

**ORDER**

15 Pending before the Court are (1) Defendant's Motion to Dismiss for Lack of  
16 Jurisdiction (Doc. 9); (2) Plaintiff's Motion to Strike the Motion to Dismiss for Lack of  
17 Jurisdiction (Doc. 10); (3) Plaintiff's Motion for Mandatory Injunction (Doc. 13) and (4)  
18 Plaintiff's Motion to Strike Response in Opposition to Motion (Doc. 16).

19 On May 29, 2012, Plaintiff filed a Complaint alleging that the "Social Security  
20 Administration has decided for [Plaintiff] to continue with the stewardship association"  
21 and this decision violates "[Plaintiff's] U.S. Constitution, Bill of Rights, and Declaration  
22 of Independence; my right to life, liberty, and the pursuit of happiness." Doc. 1. Plaintiff  
23 further alleges that he has informed the Social Security Administration that "he is no  
24 longer at the Verde Vista Care [and] Rehab" and that he needs his social security check in  
25 the amount of \$1,074.00 each month. Doc. 1. These allegations represent the entirety of  
26 Plaintiff's allegations, aside from a prayer of relief requesting relief in the amount of  
27 \$1,000,000.00 in damages.

28 Defendant moves to dismiss Plaintiff's complaint pursuant to Federal Rules of

1 Civil Procedure 8(a) and 12(b)(1). Defendant argues that Plaintiff’s Complaint should be  
2 dismissed because he has failed to state a claim upon which relief can be granted.  
3 Defendant further argues that Plaintiff has failed to exhaust his administrative remedies  
4 and the Court thus lacks subject matter jurisdiction pursuant to 42 U.S.C. section 405(g).

5 Plaintiff moves to strike Defendant’s Motion to Dismiss. Plaintiff does not cite to  
6 any legal authority under which it would be appropriate to strike Defendant’s Motion to  
7 Dismiss. Rather, Plaintiff’s Motion to Strike merely adds additional allegations to his  
8 Complaint. Accordingly, because Plaintiff has failed to identify any reason to strike  
9 Defendant’s Motion to Dismiss, Plaintiff’s Motion to Strike Defendant’s Motion to  
10 Dismiss is denied.

11 **I. Whether Dismissal is Appropriate under Federal Rules of Civil**  
12 **Procedure 12(b)(6) and 8(a)**

13 **A. Legal Standard**

14 The Court may dismiss a complaint for failure to state a claim under Federal Rule  
15 of Civil Procedure 12(b)(6) for two reasons: 1) lack of a cognizable legal theory and 2)  
16 insufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police*  
17 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

18 To survive a 12(b)(6) motion for failure to state a claim, a complaint must meet  
19 the requirements of Federal Rule of Civil Procedure 8(a)(2). Rule 8(a)(2) requires a  
20 “short and plain statement of the claim showing that the pleader is entitled to relief,” so  
21 that the defendant has “fair notice of what the . . . claim is and the grounds upon which it  
22 rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v.*  
23 *Gibson*, 355 U.S. 41, 47 (1957)).

24 Although a complaint attacked for failure to state a claim does not need detailed  
25 factual allegations, the pleader’s obligation to provide the grounds for relief requires  
26 “more than labels and conclusions, and a formulaic recitation of the elements of a cause  
27 of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). The factual  
28 allegations of the complaint must be sufficient to raise a right to relief above a

1 speculative level. *Id.* Rule 8(a)(2) “requires a ‘showing,’ rather than a blanket assertion,  
2 of entitlement to relief. Rule 8’s pleading standard demands more than “an unadorned,  
3 the defendant unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
4 (2009) (citing *Twombly*, 550 U.S. at 555). A complaint that offers nothing more than  
5 naked assertions will not suffice. To survive a motion to dismiss, a complaint must  
6 contain sufficient factual matter, which, if accepted as true, states a claim to relief that is  
7 “plausible on its face.” *Iqbal*, 556 U.S. at 678. Facial plausibility exists if the pleader  
8 pleads factual content that allows the court to draw the reasonable inference that the  
9 defendant is liable for the misconduct alleged. *Id.* Plausibility does not equal  
10 “probability,” but plausibility requires more than a sheer possibility that a defendant  
11 acted unlawfully. *Id.* “Where a complaint pleads facts that are ‘merely consistent’ with a  
12 defendant’s liability, it ‘stops short of the line between possibility and plausibility of  
13 entitlement to relief.’” *Id.* (citing *Twombly*, 550 U.S. at 557).

14 In deciding a motion to dismiss under Rule 12(b)(6), a court must construe the  
15 facts alleged in the complaint in the light most favorable to the drafter of the complaint  
16 and the court must accept all well-pleaded factual allegations as true. *See Shwarz v.*  
17 *United States*, 234 F.3d 428, 435 (9th Cir. 2000). Nonetheless, courts do not have to  
18 accept as true a legal conclusion couched as a factual allegation. *Papasan v. Allain*, 478  
19 U.S. 265, 286 (1986).

## 20 **B. Analysis**

21 In this case, Plaintiff has failed to identify any legal theory under which he is  
22 seeking relief. Although Plaintiff states that this Court has jurisdiction because his claim  
23 “comes under the United States Constitution, Bill of Rights, and Declaration of  
24 Independence (the right to life, liberty and pursuit of happiness)” (Docs. 10, 1, 16, 13),  
25 Plaintiff fails to link these “theories” to any facts in his Complaint or explain his legal  
26 theories in any meaningful way. Further, it appears from Plaintiff’s pleadings, motions,  
27 and responses that the central allegation of his Complaint is that he is not receiving his  
28 social security check. Plaintiff has failed to state any other facts or actions by Defendant

1 that would give Defendant notice of any possible claims that Plaintiff may have against  
2 it. The allegations in Plaintiff’s complaint amount to allegations consisting of statements  
3 that the Defendant unlawfully harmed him, without articulating any facts as to how  
4 Defendant harmed him and/or how such harm entitles Plaintiff to legal relief.  
5 Accordingly, Plaintiff’s Complaint must be dismissed because Plaintiff has failed to  
6 identify any cognizable legal theory.

7 **II. Leave to Amend**

8 Plaintiff has not requested leave to amend his Complaint. Further, Plaintiff has  
9 lost his opportunity to amend his complaint once as a matter of course under Federal Rule  
10 of Civil Procedure 15(A)(1). Plaintiff has not filed a motion to amend his complaint in  
11 compliance with Federal Rule of Civil Procedure 15(a)(2) and LRCiv 15.1.

12 Further, Defendant argues that any possible amendment would be futile because  
13 Plaintiff has failed to exhaust his administrative remedies. When a Plaintiff requests  
14 leave to amend, the Court must consider the following factors: (1) undue delay, (2) bad  
15 faith, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether  
16 plaintiff has previously amended his complaint. *Western Shoshone Nat. Council v.*  
17 *Molini*, 951 F.2d 200, 204 (9th Cir. 1991).

18 In this case, even if Plaintiff had properly requested leave to amend, the Court  
19 finds that any amendment would be futile because Plaintiff has failed to exhaust his  
20 administrative remedies for any claims against Defendant.<sup>1</sup>

21 Defendant attached the Declaration of Iris Greene (“Greene”), a District Manager  
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23 <sup>1</sup> The Court notes that it has considered a Declaration and letters attached to Defendant’s  
24 Motion to Dismiss (Doc. 9) solely in determining whether Plaintiff is required to exhaust  
25 his administrative remedies. *See McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir.  
26 1988) (On a motion to dismiss for lack of subject matter jurisdiction, a district court may  
27 consider matters outside the pleadings without converting the motion into one for  
28 summary judgment under Federal Rule of Civil Procedure 56.), *cert. denied*, 489 U.S.  
1052 (1989); *see also Bilyeu v. Morgan Stanley Long Term Disability Plan*, 683 F.3d  
1083, 1088 (9th Cir. 2012) (In addressing an unenumerated motion to dismiss for failure  
to exhaust, “a court may look beyond the pleadings and decide disputed issues of fact.”).

1 of the Social Security Administration’s (“SSA”) Prescott Office, to its Motion to Dismiss.  
2 Green avows that she has reviewed Plaintiff’s file and has determined that Plaintiff has  
3 been entitled to Social Security Disability Insurance Benefits since January 1986 and the  
4 SSA appointed a Stewardship Association to serve as Plaintiff’s representative payee in  
5 January 2011. (Doc. 9-1 at ¶¶ 3-7). On April 13, 2012, Plaintiff asked to serve as his  
6 own payee and the SSA denied this request. (*Id.* at ¶ 9). The SSA sent Plaintiff notices  
7 of its decision on May 1, May 24, and July 2, 2012. (*Id.* at ¶ 10). Although, there is a  
8 procedure for Plaintiff to appeal the SSA’s decision, Plaintiff has not done so. (*Id.* at ¶  
9 12).

10 Defendant argues that, pursuant to 42 U.S.C. § 405(g) and (h), Plaintiff is only  
11 entitled to judicial review of the final decision of the Social Security Commissioner and,  
12 thus, the Court lacks subject matter jurisdiction over Plaintiff’s claims until such time as  
13 he has exhausted his administrative remedies. Defendant further argues that Plaintiff has  
14 not completed the administrative review process provided for in 20 C.F.R. section  
15 404.900 and, thus, he has not exhausted his administrative remedies.

16 In his Motion to Strike Defendant’s Motion to Dismiss, Plaintiff suggests that  
17 pursuing administrative review with the Social Security Administration “would take  
18 months to reply to Plaintiff, as excessive paperwork would slow down any lawsuit.  
19 Plaintiff needs his money A.S.A.P.” (Doc. 10 at ¶¶ 3-4). Plaintiff cites to no authority  
20 entitling him to relief from his duty to exhaust his administrative remedies simply  
21 because the review process may be time consuming.

22 Accordingly, allowing Plaintiff leave to amend would be futile because the Court  
23 lacks jurisdiction over Plaintiff’s claims until he has exhausted his opportunity for  
24 administrative review with the Social Security Administration.

### 25 **III. Conclusion**

26 Based on the foregoing,

27 **IT IS ORDERED** that Defendant’s Motion to Dismiss for Lack of Jurisdiction  
28 (Doc. 9) is granted. This case is dismissed without prejudice to Plaintiff refile, if

1 appropriate, after his administrative remedies have been exhausted. The Clerk of the  
2 Court shall enter judgment accordingly.

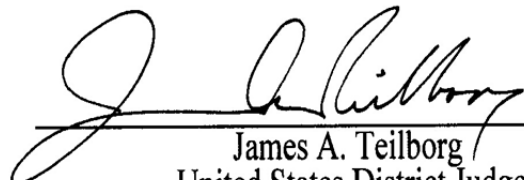
3 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Strike the Motion to  
4 Dismiss for Lack of Jurisdiction (Doc. 10) is denied.

5 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Mandatory Injunction  
6 (Doc. 13) is denied as moot.

7 **IT IS FINALLY ORDERED** that Plaintiff's Motion to Strike Response in  
8 Opposition to Motion (Doc. 16) is denied as moot.

9 Dated this 2nd day of November, 2012.

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James A. Teilborg  
United States District Judge