



1 determines that it lacks subject matter jurisdiction). For the reasons set forth below, the Court  
2 recommends that the complaint be **DISMISSED WITH PREJUDICE**.

### 3 **II. Legal Standards of a Complaint**

4 General rules for complaints are governed by the Federal Rules of Civil Procedure. A  
5 pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short  
6 and plain statement of the claim showing the pleader is entitled to relief; and...a demand for the  
7 relief sought, which may include relief in the alternative or different types of relief.” Fed.R.Civ.P.  
8 8(a). The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less  
9 stringent standards” than pleadings drafted by attorneys. Haines v. Kerner, 404 U.S. 519, 520-21  
10 (1972).

11 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
12 succinct manner. Jones v. Cmty Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). The  
13 purpose of the complaint is to give the defendant fair notice of the claims against him, and the  
14 grounds upon which the complaint stands. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002).  
15 The Supreme Court noted,

16 Rule 8 does not require detailed factual allegations, but it demands more than an  
17 unadorned, the-defendant-unlawfully-harmed-me unlawfully accusation. A pleading that  
18 offers labels and conclusions or a formulaic recitation of the elements of a cause of  
action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of  
further factual enhancement.

19 Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (internal quotation marks and citations omitted).  
20 Conclusory and vague allegations do not support a cause of action. Ivey v. Board of Regents, 673  
21 F.2d 266, 268 (9th Cir. 1982). The Court clarified further that,

22 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
23 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the  
24 plaintiff pleads factual content that allows the court to draw the reasonable inference that  
25 the defendant is liable for the misconduct alleged. [Citation]. The plausibility standard  
is not akin to a “probability requirement,” but it asks for more than a sheer possibility  
that a defendant has acted unlawfully. [Citation]. Where a complaint pleads facts that  
are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and  
probability.”

26 Iqbal, 129 S.Ct. at 1949. Where the factual allegations are well-pled, a court should assume their  
27 truth and determine whether the facts would make the plaintiff entitled to relief; conclusions in the  
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1 pleading are not entitled to the same assumption of truth. Id. If the Court determines that the  
2 complaint fails to state a cognizable claim, the Court may grant leave to amend to the extent that  
3 deficiencies of the complaint can be cured by an amendment. Lopez v. Smith, 203 F.3d 1122, 1127-  
4 28 (9th Cir. 2000) (en banc).

### 5 **III. Plaintiff's Factual Allegations**

6 Plaintiff alleges that the Veterans Affairs General Council ruling dated September 12, 1979,  
7 granted Aid and Attendance to disabled veterans who "lost the control of bowel and bladder." (Doc.  
8 1 at 1) As a result, he received "disability compensation for Aid and Attendance." Id. However, a  
9 decision by the Board of Veterans Appeal on May 22, 1989, made Plaintiff unqualified for Aid and  
10 Attendance, and he stopped receiving compensation. Id.

11 On January 9, 2009, the decision concerning the issue of Aid and Attendance was reversed,  
12 and Plaintiff was paid retroactively for the period of time from October 1, 1988, through November  
13 30, 2009. Id. at 2. According to Plaintiff, he "submitted a demand for interest on the money that  
14 was illegally seized from 1989 thru (sic) 2009 to the VA on April 8, 2010. The VA was given 60  
15 days to respond before legal action would be taken to recover the lost interest on the recovered  
16 compensation." Id. To the date of Plaintiff filing the Complaint, the VA had not responded. Id.  
17 Plaintiff requests that the Court award him the interest that was demanded, totaling \$284,397.00 and  
18 punitive damages in the amount of \$100,000,000.00. Id.

### 19 **IV. Veteran's Judicial Review Act**

20 Plaintiff's claim to benefits arises under the laws administered by the Department of Veterans  
21 Affairs ("VA"). 38 U.S.C. § 301, *et seq.* "The Veterans' Judicial Review Act of 1988 provides the  
22 exclusive means for appealing benefit decisions made by the Department of Veterans Affairs."  
23 Jenkins v. Dep't of Veteran's Affairs, 2009 U.S. Dist. LEXIS 51875, at \*2 (E.D. Cal. June 19,  
24 2009). Consistently, federal courts have held that "a federal district court may not entertain  
25 constitutional or statutory claims whose resolution would require the court to intrude upon the VA's  
26 exclusive jurisdiction." Price v. United States, 228 F.3d 420, 422 (D.C. Cir. 2000), citing Beamon  
27 v. Brown, 125 F.3d 965, 972-74 (6th Cir. 1997); Weaver v. United States, 98 F.3d 519, 520 (10th  
28 Cir. 1996); Hicks v. Small, 69 F.3d 967, 970 (9th Cir. 1995).

1 Notably, Plaintiff has received and continues to receive benefits from the VA. Nevertheless,  
2 generally, when a veteran is dissatisfied with the resolution of a claim, he can appeal the decision to  
3 the Board of Veterans' Appeals. 38 U.S.C. § 7104(a). After appeal, the procedure is as follows:

4 Following review by the Board of Veterans' Appeals a claimant can then appeal any  
5 adverse decision to the United States Court of Appeals for Veterans Claims. 38 U.S.C.  
6 §§ 7252 and 7261. The Court of Appeals "shall have exclusive jurisdiction to review  
7 decisions of the Board of Veterans' Appeals," and it has authority to "affirm, modify, or  
8 reverse a decision of the Board or to remand the matter, as appropriate." 38 U.S.C.  
9 §7252(a).

10 The Court of Appeals' decision is in turn, subject to appellate review as provided under  
11 38 U.S.C. § 7292, 38 U.S.C. § 7252(c). Section 7292 grants to the United States Court  
12 of Appeals for the Federal Circuit the "exclusive jurisdiction to review decisions of the  
13 Court of Appeals." 38 U.S.C. § 7292(c). The Federal Circuit is vested with the "power  
14 to affirm or...to modify or reverse the decision of the Court of Appeals for Veterans  
15 Claims or to remand the matter, as appropriate." 38 U.S.C. §7292(e)(1).

16 Sullivan v. Dep't of Veterans Affairs, 2010 U.S. Dist. LEXIS 50773, at \*4-6 (Mont. Apr. 5, 2010).

17 Ultimately, the procedure set forth by Congress for review of veterans' benefits determinations does  
18 not include district courts. Jenkins, 2009 U.S. Dist LEXIS 51875, at \*3.

19 Implicitly, Plaintiff's complaint demonstrates that he has not followed this procedure to raise,  
20 with the VA, his dissatisfaction with the determination to pay him retroactive benefits, but not to  
21 award the interest which he claims accrued over that term. In addition, Plaintiff's attempt to state  
22 that this claim is a violation of his rights under the Fourth and Fifth Amendment fails (See Doc. 2 at  
23 1). "[A]n attempt to challenge the allocation of benefits under the guise of a constitutional attack is  
24 not permitted." White v. United States, 2008 U.S. Dist. LEXIS 48684 , at \*5 (E.D. Cal. June 23,  
25 2008), citing Tietjen v. United States Veterans Admin., 884 F.2d 514, 515 (9th Cir. 1989).

## 26 **V. Findings and Recommendations**

27 For the foregoing reasons, the Court lacks jurisdiction over this matter, and finds that  
28 Plaintiff fails to state a claim upon which relief may be granted in this Court. If Plaintiff should  
desire to pursue his claims, he should do so under the procedures outlined by the Veterans' Judicial  
Review Act. Accordingly, IT IS HEREBY RECOMMENDED that:

- 29 1. Plaintiff's motion to add the United States as a defendant be **DENIED**;
- 30 2. This action be **DISMISSED WITH PREJUDICE**; and
- 31 3. Because the order dismissing the Complaint concludes this case, the Clerk of the

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Court is ordered to close this matter.

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within 14 days after being served with these findings and recommendations, Plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Defendant may file a reply to Plaintiff's objections within 14 days thereafter. Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: November 9, 2010

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE