

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

RICARDO JOSE CALDERON LOPEZ,

Plaintiff,

v.

TIGRAN GUMUSHYAN, et al.,

Defendants.

Case No. [16-cv-07236-LB](#)

**ORDER GRANTING THE
DEFENDANTS' MOTION TO DISMISS**

Re: ECF No. 121

INTRODUCTION

This case relates to the Social Security Administration's ("SSA") termination of Ricardo Calderon Lopez's disability benefits.¹ Mr. Lopez asserts that the defendants — the United States, the SSA Commissioner, and three SSA employees (Tigran Gumushyan, Darryl Onizuka, and Doe Vazquez) — improperly terminated his Social Security benefits in 2013. He appears to assert tort- and constitutional-based claims for the defendants' improper disability determination and related conduct, and he seeks nearly \$7 million in damages and judicial "intervention" to "suppress" an Administrative Law Judge's decision. The defendants move to dismiss the complaint under

¹ See generally Compl. – ECF No. 1. Record citations refer to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 Federal Rule of Civil Procedure 12(b)(1) on the basis of sovereign immunity and subject-matter
2 jurisdiction.²

3 The court can decide the matter without oral argument and vacates the May 18, 2017 hearing.
4 Civil L.R. 7-1(b). The court grants the motion because Mr. Lopez’s claims are barred by sovereign
5 immunity and so the court lacks subject-matter jurisdiction.

6
7 **STATEMENT**

8 As a result of a 1993 motor-vehicle accident, Mr. Lopez suffers from permanent hemiplegia.³
9 In 2003, the SSA found that Mr. Lopez was disabled under the Social Security Act and awarded
10 him benefits.⁴ Over ten years later, though, the SSA determined that Mr. Lopez was no longer
11 disabled and no longer entitled to benefits.⁵ Mr. Lopez requested reconsideration of the SSA’s
12 conclusion and, per statute, asked that his benefits continue during his appeal.⁶ The SSA granted
13 Mr. Lopez’s request for continuing benefits.⁷

14 In March 2014, an SSA Disability Hearing Officer “found that the evidence was insufficient to
15 establish disability” and affirmed the Administration’s initial decision terminating Mr. Lopez’s
16 benefits.⁸ Mr. Lopez stopped receiving his statutory continuing benefits.⁹

17 After the Hearing Officer’s decision, in May, Mr. Lopez visited the SSA’s West Los Angeles
18 office and spoke with defendant Vasquez.¹⁰ Mr. Lopez alleges that Vasquez informed him of the
19 Hearing Officer’s decision (but refused to provide him a copy) and “intimidated [him] to complete
20

21
22

² Motion to Dismiss – ECF No. 121.

23 ³ Compl. at 4, 16–17.

24 ⁴ Id.; Chung Decl. – ECF No. 121-5, ¶ 3(a).

25 ⁵ Compl. at 5; Chung Decl. ¶ 3(b).

26 ⁶ Compl. at 5; Chung Decl. ¶ 3(c); Litwin Decl. – ECF No. 121-1, ¶¶ 4–5.

27 ⁷ Litwin Decl. ¶ 6.

28 ⁸ Chung Decl. ¶ 3(d)–(e).

⁹ Litwin Decl. ¶ 8.

¹⁰ Compl. at 7.

1 several forms in order to reinstate [his] benefits.”¹¹ Among those forms that Mr. Lopez was
2 “forced to complete” was a Request for Hearing by an Administrative Law Judge, which he filed
3 on May 8, 2014.¹² He again requested statutory-based continuing benefits, which the SSA granted
4 for the duration of his appeal before the ALJ.¹³

5 The SSA sent Mr. Lopez a Notice of Hearing, “indicating that a hearing had been scheduled
6 for August 26, 2015.”¹⁴ The SSA unsuccessfully tried to contact Mr. Lopez by phone three weeks
7 before the hearing, and it sent him a Notice of Hearing Reminder one week later.¹⁵ Mr. Lopez did
8 not appear, though, and the ALJ dismissed his claim.¹⁶ Mr. Lopez’s continuing benefits were
9 terminated.¹⁷ He filed a Request for Review of the ALJ’s dismissal, but the Appeals Council
10 denied the request.¹⁸

11 In May 2014, around the time that Mr. Lopez requested an ALJ hearing, he also filed a
12 complaint with the SSA’s Office of the General Counsel.¹⁹ In that complaint, it appears, Mr.
13 Lopez alleged that the defendants engaged in fraud and discrimination while terminating his
14 benefits.²⁰ The Office of the General Counsel denied the claim under the Federal Tort Claims Act
15 (“FTCA”) in January 2017 (after Mr. Lopez filed this case).²¹

16 Mr. Lopez initially sued the defendants in the Central District of California.²² After one
17 plaintiff (Starlight Entertainment Enterprises, Mr. Lopez’s company) and one defendant (Sunset
18

19
20 ¹¹ Id. at 7, 13–14.

21 ¹² Id. at 8; Chung Decl. ¶ 3(f).

22 ¹³ Litwin Decl. ¶ 9.

23 ¹⁴ Chung Decl. ¶ 3(g).

24 ¹⁵ Id. ¶ 3(h)–(i).

25 ¹⁶ Id. ¶ 3(j).

26 ¹⁷ Litwin Decl. ¶ 10.

27 ¹⁸ Chung Decl. ¶ 3(k)–(l).

28 ¹⁹ Compl. at 10.

²⁰ Id. at 9–10, Ex. G.

²¹ Litwin Decl. ¶ 13.

²² See Compl.

1 Housing Solutions, Mr. Lopez’s former landlord) were dismissed, the case was transferred to this
2 district.²³

3 In the complaint, Mr. Lopez sues the United States, including the SSA Commissioner, and
4 three of its employees (Gumushyan, Onizuka, and Vazquez), and he seeks damages for the
5 defendants’ allegedly wrongful termination of his disability benefits. For example, he asserts that
6 his “benefits were improperly terminated,”²⁴ Vazquez intimidated and forced him to complete
7 several forms to challenge the termination,²⁵ Vazquez and Gumushyan conspired to discriminate
8 against him after he appealed,²⁶ Vazquez and Gumushyan “d[id] not follow regulation” when they
9 “refus[ed] the continuation of [his] benefits” and thus “deprived [him] of [his] Constitutional
10 Right,”²⁷ that, although he received a copy of his file, the defendants’ normal practice “is to deny
11 common law rights to inspect and copy the information contained in [the] file,”²⁸ and the
12 defendants “tampered with the information [in his] file, which led to his identity be[ing] stolen.”²⁹
13 Among the relief that he seeks — including \$5.5 million from Gumushyan; \$750,000 from
14 Vazquez; and \$500,000 from supervisor Onizuka³⁰ — he asks the court to “intervene” and
15 “suppress the unlawfully initiated Hearing by Administrative Law Judge (ALJ) and to order the
16 federal agency-SSA to pay the correct amount of back-payment of benefits owed.”³¹

17 The defendants move to dismiss the complaint under Rule 12(b)(1) and argue that the
18 government has not waived sovereign immunity for Mr. Lopez’s claims and thus the court lacks
19

20 ²³ See ECF Nos. 14, 25, 76. While this case was pending, Mr. Lopez filed a separate complaint
21 here, in the Northern District, seeking judicial review of the Commissioner’s termination of his
22 benefits (See Case No. 3:16-cv-02732-LB.) The undersigned dismissed that case for lack of
jurisdiction because there had been no final agency decision. (Case No. 3:16-cv-02732-LB, ECF
No. 50.) Mr. Lopez’s appeal of that decision to the Ninth Circuit is still pending.

23 ²⁴ Comp. at 5, 7, 22.

24 ²⁵ Id. at 7–8, 13–14.

25 ²⁶ Id. at 9.

26 ²⁷ Id. at 12.

27 ²⁸ Id. at 15.

28 ²⁹ Id. at 17.

³⁰ Id. at 22–23.

³¹ Id. at 18.

1 subject-matter jurisdiction.³² Mr. Lopez opposes the motion but argues only that his appeal of the
2 court's order denying his withdrawal of consent to magistrate jurisdiction divested this court of
3 jurisdiction to hear the matter.³³

4 5 GOVERNING LAW

6 **1. Rule 12(b)(1) Subject-Matter Jurisdiction**

7 A complaint must contain a short and plain statement of the ground for the court's jurisdiction
8 (unless the court already has jurisdiction and the claim needs no new jurisdictional support).
9 Fed. R. Civ. P. 8(a)(1). The plaintiff has the burden of establishing jurisdiction. See *Kokkonen v.*
10 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *Farmers Ins. Exchange v. Portage La*
11 *Prairie Mut. Ins. Co.*, 907 F.2d 911, 912 (9th Cir. 1990). A defendant's Rule 12(b)(1)
12 jurisdictional attack can be either facial or factual. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.
13 2000). "A 'facial' attack asserts that a complaint's allegations are themselves insufficient to
14 invoke jurisdiction, while a 'factual' attack asserts that the complaint's allegations, though
15 adequate on their face to invoke jurisdiction, are untrue." *Courthouse News Serv. v. Planet*, 750
16 F.3d 776, 780 n.3 (9th Cir. 2014). Under a facial attack, the court "accept[s] all allegations of fact
17 in the complaint as true and construe[s] them in the light most favorable to the plaintiffs." *Warren*
18 *v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003). In a factual attack, the court
19 "need not presume the truthfulness of the plaintiff's allegations" and "may review evidence
20 beyond the complaint without converting the motion to dismiss into a motion for summary
21 judgment." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).

22 If a court dismisses a complaint, it should give leave to amend unless the "the pleading could
23 not possibly be cured by the allegation of other facts." *Cook, Perkiss and Liehe, Inc. v. Northern*
24 *California Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

25
26
27 _____
³² Motion to Dismiss – ECF No. 124.

28 ³³ Opposition – ECF No. 124.

1 42 U.S.C. § 405(g). Section 405(g) “limits judicial review to a particular type of agency action, a
2 ‘final decision’ of the Secretary made after a hearing.” *Califano v. Sanders*, 430 U.S. 99, 108
3 (1977). A “final decision” is not defined by the Social Security Act and is instead defined by
4 regulation. See 20 C.F.R. § 404.900(a)(1)–(4). Under the regulations, a claimant obtains a final
5 decision only after completing the four steps of the administrative review process: (1) an initial
6 determination; (2) reconsideration; (3) a hearing before an ALJ; and (4) review by the Appeals
7 Council. *Id.*; see *Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003) (“A final decision has two
8 elements: (1) presentment of the claim to the Commissioner, and (2) complete exhaustion of
9 administrative remedies.”) (citing *Johnson v. Shalala*, 2 F.3d 918, 921 (9th Cir. 1993)). The
10 cessation of disability benefits following a continuing disability review is an initial determination.
11 20 C.F.R. § 404.902(a). Before appealing to this court, the plaintiff must exhaust administrative
12 remedies by seeking a reconsideration decision, then an ALJ decision after a hearing, and then a
13 final review by the Appeals Council. 20 C.F.R. § 404.900(a)(1)–(5).

14 Section 405(h) limits federal-court jurisdiction to claims brought through the above § 405(g)
15 framework. See *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 20 (2000) (“[T]his
16 Court crossed the relevant bridge long ago when it held that Congress, in both the Social Security
17 Act and the Medicare Act, insisted upon an initial presentation of the matter to the agency.”). That
18 section says:

19 The findings and decision of the Commissioner of Social Security after a hearing
20 shall be binding upon all individuals who were parties to such hearing. No findings
21 of fact or decision of the Commissioner of Social Security shall be reviewed by any
22 person, tribunal, or governmental agency except as herein provided. No action
against the United States, the Commissioner of Social Security, or any officer or
employee thereof shall be brought under section 1331 or 1346 of title 28 to recover
on any claim arising under this subchapter.

23 42 U.S.C. § 405(h) (emphasis added); *see also Ass’n of Am. Med. Colleges v. United States*, 217
24 F.3d 770, 779 (9th Cir. 2000).

25 The Supreme Court has interpreted broadly § 405’s third sentence. See *Hooker v. United*
26 *States Dep’t of Health and Human Servs.*, 858 F.2d 525, 529 (1988) (citing *Weinberger v. Salfi*,
27 422 U.S. 749, 760–61 (1975)). In doing so, the Court has held that the phrase “arising under” the
28 Act includes “a claim in which ‘both standing and the substantive basis for the presentation’ of the

1 claim is the Social Security Act.” Id. (quoting Weinberger, 422 U.S. at 760–61). Section 405(h)
2 therefore bars, for example, constitutional challenges to the Act’s requirements, see Weinberger,
3 422 U.S. at 760–61; FTCA-based tort claims for wrongful disability determinations, see Hooker,
4 858 F.2d at 529–30; and Bivens-based due-process claims for the wrongful termination of benefits,
5 see Schweiker v. Chilicky, 487 U.S. 412, 414, 429 (1988). In a “typical” Social Security benefits
6 case — “where an individual seeks a monetary benefit from the agency, . . . the agency denies the
7 benefit, and the individual challenges the lawfulness of that denial” — § 405(h) “plainly bars
8 § 1331 review . . . , irrespective of whether the individual challenges the agency’s denial on
9 evidentiary, rule-related, statutory, constitutional, or other legal grounds.” Ill. Council, 529 U.S. at
10 10.

12 **2. Mr. Lopez’s Claims are Barred**

13 Mr. Lopez’s claims are, at their core, “typical” claims for Social Security benefits. The
14 complaint, although often difficult to follow, plainly challenges the government-defendants’
15 decision to terminate his benefits and their related policies and practices. For example, he alleges
16 that the government improperly terminated his benefits; that it forced him to fill out forms to
17 appeal its decision; that Gumushyan and Vazquez conspired to discriminate against him, refused
18 to follow SSA regulations, and deprived him of his Constitutional rights; and that the defendants
19 refused to give him his file (although he also admits that he received the file).

20 All of these allegations, and Mr. Lopez’s claims for damages, benefits back pay, and court
21 intervention to “suppress” the ALJ’s determination, relate to his claim for disability benefits. So
22 do his Bivens-based due-process claims against the individual defendants — he cites Bivens v. Six
23 Unknown Named Agents, 403 U.S. 388 (1971) and apportions millions of dollars in damages
24 among them.³⁴ See Schweiker, 487 U.S. at 429. And his constitutional challenges to the SSA’s
25
26
27

28 ³⁴ See Compl. at 6, 22–23.

1 administrative-review process — he appears to take issue with (among other things) the
2 requirement that he submit forms.³⁵ See *Weinberger*, 422 U.S. at 760–61.

3 In a related case, the court previously held that “[b]y not attending his hearing [before the
4 ALJ], Mr. Lopez waived his right to a hearing and failed to exhaust his administrative remedies.”³⁶
5 Thus, because there is no “final decision” under § 405(g), and because Mr. Lopez’s claims “arise
6 under” the Social Security Act, his claims fall outside the government’s limited waiver of
7 sovereign immunity in this context.

8 This conclusion is not affected by Mr. Lopez’s appeal to the Ninth Circuit seeking review of
9 this court’s order denying his withdrawal of consent to magistrate-judge jurisdiction. That order
10 was non-appealable and the Ninth Circuit has since dismissed the appeal as such.³⁷

11
12 **CONCLUSION**

13 The court dismisses the complaint for lack of subject-matter jurisdiction.

14
15 **IT IS SO ORDERED.**

16 Dated: May 16, 2017

17 

18 LAUREL BEELER
19 United States Magistrate Judge

20
21
22
23
24
25
26 _____
27 ³⁵ Compl. at 13–14, 20.

28 ³⁶ Order – Case No. 3:16-cv-02732-LB, No. 50 at 5.

³⁷ See Ninth Circuit Order – ECF No. 130.