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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 PATRICIA JORDAN,  
8 Plaintiff,  
9 v.  
10 THE PRESIDIO TRUST, et al.,  
11 Defendants.

Case No. 16-cv-02122-KAW

**ORDER GRANTING MOTION TO  
DISMISS**

Re: Dkt. No. 63

12  
13 On April 21, 2016, Plaintiff Patricia Jordan filed the instant case against Defendants  
14 Presidio Trust and the United States Equal Employment Opportunity Commission ("EEOC"),  
15 alleging that she was terminated from her position with the Presidio Trust based on her age and  
16 gender. (Compl., Dkt. No. 1.) On January 30, 2017, the Court granted Defendants' motion to  
17 dismiss the complaint. (Dkt. No. 49.) Plaintiff filed an amended complaint, which brought two  
18 causes of action for declaratory relief and injunctive relief, based on whether Plaintiff's claims are  
19 subject to the "Presidio Trust Procedures Related to Claims of Workplace Discrimination." (First  
20 Amended Compl. ("FAC") ¶¶ 67, 77, Dkt. No. 51.) Defendants now move to dismiss Plaintiff's  
21 pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Defs.' Mot., Dkt. No. 63.)

22 The Court deemed the matter suitable for disposition without hearing pursuant to Civil  
23 Local Rule 7-1(b) and vacated the hearing previously set for July 6, 2017. (Dkt. No. 73.) Having  
24 considered the papers filed by the parties and the relevant legal authority, the Court GRANTS  
25 Defendants' motion because Plaintiff only brings two causes of action for declaratory relief and  
26 injunctive relief; these, however, "are not independent causes of action, but remedies." *Hayes v.*  
27 *Wells Fargo Bank, N.A.*, Case No.: 3-13-cv-420 KAW, 2013 WL 4117050, at \*7 (N.D. Cal. Aug.  
28 12, 2013); see also *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F. Supp. 2d 952, 975 (N.D. Cal.

1 2010) ("the Court notes that declaratory and injunctive relief are not causes of action; rather, they  
2 are remedies"). To seek declaratory relief or injunctive relief, Plaintiff must first plead a cause of  
3 action to support such relief. The Court therefore finds dismissal with leave to amend to be  
4 appropriate.

5 In her opposition, Plaintiff appears to suggest that she is bringing an Administrative  
6 Procedure Act ("APA") claim, which underlies her request for declaratory relief and an injunction.  
7 (Plf.'s Opp'n at 4, Dkt. No. 71 ("the case seeks declaratory relief and an injunction against officers  
8 of the subject agencies under §702").) As Defendants point out, however, Plaintiff's complaint  
9 does not in fact include an APA cause of action, and an "argument in opposition cannot cure a  
10 defect in the pleading." *Yamauchi v. Cotterman*, 84 F. Supp. 3d 993, 1009 (N.D. Cal. 2015); see  
11 also *Broam v. Bogan*, 320 F.3d 1023, 1026 n.2 (9th Cir. 2003) ("In determining the propriety of a  
12 Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers,  
13 such as a memorandum in opposition to a defendant's motion to dismiss") (internal quotation  
14 omitted). Thus, if Plaintiff intends to bring an APA claim, she must explicitly plead such a claim  
15 in her amended complaint. The APA claim should, at the very least, specifically identify the exact  
16 agency actions being challenged, whether it is the promulgation of the Presidio Trust Procedures  
17 Related to Claims of Workplace Discrimination, the alleged "interagency agreement" between  
18 Defendants, or some other alleged final action.

19 Because the Court dismisses Plaintiff's complaint on the ground that declaratory relief and  
20 injunctive relief are not causes of action, the Court need not determine the merits of Defendants'  
21 other arguments. The Court notes, however, the following issues that have been raised in the  
22 parties' briefing:

23 First, should Plaintiff bring an APA claim, there is a question of whether the agency  
24 discretion exception applies. (See Defs.' Reply at 3-5.) This discretion is a "very narrow" one,  
25 which applies when "statutes are drawn in such broad terms that in a given case there is no law to  
26 apply." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971) (internal  
27 quotation omitted).

28 Second, there is a question of whether Plaintiff can adequately identify an injury-in-fact by

1 pointing to differences between the Presidio Trust's and the EEOC's procedures. (See Plf.'s Opp'n  
2 at 6.) It is not clear that the cited differences alone are adequate to establish the concrete and  
3 particularized injury required for standing purposes, and what legal authority exists to support  
4 such a position.

5 Third, again, the Court observes generally that statutory interpretation may properly be  
6 conducted at the motion to dismiss stage because it is a legal question. (See also Dkt. No. 49 at  
7 10.) The Court is unaware of any authority which concludes that legislative history is a matter  
8 outside of the pleadings, such that a court cannot interpret a statute without converting a motion to  
9 dismiss into a motion for summary judgment.<sup>1</sup> Further, if the statute itself is clear, there may be  
10 no need to analyze legislative history or intent at all.

11 For the reasons stated above, the Court GRANTS Defendants' motion and dismisses  
12 Plaintiff's complaint without prejudice. Plaintiff has thirty (30) days from the date of this order to  
13 file the amended complaint.

14 IT IS SO ORDERED.

15 Dated: July 5, 2017

16   
17 KANDIS A. WESTMORE  
18 United States Magistrate Judge

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28 <sup>1</sup> To the extent Plaintiff intends to rely on this argument again, the Court expects Plaintiff to cite to relevant legal authority in support.