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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 RAFAEL DE LIMA MARQUES,

12 Plaintiff,

13 v.

14 UNITED STATES POSTAL SERVICE,

15 Defendant.

Case No.: 18-CV-02392-AJB-NLS

**ORDER GRANTING  
DEFENDANT’S MOTION TO  
DISMISS**

**(Doc. No. 8)**

16  
17 Before the Court is Defendant United States Postal Service’s motion to dismiss  
18 Plaintiff Rafael de Lima Marques’s Complaint under Rules 4, 12(b)(1), and 12(b)(6) of the  
19 Federal Rules of Civil Procedure. (Doc. No. 8.) Having reviewed the parties’ arguments  
20 and controlling legal authority, and pursuant to Civil Local Rule 7.1.d.1, the Court finds  
21 the matter suitable for decision on the papers without oral argument. Accordingly, the  
22 **July 11, 2019** motion hearing is hereby **VACATED**. For the reasons set forth below, the  
23 Court **GRANTS** Defendant’s motion to dismiss.

24 **I. BACKGROUND**

25 Although Plaintiff failed to fill out the section of his complaint entitled, “Statement  
26 of Claim,” the Court has liberally construed the pleadings and looked to the exhibits  
27 provided to decipher the claim. *See* Fed. R. Civ. P. 10(c) (“A copy of a written instrument  
28 that is an exhibit to a pleading is a part of the pleading for all purposes.”); *Balistreri v.*

1 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988) (pro se pleadings are liberally  
2 construed). The following facts are taken from the Complaint and attached exhibits. They  
3 are construed as true for the limited purpose of resolving the instant motion. *See Brown v.*  
4 *Elec. Arts, Inc.*, 724 F.3d 1235, 1247 (9th Cir. 2013).

5 In a demand letter attached to the Complaint, which had been sent to Defendant's  
6 legal department prior to commencement of this action, Plaintiff contends that on July 20,  
7 2018, he shipped a rig<sup>1</sup> valued at \$3,310.38 through Defendant's services. (Doc. No. 1-2 at  
8 31.) Plaintiff purchased postage, insurance for the contents of the package, and tracking  
9 services for a total of \$144.07 from Defendant. (*Id.*) Plaintiff claims that the rig arrived at  
10 its destination in a damaged condition, so he sought reimbursement from Defendant. (*Id.*)

11 Plaintiff filed an insurance claim with USPS. (*Id.*) Defendant instructed Plaintiff to  
12 "present the item(s) and mailing container including the wrapping, packaging, and any  
13 other contents received, along with this letter, to a Post Office for inspection within 20  
14 days." (Doc. No. 1-2 at 39.) Further, that "[i]f this evidence of damage is not available for  
15 inspection, [Plaintiff's] claim may be denied." (*Id.*) Plaintiff delivered the rig to Defendant  
16 for inspection in furtherance of his insurance claim. (Doc. No. 1-2 at 31.) Defendant denied  
17 Plaintiff's claim. (*Id.* at 40.) As grounds for the denial, Defendant cited "failure to present  
18 the article, mailing container and all packaging to the Post Office for inspection as  
19 requested." (*Id.*)

20 Plaintiff subsequently appealed. Defendant's claims division in St. Louis, Missouri  
21 upheld the prior decision to deny Plaintiff's claim. (Doc. No. 1-2 at 41.) The letter states  
22 that USPS did not have an opportunity to inspect the package in which the rig was shipped,  
23 and that Plaintiff provided insufficient proof of value. (*Id.*) Defendant's Consumer  
24 Advocate Office in Washington D.C. upheld the decision of the St. Louis office. (*Id.* at 43.)  
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27 <sup>1</sup> The Court infers from Plaintiff's attachment of computer parts receipts and additional  
28 correspondence that the "rig" Plaintiff refers to is a computer system built to mine crypto-  
currency. (*See* Doc. No. 1-2 at 9–28.)

1 Plaintiff filed this action and requests “the court to order the defendant to reimburse me for  
2 the damaged item.” (Doc. No. 1 at 3.)

3 The Court issued notice of a hearing for dismissal for want of prosecution pursuant  
4 to Rule 4(m) of the Federal Rules of Civil Procedure because Plaintiff had not served  
5 Defendant with notice of this action. (Doc. No. 5.) Plaintiff then served Defendant and filed  
6 proof of service with the Court. (Doc. No. 6.) The Court subsequently vacated the dismissal  
7 hearing. (Doc. No. 7.) Defendant then filed the instant motion to dismiss. (Doc. No. 8.)

## 8 II. LEGAL STANDARD

9 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff’s  
10 complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “[A] court may dismiss  
11 a complaint as a matter of law for (1) lack of cognizable legal theory or (2) insufficient  
12 facts under a cognizable legal claim.” *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*,  
13 88 F.3d 780, 783 (9th Cir. 1996) (citation and internal quotation marks omitted). However,  
14 a complaint will survive a motion to dismiss if it contains “enough facts to state a claim to  
15 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).  
16 In making this determination, a court reviews the contents of the complaint, accepting all  
17 factual allegations as true and drawing all reasonable inferences in favor of the nonmoving  
18 party. *See Cedars-Sinai Med. Ctr. v. Nat’l League of Postmasters of U.S.*, 497 F.3d 972,  
19 975 (9th Cir. 2007).

20 Notwithstanding this deference, the reviewing court need not accept legal  
21 conclusions as true. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for  
22 a court to assume “the [plaintiff] can prove facts that [he or she] has not alleged . . . .”  
23 *Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519,  
24 526 (1983). However, “[w]hen there are well-pleaded factual allegations, a court should  
25 assume their veracity and then determine whether they plausibly give rise to an entitlement  
26 to relief.” *Iqbal*, 556 U.S. at 679.

27 Pro se pleadings are held to “less stringent standards than formal pleadings drafted  
28 by lawyers” because pro se litigants are more prone to making errors in pleading than

1 litigants represented by counsel. *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations  
2 omitted); see *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded by statute*  
3 *on other grounds*, *Lopez*, 203 F.3d at 1126–30 (9th Cir. 2000). Thus, the Supreme Court  
4 has held that federal courts should liberally construe the “‘inartful pleading’ of pro se  
5 litigants.” *Eldridge v. Block*, 832 F.2d 1132, 1137 (9th Cir. 1987) (quoting *Boag v.*  
6 *MacDougall*, 454 U.S. 364, 365 (1982)).

7 Therefore, the Court will liberally construe this Plaintiff’s legal claims when  
8 considering whether the complaint should be dismissed. However, pro se plaintiffs are  
9 expected to follow “the same rules of procedure that govern other litigants.” *King v. Atiyeh*,  
10 814 F.2d 565, 567 (9th Cir. 1987); see *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995);  
11 see also *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991) (“[W]hile pro se litigants may  
12 be entitled to some latitude when dealing with sophisticated legal issues, acknowledging  
13 their lack of formal training, there is no cause for extending this margin to straightforward  
14 procedural requirements that a layperson can comprehend as easily as a lawyer.”). Thus,  
15 failure to meet procedural requirements will receive less latitude.

### 16 III. DISCUSSION

17 Defendant requests dismissal of Plaintiff’s Complaint pursuant to Fed. R. Civ. P.  
18 12(b)(1) for lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(6) for failure to state  
19 a claim, and Fed. R. Civ. P. 4 for failure of service. The Court discusses each in turn below.

#### 20 A. Lack of Subject Matter Jurisdiction

21 The United States is immune from lawsuits except for in cases where it has  
22 consented, by statute, to being sued. See *United States v. Dalm*, 494 U.S. 596, 608 (1990).  
23 The Supreme Court has held that “[j]urisdiction over any suit against the Government  
24 requires a clear statement from the United States waiving sovereign immunity together  
25 with a claim falling within the terms of the waiver. The terms of consent to be sued may  
26 not be inferred, but must be ‘unequivocally expressed.’” *United States v. White Mt. Apache*  
27 *Tribe*, 537 U.S. 465, 472 (2003) (internal citations omitted).

28 “The district courts shall have original jurisdiction of any civil action arising under

1 any Act of Congress relating to the postal service.”<sup>2</sup> 28 U.S.C. § 1339. The Postal  
2 Reorganization Act (“PRA”) grants the USPS the general power “to sue and be sued in its  
3 official name.” 39 U.S.C. § 401. Plaintiff has the burden of proof to establish the Court’s  
4 subject matter jurisdiction over his claim. *See Sopcak v. N. Mountain Helicopter Serv.*, 52  
5 F.3d 817, 818 (9th Cir. 1995). Although Plaintiff has made no attempt to prove jurisdiction  
6 in his claim, the Court has liberally construed his pleadings to search for a source of  
7 jurisdiction based on a waiver of sovereign immunity by the United States.

### 8 **1. Tort Claim Theory**

9 The first such source of subject matter jurisdiction could potentially lie in the Federal  
10 Torts Claim Act (“FTCA”). *See* 28 U.S.C. § 2671 *et seq.* The general “sue and be sued”  
11 power granted to the USPS by the PRA is subject to the FTCA. *See* 39 U.S.C. § 401(c);  
12 *see also Kennedy v. United States Postal Serv.*, 145 F.3d 1077 (9th Cir. 1998). The FTCA  
13 waives immunity for certain claims including injury or loss of personal property caused by  
14 negligent or wrongful acts or omissions by federal agencies and their employees. 28 U.S.C.  
15 § 2672. However, the FTCA specifically excludes “[a]ny claim arising out of the loss,  
16 miscarriage, or negligent transmission of letters or postal matter” from the types of lawsuits  
17 that can be brought. 28 U.S.C. § 2680(b). As such, there is no jurisdiction for the Court to  
18 consider Plaintiff’s claim under a theory that Defendant negligently transmitted Plaintiff’s  
19 postal matter.

### 20 **2. Breach of Contract Theory**

21 The Court can also liberally construe the Complaint to theorize that Plaintiff intends  
22 to bring a contract claim; that Defendant has breached a contract to compensate Plaintiff  
23 for damaged postal matter. The Contract Disputes Act (“CDA”) allows the United States  
24 to be sued for certain contract disputes. *See* 41 U.S.C. § 7101 *et seq.* However, the CDA  
25 only applies to contract claims involving procurement by the United States and certain  
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27 <sup>2</sup> Civil actions brought under 28 U.S.C. § 1339 “require[] an independent statutory basis of  
28 jurisdiction.” *O’Connor v. Yezukevicz*, 589 F.2d 16, 18 (1st Cir. 1978).

1 other specific categories of contracts unrelated to the insurance of mail. *See* 41 U.S.C. §  
2 7102; *see also* *Tritz v. United States Postal Serv.*, 721 F.3d 1133 (9th Cir. 2013). Contracts  
3 for an entity of the federal government to provide services, rather than procure them, do  
4 not fall within the CDA. *Rider v. United States*, 7 Cl. Ct. 770, 775 (Cl. Ct. 1985), *aff'd*, 790  
5 F.2d 91 (Fed. Cir. 1986).

6 The United States Court of Appeals for the Ninth Circuit has held that “[t]he plain  
7 language of [39 U.S.C. § 409(a)] grants district courts jurisdiction over contract actions  
8 against the Postal Service.” *Tritz*, 721 F.3d at 1138 (citing *Flamingo Indus. (USA) Ltd. v.*  
9 *U.S. Postal Serv.*, 302 F.3d 985, 995 (9th Cir. 2002), *reversed on other grounds*, 540 U.S.  
10 736, 124 S. Ct. 1321, 158 L. Ed. 2d 19 (2004), *on remand*, 366 F.3d 789; *Wright v. U.S.*  
11 *Postal Serv.*, 29 F.3d 1426, 1430 (9th Cir. 1994)). The Court further held that the PRA is  
12 an independent source of subject matter jurisdiction by which a district court may hear a  
13 contract claim against the USPS if the claim does not fall within the CDA. *Id.* at 1139.

14 In the demand letter Plaintiff attached to the Complaint, he asserts that: (1) it is  
15 Defendant’s obligation to get the package safely to its destination, (2) Plaintiff sent the  
16 package with insurance, and (3) that Plaintiff has a right to be reimbursed. (Doc. No. 1-2  
17 at 32.) The Court does not find it unreasonable to liberally construe these points, in light  
18 of Plaintiff’s pro se status, to mean that Plaintiff intends to bring a breach of contract claim  
19 against Defendant. Such a contract claim would not be governed by the CDA. Based on  
20 the PRA, there is an independent basis of subject matter jurisdiction by which the Court  
21 may consider Plaintiff’s claim under a breach of contract theory.

22 While the Court may hear certain contract disputes against the USPS, the Court’s  
23 ability to review the administrative decisions of federal agencies is not unlimited. The  
24 scope of the Court’s review in a case challenging agency action is governed by the  
25 Administrative Procedure Act. 5 U.S.C. § 701 *et seq*; *see, e.g.,* *Barton v. United States*  
26 *Postal Serv.*, 615 F. Supp. 2d 790, 794 (N.D. Ind. 2009). “The reviewing court shall . . .  
27 hold unlawful and set aside agency action, findings, and conclusions found to be . . .  
28 arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . .”

1 5 U.S.C. § 706. The “arbitrary and capricious” standard requires that the Court refrain from  
2 overruling a decision made by a federal agency that is reasonably supported by facts.  
3 *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 285–86 (1974).

4 In sum, efforts by the Court to liberally construe Plaintiff’s pleadings reveal potential  
5 claims in tort law and contract law. To the extent that Plaintiff intends to bring a tort claim  
6 against the USPS—that is a claim that Defendant negligently transported Plaintiff’s postal  
7 matter—the Court has no subject matter jurisdiction. Therefore, with respect to Plaintiff’s  
8 tort claim under the FTCA, Defendant’s motion to dismiss is **GRANTED** without leave to  
9 amend. However, in finding the potential for subject matter jurisdiction over Plaintiff’s  
10 contract claim through the PRA, the Court further considers Defendant’s motion to dismiss.

#### 11 **B. Failure to State a Claim**

12 In seeking to commence a civil action by filing a complaint with the Court, the  
13 Federal Rules of Civil Procedure require that a plaintiff include a short and plain statement  
14 of the court’s jurisdiction, a short and plain statement of the claim, and a demand for the  
15 relief sought. Fed. R. Civ. P. 8(a). A plaintiff must include “enough facts to state a claim  
16 to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. Defendant is correct that  
17 in the Complaint, “Plaintiff literally states no claim.” (Doc. No. 8-1 at 4, 14 (referencing  
18 Doc. No. 1 at 1-2).) Even so, the Court has liberally construed the pleadings and looked to  
19 the exhibits provided to decipher the claim.

20 In the attached demand letter, Plaintiff acknowledges that Defendant informed him  
21 that the postal insurance claim was denied because Plaintiff had not complied with  
22 instructions to present the damaged item and packaging to the Post Office. (Doc. No. 1-2  
23 at 31.) Plaintiff subsequently states, “[a]s a consumer, I have the right to be reimbursed.”  
24 (*Id.*) However, Plaintiff cites no facts or authority to support a contention that he is entitled  
25 to any additional relief beyond the claim and appeal process afforded to him by Defendant,  
26 as outlined in Plaintiff’s exhibits. (*See* Doc. No. 1-2 at 39–43.)

27 In construing Plaintiff’s pleadings to form a breach of contract claim, facts are  
28 alleged that indicate Plaintiff paid money in exchange for Defendant’s promise to insure

1 the contents of the package he shipped. (*See* Doc. No. 1-2 at 2.) However, Plaintiff fails to  
2 plead any facts regarding the terms of the contract with Defendant, his performance of  
3 obligations, or facts to support the necessary contention that Defendant’s denial of  
4 Plaintiff’s claim was arbitrary and capricious. A mere legal conclusion that Plaintiff  
5 purchased insurance and now Defendant is bound to reimbursement him is insufficient. *See*  
6 *Assoc. Gen. Contractors*, 459 U.S. at 526 (holding that it is improper for a court to assume  
7 that a plaintiff can prove facts not alleged).

8 Further, in the section of the Complaint where Plaintiff describes the relief he is  
9 seeking, he merely states, “I want the court to order the defendant to reimburse me for the  
10 damaged item.” (Doc. No. 1 at 3.) Plaintiff includes no evidence that indicates a loss of the  
11 total value of the items he shipped. The Court is not able to simply assume that Plaintiff’s  
12 actual loss is equal to the retail value of the items he shipped or that a contract exists with  
13 Defendant by which Plaintiff is entitled to the full amount that he initially paid. Thus,  
14 Plaintiff has not sufficiently demonstrated a plausible claim that full reimbursement is the  
15 proper remedy in this case.

16 As a defense to a civil action, Rule 12(b)(6) includes two important elements: (1)  
17 “failure to state a claim,” and (2) “upon which relief can be granted.” Fed. R. Civ. P.  
18 12(b)(6). The Court agrees with Defendant that Plaintiff has not sufficiently stated his  
19 claim, nor has he demonstrated that he is plausibly entitled to relief.

### 20 **C. Failure of Service**

21 Rule 4(m) of the Federal Rules of Civil Procedure, in describing the requirements  
22 for service of notice and complaints on defendants in civil actions, states that:

23 If a defendant is not served within 90 days after the complaint is filed, the  
24 court—on motion or on its own after notice to the plaintiff—must dismiss the  
25 action without prejudice against that defendant or order that service be made  
26 within a specified time. But if the plaintiff shows good cause for the failure,  
the court must extend the time for service for an appropriate period.

27 Plaintiff was initially required to serve Defendant with notice and the Complaint by January  
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1 16, 2019.<sup>3</sup> On January 24, 2019, the Court issued notice of a dismissal for want of  
2 prosecution hearing scheduled for February 21, 2019. (Doc. No. 5.) The Court vacated that  
3 hearing on February 15, 2019 after receiving proof that Plaintiff served Defendant on  
4 February 4, 2019. (Docs. No. 6, 7.) By vacating the dismissal hearing, the Court implicitly  
5 extended Plaintiff's service deadline in light of his pro se status.

6 The issue with Plaintiff's service of the Complaint lies not in the date served, but  
7 rather to whom it was served. Rule 4(i) further sets out specific requirements for serving  
8 an agency of the United States. Fed. R. Civ. P. 4(i)(3). The rule requires that "a party must  
9 serve the United States<sup>4</sup> and also send a copy of the summons and of the complaint by  
10 registered or certified mail to the agency, corporation, officer, or employee." *Id.* Plaintiff's  
11 service of process, having been directed only to the USPS and not the United States, is  
12 insufficient under the Federal Rules of Civil Procedure.

13 Defendant's argument regarding Plaintiff's service of process is problematic in that  
14 it focuses solely on claims arising under the FTCA. However, given the insufficiencies of  
15 Plaintiff's Complaint, Defendant was forced to make inferences as to the nature of the  
16 claim. While Defendant is correct that the United States is the only proper defendant in an  
17 FTCA action, (Doc. No. 8-1 at 5, 12), the PRA is an independent source of subject matter  
18 jurisdiction for a district court to hear a contract claim against the USPS. *Tritz*, 721 F.3d at  
19 1138. FTCA and CDA claims aside, civil claims against the United States can generally be  
20 brought within six years from the time the right of action first accrues. 28 U.S.C. § 2401.  
21 The Court disagrees with Defendant's argument that no possibility exists by which Plaintiff  
22 could properly notice the United States and other pertinent parties of his claim.

23 While Plaintiff's pro se Complaint is lacking in its statement of the claim and its  
24 service upon the United States, the Court has liberally construed the pleadings and finds  
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27 <sup>3</sup> January 16, 2019, is 90 days after October 18, 2018, when Plaintiff filed the Complaint.  
28 (See Doc. No. 1.)

<sup>4</sup> The requirements for serving the United States are outlined in Fed. R. Civ. P. 4(i)(1).

1 the potential for subject matter jurisdiction over the claim. However, Plaintiff has failed to  
2 properly state a claim pursuant to Fed. R. Civ. P. 8(a). Plaintiff has also failed to properly  
3 effectuate service of the Complaint as required by Fed. R. Civ. P. 4(i). Therefore,  
4 Defendant’s motion to dismiss is **GRANTED**.

#### 5 **IV. LEAVE TO AMEND**

6 Although leave to amend is typically freely given under Federal Rule of Civil  
7 Procedure 15(a), the Court finds that amendment, in this case, would be futile. Plaintiff has  
8 attached his proof of insurance receipt to the Complaint. (Doc. No. 1-2 at 2.) The receipt  
9 includes the following text: “Save this receipt as evidence of insurance. For information on  
10 filing an insurance claim go to <https://www.usps.com/help/claims.htm>.” (*Id.*) Upon visiting  
11 the printed web address, Defendant’s website displays information about filing an  
12 insurance claim. *File a Claim*, USPS, <https://www.usps.com/help/claims.htm> (last visited  
13 June 7, 2019). One of the instructions on that page is, “If you received something damaged,  
14 please hang onto the original packaging and the damaged item until your claim is settled.”  
15 *Id.* There is also a note that reads: “**NOTE:** These instructions do not contain the text of  
16 the Postal Regulations in the DMM® on insurance claims. The Postal Service™ reserves  
17 its rights under the regulations to require strict compliance with the DMM.” *Id.* Following  
18 the note is a link to the pertinent section of the Domestic Mail Manual (“DMM”). *Id.*

19 The DMM states that, “[i]f a claim is filed because some or all of the contents are  
20 missing or damaged, the addressee must retain the mailing container, including any  
21 damaged articles, all packaging, and any contents received. *See* United States Postal  
22 Service, Domestic Mail Manual, § 609.2.0, <https://pe.usps.com/text/dmm300/609.htm>.  
23 The United States District Court for the Northern District of California has addressed the  
24 weight and applicability of the DMM as follows:

25 Furthermore, traditional contract doctrine does not apply to postal insurance  
26 because the “postal insurance regulations are promulgated pursuant to  
27 statutory authority, and therefore have the force and effect of law.” *Ridgway*  
28 *Hatcheries, Inc. v. United States*, 278 F. Supp. 441, 443 (N.D. OH. 1968). The  
postal regulations are published in the United States Postal Service's Domestic

1 Mail Manual (DMM). Because the DMM is incorporated by reference in the  
2 Code of Federal Regulations, it is deemed published in the Federal Register,  
3 39 C.F.R. P 111.1, and a plaintiff is presumed to have notice of the DMM's  
4 contents. *Gelbfish v. United States Postal Service*, 51 F. Supp. 2d 252, 254  
(E.D. N.Y. 1999) (citations omitted).

5 *Jamil v. United States Postal Serv.*, No. C 05-5121 RS, 2006 WL 988825, 2006 U.S. Dist.  
6 LEXIS 98387, at \*5 (N.D. Cal. Apr. 14, 2006).


7 Plaintiff indicates in correspondence between himself and Defendant that he no  
8 longer has the package that Defendant requested. (Doc. No. 1-2 at 30.) Plaintiff is presumed  
9 to have notice of DMM section 609.2.0 which requires him to retain the mailing container  
10 for a damage claim. *See Gelbfish*, 51 F. Supp. 2d at 254 (citations omitted). The Court  
11 cannot agree with a contention that Defendant's process, findings, and final decision in this  
12 case were arbitrary or capricious as would be required to set aside the agency's decision.  
13 *See 5 U.S.C. § 706*. Thus, based on this finding that would render amendment of the  
14 Complaint futile, the Court **DENIES** Plaintiff leave to amend.

#### 15 V. CONCLUSION

16 For the reasons stated above, Defendant's motion to dismiss is **GRANTED**  
17 (Doc. No. 8), and Plaintiff's Complaint is **DISMISSED** without leave to amend.  
18 (Doc. No. 1).

19 **IT IS SO ORDERED.**

20 Dated: June 25, 2019

21   
22 Hon. Anthony J. Battaglia  
23 United States District Judge  
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