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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Jeffrey A. Lowy, Plaintiff, vs. Kellogg Sales Company, Defendant.	No. CV-11-641-PHX-FJM **ORDER**

On April 27, 2011, we granted Kellogg's motion to dismiss the original complaint, concluding that plaintiff's one-paragraph complaint failed to set forth a cognizable legal theory or sufficient facts to support a cause of action (doc. 15). We granted plaintiff leave to amend his complaint in order to cure the deficiencies. Plaintiff then filed an amended complaint that is similarly defective.

We now have before us Kellogg's motion to dismiss the amended complaint (doc. 17). Plaintiff did not respond to the motion and the time for doing so has expired. See LRCiv 7.2(c). Failure to respond to a motion "may be deemed a consent to the . . . granting of the motion and the Court may dispose of the motion summarily." LRCiv 7.2(i). We grant Kellogg's motion to dismiss on this basis.

In addition, we consider the motion to dismiss and grant it on the merits. Kellogg argues that, among other deficiencies, plaintiff's amended complaint fails to assert any facts

to support the causation element of plaintiff's negligence claim. Plaintiff asserts only that "[t]here is no question that the plaintiff's ingestion of Austin Peanut Butter Crackers in December of 2008 is what caused his end stage renal disease." Amended Complaint. This conclusory statement is insufficient to satisfy the pleading requirements of Rule 8, Fed. R. Civ. P.; see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955 (2007). The complaint is properly dismissed on this basis.

Therefore, **IT IS ORDERED GRANTING** Kellogg's motion to dismiss the amended complaint (doc. 17). Plaintiff has not sought leave to amend his complaint, or otherwise responded to Kellogg's motion. Therefore the action will be dismissed. The clerk shall enter final judgment.

DATED this 8th day of July, 2011.

Frederick J. Martone

Frederick J. Martone
United States District Judge