

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

6 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted).

7 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*,
8 673 F.2d 266, 268 (9th Cir. 1982). When factual allegations are well-pled, a court should assume the
9 truth and determine whether the facts would make the plaintiff entitled to relief; conclusions in the
10 pleading are not entitled to the same assumption of truth. *Id.*

11 The Court has a duty to dismiss a case at any time it determines an action fails to state a claim,
12 “notwithstanding any filing fee that may have been paid.” 28 U.S.C. § 1915e(2). Accordingly, a court
13 “may act on its own initiative to note the inadequacy of a complaint and dismiss it for failure to state a
14 claim.” *See Wong v. Bell*, 642 F.2d 359, 361 (9th Cir. 1981) (citing 5 C. Wright & A. Miller, *Federal*
15 *Practice and Procedure*, § 1357 at 593 (1963)). However, the Court may grant leave to amend when
16 the deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122,
17 1127-28 (9th Cir. 2000) (en banc).

18 **II. Plaintiff’s Allegations**

19 Plaintiff alleges he worked for Coca-Cola as a driver, but “was wrongfully terminated for not
20 reporting an accident and falsifying (sic) [his] DVR (Driver Vehicle Report).” (Doc. 1 at 1.) He asserts
21 that he was not aware of the accident and his “vehicle had no visible damage.” (*Id.*) Plaintiff asked his
22 supervisor, Ron Hemingway, if there were “any call-ins” on his route, and Mr. Hemingway responded
23 there were not. (*Id.*) However, Plaintiff contends Mr. Hemingway “knew about the accident but kept it
24 from [him].” (*Id.* at 1-2.) According to Plaintiff, at that time he “was on [his] first week back from a
25 previous termination that lasted 8 months.” (*Id.* at 2.) Plaintiff contends he “wasn’t retrained properly”
26 and Mr. Hemingway “lied on his report to get [Plaintiff] terminated.” (*Id.*) As a result, Plaintiff asserts
27 he has “severe financial and emotional hardship.” (*Id.*)

28 Plaintiff asserts he “received a right to sue letter” after the Equal Employment Opportunity
Commission dismissed his case. (Doc. 1 at 1).

1 **III. Discussion and Analysis**

2 Because Plaintiff does not specify the claims upon which his complaint stands, the Court is
3 unable to determine if his “wrongful termination” allegation is based upon state or federal law. In the
4 event that it is based upon state law, Plaintiff has not pleaded sufficient facts for the Court to
5 determine it has diversity jurisdiction. Although Plaintiff alleges he received the right to sue letter
6 from the EEOC, he does not allege sufficient facts for the Court to determine that it has subject matter
7 jurisdiction.

8 Indeed, Plaintiff even fails to allege facts regarding when he was employed by Coca-Cola, the
9 date of his termination, and when he received the letter from the EEOC. The Supreme Court
10 explained:

11 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
12 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the
13 plaintiff pleads factual content that allows the court to draw the reasonable inference
14 that the defendant is liable for the misconduct alleged. [Citation]. The plausibility
15 standard is not akin to a “probability requirement,” but it asks for more than a sheer
16 possibility that a defendant has acted unlawfully. [Citation]. Where a complaint pleads
17 facts that are “merely consistent with” a defendant’s liability, it “stops short of the line
18 between possibility and plausibility of ‘entitlement to relief.’
19 *Iqbal*, 556 U.S. at 679 (citations omitted). Consequently, the Court must dismiss Plaintiff’s complaint
20 because it is nearly devoid of facts.

18 **IV. Conclusion and Order**

19 Plaintiff will be given an opportunity to file an amended complaint to plead sufficient facts such
20 that the Court is able to determine the matter of its jurisdiction and what causes of action Plaintiff seeks
21 to state against Defendant. *See Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is
22 advised that the Court cannot refer to a prior pleading in order to make his amended complaint
23 complete. As a general rule, an amended complaint supersedes the original complaint. *See Loux v.*
24 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Thus, once Plaintiff file an amended complaint, the original
25 pleading no longer serves any function in the case.

26 The amended complaint must bear the docket number assigned this case and must be labeled
27 “First Amended Complaint.” Finally, Plaintiff is warned that “[a]ll causes of action alleged in an
28 original complaint which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814

1 F.2d 565, 567 (9th Cir. 1986) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir.
2 1981).

3 Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 4 1. Plaintiffs' Complaint is **DISMISSED with leave to amend**; and
- 5 2. Plaintiff is GRANTED thirty days from the date of service of this Order to file his First
6 Amended Complaint.

7 Plaintiff is cautioned that failure to comply with this order by filing an amended complaint will result
8 in a recommendation that this action be dismissed pursuant to Local Rule 110.

9
10 IT IS SO ORDERED.

11 Dated: August 16, 2013

/s/ Jennifer L. Thurston
12 UNITED STATES MAGISTRATE JUDGE