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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
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8 **O'DEAN M. GRANT,**

9 **Plaintiff**

10 **v.**

11 **CAPELLA UNIVERSITY, SOPHIA**  
12 **PATHWAYS, AND DOES 1-12,**

13 **Defendants**

**CASE NO. 1:14-CV-1678 AWI JLT**

**ORDER RE: MOTION TO DISMISS**

**(Doc. 45)**

14 **I. Background**

15 Plaintiff O'Dean Grant was a student taking online courses that were administered by  
16 Defendants Capella University and/or Sophia Learning, LLC (erroneously named as Sophia  
17 Pathways). Plaintiff originally filed suit in Kern County Superior Court alleging generally that  
18 Defendants somehow defrauded him of federal student aid grant money and improperly denied  
19 him academic credit. The case was removed to federal court. Defendants filed a motion to  
20 dismiss. Doc. 7. That motion was granted; the complaint was dismissed with leave to amend.  
21 Doc. 40. Plaintiff filed an amended complaint. Doc. 41. Defendants have filed a second motion  
22 to dismiss. Doc. 45. The motion is opposed. Doc. 47.

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24 **II. Legal Standards**

25 Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed because of the  
26 plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A  
27 dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the  
28 absence of sufficient facts alleged under a cognizable legal theory. Conservation Force v. Salazar,

1 646 F.3d 1240, 1242 (9th Cir. 2011); Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1121  
2 (9th Cir. 2008). In reviewing a complaint under Rule 12(b)(6), all allegations of material fact are  
3 taken as true and construed in the light most favorable to the non-moving party. Faulkner v. ADT  
4 Sec. Servs., 706 F.3d 1017, 1019 (9th Cir. 2013). However, complaints that offer no more than  
5 “labels and conclusions” or “a formulaic recitation of the elements of action will not do.” Ashcroft  
6 v. Iqbal, 556 U.S. 662, 678 (2009). The Court is not required “to accept as true allegations that are  
7 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” Wilson v.  
8 Hewlett-Packard Co., 668 F.3d 1136, 1145 n.4 (9th Cir. 2012); Sprewell v. Golden State Warriors,  
9 266 F.3d 979, 988 (9th Cir. 2001). To avoid a Rule 12(b)(6) dismissal, “a complaint must contain  
10 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A  
11 claim has facial plausibility when the plaintiff pleads factual content that allows the court draw the  
12 reasonable inference that the defendant is liable for the misconduct alleged. The plausibility  
13 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that  
14 a defendant has acted unlawfully.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v.  
15 Twombly, 550 U.S. 544, 555, 570 (2007). The Ninth Circuit has distilled the following principles  
16 from Iqbal and Twombly: (1) to be entitled to the presumption of truth, allegations in a complaint  
17 or counterclaim may not simply recite the elements of a cause of action, but must contain  
18 sufficient allegations of underlying facts to give fair notice and to enable the opposing party to  
19 defend itself effectively; (2) the factual allegations that are taken as true must plausibly suggest an  
20 entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the  
21 expense of discovery and continued litigation. Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).  
22 In assessing a motion to dismiss, courts may consider documents attached to the complaint,  
23 documents incorporated by reference in the complaint, or matters of judicial notice. Dichter-Mad  
24 Family Partners. LLP v. United States, 709 F.3d 749, 761 (9th Cir. 2013). If a motion to dismiss  
25 is granted, “[the] district court should grant leave to amend even if no request to amend the  
26 pleading was made.” Henry A. v. Willden, 678 F.3d 991, 1005 (9th Cir. 2012). However, leave to  
27 amend need not be granted if amendment would be futile or if the plaintiff has failed to cure  
28 deficiencies despite repeated opportunities. Mueller v. Aulker, 700 F.3d 1180, 1191 (9th Cir.

1 2012); Telesaurus VPC. LLC v. Power, 623 F.3d 998, 1003 (9th Cir. 2010).

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3 **III. Discussion**

4 In the prior complaint, Plaintiff failed to make sufficiently clear factual allegations to state  
5 a claim. In his new complaint, Plaintiff has removed detail from his claims instead of adding  
6 detail. The entirety of the facts Plaintiff provides is “The school has failed to transfer all monies  
7 distributed to me through FAFSA, student aid during my attendance; they failed to accredit  
8 plaintiff all his credits that were available to him, the school placed technical (I have photos of  
9 green and black screens), and monetary deception to drag me on.” Doc. 41, at 3.

10 With regards to student aid, in the earlier complaint Plaintiff alleged “Capella has placed  
11 technical, monetary (i.e. withholding book allowances) impediments in my path; but has stolen  
12 approximately \$25,000 to \$30,000 worth of my federally provided grant money....I have been  
13 defrauded out of nearly \$30,000 plus ripped off of nearly another \$25,000. That is, I was forced  
14 by fraudulent practices and maneuvers to pay for my whole, inordinate, and over-extended  
15 enrollment at Capella by all loans – while my grants were being stolen, taken, kept, etc.” Doc. 1, at  
16 11-12 of 63. In the prior order, Plaintiff was specifically warned that “Plaintiff only offers vague,  
17 conclusory statements that federal grant funds were afforded to Plaintiff and that Defendants  
18 improperly diverted those grants. The Court cannot glean from Plaintiff’s complaint or any of the  
19 attached exhibits how or why Plaintiff has come to the conclusion that both (or either) of the  
20 Defendants has negligently or fraudulently diverted funds....allegations should include the basis  
21 for Plaintiff’s belief that federal grant were issued to Capella or Sophia and the amount that  
22 Plaintiff believes was issued” Doc. 40, 3:15-19 and 6:3-4. Plaintiff has not cured the pleading  
23 deficiency.

24 Regarding credits, in the earlier complaint Plaintiff alleged “Capella University/defendant  
25 negligently withheld all the transferable credits available to me as a transfer student; Capella  
26 compounded their malfeasance by rejecting even my lower level credits to which I have a double  
27 A.A. degree in psychology – their neglect in accepting 115 transferred units out of 167 – then  
28 required in addition to 115 units to attend (as they defraud me) their institution for 2 years to

1 receive my B.S.” Doc. 1, at 11 of 63. The prior order stated that “generally an academic  
2 institution bears no duty to students regarding academic advisement or credit transfer. A claim  
3 may exist if the academic institution specifically undertook such a duty or explicitly promised a  
4 student that his or her educational credits would transfer; that situation may yield claims for  
5 negligent or fraudulent misrepresentation.” Doc. 40, 6:7-13. Plaintiff has still not explained how  
6 any denial of credit gives rise to a legal claim.

7 Simultaneous to the new complaint, Plaintiff filed a document entitled “Notice of  
8 Disapproval: Plaintiff Opposes/Disapproves the Granting Defendants Motion to Dismiss  
9 Plaintiff’s Complaint – Yet, Affording Plaintiff to Amend. Pursuant to Cal.R.Ct., Rule 3.1312(a).”  
10 Doc. 42. In this document, Plaintiff describes his frustrations with the procedural standards he is  
11 being asked to meet:

12 Plaintiff contends and asserts that his disapproval to the ruling is in its entirety, and  
13 that he purports that it may well be impossible to comport to the pleading standards  
14 of the court and the defendants, in light that plaintiff’s allegations are true and  
therefore damaging....

15 the court is really asking me to amend my complaint to meet the defendants and the  
16 courts pleading standards, and not those of F.R.C.P., 8(a) according (f). Where it  
17 seems that the court is ordering the plaintiff, advertently or inadvertently, to argue  
18 his claims at the pleading stage, and not to allege material factual claims that are  
19 meritorious (if that was the case...discovery would be obsolete). The succinct nature  
20 of the pleading standard in F.R.C.P. 8 without the benefit of uncovering tiers of fact  
21 through discovery, witness, disposition, case management etc, defeats and make  
procedural safe-guards, motions, etc. and all subsequent pleadings/hearings a farce,  
a sham and a mockery. Thus, for the court to require to elucidate on and submit  
more evidence of the defendants malfeasance, when in all actuality judge Ishii  
construction of plaintiff complaint was not only his fiduciary duty, not only did he  
do it well, but it was totally accurate and it is in this, plaintiff is shocked and  
appalled at the consequential ruling/order.

22 Doc. 42, 1:22-2:24. The court can only reiterate that Plaintiff is not expected to present evidence  
23 at this stage of the proceedings. What Plaintiff must do is to explain what happened, to clearly  
24 state the facts of his story that he believes gives rise to the causes of action. Baldly asserting a  
25 legal claim without stating the specific facts that explain the claim is insufficient to survive a  
26 motion to dismiss. Litigation is an admittedly difficult process but Plaintiff must satisfy the  
27 relevant Fed. Rule Civ. Proc. 8 and 9 standards to continue with this case. Plaintiff is granted one  
28 more chance to amend his complaint. If he is unable to state a claim in his next complaint, the

1 court may have no choice but to dismiss his claims with prejudice.

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3 **IV. Order**

4 Defendants' motion to dismiss is GRANTED with leave to amend. Plaintiff may file an  
5 amended complaint within thirty (30) days of the filing of this order.

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7 IT IS SO ORDERED.

8 Dated: January 8, 2016

  
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SENIOR DISTRICT JUDGE