

1 **II. Screening Requirement**

2 When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and
3 shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or the
4 action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . .
5 seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). A
6 claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly incredible,
7 whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*,
8 504 U.S. 25, 32-33 (1992).

9 **III. Pleading Standards**

10 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
11 pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short
12 and plain statement of the claim showing the pleader is entitled to relief; and . . . a demand for the
13 relief sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P.
14 8(a). The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less
15 stringent standards” than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

16 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and
17 succinct manner, and identify the grounds upon which the complaint stands. *Swierkiewicz v. Sorema*
18 *N.A.*, 534 U.S. 506, 512 (2002); *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir.
19 1984). The Supreme Court noted,

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

23 *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks and citations omitted).

24 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
25 266, 268 (9th Cir. 1982). The Court clarified further,

26 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
27 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
the plaintiff pleads factual content that allows the court to draw the reasonable
28 inference that the defendant is liable for the misconduct alleged. [Citation]. The
plausibility standard is not akin to a “probability requirement,” but it asks for more than

1 a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint
2 pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of
the line between possibility and plausibility of ‘entitlement to relief.’

3 *Iqbal*, 566 U.S. at 678 (citations omitted). When factual allegations in a complaint are well-pled, a
4 court should assume their truth and determine whether the facts would make the plaintiff entitled to
5 relief. *Id.* However, legal conclusions are not entitled to the same assumption of truth. *Id.* Leave to
6 amend a complaint may be granted when its deficiencies can be cured by an amendment. *Lopez v.*
7 *Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

8 **IV. Title VII Claims**

9 Plaintiff fails to identify any federal law under which he seeks to proceed. However, assuming
10 Plaintiff is attempting to state a claim under Title VII, 42 U.S.C. § 2000e-2 provides that it is “an
11 unlawful employment practice for an employer . . . to discriminate against any individual with respect
12 to his compensation, terms, conditions, or privileges of employment, because of such individual’s
13 race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1); Harris v. Forklift Sys., Inc.,
14 510 U.S. 17, 21 (1993). The Supreme Court determined this guarantees “the right to work in an
15 environment free from discriminatory intimidation, ridicule, and insult.” Meritor Sav. Bank, FSB v.
16 Vinson, 477 U.S. 57, 65 (1986).

17 A plaintiff may show racial discrimination in violation of Title VII by proving disparate
18 treatment or impact, or by establishing the existence of a hostile work environment. Sischo-Nownejad
19 v. Merced Community College Dist., 934 F.2d 1104, 1109 (9th Cir. 1991) (citing Int’l Brotherhood of
20 Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977); Jordan v. Clark, 847 F.2d 1368, 1373 (9th
21 Cir. 1988); EEOC v. Borden’s, Inc., 724 F.2d 1390, 1392 (9th Cir. 1984)).

22 Title VII is violated “[w]hen the workplace is permeated with discriminatory intimidation,
23 ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s
24 employment and create an abusive working environment.” Oncale v. Sundowner Offshore Servs.,
25 Inc., 523 U.S. 75, 78 (1998). The Supreme Court instructs that a court must consider “all the
26 circumstances, including the frequency of the discriminatory conduct; its severity; whether it is
27 physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably
28 interferes with an employee’s work performance.” Morgan, 536 U.S. at 116 (citation omitted).

1 “[S]imple teasing, offhand comments, and isolated incidents (unless extremely serious) will not
2 amount to discriminatory changes in the terms and conditions of employment.” Faragher v. City of
3 Boca Raton, 524 U.S. 775, 788 (1998) (internal quotation marks and citations omitted). Further, the
4 requisite level of severity “varies inversely with the pervasiveness or frequency of the conduct.”
5 Ellison v. Brady, 924 F.2d 872, 878 (9th Cir. 1991).

6 To prevail on a hostile work environment claim, “a plaintiff must show: (1) that he was
7 subjected to verbal or physical conduct of a racial . . . nature; (2) that the conduct was unwelcome; and
8 (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the plaintiff’s
9 employment and create an abusive work environment.” Vasquez v. County of Los Angeles, 349 F.3d
10 634, 642 (9th Cir. 2003); see also Dawson v. Entek Int’l, 630 F.3d 928, 939 (9th Cir. 2011). A
11 plaintiff must demonstrate “the conduct at issue was both objectively and subjectively offensive: he
12 must show that a reasonable person would find the work environment to be ‘hostile or abusive,’ and
13 that he in fact did perceive it to be so.” Dawson, 630 F.3d at 938 (quoting Faragher, 524 U.S. at 787).

14 In his complaint, Plaintiff’s allegations are sparse. He asserts that,

15 Walmart denied Hr. Hurtado promotional opportunities, equal pay, creating a hostile
16 environment against males including himself. Double standards for male and females
17 on policys and procedures in promotion process. Walmart failing to tell the truth in the
Department of Fair Employment and Housing investigation.

18 (Doc. 1 at 2) Likewise, he asserts,

19 This is an action to correct being denied promotional opportunities, equal pay and on
20 environment free of discrimination based on my sex-gender, filling stereo typed roles
and positions based on genders.

21 Id. Notably, Plaintiff fails to provide any factual support for these details. Instead, he attaches
22 correspondence he had with the EEOC and the DFEH. Id. at 3-17. At least in part, these
23 documents undercut his claim that he suffered discrimination and demonstrate that the
24 investigating administrative agencies found insufficient evidence to support Plaintiff’s claims.
25 Id.

26 In any event, as noted above, Plaintiff is obligated to set forth a concise statement of
27 factual allegations to support his conclusions that Defendant engaged in wrongdoing but he has
28 failed to do so. Moreover, Plaintiff has failed to identify any authority—statutory or

1 otherwise—supporting this Court’s jurisdiction and fails to set forth any federal law or
2 authority under which he seeks to proceed.¹ As a result, Plaintiff has failed to set forth any
3 cognizable claim and the complaint must be **DISMISSED with leave to amend.**

4 **VII. Conclusion and Order**

5 A plaintiff should be granted leave to amend when the deficiencies of the complaint can be
6 cured by amendment. *Lopez*, 203 F.3d at 1130. A complaint, or a portion thereof, should only be
7 dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that
8 the Plaintiff can prove no set of facts, consistent with the allegations, in support of the claim or claims
9 that would entitle her to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley*
10 *v. Gibson*, 355 U.S. 41, 45-46 (1957)).

11 In this case, it is unclear whether Plaintiff may allege facts supporting his stated conclusions
12 that Defendant violated any of his rights provided by federal law. Therefore, the Court will grant
13 leave for Plaintiff to cure the deficiencies identified above by stating facts sufficient to support claims
14 against the Defendant. The amended pleading must bear the docket number assigned this case and
15 must be labeled “First Amended Complaint.”

16 Plaintiff is advised that the Court cannot refer to a prior pleading in order to make an amended
17 complaint complete. Local Rule 220 requires an amended complaint be “complete in itself without
18 reference to the prior or superseded pleading.” As a general rule, an amended complaint supersedes
19 the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Thus, once Plaintiff files a
20 First Amended Complaint, the original complaint no longer serves any function in the case. Finally,
21 Plaintiff is warned that “[a]ll causes of action alleged in an original complaint which are not alleged in
22 an amended complaint are waived.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (citation
23 omitted).

24 Moreover, Plaintiff is advised that, while he may attach documents to his complaint, these
25 attachments cannot take the place of well-pleaded factual allegations that must appear in the body of
26 the complaint.

27 _____
28 ¹ For example, the Court cannot determine if he seeks to sue under federal law or if he claims there is diversity jurisdiction.

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

1. Plaintiff's Complaint is **DISMISSED** with leave to amend;
2. Plaintiff **SHALL** file a First Amended Complaint within thirty days from the date of service of this Order; and
3. Plaintiff is advised that the action may be dismissed for failure to comply with this Order. See e.g. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissing the action for failure to comply with an order requiring amendment of complaint).

IT IS SO ORDERED.

Dated: November 5, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE