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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

KENYON N. WARNER, ) Case No.: 1:17-cv-00217 LJO JLT  
 )  
Plaintiff, ) ORDER DISMISSING COMPLAINT WITH  
 ) LEAVE TO AMEND  
v. )  
 )  
WM BOLTHOUSE FARMS INC., )  
 )  
Defendant. )  
 )  
 )  
 )  
 )  
 )

Kenyon Warner is seeking to proceed *in forma pauperis*<sup>1</sup> with an action against Bolthouse Farms. For the reasons set forth below, his complaint is **DISMISSED** with leave to amend.

**I. Screening Requirement**

When an individual seeks to proceed *in forma pauperis*, the Court is required to review the complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.

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<sup>1</sup> The Court defers ruling on the motion to proceed *in forma pauperis* until the amended complaint is filed.

1 25, 32-33 (1992).

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3 **II. Pleading Standards**

4 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
5 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the  
6 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may  
7 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).

8 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
9 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The  
10 Supreme Court noted,

11 Rule 8 does not require detailed factual allegations, but it demands more than an  
12 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
13 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.

14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague  
15 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,  
16 268 (9th Cir. 1982). The Court clarified further,

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

22 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should  
23 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal  
24 conclusions are not entitled to the same assumption of truth. *Id.*

25 The Court may grant leave to amend a complaint to the extent deficiencies of the complaint can  
26 be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

27 **III. Factual Allegations**

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1 Plaintiff alleges only, “Discrimination wrongful termination removals, suspensions, failures to  
2 accommodate and disability.” (Doc. 1 at 4, 5) He asserts as damages, “Lost income, benefits,  
3 reimbursement for out of pocket expenses, compensatory damages for mental and emotional pain and  
4 suffering and punitive damages.” *Id.* at 6. To the complaint, he attaches hundreds of pages of  
5 documents, including medical records and a transcript. However, he offers no factual allegations to  
6 support any wrongful act by the defendant or that he is entitled to damages.

#### 7 **IV. Discussion and Analysis**

##### 8 **A. Disability Discrimination**

9 “The ADA prohibits discrimination against a qualified individual with a disability in regards to  
10 terms, conditions and privileges of employment.” *Gribben v. UPS*, 528 F.3d 1166, 1169 (9th Cir.  
11 2008). To make a prima facie case of disparate treatment under the ADA, a plaintiff must show that,  
12 within the meaning of the ADA, he: “(1) is disabled; (2) is qualified; and (3) suffered an adverse  
13 employment action because of [his] disability.” *Snead v. Metro. Prop. & Cas. Ins. Co.*, 237 F.3d 1080,  
14 1087 (9th Cir. 2001). For an act to be considered an “adverse employment action,” the act must  
15 “materially” affect the compensation, terms, conditions or privileges of the plaintiff’s employment.  
16 *Jefferson v. Time Warner Cable Enters. LLC*, 584 Fed. Appx. 520, 522 (9th Cir. 2014); *Davis v. Team*  
17 *Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008).

##### 18 **B. Failure to Accommodate**

19 The failure to provide a reasonable accommodation to a qualified individual with a disability  
20 can constitute discrimination under the ADA. 42 U.S.C. § 12112(b)(5)(A); *EEOC v. UPS Supply*  
21 *Chain Solutions*, 620 F.3d 1103, 1110 (9th Cir. 2010). As relevant here, the term “reasonable  
22 accommodation” means “[m]odifications or adjustments that enable a covered entity's employee with  
23 a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly  
24 situated employees without disabilities.” 29 C.F.R. § 1630.2(o)(1)(iii); *UPS*, 620 F.3d at 1110. While  
25 there is no comprehensive list, some “reasonable accommodations” include: job restructuring, part-  
26 time or modified work schedules, reassignment to a vacant position, acquisition or modification of  
27 equipment or devices, appropriate adjustment or modifications of examinations, training materials or  
28 policies, the provision of qualified readers or interpreters, and other similar accommodations. 42

1 U.S.C. § 12111(9). Bates v. UPS, 511 F.3d 974 (9th Cir. 2007). In order for an accommodation to be  
2 “reasonable,” it must be effective in enabling the employee to perform his job duties. UPS, 620 F.3d at  
3 1110; Humphrey v. Mem’l Hosps. Assn., 239 F.3d 1128, 1137 (9th Cir. 2001).

4 Once an employee requests an accommodation, “the employer must engage in an interactive  
5 process with the employee to determine the appropriate reasonable accommodation.” UPS, 620 F.3d at  
6 1110; Zivkovic v. Southern Cal. Edison Co., 302 F.3d 1080, 1089 (9th Cir. 2002). This interactive  
7 process requires: “(1) direct communication between the employer and employee to explore in good  
8 faith the possible accommodations; (2) consideration of the employee’s request; and (3) offering an  
9 accommodation that is reasonable and effective.” UPS, 620 F.3d at 1110-11; Zivkovic, 302 F.3d at  
10 1089.

11 An employer who fails to engage in the interactive process in good faith faces “liability for the  
12 remedies imposed by the statute if a reasonable accommodation would have been possible.”  
13 Humphrey, 239 F.3d at 1137-38; Barnett v. U.S. Air, Inc., 228 F.3d 1105, 1116 (9th Cir. 2000) (en  
14 banc)<sup>2</sup>; EEOC v. Creative Networks, LLC, 912 F.Supp.2d 828, 837 (D. Ariz. 2012).

### 15 **C. Analysis**

16 As noted above, the plaintiff fails to set forth any facts to support that the defendat acted  
17 unlawfully or that he is entitled to damages. Though the plaintiff has attached numerous documents to  
18 his complaint, it is the plaintiff’s obligation to plead facts and the Court will not wade through  
19 documents in order to try to fashion a complaint on the plaintiff’s behalf. Moreover, the Court is not  
20 the repository of the plaintiff’s evidence. Unless or until filing evidence is needed such as to support a  
21 motion to demonstrate, for example, exhaustion of an administrative process<sup>3</sup>, the plaintiff SHALL not  
22 file his evidence with the Court.

### 23 **V. Leave to Amend the Complaint**

24 Leave to amend should be granted to the extent that the deficiencies of the complaint can be  
25 cured by amendment. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). The Court  
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27 <sup>2</sup>Vacated on other grounds by U.S. Airways, Inc. v. Barnett, 535 U.S. 391 (2002).

28 <sup>3</sup> If the plaintiff chooses to file an amended complaint, he SHALL simply attach documents to his complaint. If he wishes the complaint to incorporate the attached document, he must describe the document and refer to it in his complaint.

1 cannot find with certainty that Plaintiff cannot allege facts supporting a finding that the Court has  
2 jurisdiction over the matter. Further, Plaintiff may allege facts sufficient to support a claim for medical  
3 malpractice, if that is the claim upon which he seeks to proceed. Accordingly, the Court will grant  
4 Plaintiff leave to amend the complaint to cure the factual deficiencies of this complaint by alleging  
5 additional facts.

6 Plaintiff is advised that an amended complaint supersedes the original complaint. *Forsyth v.*  
7 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).  
8 In addition, the amended complaint must be “complete in itself without reference to the prior or  
9 superseded pleading.” Local Rule 220. Once Plaintiff files an amended complaint, the original  
10 pleading no longer serves any function in the case.

11 The amended complaint must bear the docket number assigned this case and must be labeled  
12 “First Amended Complaint.” Finally, Plaintiff is warned that “[a]ll causes of action alleged in an  
13 original complaint which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814  
14 F.2d 565, 567 (9th Cir. 1986) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

15 Accordingly, the Court **ORDERS**:

- 16 1. Plaintiff’s complaint is **DISMISSED** with leave to amend; and
- 17 2. Plaintiff is **GRANTED** 30 days from the date of service of this order to file an  
18 amended complaint that complies with the requirements of the pertinent substantive  
19 law, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

20 **Plaintiff is advised that failure to file an amended complaint will be considered to be a failure to**  
21 **comply with a Court’s order, and may result in dismissal of this action.**

22  
23 IT IS SO ORDERED.

24 Dated: February 17, 2017

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