

1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim
6 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 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 must include a statement affirming the court’s jurisdiction, “a short and plain statement of the
12 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may
13 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).

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

18 Rule 8 does not require detailed factual allegations, but it demands more than an
19 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
20 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.

21 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
22 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
23 268 (9th Cir. 1982). The Court clarified further,

24 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
25 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
26 the plaintiff pleads factual content that allows the court to draw the reasonable
27 inference that the defendant is liable for the misconduct alleged. [Citation]. The
28 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.’”

1 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
2 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
3 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
4 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
5 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

6 **IV. Allegations**

7 Plaintiffs allege that on February 1, 2018, Jan Brown, an employee of Pam Transport, Inc.,
8 “imposed [an] impermissible medical inquiry on both Plaintiffs.” (Doc. 1 at 5) According to Plaintiffs,
9 on February 5, 2018, the unidentified employee “refused to do a non-job related medical and
10 psychological exam or bring defendant any past psych report.” (*Id.*) Plaintiffs contend the defendants
11 then “stopped Plaintiff’s driver by placing a medical hold.” (*Id.*)

12 In addition, Plaintiffs assert that on February 7, 2018, defendant “Ron Griffin reneged on
13 Plaintiff’s [truck] lease, which put Plaintiff (sic) out of business.” (Doc. 1 at 5) Plaintiffs allege the
14 truck “would have been bought in July 208 if not for defendants (sic) breach of contract.” (*Id.*)

15 Based upon these facts, Plaintiffs contend the defendants are liable for a violation of the
16 Americans with Disabilities Act and breach of contract. (Doc. 1 at 4, 6) Mr. Glover filed a complaint
17 with California’s Department of Fair Employment and Housing and the Equal Employment
18 Opportunity Commission. (*See* Doc. 1 at 10) He received a Notice of Right to Sue from the DFEH on
19 March 30, 2018. (*Id.*)

20 **V. Discussion and Analysis**

21 **A. Status a Corporation as a Plaintiff**

22 As an initial matter, the right to represent oneself does not extend to representation of others.
23 *Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664 (9th Cir. 2008); *see also Russell v. United States*, 308
24 F.2d 78, 79 (9th Cir. 1962) (“A litigant appearing in propria persona has no authority to represent
25 anyone other than himself”). Thus, “[a] corporation may appear in federal court only through licensed
26 counsel.” *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir.1993) (per curiam); *see*
27 *also Rowland v. Cal. Men’s Colony, Unit II Men’s Advisory Council*, 506 U.S. 194, 202 (1993)
28 (acknowledging that courts have held that the rationale for the rule requiring that corporations appear in

1 federal court through an attorney “applies equally to all artificial entities”); Local Rule 183(a) (“[a]
2 corporation or other entity may appear only by an attorney”). Consequently, Mr. Glover is unable to
3 represent the claims of Glover Transport, Inc.

4 **B. Violation of the Americans with Disabilities Act**

5 Pursuant to the ADA, “a covered entity shall not ... make inquiries of an employee as to
6 whether such employee is an individual with a disability or as to the nature or severity of the
7 disability, unless such examination or inquiry is shown to be job-related and consistent with business
8 necessity.” 42 U.S.C. § 12112(d)(4)(A). This prohibition applies to all employees, regardless of
9 whether they qualify as “disabled” under the ADA. *See Indergard v. Georgia-Pacific Corp.*, 582 F.3d
10 1049, 1052-53 (9th Cir. 2009); *Fredenburg v. Contra Costa County Dep't of Health Servs.*, 172 F.3d
11 1176, 1182-83 (9th Cir. 1999). However, “[a] covered entity may make inquiries into the ability of an
12 employee to perform job-related functions.” *Id.*, § 12112(d)(4)(B). Medical inquiries are job-related
13 and consistent with business necessity when an employer has good cause to determine whether an
14 employee is capable of performing his job-related functions. *See Yin v. State of California*, 95 F.3d
15 864, 868 (9th Cir. 1996).

16 There are insufficient facts alleged in the complaint for the Court to determine whether any of
17 the defendants made an inquiry that violates the provisions of the ADA. Although Plaintiffs allege the
18 inquiry was “impermissible,” this is a legal conclusion, rather than a *fact*. Plaintiffs have not alleged
19 what inquiry was made, or to whom it was directed. Without such facts, the Court is unable to
20 determine whether Mr. Glover suffered a violation of the ADA or whether it was a different employee
21 of Glover Transport, Inc. Accordingly, the claim for a violation of the ADA is not cognizable.

22 **C. Breach of Contract**

23 A claim for breach of contract arises under state law, and a plaintiff must allege (1) the
24 existence of a contract, (2) performance by the plaintiff, (3) breach by the defendants, and (4) resulting
25 damages. *Alcalde v. NAC Real Estate Invs. & Assignments, Inc.*, 316 Fed. App'x 661, 662 (9th Cir.
26 2009) (citation omitted); *see also Haberbush v. Clark Oil Trading Co.*, 33 Fed. App'x 896, 898 (9th
27 Cir. 2002) (identifying “agreement, consideration, performance by plaintiff, breach by defendant, and
28 damages” as elements to a breach of contract).

1 Plaintiffs contend there has been a breach of contract related to a leased truck, but fail to
2 identify the parties to the contract or the terms of the contract. In addition, Plaintiffs fail to assert they
3 performed all obligations as required under the alleged contract. Consequently, the facts alleged are
4 insufficient to support a claim for breach of contract by any of the defendants.

5 **VI. Conclusion and Order**

6 For the reasons set forth above, the Court is unable to find the complaint states a cognizable
7 claim. In addition, the corporation may not proceed without representation by an attorney. However,
8 it is possible the factual deficiencies of the complaint as to Mr. Glover individually, may be cured by
9 amendment. *See Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987); *see also Lopez*, 203 F.3d at
10 1128 (dismissal of a *pro se* complaint without leave to amend for failure to state a claim is proper only
11 where it is obvious that an opportunity to amend would be futile). Therefore, Mr. Glover will be given
12 an opportunity to amend the pleading as to his personal claims—and not as to those belonging to the
13 corporation—and set forth facts sufficient to support the claims presented.

14 Mr. Glover is advised that an amended complaint supersedes the original complaint. *Forsyth v.*
15 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).
16 In addition, the amended complaint must be “complete in itself without reference to the prior or
17 superseded pleading.” Local Rule 220. Once an amended complaint is filed, the original pleading no
18 longer serves any function in the case. The amended complaint must bear the docket number assigned
19 this case and must be labeled “First Amended Complaint.” Finally, Mr. Glover is warned that “[a]ll
20 causes of action alleged in an original complaint which are not alleged in an amended complaint are
21 waived.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1986) (citing *London v. Coopers & Lybrand*, 644
22 F.2d 811, 814 (9th Cir. 1981).

23 Based upon the foregoing, the Court **ORDERS**:

- 24 1. Mr. Glover’s motion to proceed *in forma pauperis* (Doc. 4) is **GRANTED**;
- 25 2. The Complaint is **DISMISSED** with leave to amend; and
- 26 3. Within thirty days from the date of service of this order, Mr. Glover **SHALL** file a First
27 Amended Complaint as to his own, personal claims;

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4. Within thirty days from the date of service of this order, the corporation **SHALL** file a First Amended Complaint but it may proceed only through a complaint filed by a lawyer.

If the plaintiffs fail to comply with this order to file an amended complaint, the action may be dismissed for failure to prosecute and failure to obey the Court's order.

IT IS SO ORDERED.

Dated: June 29, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE