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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD WINN, SR.)	Case No. 2:10-CV-1030-JAM-CMK
)	
Plaintiff,)	<u>ORDER GRANTING DEFENDANTS'</u>
)	<u>MOTION TO DISMISS</u>
v.)	
)	
LASSEN CANYON NURSERY INC,)	
LASSEN CANYON NURSERY INC.)	
401(K) PROFIT SHARING PLAN, LIZ)	
ELWOOD-PONCE, DENNIS CARGILE,)	
)	
Defendants.)	
)	

This matter comes before the Court on Defendants' Lassen Canyon Nursery Inc, Lassen Canyon Nursery Inc. 401(k) Profit Sharing Plan, and Liz Elwood-Ponce ("Defendants'") Motion to Dismiss (Doc. 6) Plaintiff Richard Winn, Sr.'s ("Plaintiff's") Complaint (Doc. 1), for failure to state a claim pursuant to Federal Rule of Civil Procedure section 12(b)(6). Plaintiff opposes the motion.¹ For the reasons set forth below, Defendants' motion is granted.

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 The Complaint alleges that Plaintiff was an employee of
3 Defendant Lassen Canyon Nursery (the "Nursery"). Plaintiff was
4 part of the Nursery's Profit Sharing Plan, and entered into a 2007
5 Plan Agreement (the "plan"). At the time of Plaintiff's separation
6 from the Nursery in November 2007, Plaintiff alleges irregularities
7 in the valuation of his account. Plaintiff alleges that the
8 Nursery then modified the plan without informing plan members,
9 violated plan terms, and dealt unfairly with Plaintiff. Plaintiff
10 brought nine causes of action, alleging breach of the 2007 and 2008
11 plans, breach of the duty of good faith and fair dealing,
12 misappropriation of interest, breach of contract and breach of
13 fiduciary duty, and requesting (though also captioned as causes of
14 action) declaratory judgment action, inspection of corporate
15 records and accounting and declaratory judgment.

16 The Complaint was originally filed in the Shasta County
17 Superior Court. Defendants removed the case (Doc. 1) to this Court
18 under 28 U.S.C. §§ 1331, 1441(b) and 1446. The case was removed on
19 the grounds that all claims are completely preempted by the
20 Employee Retirement Income Security Act ("ERISA"), 29 U.S.C.
21 § 1132. Thereafter, Defendants filed the present motion to
22 dismiss, alleging complete preemption under ERISA. Plaintiff filed
23 an opposition brief (Doc. 12), captioned as a reply, in which he
24 opposes dismissal and asks the court to grant leave to amend should
25 the Court decide to dismiss the Complaint. Plaintiff's opposition
26 brief raises a host of new allegations not present in the
27 Complaint. The opposition brief does not address the preemption
28 issue, rather Plaintiff states that each of the claims in the

1 Complaint is actually a claim under ERISA. The original Complaint
2 does not contain any claims for relief under ERISA nor any
3 allegations that ERISA was violated. Defendants' Reply brief (Doc.
4 14) argues that while Plaintiff appears to agree that the claims
5 should have been brought under ERISA, Plaintiff raised no ERISA
6 allegation in the Complaint, thus the Complaint remains preempted.

8 II. OPINION

9 A. Legal Standard

10 In considering a motion to dismiss under Federal Rule of Civil
11 Procedure section 12(b)(6) for failure to state a claim, the court
12 must accept the allegations in the complaint as true and draw all
13 reasonable inferences in favor of the plaintiff. Scheur v. Rhodes,
14 416 U.S. 232, 236 (1975), overruled on other grounds by Davis v.
15 Schere, 468 U.S. 183 (1984). Assertions that are mere "legal
16 conclusions," however, are not entitled to the assumption of
17 truth." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1950 (2009), citing
18 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). To survive a
19 motion to dismiss, a plaintiff needs to plead "enough facts to
20 state a claim to relief that is plausible on its face." Twombly,
21 550 U.S. at 570.

22 Upon granting a motion to dismiss, a court has discretion to
23 allow leave to amend the complaint pursuant to Federal Rule of
24 Civil Procedure section 15(a). "Absent prejudice, or a strong
25 showing of any [other relevant] factor[], there exists a
26 presumption under Rule 15(a) in favor of granting leave to amend."
27 Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th
28 Cir. 2003). Courts may dismiss a case without leave to amend if

1 the plaintiff is unable to cure the defect by amendment. Lopez v.
2 Smith, 203 F.3d 1122, 1120 (9th Cir. 2000).

3 When ruling on a motion to dismiss, the focus of the Court is
4 on the allegations of the Complaint. The Court may not consider
5 new allegations and arguments raised in the opposition brief. See
6 Schneider v. California Dept. of Corrections, 151 F.3d 1194, 1197
7 (9th Cir. 1998).

8 B. ERISA Preemption

9 "The purpose of ERISA is to provide a uniform regulatory
10 regime over employee benefit plans." Aetna Health, Inc., v.
11 Davilla, 542 U.S. 200, 208 (2004). Though Plaintiff filed his
12 Complaint in State Court, bringing state law claims,

13 when a federal statute wholly displaces the state-law
14 cause of action through complete preemption, the state
15 claim can be removed. This is so because when the
16 federal statute completely preempts the state-law
17 cause of action, a claim which comes within the scope
18 of that cause of action, even if pleaded in terms of
19 state law, is in reality based on federal law. ERISA
20 is one of these statutes." Id. at 207-208.

21 ERISA contains a comprehensive scheme of civil remedies to
22 enforce its provisions. Cleghorn v. Blue Shield, 408 F.3d 1222,
23 1225 (9th Cir. 2005). Accordingly, ERISA provides the exclusive
24 procedure for the recovery of benefits, or the enforcement or
25 clarification of rights under the terms of employee benefit plans.
26 See Id., at 1225; Aetna Health, at 208-210.

27 Here, Plaintiff is seeking to recover benefits he alleges are
28 owed to him under the Nursery's employee benefit plan, and seeking
29 declaratory judgment to clarify and enforce the terms of the plan.
30 Accordingly, his state claims are preempted. Plaintiff's Complaint
31 fails to state a claim upon which relief can be granted, as every

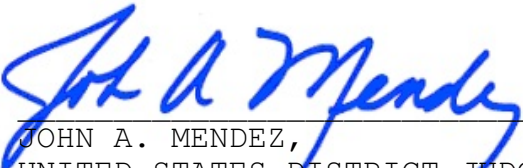
1 claim for relief is preempted by ERISA. However, the Court will
2 grant leave to amend the Complaint, so as to allow Plaintiff an
3 opportunity to correctly plead his claims under ERISA.

4
5 III. ORDER

6 Defendants' Motion to Dismiss is GRANTED, without prejudice.
7 An amended complaint must be filed within twenty (20) days of the
8 date of this Order and served on all Defendants, including Dennis
9 Cargile.

10 IT IS SO ORDERED.

11 Dated: November 10, 2010

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14 JOHN A. MENDEZ,
15 UNITED STATES DISTRICT JUDGE
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