

HONORABLE RONALD B. LEIGHTON

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES H. BRYAN,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

CASE NO. C13-5934 RBL

ORDER GRANTING MOTION TO  
DISMISS

[Dkt. #12]

**I. SUMMARY**

THIS MATTER is before the Court on Defendant Wal-Mart’s Motion to Dismiss [Dkt. #12]. Plaintiff Bryan is a pharmacist formerly employed by Wal-Mart. He is also a self-described former prescription drug addict, and he admits that he was charged with 17 counts of forging prescriptions. He entered and successfully completed a Drug Court rehabilitation program, and the charges were dismissed. He nevertheless surrendered his pharmacy license for five years. The Pharmacy Board conditionally reinstated Bryan’s license in July, 2007.

Bryan began working as a Wal-Mart pharmacy intern in September, 2007. He claims he informed Wal-Mart of his prior license suspension, as he was required to do under the terms of

1 his reinstatement. Bryan was promoted to staff pharmacist<sup>1</sup> in 2008, and he claims he performed  
2 his job well and without incident until he was terminated in 2011. Bryan alleges that he was  
3 terminated when (and because) Wal-Mart instituted a new “credentialing policy” under which  
4 people with any history of adverse pharmacy board action are not eligible for employment. Wal-  
5 Mart claims that, at the time of termination, Bryan was still on probation from the Pharmacy  
6 Board; a point Bryan concedes.

7 Bryan sued on behalf of himself and a class of similarly situated Wal-Mart employees  
8 across the country, claiming that the Wal-Mart’s policy violates the Americans with Disabilities  
9 Act, 42 U.S.C. §§12112 and 12114.

10 Wal-Mart moves to dismiss, arguing that Plaintiff was terminated for forging  
11 prescriptions, not because he was disabled.

## 12 II. DISCUSSION

### 13 A. Fed. R. Civ. P. 12(b)(6) Standard.

14 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal  
15 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*  
16 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff’s complaint must allege  
17 facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct.  
18 1937, 1949 (2009). A claim has “facial plausibility” when the party seeking relief “pleads  
19 factual content that allows the court to draw the reasonable inference that the defendant is liable  
20 for the misconduct alleged.” *Id.* Although the Court must accept as true the Complaint’s well-  
21 pled facts, conclusory allegations of law and unwarranted inferences will not defeat a Rule 12(c)  
22 motion. *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*

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24 <sup>1</sup> Wal-Mart describes his position as “pharmacy technician.”

1 | *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to provide the ‘grounds’  
2 | of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic  
3 | recitation of the elements of a cause of action will not do. Factual allegations must be enough to  
4 | raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
5 | (2007) (citations and footnotes omitted). This requires a plaintiff to plead “more than an  
6 | unadorned, the-defendant-unlawfully-harmed-me-accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing  
7 | *Twombly*).

8 |         On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to  
9 | amend the pleading was made, unless it determines that the pleading could not possibly be cured  
10 | by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,  
11 | 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether  
12 | there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*  
13 | *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

14 | **B. Bryan’s disparate impact ADA claim is deficient.**

15 |         Bryan claims that the Wal-Mart policy has a disparate impact, that the facially neutral  
16 | Wal-Mart policy had a disproportionate affect on individuals who are disabled within the  
17 | meaning of the ADA. He claims that the Wal-Mart policy discriminates against people (like  
18 | him) who are “disabled” due to addiction to alcohol or drugs, and/or have a record of chemical or  
19 | alcohol dependency, and who have successfully participated in a supervised rehabilitation  
20 | program. [See Dkt. #15]

21 |         Wal-Mart’s Motion is based on its claim that Bryan has not pled (and cannot plausibly  
22 | plead) that he is “disabled” within the meaning of the ADA, and, more persuasively, that he was  
23 | not terminated for being a “recovered or recovering drug addict” but rather because he forged  
24 | prescriptions and had his license suspended.

1 To establish an ADA claim, a plaintiff must prove that (1) he has a disability, (2) that  
2 he was qualified for the job in question, and (3) an adverse employment decision was made  
3 based on his disability. To prove that he was “disabled,” a plaintiff must  
4 prove he had a physical or mental impairment that substantially limited at least one  
5 major life activity. *See Wellington v. Lyon County Sch. Dist.*, 187 F.3d 1150, 1154 (9th Cir.  
6 1999).

7 Wal-Mart argues that Bryan has not claimed<sup>2</sup> that he is disabled, or plausibly alleged that  
8 his disability substantially limits any major life activities. It also claims that Bryan has not  
9 plausibly pled that he was “qualified” for the job in question.

10 Bryan’s response emphasizes that he is alleging a disparate *impact* claim; that Wal-  
11 Mart’s facially-neutral policy tends to screen out qualified individuals with disabilities, *i.e.*, those  
12 who “have been addicted and who have successfully participated in a supervised rehabilitation  
13 program.” [See Dkt. # 15 at 13]. He points to ADA authority holding, perhaps not surprisingly,  
14 that addiction can be a disability, even after rehabilitation. *See* 42 U.S.C. §21114(b)(1)-(3).

15 But Bryan’s second argument—that the issue is *not* whether he was terminated for  
16 forging prescriptions and being suspended, but is instead whether Wal-Mart can terminate him  
17 on that basis where doing so would screen out a class of disabled persons—is not as viable.

18 Bryan argues that while an employer may take reasonable measures to ensure against  
19 theft under 21 U.S.C. §830, that provision should not be read to “trump” the ADA.

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22 <sup>2</sup> Wal-Mart also continues to argue that Bryan has not pled that he is disabled. But the  
23 cure for that is not, as Wal-Mart appears to contend, dismissal with prejudice; it is amendment.  
24 Bryan has demonstrated that his rehabilitated addiction can suffice, and he could so plead. That  
is not the defect in Bryan’s claim.

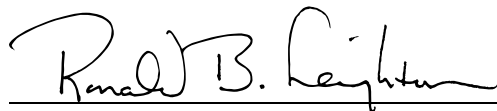
1 Wal-Mart's Reply emphasizes that Bryan was terminated because of criminal forgery—  
2 not any disability—and that the ADA distinguishes (as it must) between addiction and addiction-  
3 related misconduct. It points out that Bryan has not and cannot point to any case supporting his  
4 assertion that, under the ADA, a person's addiction disability "trumps" his addition-related  
5 misconduct. Indeed, as Wal-Mart argues, the opposite is true. *See Pernice v. Chicago*, 237 F.3d  
6 783 (7<sup>th</sup> Cir. 2001), citing *Newland v Dalton*, 81 F.32D 904 (9th Cir. 1996).

7 It is apparent from the Complaint and the materials that Wal-Mart terminated Bryan  
8 because he had criminally forged prescriptions, and because that led to the suspension of his  
9 pharmacy license. He was not terminated because he was a disabled, rehabilitated drug addict.  
10 That termination is not actionable under the ADA, and Bryan cannot amend his complaint to  
11 make it so.

12 The Motion to Dismiss is GRANTED, and Bryan's claims against Wal-Mart are  
13 DISMISSED with prejudice.

14 IT IS SO ORDERED.

15 Dated this 4<sup>th</sup> day of March, 2014.

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17 RONALD B. LEIGHTON  
18 UNITED STATES DISTRICT JUDGE