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7	UNITED STATES D	ISTRICT COURT
8	WESTERN DISTRICT OF WASHINGTON AT SEATTLE	
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10	JAMES C. DURKIN,	CASE NO. C10-1779JLR
11	Plaintiff,	ORDER GRANTING MOTION
12	v.	TO DISMISS AMENDED COMPLAINT
13	ALASKA AIRLINES, INC.,	
14	Defendant.	
15	Before the court is Defendant Alaska A	irlines, Inc.'s ("Alaska Airlines") motion
16	to dismiss Plaintiff James C. Durkin's amende	d complaint pursuant to Rule 12(b)(6) of
17	the Federal Rules of Civil Procedure (Dkt. # 18	8). On February 10, 2011, the court
18	granted Alaska Airlines' first motion to dismis	s Mr. Durkin's complaint for failure to
19	state a claim (Dkt. # 16). The court gave Mr. I	Durkin an additional 30 days to amend his
20	complaint. The court also directed Mr. Durkin	to various resources available to pro se
21	plaintiffs explaining how to draft a complaint.	On March 16, 2011, Mr. Durkin filed an
22	amended complaint (Dkt. # 17). This motion	was filed shortly thereafter.

Having considered the submissions of the parties and the relevant law, and no
party having requested oral argument, the court GRANTS Alaska Airlines' motion to
dismiss the amended complaint (Dkt. # 18) without leave to amend. The court DENIES
Mr. Durkin's motion for mediation (Dkt. # 21) as MOOT.

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I. BACKGROUND & ANALYSIS

6 In Mr. Durkin's first complaint he alleged that he was employed as a pilot by 7 Alaska Airlines from 1975 until his retirement in June 2008. (Compl. (Dkt. # 1), Ex. A.) 8 He alleged that he was harassed by his employer, Alaska Airlines, because he complained 9 about pray cards on his crew meal tray. (Id.) Mr. Durkin also alleged that he was forced 10 to retire in June 2008 "under duress." (Id.) Both the court and Alaska Airlines 11 interpreted Mr. Durkin's original complaint as stating a claim for religious discrimination 12 pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (Id.) 13 Early on in the case, Alaska Airlines filed its first motion to dismiss.

14 In response to Alaska Airlines motion to dismiss, Mr. Durkin asserted new claims 15 against the airline alleging possible sexual harassment against another female pilot and an 16 allegation that there is an atmosphere of racism within Alaska Airlines. (See generally 17 Resp. (Dkt. # 7).) Mr. Durkin also responded to the motion by attaching approximately 18 86 pages of exhibits that consisted of chronologies of events, emails, news articles, 19 excerpts from training manuals, and his own correspondence to the EEOC. (Id. at 2-87.) 20 None of the exhibits were authenticated and Mr. Durkin's own chronology was a 21 rambling assortment of allegations against not only Alaska Airlines but the

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Transportation Security Administration and his union, the Air Line Pilots Association.
(*Id.*)

3 The court granted Alaska Airlines first motion to dismiss on the grounds that Mr. 4 Durkin failed to meet the basic requirement of Federal Rule of Civil Procedure 8(a). 5 Rule 8(a) provides that a pleading, which is the complaint in this case, "must contain: (1) 6 a short and plain statement of the grounds for the court's jurisdiction . . .; (2) a short and 7 plain statement of the claim showing that the pleader is entitled to relief; and (3) a 8 demand for the relief sought "Fed. R. Civ. P. 8(a). The court held that Mr. Durkin 9 failed to address the first and second elements of a Rule 8(a) complaint pleading. That is, 10 his complaint failed to set forth the basis for this court's jurisdiction and failed to provide 11 a short and plain statement of his claims. Given his pro se status, the court granted Mr. 12 Durkin 30 days to amend his complaint.

13 Six days after the time for amending his complaint expired, Mr. Durkin filed an 14 amended complaint that fails to address any of the concerns raised by the court in its prior 15 order. Instead, Mr. Durkin's complaint accuses other Alaska Airline pilots of being 16 unprofessional and "marginal line pilots." (Am. Compl. (Dkt. # 17) at 3.) He describes 17 training sessions and simulations that he felt were inadequate, and he accuses one 18 instructor of using the "N bomb" and "F bomb" during a simulation. (Id.) Mr. Durkin 19 concludes his description of his co-workers' behavior with the statement "[t]he plaintiff 20 only encountered problems, when the Plaintiff encountered unprofessional flight 21 instructors and a unprofessional Chief Pilot System at Alaska Airlines based on age and 22 religion." (Id. at 4.)

ORDER-3

1	Alaska Airlines again moved to dismiss the amended complaint on the basis that it
2	fails to state a claim that would entitle Mr. Durkin to relief. (Mot. at 1.) Mr. Durkin
3	failed to respond timely to the motion. Over two weeks after his response was due, Mr.
4	Durkin filed a pleading that argues he was not properly served with the motion ¹ and that
5	"Plaintiff attorney continual effort to used any legal technical move to protect the
6	religious and racist Chief Pilot System which exits at Alaska Airlines." (Resp. (Dkt. #
7	22) at 2).
8	As the court explained in its prior order:
9	When considering a motion to dismiss under Federal Rule of Civil Proceedure 12(h)(6), the court construct the complete in the light most
10	Procedure 12(b)(6), the court construes the complaint in the light most favorable to the non-moving party. <i>Livid Holdings Ltd. v. Salomon Smith</i>
11	<i>Barney, Inc.</i> , 416 F.3d 940, 946 (9th Cir. 2005). The court must accept all well-pleaded facts as true and draw all reasonable inferences in favor of the plaintiff. <i>Wyler Summit P'ship v. Turner Broad. Sys.</i> , 135 F.3d 658, 661
12	(9th Cir. 1998). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is
13	plausible on its face." Ashcroft v. Iqbal, U.S, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); see
14	<i>al-Kidd v. Ashcroft</i> , 580 F.3d 949, 956 (9th Cir. 2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
15	draw the reasonable inference that the defendant is liable for the misconduct alleged." <i>Id.</i> In the event the court finds that dismissal is
16	warranted, the court should grant the plaintiff leave to amend unless amendment would be futile. <i>Lopez v. Smith</i> , 203 F.3d 1122, 1127 (9th Cir.
17	2000).
18	While a pro se litigant's pleadings and papers are held to a less stringent standard than those of represented partice. <i>Haines y Karner</i> 404
19	stringent standard than those of represented parties, <i>Haines v. Kerner</i> , 404 U.S. 519, 520 (1972), the Ninth Circuit has held that <i>pro se</i> parties are not
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21	¹ Alaska Airlines responded to this accusation by filing a declaration stating that Mr.

Alaska Airlines responded to this accusation by filing a declaration stating that Mr.
Durkin was properly served via email through the court's electronic filing system and was also served by First Class Mail at his last known address. (Campbell Decl. (Dkt. # 25) ¶ 4.)

1 excused from following the rules and orders of the court. See Jacobsen v. Filler, 790 F.2d 1362, 1364-65 (9th Cir. 1986). 2 (February 16, 2011 Order (Dkt. # 16) at 3-4.) Mr. Durkin's amended complaint considered together with his response to Alaska 4 Airlines second motion to dismiss, fail to clarify his allegations against the airline. 5 Instead, his allegations have morphed between age, race and religious discrimination, 6 none of which are supported by any factual allegations. Accordingly, the court finds that 7 Mr. Durkin's amended complaint does not meet the basic pleading requirements set forth 8 in Federal Rule of Civil Procedure 8(a). Mr. Durkin's amended complaint fails to set

9 forth the basis for this court's jurisdiction and fails to provide a short and plain statement 10 of his claims. Mr. Durkin also fails to state one claim consistently. Although the court 11 acknowledges Mr. Durkin's status as a pro se plaintiff and thus affords him wider latitude 12 in describing the nature of his claim, it cannot ignore the major deficiencies in Mr. 13 Durkin's amended complaint. The court also finds that because Mr. Durkin was unable 14 to address the concerns raised in the court's first order, and therefore, is unlikely to 15 provide a second amended complaint that comports with the court's second order, 16

allowing further amendments would be futile.

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1	II. CONCLUSION
2	For the reasons stated, the court GRANTS Alaska Airlines' second motion to
3	dismiss for failure to state a claim pursuant to Rule 12(b)(6) (Dkt. # 18). The court
4	dismisses Mr. Durkin's complaint without prejudice.
5	Dated this 10th day of June, 2011.
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7	Jun R. Rlit
8	JAMES L. ROBART
9	United States District Judge
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