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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JAMES C. DURKIN,

11 Plaintiff,

12 v.

13 ALASKA AIRLINES, INC.,

14 Defendant.

CASE NO. C10-1779JLR

ORDER GRANTING MOTION
TO DISMISS AMENDED
COMPLAINT

15 Before the court is Defendant Alaska Airlines, Inc.'s ("Alaska Airlines") motion
16 to dismiss Plaintiff James C. Durkin's amended complaint pursuant to Rule 12(b)(6) of
17 the Federal Rules of Civil Procedure (Dkt. # 18). On February 10, 2011, the court
18 granted Alaska Airlines' first motion to dismiss Mr. Durkin's complaint for failure to
19 state a claim (Dkt. # 16). The court gave Mr. 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.

1 Transportation Security Administration and his union, the Air Line Pilots Association.

2 (*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.)

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 motion¹ and that
5 “Plaintiff attorney continual effort to used any legal technical move to protect the
6 religious and racist Chief Pilot System which exists 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
10 Procedure 12(b)(6), the court construes the complaint in the light most
11 favorable to the non-moving party. *Livid Holdings Ltd. v. Salomon Smith
12 Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). The court must accept all
13 well-pleaded facts as true and draw all reasonable inferences in favor of the
14 plaintiff. *Wylar Summit P’ship v. Turner Broad. Sys.*, 135 F.3d 658, 661
15 (9th Cir. 1998). “To survive a motion to dismiss, a complaint must contain
16 sufficient factual matter, accepted as true, to ‘state a claim to relief that is
17 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
18 *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009). “A claim has facial
19 plausibility when the plaintiff pleads factual content that allows the court to
20 draw the reasonable inference that the defendant is liable for the
21 misconduct alleged.” *Id.* In the event the court finds that dismissal is
22 warranted, the court should grant the plaintiff leave to amend unless
amendment would be futile. *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir.
2000).

23 While a pro se litigant’s pleadings and papers are held to a less
24 stringent standard than those of represented parties, *Haines v. Kerner*, 404
25 U.S. 519, 520 (1972), the Ninth Circuit has held that *pro se* parties are not

26 ¹ Alaska Airlines responded to this accusation by filing a declaration stating that Mr.
27 Durkin was properly served via email through the court’s electronic filing system and was also
28 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.*
2 *Filler*, 790 F.2d 1362, 1364-65 (9th Cir. 1986).

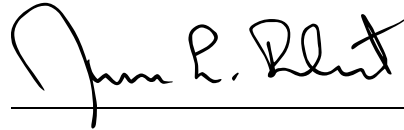
3 (February 16, 2011 Order (Dkt. # 16) at 3-4.)

4 Mr. Durkin's amended complaint considered together with his response to Alaska
5 Airlines second motion to dismiss, fail to clarify his allegations against the airline.
6 Instead, his allegations have morphed between age, race and religious discrimination,
7 none of which are supported by any factual allegations. Accordingly, the court finds that
8 Mr. Durkin's amended complaint does not meet the basic pleading requirements set forth
9 in Federal Rule of Civil Procedure 8(a). Mr. Durkin's amended complaint fails to set
10 forth the basis for this court's jurisdiction and fails to provide a short and plain statement
11 of his claims. Mr. Durkin also fails to state one claim consistently. Although the court
12 acknowledges Mr. Durkin's status as a *pro se* plaintiff and thus affords him wider latitude
13 in describing the nature of his claim, it cannot ignore the major deficiencies in Mr.
14 Durkin's amended complaint. The court also finds that because Mr. Durkin was unable
15 to address the concerns raised in the court's first order, and therefore, is unlikely to
16 provide a second amended complaint that comports with the court's second order,
17 allowing further amendments would be futile.

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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8 JAMES L. ROBART
9 United States District Judge

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