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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 DONALD R. SANDERS,
10 Plaintiff,
11 v.
12 DELTA AIRLINES, INC.,
13 Defendant.

No. CIV 13-1440-TUC-CKJ

ORDER

14
15 Pending before the Court is Defendant's Motion for Judgment on the Pleadings.
16 (Doc. 33.) Plaintiff has not filed a response.
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18 *Factual and Procedural Background*¹

19 Plaintiff Donald Sanders (Sanders) purchased a ticket from Delta Air Lines, Inc.
20 (hereinafter "Delta") to fly to Egypt on or about March 20, 2012. (Doc. 21-2 at 1.)
21 Ostensibly, this trip did not take place, and Defendant, Delta, eventually refunded the
22 cost of the ticket to Sanders. (Doc. 29 at 1.) On January 23, 2013, Plaintiff filed a *pro se*
23 Complaint in the Supreme Court of the State of New York alleging that Delta "denied
24 him and his [dog the right] to fly." (Complaint, ¶3)

25 _____
26 ¹ When evaluating a motion for judgment on the pleadings, the court construes the
27 facts in the light most favorable to the non-moving party. *See Erickson v. Pardus*, 551
28 U.S. 89, 94 (2007). Unless otherwise noted, the facts come from the Plaintiff's
Complaint. However, due to the scantiness of facts in the Complaint, additional factual
and procedural background has been supplemented through other documents filed with
the Court.

1 Delta removed the case to the United States District Court, Eastern District of New
2 York pursuant to 28 U.S.C. § § 1441 and 1332. (Doc. 1.) On October 23, 2013, Delta’s
3 Motion to Change Venue to the District of Arizona, pursuant to 28 U.S.C. § 1404(a), was
4 granted. (Docs. 20 and 23.)

5 On January 27, 2014, Delta filed a Motion for Judgment on the Pleadings. Sanders
6 has not filed a response.²
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9 *Judgment on the Pleadings Standard*

10 “After the pleadings are closed – but early enough not to delay trial – a party may
11 move for judgment on the pleadings.” Fed.R.Civ.P. 12(c). The Ninth Circuit has said
12 “that Rule 12(c) is functionally identical to Rule 12(b)(6) and that the same standard of
13 review applies to motions brought under either rule.” *Cafasso, U.S. ex rel. v. Gen.*
14 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks
15 omitted). Therefore, dismissal by granting a motion for judgment on the pleadings is only
16 appropriate if the complaint's factual allegations, together with all reasonable inferences,
17 fail to state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
18 (establishing the pleading standard for Rule 12(b)(6) motions). While a complaint need
19 not plead “detailed factual allegations,” the factual allegations it does include “must be
20 enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v.*
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22 ² Failure to respond to defendant’s motions provides the Court with the discretion
23 to grant the motion on independent grounds. LRCiv 7.2(i) (stating that if the required
24 answering memorandum is not filed, it may be deemed as consent to the granting of the
25 motion and the Court may dispose of the motion summarily); *see also Wystrach v.*
26 *Ciachurski*, 267 F. App'x 606, 609 (9th Cir. 2008) (affirming the district court's dismissal
27 pursuant to Arizona Local Rule 7.2(i)); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995)
28 (affirming the district court’s dismissal of a *pro se* plaintiff’s Complaint pursuant to a
local Nevada rule that stated “[t]he failure of the opposing party to file a memorandum of
points and authorities in opposition to any motion shall constitute a consent to the
granting of the motion”). Prior to granting the motion on the basis of the local rule, the
Court must weigh the following factors: “(1) the public's interest in expeditious
resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice
to the defendants; (4) the public policy favoring disposition of cases of their merits; and
(5) the availability of less drastic sanctions.” *Ghazali*, 46 F.3d at 53.

1 *Twombly*, 550 U.S. 544, 545 (2007). If there remains “no genuine dispute as to any
2 material fact the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a).

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4 When evaluating a defendant’s Rule 12(c) motion, the allegations in the complaint
5 must be construed in the light most favorable to the plaintiff. *See Erickson v. Pardus*, 551
6 U.S. 89, 94 (2007); *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003).
7 However, a formulaic recitation of the elements of a cause of action is not sufficient to
8 establish a claim, and legal conclusions are not entitled to an assumption of truth. *Iqbal*,
9 556 U.S. at 679.

10 If a court determines that dismissal is appropriate, a plaintiff must be given at least
11 one chance to amend a complaint when a more carefully drafted complaint *might* state a
12 claim. *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991). Moreover, when dismissing
13 with leave to amend, a court is to provide reasons for the dismissal so a plaintiff can
14 make an intelligent decision whether to file an amended complaint. *See Eldridge v.*
15 *Block*, 832 F.2d 1132 (9th Cir. 1987).

16
17 *Defendant’s Motion for Judgment on the Pleadings*

18 In the present case, Plaintiff’s four page Complaint provides a fragmented, loosely
19 related backstory of the Plaintiff’s life and struggles, including unspecific allegations of
20 racial and religious discrimination by the “Obama Administration,” the “State
21 Department,” and other persons not parties to this case. (Complaint, ¶7-17.) For example,
22 Plaintiff states that he was a “peacemaker” in northern Uganda and was told, by an
23 undisclosed party, he would not receive some form of monthly payments unless he
24 returned to America. (*Id.* at ¶11-12.) It appears Plaintiff alleges he became ill upon his
25 return to America and was denied medical treatment at a Veterans Administration
26 Hospital “because [he] is a prophet and a man of God.” (*Id.* at ¶7.) Plaintiff’s only
27 statement in the Complaint that can be construed as remotely or causally related to Delta
28 is that he, along with his canine companion, was sometime thereafter denied permission

1 to board an unspecified flight to return to “Africa for religious healing.” (*Id.* at ¶3-4)
2 However, Plaintiff fails to provide any further specifics to this claim, which leaves the
3 Court in the dark as to basic facts such as a date, time, location, or reason for Delta’s
4 decision - beyond a veiled allegation that the State Department is aware he is a black
5 male.

6 The only claim within the realm of plausibility that Plaintiff *could* be alleging
7 against Delta is a racial discrimination claim under 42 U.S.C. § 1981(b) for breach of the
8 airline ticket contract. Yet, in order for a claim under § 1981 to survive judgment on the
9 pleadings, a plaintiff must allege “that: (1) he or she is a member of a racial minority; (2)
10 the defendant had an intent to discriminate on the basis of race; and (3) the discrimination
11 concerned one or more of the activities enumerated in the statute.” *Rutstein v. Avis Rent-*
12 *A-Car Sys., Inc.*, 211 F.3d 1228, 1235 (11th Cir. 2000). Here, the Plaintiff failed to allege
13 the “critical” second element, *see id.*, that Delta did not allow him to board a plane,
14 thereby breaching their contract with Plaintiff, based on racial animus. Therefore, this
15 claim could not survive a motion for judgment on the pleadings.

16 The Court is not to serve as an advocate of a *pro se* litigant, *Noll v. Carlson*, 809
17 F.2d 1446, 1448 (9th Cir. 1987), *superseded on other grounds*, in attempting to decipher
18 a complaint or read in claims that do not exist. Moreover, failure to set forth claims in a
19 discernible manner places the onus on the Court to decipher which, if any, facts support a
20 claim, as well as to determine whether a plaintiff is entitled to the relief sought. *Haynes*
21 *v. Anderson & Strudwick, Inc.*, 508 F.Supp. 1303 (D.C.Va. 1981). Even construed
22 liberally, Plaintiff fails to articulate a claim upon which relief can be granted.

23 However, the Court finds that Plaintiff *may* be able to state a valid claim upon
24 careful redrafting of his Complaint. Therefore, the Court is dismissing the action with
25 leave to amend in order to provide Plaintiff with the ability to file an amended complaint
26 if he so pleases. *Bank*, 928 F.2d at 1112. Any amended complaint filed by Plaintiff must
27 be retyped or rewritten in its entirety and may not incorporate any part of the original
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1 complaint by reference. Any amended complaint submitted by Plaintiff shall be clearly
2 designated as an amended complaint on the face of the document.

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4 Plaintiff should take notice that failure to timely comply with every provision of
5 this Order, may result in this action being dismissed pursuant to Rule 41(b), Fed.R.Civ.P.
6 *See Ferdik v. Bonzelet*, 963 F.2d 1258 (9th Cir. 1992) (District Court may dismiss action
7 for failure to comply with any order of the Court), *cert. denied*, 506 U.S. 915 (1992).

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9 *Defendant's May 28, 2014 Correspondence* (Doc. 35)

10 Finally, defense counsel has notified the Court in a filing that Sanders has been
11 vociferously communicating the imminency of extreme acts of violence he will perform
12 on defense counsel; threats ranging from personal decapitation at Plaintiff's own hands to
13 even more radical terroristic threats against the United States as a whole. (Doc. 35.)
14 Plaintiff has not filed a response. This egregious and abusive behavior is completely
15 unacceptable and is in violation of a myriad of ethical rules of conduct. Although a *pro se*
16 litigant may be entitled to great leeway by the Court when construing their filings, *see*
17 *Brazil v. U.S. Dep't of Navy*, 66 F.3d 193, 199 (9th Cir. 1995), it does not excuse him
18 from following basic rules of ethics and civility. *See Nelson v. Eaves*, 140 F. Supp. 2d
19 319, 322 (S.D.N.Y. 2001) (dismissing *pro se* litigant's complaint with prejudice after he
20 wrote threatening letter to opposing counsel); *see also Cameron v. Lambert*, WL 4823596
21 (S.D.N.Y. Nov. 7, 2008) (granting a sanction of dismissal for *pro se* plaintiff's use of
22 abusive and threatening language). The Court orders Plaintiff to act in a civil manner at
23 all times with regards to the proceedings moving forward.

24 Failure to comply with this Court Order may result in civil contempt sanctions. A
25 party commits civil contempt by disobeying "a specific and definite court order by failure
26 to take all reasonable steps within the party's power to comply." *Reno Air Racing Ass'n,*
27 *Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006) (citation omitted). The purpose of
28 civil contempt sanctions is to incentive the contemnor to comply with the court's orders.

1 *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir.1992). Sanctions can
2 include fines or imprisonment.

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4 Furthermore, the Court may impose sanctions on a party for failing to obey a
5 scheduling *or other pretrial order* pursuant to Fed.R.Civ.P. 16(f). Local Rule
6 83.1(f)(1)(A) also provides that the court may, “upon its own initiative” impose
7 appropriate sanctions upon a party who, “without just cause” violates or fails to conform
8 to the Federal Rules of Civil Procedure or any order of the court. This rule permits the
9 Court to order a sanction that is just under the circumstances, which may include the
10 imposition of a fine, or an order imposing costs and attorney fees. "District courts have
11 broad discretion in interpreting and applying their local rules," *Simmons v. Navajo*
12 *County, Ariz.*, 609 F.3d 1011, 1017 (9th Cir. 2010) (citing *Miranda v. Southern Pacific*
13 *Transp. Co.*, 710 F.2d 516, 521 (9th Cir.1983), and the Court will not hesitate to use any
14 means it finds appropriate to compel the parties to comply with this Order.

15 Harassing, coercive, argumentative, threatening, or similar statements to opposing
16 counsel will not be permitted. *See e.g., Alvarado Morales v. Digital Equipment*
17 *Corporation*, 669 F.Supp. 1173, 1187 (D.Puerto Rico 1987) (“The federal courts do not
18 provide a forum for mudslinging, name calling and ‘privileged’ defamation.”); *Talbot v.*
19 *Robert Matthews Distributing Co.*, 961 F.2d 654, 664–65 (7th Cir.1992) (scandalous
20 portion of pleading may be stricken); *Wilkerson v. Butler*, 229 F.R.D. 166, 170
21 (E.D.Cal.2005) (allegation is “impertinent” if it is not responsive or relevant to the issues;
22 it is “scandalous” if it improperly casts a derogatory light on someone); *Global View Ltd.*
23 *Venture Capital v. Great Central Basin Exploration, L.L.C.*, 288 F.Supp.2d 473
24 (S.D.N.Y. 2003) (calling defendants unscrupulous and con artists was nothing more than
25 name-calling and did not add to substantive claims). If Plaintiff does not proceed with
26 civility in this case, the Court will impose appropriate sanctions, including, if necessary,
27 dismissal of Plaintiff’s Complaint.

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1 *Plaintiff's Address of Record*

2 On January 17, 2014, Court ordered Plaintiff Donald R. Sanders to provide the
3 Court with his current address (i.e., file a Notice of Change of Address, *see* LRCiv
4 83.3(d)) by no later than January 21, 2014. *See* Doc. 30. As of this date, Plaintiff has not
5 complied with the Court's order.

6 The Court will order Plaintiff to show cause why he should not be held in
7 contempt or be subject to other sanction for failing to comply with the Order of the Court.
8 The Court, alternatively, will set a deadline for Plaintiff to comply with the Order of the
9 Court.

10
11 Accordingly, IT IS ORDERED:

12 1. Delta's Motion for Judgment on the Pleadings (Doc. 33) is GRANTED
13 without prejudice so that Plaintiff may have a chance to amend his Complaint and state a
14 claim on which relief may be granted.

15 2. Plaintiff SHALL HAVE thirty (30) days from the date of filing of this
16 Order to file an amended complaint. Any amended complaint filed by Plaintiff must be
17 retyped or rewritten in its entirety and may not incorporate any part of the original
18 complaint by reference. Any amended complaint submitted by Plaintiff shall be clearly
19 designated as an amended complaint on the face of the document.

20 3. A clear, legible copy of every pleading or other document filed SHALL
21 ACCOMPANY each original pleading or other document filed with the Clerk for use by
22 the District Judge to whom the case is assigned. *See* L.R.Civ. 5.4; *see also* ECF
23 Administrative Policies and Procedures Manual § II.D.3. **Failure to submit a copy**
24 **along with the original pleading or document will result in the pleading or document**
25 **being stricken without further notice to Plaintiff.**

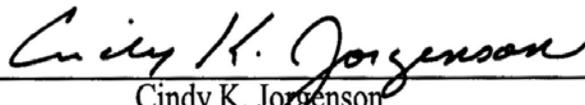
26 4. Plaintiff shall not threaten defense counsel and shall not use harassing or
27 abusive language in communicating with defense counsel or the Court. Furthermore,
28 Plaintiff shall treat defense counsel and the Court with civility.

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5. Plaintiff is hereby **ORDERED TO SHOW CAUSE** why he should not be held in contempt of Court or be otherwise sanctioned for his failure to comply with the Court's January 17, 2014, Order by filing a writing with this Court **within thirty (30) days of the date of this Order**. Alternatively, Plaintiff shall file a Notice of Change of Address **within thirty (30) days of the date of this Order**.

6. At all times during the pendency of this action, Plaintiff shall immediately advise the Court of any future change of address and its effective date. Such notice shall be captioned "NOTICE OF CHANGE OF ADDRESS". The notice shall contain only information pertaining to the change of address and its effective date. The notice shall not include any motions for any other relief. Plaintiff shall serve a copy of the Notice of Change of Address on all served opposing parties. Failure to file a NOTICE OF CHANGE OF ADDRESS may result in the dismissal of the action for failure to prosecute pursuant to Rule 41(b), Fed.R.Civ.P.

Dated this 20th day of June, 2014.



Cindy K. Jorgenson
United States District Judge