

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION

5 MR. BERNARD P. CORBINS,

6 Plaintiff,

7 vs.

8 UNITED AIRLINES, INC.,

9 Defendant.

Case No: C 10-2312 SBA

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS**

Docket 8

10  
11  
12 Plaintiff, Bernard Corbins, an African-American male, filed the instant pro se  
13 employment discrimination action against United Airlines, Inc., alleging that he was  
14 discriminated against on account of his race and color. The parties are presently before the  
15 Court on Defendant's motion to dismiss the First Amended Complaint ("FAC"), pursuant  
16 to Federal Rule of Civil Procedure 12(b)(6). Having read and considered the papers filed in  
17 connection with this matter and being fully informed, the Court hereby DENIES the motion  
18 for the reasons set forth below. The Court, in its discretion, finds this matter suitable for  
19 resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

20 **I. BACKGROUND**

21 The following factual summary is taken from the FAC, Dkt. 3, which is presumed  
22 true for purposes of a motion to dismiss brought under Rule 12(b)(6). Plaintiff alleges that  
23 he has been employed by Defendant in San Francisco as a Senior Engineer since July 15,  
24 1991. Compl. Addendum A at 1. He joined the "Operational Engineering" department in  
25 September 2004. Id. Sometime in 2008, Plaintiff was advised that his department was  
26 moving to Chicago, Illinois. Id. The manager of Plaintiff's department asked members of  
27 the department whether they were willing to "go and support the group." Id. Plaintiff  
28 "advised that [he] was interested and going to support the group." Id. However, on

1 September 15, 2008, Plaintiff was told that “his path lies in San Francisco” and was  
2 therefore not afforded an opportunity to transfer to Chicago. Id. Though Plaintiff was  
3 informed that the department was downsizing, Defendant actually increased the size of the  
4 department in Chicago by hiring three other engineers from an Indianapolis facility. Id.  
5 Plaintiff alleges that he had more seniority and experience than these engineers, who  
6 apparently are Caucasian. Id.

7 Plaintiff filed his FAC on June 2, 2010. On October 8, 2010, Defendant filed the  
8 instant motion to dismiss while the action was assigned to Magistrate Judge Maria Elena-  
9 James. On October 25, 2010, the action was reassigned to this Court, which later  
10 rescheduled the hearing on Defendant’s motion to January 25, 2011. Under Civil Local  
11 Rule 7-3(a), Plaintiff’s response to the motion was due by January 4, 2011. No opposition  
12 or other response was filed by Plaintiff. However, in its reply brief, Defendant indicates  
13 that the parties have been meeting and conferring regarding Defendant’s concerns with the  
14 sufficiency of the allegations contained in the FAC. Plaintiff provided Defendant with a  
15 proposed Second Amended Complaint, but Defendant declined to stipulate to its filing.

16 **II. LEGAL STANDARD**

17 A complaint may be dismissed under Rule 12(b)(6) for failure to state a claim if the  
18 plaintiff fails to state a cognizable legal theory, or has not alleged sufficient facts to support a  
19 cognizable legal theory. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.  
20 1990). To survive a motion to dismiss, the plaintiff must allege “enough facts to state a claim  
21 to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570  
22 (2007). The pleadings must “give the defendant fair notice of what ... the claim is and the  
23 grounds upon which it rests.” Erickson v. Pardus, 551 U.S. 89, 93 (2007) (internal quotation  
24 marks omitted).

25 When considering a motion to dismiss under Rule 12(b)(6), a court must take the well-  
26 pled allegations of material fact as true and construe them in the light most favorable to  
27 plaintiff. See Ashcroft v. Iqbal, --- U.S. ---, 129 S.Ct. 1937, 1949 (2009). However, “the tenet  
28 that a court must accept as true all of the allegations contained in a complaint is inapplicable to

1 legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere  
2 conclusory statements, do not suffice.” Id. at 1949-50. “While legal conclusions can provide  
3 the complaint’s framework, they must be supported by factual allegations.” Id. at 1950. Those  
4 facts must be sufficient to push the claims “across the line from conceivable to plausible[.]” Id.  
5 at 1951 (quoting Twombly, 550 U.S. at 557). If the complaint is dismissed, plaintiff generally  
6 should be afforded leave to amend unless it is clear the complaint cannot be saved by  
7 amendment. See Cato v. United States, 70 F.3d. 1103, 1106 (9th Cir. 1995).

### 8 **III. DISCUSSION**

#### 9 **A. SUFFICIENCY OF THE ALLEGATIONS**

10 Title VII of the Civil Rights Act of 1964 provides that employers may not  
11 “discriminate against any individual with respect to his compensation, terms, conditions, or  
12 privileges of employment, because of such individual’s race, color, religion, sex or national  
13 origin.” 42 U.S.C.2000e-2(a)(1). A plaintiff may prove unlawful discrimination by  
14 producing “direct or circumstantial evidence demonstrating that a discriminatory reason  
15 more likely than not motivated the employer.” Metoyer v. Chassman, 504 F.3d 919, 930  
16 (9th Cir. 2007). If direct evidence of discrimination is not available, a plaintiff may rely  
17 upon the burden-shifting framework to prove discrimination, as set forth in McDonnell  
18 Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). To establish a prima facie case under  
19 McDonnell Douglas for failure to promote due to racial discrimination, plaintiff must  
20 demonstrate that: (1) he is a member of a protected class; (2) he applied for and was  
21 qualified for an open job; (3) he was rejected for that job; and (4) rather than filling the  
22 position the employer left it open or filled it with a worker outside the protected class at  
23 issue. McGinest v. GTE Serv. Corp., 360 F.3d 1103, 1122-23 (9th Cir. 2004).

24 Defendant contends that Plaintiff’s failure to promote claim is deficiently pled on the  
25 ground that he has failed to allege a prima facie case of discrimination. Specifically,  
26 Defendant complains that Plaintiff has not identified the position or positions in Chicago  
27 for which he was qualified or how Defendant’s alleged failure to transfer him constitutes an  
28 adverse employment action. “The prima facie case under McDonnell Douglas, however, is

1 an evidentiary standard, not a pleading requirement. Swierkiewicz v. Sorema N.A.,  
2 534 U.S. 506, 509 (2002) (“we hold that an employment discrimination plaintiff need not  
3 plead a prima facie case of discrimination ... to survive respondent’s motion to dismiss”).  
4 Rather, a plaintiff’s complaint need only contain “a short and plain statement of the claim  
5 showing that the pleader is entitled to relief.” Id. at 508 (quoting Fed.R.Civ.P. 8(a)).  
6 Plaintiff’s allegations are sufficient to comport with this requirement.

7 **B. WARNING TO PLAINTIFF**

8 Although Plaintiff did not file an opposition to Defendant’s motion to dismiss, the  
9 record indicates that he met and conferred with Defendant’s counsel in an effort to address  
10 their concerns regarding the sufficiency of the allegations in the FAC. See Def.’s Reply at  
11 1-2, Dkt. 20. As such, it is apparent that Plaintiff’s failure to file an opposition to  
12 Defendant’s motion is not necessarily an indication of his intention to abandon this case.  
13 Nonetheless, Plaintiff’s failure to respond to Defendant’s motion constitutes a violation of  
14 the Court’s Civil Local Rules. See Civ. L.R. 7-3(a). Thus, the Court could have granted  
15 Defendant’s motion on the ground that Plaintiff failed to file an opposition in violation of  
16 the Local Rules. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). The  
17 Court, however, is mindful of its obligation to consider less drastic alternatives to dismissal,  
18 and therefore, will not impose such a sanction at this juncture. See id.

19 Plaintiff should be aware that although he is acting pro se (i.e., without an attorney)  
20 he nevertheless remains obligated to follow the same rules as represented parties. See  
21 Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995) (“Although we construe pleadings  
22 liberally in their favor, pro se litigants are bound by the rules of procedure.”) (per curiam);  
23 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (same). Self-representation is not an  
24 excuse for non-compliance with Court rules. See Swimmer v. I.R.S., 811 F.2d 1343, 1344  
25 (9th Cir. 1987) (“[i]gnorance of court rules does not constitute excusable neglect, even if  
26 the litigant appears pro se.”) (citation omitted). Plaintiff’s failure to comply with any  
27 procedural requirements, including any Court order, may result in the imposition of  
28 sanctions up to and including dismissal of the action. See Ferdik v. Bonzelet, 963 F.2d

1 1258, 1260 (9th Cir. 1992). Plaintiff is warned that any further failure to comply with any  
2 order or applicable procedural rule, including the failure to timely oppose a motion, may be  
3 deemed to be a consent to the granting of said motion, without further notice.

4 **IV. CONCLUSION**

5 For the reasons stated above,

6 IT IS HEREBY ORDERED THAT Defendant's motion to dismiss is DENIED. This  
7 Order terminates Docket 8.

8 IT IS SO ORDERED.

9 Dated: January 12, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 CORBINS et al,

5 Plaintiff,

6 v.

7 UNITED AIRLINES - MOC et al,

8 Defendant.

9 \_\_\_\_\_/

Case Number: CV10-02312 SBA

10 **CERTIFICATE OF SERVICE**

11  
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
13 Court, Northern District of California.

14 That on January 12, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
15 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
16 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
17 located in the Clerk's office.

18 Bernard P. Corbins  
19 30074 Woodthrush Pl  
20 Hayward, CA 94544

21 Dated: January 12, 2011

Richard W. Wieking, Clerk

22 By: LISA R CLARK, Deputy Clerk

23  
24  
25  
26  
27  
28