

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MICHAEL JOHN MEASEL,	)	Case No.: 10-CV-02345-LHK
	)	
Plaintiff,	)	ORDER GRANTING MOTION TO
v.	)	DISMISS WITH LEAVE TO AMEND;
	)	DENYING MOTION FOR A MORE
LINKUS ENTERPRISES, INC., and DOE 1,	)	DEFINITE STATEMENT
inclusive,	)	
	)	
Defendants.	)	
	)	

Defendant LinkUs Enterprises, Inc., moves to dismiss the Complaint under Rule 12(b)(6) or, in the alternative, to require Plaintiff to provide a more definite statement under Rule 12(e). Plaintiff Michael John Measel has not opposed Defendant’s motion. Pursuant to Local Civil Rule 7-1(b), the Court concludes that this motion is appropriate for determination without oral argument. Having considered the parties’ submissions and the relevant law, the Court GRANTS Defendant’s motion to dismiss with leave to amend, and DENIES as moot Defendant’s motion for a more definite statement. Accordingly, the motion hearing and case management conference scheduled for October 28, 2010, are VACATED.

**I. Background**

This action involves acts of employment discrimination allegedly committed by Defendant LinkUs Enterprises, Inc. (“LinkUs”) against Plaintiff Michael John Measel. Plaintiff Measel was

1 employed by LinkUs as a Satellite Technician from October 28, 2006, until his termination on  
2 February 23, 2009. Compl. Attach. 4. Sometime thereafter, Plaintiff filed charges alleging racial  
3 discrimination and retaliation with the California Department of Fair Employment and Housing  
4 (“DFEH”) and the Equal Employment Opportunity Commission (“EEOC”). Compl. Attachs. 4-5.  
5 The EEOC referred Plaintiff’s complaint to the California DFEH, and DFEH declined to conduct  
6 an investigation or issue an accusation in the matter. Compl. Attach. 2. Accordingly, on October  
7 20, 2009, the EEOC and DFEH issued right-to-sue notices. *Id.*

8 On January 19, 2010, Plaintiff filed a Complaint in the Monterey County Superior Court.  
9 The Complaint consisted of a two-page form complaint for contract actions, to which Plaintiff  
10 attached copies of the following five documents: (1) the EEOC’s notice of receipt of his  
11 employment discrimination charge; (2) the DFEH right-to-sue notice; (3) the EEOC right-to-sue  
12 notice; (4) the charge of discrimination Plaintiff filed with the EEOC; and (5) the complaint of  
13 discrimination Plaintiff filed with DFEH. Compl. Attachs. 1-5. The only statement of Plaintiff’s  
14 claims is contained in the attached EEOC charge and DFEH complaint. These documents provide  
15 a one-paragraph description of Plaintiff’s allegations, which include: (1) Plaintiff was denied equal  
16 pay compared to less-qualified, non-Caucasian Satellite Technicians since June 2008; (2) Plaintiff  
17 was harassed and retaliated against for complaining about the termination of a co-worker; (3)  
18 Plaintiff was denied a promotion to manager; and (4) Plaintiff’s employment was terminated  
19 without reason. Compl. Attachs. 4-5. Defendant removed this action to federal court on May 27,  
20 2010, and now moves to dismiss Plaintiff’s claims under Rule 12(b)(6) or, in the alternative, to  
21 require a more definite statement under Rule 12(e).

## 22 **II. Motion to Dismiss**

### 23 **A. Legal Standard**

24 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal  
25 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering  
26 whether the complaint is sufficient to state a claim, the court must accept as true all of the factual  
27 allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). However,  
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1 the court need not accept as true “allegations that contradict matters properly subject to judicial  
2 notice or by exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or  
3 unreasonable inferences.” *St. Clare v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d  
4 1049, 1055 (9th Cir. 2008). While a complaint need not allege detailed factual allegations, it “must  
5 contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its  
6 face.” *Iqbal*, 129 S.Ct. at 1949 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570  
7 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference  
8 that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at 1949. If a court grants  
9 a motion to dismiss, leave to amend should be granted unless the pleading could not possibly be  
10 cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

### 11 **B. Discussion**

12 Defendant argues that Plaintiff’s claims must be dismissed because his Complaint fails to  
13 set forth “a short and plain statement of the claim showing that the pleader is entitled to relief,” as  
14 required by Federal Rule of Civil Procedure 8(a). The Court agrees. A complaint alleging  
15 employment discrimination must “give the defendant fair notice of what the plaintiff’s claim is and  
16 the grounds upon which it rests.” *Williams v. Boeing Co.*, 517 F.3d 1120, 1130 (9th Cir. 2008)  
17 (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002)). Although a plaintiff need not  
18 plead a prima facie case of discrimination in the complaint, *Swierkiewicz*, 534 U.S. at 511, he must  
19 provide more than “naked assertion[s]” and conclusory allegations. *Iqbal*, 129 S.Ct. at 1949  
20 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

21 Here, Plaintiff’s allegations are either conclusory or are not sufficient to give Defendant  
22 notice of Plaintiff’s claims. As noted above, Plaintiff provides only the one-paragraph descriptions  
23 of his claims that he submitted to the EEOC and the DFEH, and does not set forth specific causes  
24 of action or describe the relief he seeks. While Plaintiff clearly asserts that he was denied equal  
25 pay compared to less qualified, non-Caucasian technicians, he fails to provide any additional facts  
26 that might give plausibility to this “naked assertion.” *Twombly*, 550 U.S. at 557. The rest of  
27 Plaintiff’s allegations are simply too vague to give Defendant fair notice of the nature of Plaintiff’s  
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1 claims and the grounds on which they rest. Plaintiff alleges that he was retaliated against and  
2 denied a promotion, but it is not clear whether these claims are connected to Plaintiff's allegations  
3 of racial discrimination or if they are separate allegations associated with Plaintiff's complaints  
4 about the termination of another worker. Additionally, while Plaintiff alleges the date of his  
5 termination, it is difficult to tell whether the Complaint alleges that the termination itself was  
6 discriminatory and, if so, on what grounds. The Court thus finds that the Complaint as currently  
7 pled does not contain sufficient factual matter to give Defendant fair notice or to state a plausible  
8 claim for relief. Accordingly, the Court GRANTS Defendant's motion to dismiss with leave to  
9 amend.

10 **III. Motion for a More Definite Statement**

11 Defendant also moves, in the alternative, for a more definite statement. Under Federal Rule  
12 of Civil Procedure 12(e), "[a] party may move for a more definite statement of a pleading to which  
13 a responsive pleading is allowed but which is so vague or ambiguous that the party cannot  
14 reasonably prepare a response." While the Court acknowledges that portions of Plaintiff's  
15 Complaint may meet this standard, because the Court has granted Defendant's motion to dismiss  
16 the entire Complaint, Defendant's motion for a more definite statement is DENIED as moot.

17 **IV. Conclusion**

18 For the foregoing reasons, the Court GRANTS Defendant's motion to dismiss with leave to  
19 amend and DENIES Defendant's motion for a more definite statement. **Plaintiff shall file an**  
20 **amended complaint, if any, within 30 days of this Order.** If Plaintiff fails to timely file an  
21 amended complaint, his claims may be dismissed with prejudice.

22 **IT IS SO ORDERED.**

23  
24 Dated: October 25, 2010

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27 LUCY H. KOH  
28 United States District Judge