

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 02-22912-CIV-LENARD/SIMONTON
Consolidated with
CASE NO. 02-23544-LENARD/SIMONTON

**UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION,**

Plaintiff,

**XIOMARA GUERRERO; OFELIA
RODRIGUEZ; MARIBEL SUAREZ;
JORGE FIOL; ERNESTO HEDMAN;
HILARIO PINEDA; JUAN CARLOS
SUAREZ; and ALEXIS SILVA,**

Intervenor-Plaintiffs,

vs.

**AIRGUIDE CORPORATION;
PIONEER METALS, INC. and
GOODMAN GLOBAL HOLDINGS,
INC,**

Defendants.

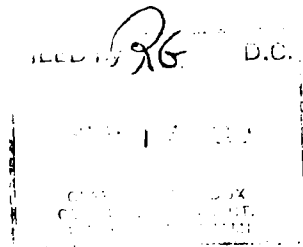
JUAN SANCHEZ,

Plaintiff,

vs.

**AIRGUIDE CORPORATION;
PIONEER METALS, INC. and
GOODMAN GLOBAL HOLDINGS,
INC,**

Defendants.



5/10/02

ORDER CLARIFYING SCOPE OF CONSOLIDATION

THIS CAUSE is before the Court on Defendants' request for clarification of the scope of consolidation of Case Nos. 02-22912-CIV-LENARD/SIMONTON and 02-23544-CIV-LENARD/SIMONTON, set forth in its Request for Status Conference, filed March 10, 2003. (D.E. 38.) The Court held a status conference held on May 7, 2003, and Defendants argued that the Court should place the individual Sanchez case on a faster track for trial than the EEOC case. The Court provided Defendants ten days in which to submit a legal memorandum in support of their position. (D.E. 49.) On May 19, 2003, Defendants filed a "Submission Regarding Jury Confusion and Prejudicial Impact of Proposed Consolidation for Pre-Trial and Trial." (D.E. 50.) Plaintiff Juan Sanchez filed a Memorandum in Opposition on May 29, 2003 (D.E. 51), and Plaintiff EEOC filed a Memorandum in Opposition on June 9, 2003 (D.E. 53). Having considered the parties' submissions and the relevant portions of the record in this matter, the Court finds as follows.

The Complaint filed by the EEOC on September 30, 2002, Case No. 02-22912-CIV-LENARD/SIMONTON, alleges that Defendants committed various acts of employment discrimination, including sexual harassment against certain employees and retaliation against other employees who complained of the sexual harassment. On December 13, 2002, Plaintiff Juan Sanchez file a Complaint in Case No. 02-23544-CIV-GRAHAM/GARBER, alleging that the same Defendants retaliated against him for various acts, including his participation

in the EEOC investigation that resulted in the filing of the first case. On January 22, 2003, the undersigned judge accepted transfer of the Sanchez case and consolidated it with the EEOC case. On March 10, 2003, Defendants filed a Request for Status Conference, to clarify the scope of consolidation and resolve a dispute regarding pre-trial deadlines. The Court held a status conference, at which defense counsel was unprepared with any legal authority to support Defendants' position. The Court granted Defendants ten days within which to submit a memorandum and any case law supporting their position that consolidation would result in jury confusion and/or undue prejudice.

Upon review of the parties' submissions, the Court finds that consolidation is appropriate in this case, because it serves the interest of justice and expedient judicial administration without causing undue prejudice to any party. Rule 42(a) provides that:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

FED. R. CIV. P. 42(a).

Plaintiffs EEOC and Sanchez and the Intervenor-Plaintiffs all argue that consolidation of these cases is appropriate under Rule 42(a), and Defendants have pointed to no legal authority persuading the Court otherwise. The binding law of this Circuit counsels that:

'In this Circuit, district judges have been urged to make good use of Rule 42(a) in order to expedite the trial and eliminate unnecessary repetition and

confusion'. . . . Rule 42(a) 'is permissive and vests a purely discretionary power in the district court.' An exercise of such power may be reviewed on appeal from a final judgment or order but will not be disturbed except for abuse of discretion.

In re Air Crash Disaster at Fla. Everglades on Dec. 29, 1972, 549 F.2d 1006, 1013 (5th Cir. 1977)¹ (internal citations omitted). Moreover, "a court may order the consolidation of cases despite the opposition of the parties." Id.

In this case, where Plaintiff Sanchez alleges retaliation arising out of the originally-filed EEOC case and many of the same legal and factual issues are expected to arise in both cases, the Court finds that separate proceedings would cause unnecessary duplication of judicial resources, to an extent that outweighs any prejudice to Defendants that might be caused by proceeding in one consolidated case. In addition, the Court will be able to mitigate any jury confusion through the use of limiting instructions.

Accordingly, it is

ORDERED AND ADJUDGED that the above-styled cases are CONSOLIDATED for all purposes, including trial.

¹ In the case of Bonner v. Prichard, 661 F.2d 1206, 1209 (11th Cir.1981) (en banc), the Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

DONE AND ORDERED in Chambers at Miami, Florida this 17 day of June, 2003.


JOAN A. LENARD
UNITED STATES DISTRICT JUDGE

Cc: U.S. Magistrate Judge Andrea M. Simonton

All counsel of record