

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

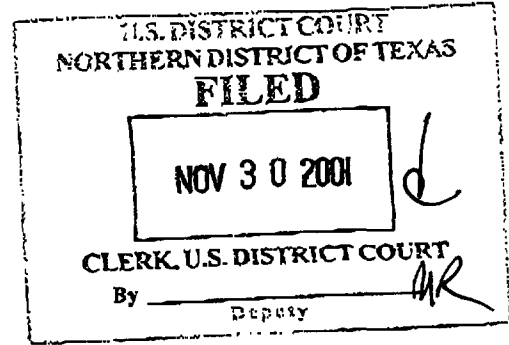
ERNEST GARCIA,

Intervenor-Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.



Civil Action No.
6:01-CV-109-C

ORDER

On this day the Court considered Defendant, United Parcel Service, Inc.'s Motions to Dismiss or in the Alternative Motions for More Definite Statement, filed August 31, 2001. Plaintiff, Equal Employment Opportunity Commission, filed a Response to Defendant's Motion on September 28, 2001. Intervenor, Ernest Garcia, filed a Response to Defendant's Motion on September 24, 2001. Defendant filed a Reply to Intervenor's Response on September 28, 2001, and filed a Reply to Plaintiff's Response on October 5, 2001. Plaintiff filed a Surreply to Defendant's Motion on October 29, 2001. After considering all relevant arguments and evidence, the Court **DENIES** Defendant's Motions to Dismiss or in the Alternative Motions for More Definite Statement as to both the Plaintiff and the Intervenor.

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**I
BACKGROUND**

On July 6, 2001, Plaintiff, Equal Employment Opportunity Commission, filed this suit against Defendant, United Parcel Service, Inc., in the United States District Court for the Western District of Texas, San Antonio Division. Plaintiff brought this suit under Title VII of the Civil Rights Act of 1964 alleging unlawful employment practices on the bases of race and national origin. The suit arises out of a charge filed with the Plaintiff by Ernest Garcia alleging numerous violations of Title VII. On August 27, 2001, Intervenor, Ernest Garcia, filed his Complaint against Defendant alleging violations of Title VII. Specifically both Plaintiff and Intervenor allege that since 1998, Defendant has engaged in unlawful employment practices, namely, maintaining a hostile work environment, disparate treatment, and retaliatory conduct. On August 31, Defendant filed a Motion to Transfer Venue. On October 29, 2001, the suit was transferred to the United States District Court for the Northern District of Texas, San Angelo Division.

**II
STANDARD**

A. RULE 12(B)(6) STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), motions to dismiss raise the defense of failure to state a claim upon which relief may be granted. This motion is appropriate when the defendant or counter-defendant attacks the complaint because it fails to state a legally cognizable claim. In other words, a motion to dismiss an action for failure to state a claim "admits the facts alleged in the complaint, but challenges plaintiff's rights to relief based upon those facts." *Telephonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1137 (5th Cir. 1992).

The test for determining the sufficiency of a complaint under Rule 12(b)(6) was set out by the United States Supreme Court in *Conley v. Gibson*:

[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

355 U.S. 41, 45-46 (1959); see also *Grisham v. United States*, 103 F.3d 24, 25-26 (5th Cir. 1997).

The *Conley* test is a rigorous standard, but subsumed within it is the requirement that the plaintiff state its case with enough clarity to enable a court or an opposing party to determine whether a claim is sufficiently alleged. *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989).

In a Rule 12(b)(6) motion to dismiss, the allegations of the complaint must be taken as true. *Grisham*, 103 F.3d at 25. Further, the allegations in the complaint should be construed favorably to the pleader. *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996). This requirement is consistent with the well-established policy that the plaintiff be given every opportunity to state a claim. *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977).

B. RULE 12(e) STANDARD

Federal Rule of Civil Procedure 12(c) is the correct avenue for seeking a more definite statement. Federal Rule of Civil Procedure 12(e) states:

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the court may strike the pleading to

which the motion was directed and make such order as it deems just.

FED. R. CIV. P. 12(e).

“If a complaint is ambiguous or does not contain sufficient information to allow a responsive pleading to be framed, the proper remedy is a motion for a more definite statement under Rule 12(e).” *Sisk v. Texas Parks & Wildlife Dep’t*, 644 F.2d 1056, 1059 (5th Cir. 1981). Information a party wishes to obtain through a motion for more definite statement should not be granted if it can be obtained through discovery. *Mitchell v. E-Z Way Towers, Inc.*, 269 F.2d 126, 132-33 (5th Cir. 1959); *Cross Timbers Concerned Citizens v. Saginaw*, 991 F. Supp. 563, 572-73 (N.D. Tex. 1997); N.D. TEX. LR 12.1 (“except for motions complaining of failure to plead fraud or mistake with particularity pursuant to FED. R. CIV. P. 9(b), a motion for more definite statement may only be filed where the information sought cannot be obtained by discovery”). Orders made pursuant to a motion for more definite statement under Rule 12(e) are reviewed under the abuse-of-discretion standard. *Old Time Enters. v. Int’l Coffee Corp.*, 862 F.2d 1213, 1217 (5th Cir. 1989) (citations omitted).

**III.
DISCUSSION**

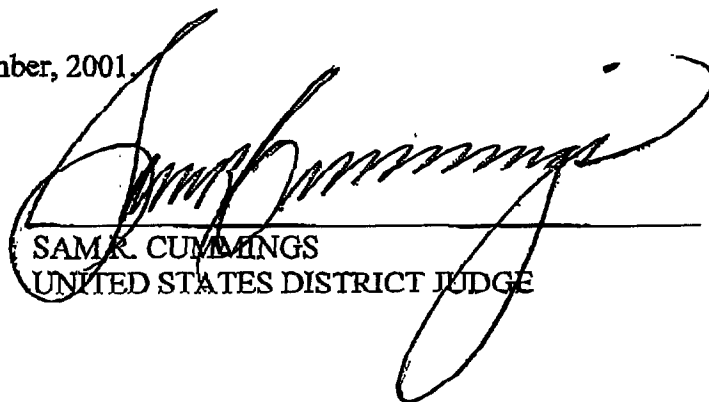
Both the Plaintiff and Intervenor claim in their individual Complaints that Defendant’s conduct of falsely accusing employees of wrongdoing, issuing conflicting work orders in repeated attempts to anger and encourage insubordination, closely and unnecessarily scrutinizing work, and issuing groundless reprimands resulted in a disparate treatment of employees, a hostile work environment, and retaliatory conduct all in violation of Title VII of the Civil Rights Act of

1964. Both complaints specifically state that the alleged violations were because of race and national origin.

Defendant contends that both Plaintiff and Intervenor's claims under Title VII should fail and be dismissed because the claims are conclusory. This Court disagrees. Both Plaintiff and Intervenor have sufficiently alleged facts from which, if proved to be true, one could find that Defendant engaged in discriminatory practices based upon race and national origin. Accordingly, Defendant's Motions to Dismiss are **DENIED**. Additionally, the Court does not find that either the Plaintiff's Complaint or the Intervenor's Complaint is "so vague and ambiguous" that Defendant cannot frame a responsive pleading. Defendant's Alternative Motions for a More Definite Statement are **DENIED**.

SO ORDERED

Dated this 30th day of November, 2001.



SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE