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United States District Court
For the Northern District of California

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

No. C 03-4383 PJH

v.

ORDER RE MOTION TO DISMISS

STEPHENS INSTITUTE d/b/a
ACADEMY OF ART COLLEGE,

Defendant.

Before the court is the motion of defendant Stephens Institute d/b/a Academy of Art College (“Academy of Art”), for an order dismissing the first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, and alternative motion pursuant to Federal Rule of Civil Procedure 12(e) for a more definite statement. Having read the parties’ papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows.

David T. Banks (“Banks”) was discharged from his employment with the Academy of Art in May 2001, and filed an administrative charge with the EEOC on August 15, 2001. Banks, who is African-American, asserted in the charge that he was hired by the Academy of Art in September 2000, that he and other African-American employees were treated differently than the non-African-American employees in the terms and conditions of their

1 employment, and were subjected to a hostile work environment because of their race. Banks
2 also charged that he complained of discriminatory and disparate treatment to his supervisors,
3 but that no action was taken. He asserted that he and other African-American employees
4 were discriminated against because of their race and in retaliation for engaging in protected
5 activity.

6 The EEOC investigated the claim, and issued a determination on July 29, 2002. The
7 EEOC found that the evidence and documentation established that the Academy of Art had
8 harassed Banks and “a class of Blacks” based on their race, and discharged Banks because
9 of his race. The EEOC was unable to conclude that the evidence established a violation of
10 Title VII with regard to Banks’ allegations of disparate wages, terms, and conditions of
11 employment, and of discharge based on retaliation for engaging in protected activity; or with
12 regard to the claim of discharge of African-Americans as a class.

13 The EEOC filed this action on September 29, 2003, pursuant to 42 U.S.C. § 2000e-
14 5(f)(1) (“Civil action by Commission”), alleging that the Academy of Art had discriminated
15 against David T. Banks and other African-American employees. The EEOC filed a first
16 amended complaint “FAC”) on November 25, 2003. The Academy of Art responded with the
17 present motion to dismiss for failure to state a claim, and alternative motion for a more definite
18 statement.

19 The Academy of Art contends that the FAC contains no facts, but instead merely
20 pleads conclusory allegations, and that it should be dismissed for failure to state a claim.
21 The FAC alleges that the Academy of Art “engaged in unlawful employment practices at its
22 San Francisco, California campus in violation of Section 703(a) of Title VII, 42 U.S.C.
23 § 2000e-3(a),” and that “[t]hese practices include subjecting Mr. Banks and other black
24 employees to a racially hostile work environment and discharging Mr. Banks because of his
25 race.” FAC ¶ 7.

26 The Academy of Art argues that the FAC fails to state a claim for violation of 42 U.S.C
27 § 2000e-3(a) (unlawful for employer to retaliate against employee for opposing unlawful
28 employment practices or for filing charge of discrimination) because the EEOC does not

1 allege that the unlawful employment practices that Banks and other unidentified African-
2 American employees were subjected to were in retaliation for opposing unlawful employment
3 practices or for filing a charge of discrimination.

4 The Academy of Art also contends that it cannot frame a responsive pleading in the
5 absence of a more definite statement, because the FAC is so vague and ambiguous.
6 Specifically, the Academy of Art asserts that the FAC fails to identify the “other black
7 employees” who were allegedly discriminated against, fails to identify the allegedly unlawful
8 practices committed by the Academy of Art, fails to identify the ways in which the work
9 environment was allegedly racially hostile, and fails to allege any facts indicating that any
10 employee opposed an unlawful practice and was retaliated against as a result.

11 The EEOC responds that the reference to § 2000e-3(a) in the FAC was a
12 typographical error, and that its intent was to refer to § 2000e-2(a) (unlawful for employer to
13 discriminate against employee with respect to compensation, terms, conditions, or privileges
14 of employment because of employee’s race, color, religion, sex, or national origin). The
15 EEOC contends that the Academy of Art should have known that the reference was to
16 § 2000e-2(a) because the FAC also cites to § 703(a) of Title VII, which corresponds to
17 § 2000e-2(a).

18 With regard to the motion for a more definite statement, the EEOC responds that the
19 FAC satisfies the notice pleading requirements of Federal Rule of Civil Procedure 8, and
20 asserts that the Academy of Art is attempting to seek factual detail that is more properly
21 obtained through the initial disclosure and discovery process. The EEOC also contends that
22 the Academy of Art and its counsel were advised of the nature of the allegations in this case
23 as a result of the EEOC’s administrative investigation of Banks’ charge, and when the EEOC
24 issued its finding of reasonable cause.

25 The court finds that the motion should be GRANTED as follows. The Rule 12(b)(6)
26 motion should be granted because, regardless of what the EEOC believes the Academy of
27 Art “should have known,” the fact is that the FAC alleges a violation of § 2000e-3, not
28 § 2000e-2. Thus, the complaint should be amended to clarify that it pleads a claim under

1 § 2000e-2(a).¹

2 With regard to the Rule 12(e) motion, the court agrees with the Academy of Art that the
3 EEOC should identify the “other black employees” who were allegedly discriminated against.
4 The court does not agree that the FAC is deficient because it does not plead in detail the
5 ways in which the work environment was hostile. However, to the extent that the EEOC
6 intends to assert claims of “unlawful employment practices” other than the claim of hostile
7 environment (as to Banks and the “other black employees”) and the claim of discriminatory
8 discharge (as to Banks), the amended complaint should so state.

9 In accordance with the foregoing, the EEOC shall, no later than March 5, 2004, file a
10 second amended complaint, clarifying the causes of action, and the alleged unlawful
11 employment practices (as explained above), and identifying the alleged victims of the unlawful
12 employment practices.

13 The date for the hearing on this motion, previously set for Wednesday, February 11,
14 2004, is hereby VACATED.

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16 **IT IS SO ORDERED.**

17 Dated: January 29, 2004

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/s
PHYLLIS J. HAMILTON
United States District Judge

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¹ As the EEOC did not find reasonable cause to believe that Banks’ charge of retaliatory discharge was true, the court concludes that the EEOC did not intend to allege a claim of retaliation in the present action. However, were the EEOC to allege a claim of retaliation, the second amended complaint should plead, in a separate cause of action, facts stating the elements of a violation of § 2000e-3(a).