

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND (BALTIMORE DIVISION)**

GIOVANNI MONTOYA, et al.

Plaintiffs

v.

S.C.C.P. PAINTING CONTRACTORS, INC., et al.

Defendants

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Case No.: 1:07-cv-00455-RDB

**REPLY TO PLAINTIFFS' OPPOSITION TO
MOTION FOR MORE DEFINITE STATEMENT**

Rule 12(e) of the Federal Rules of Civil Procedure permits a party to move for a more definite statement before interposing a responsive pleading when the 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. This is the case here, where Plaintiffs wish to invoke the wrath of a full blown class action without even properly identifying the full names and addresses of parties involved, and improperly base their allegations against other purported putative class members upon mere "information and belief". As Rule 12(e) permits, a motion shall point out the defects complained of and the details desired. Defendants have properly done so.

These defects, which could simply be cured by a more definite statement, are of a rudimentary nature. A simple identification of the four individual Plaintiffs by full name and address is not a burdensome detail to desire. Without such detail the Complaint cannot properly be analyzed, nor has proper notice been provided to Defendants for verification and response. Plaintiffs' failure in their opposition to address this specific detail requested, reveals they do not

have this information to supply, or that the information that they do have is incomplete and without adequacy. Otherwise, such simple information would have been provided in the Complaint in the first place.

Cases cited by Plaintiffs stand for the proposition that federal rules require “notice pleading”. But this glosses over other requirements of pleading contained expressly within the federal rules. Rule 10(a) requires pleading the names of all the parties. Rule 10(b) requires pleading each claim founded upon a separate transaction or occurrence. Rule 9(f) provides that averments of time and place are material for pleading purposes. And, Rule 23 is replete with elements required to be pleaded in order to justify a class action.

In its basic form a Complaint which fails to provide complete names and addresses of the parties is a failure to provide notice to the Defendants. Without such information, Defendants in this instance are placed at a disadvantage to properly analyze and verify that each such individual actually had a working relationship with Defendants, and that such individual is a citizen of a given state and the United States for the purpose of maintaining standing to bring suit, not only on his own behalf, but as a representative of a particular class or subclass. Criticism that such information is contained within the Complaint is not accurate, and a re-reading of the Complaint shows that full names and addresses are not anywhere provided for notice purposes or otherwise. Moreover, a review of the Complaint shows it entirely fails to aver (a) the type of work, (b) the specific job site, (c) the specific terms of the purported “oral contract”, and (d) the specific FLSA violation for each of the individual Plaintiffs. Rather, what is provided is boilerplate law without applying specific facts to individual occurrences or people.

Requiring such detail is a proper use of Federal Rule 12(e), which permits the judge discretion to require a modicum of clarity to provide notice of claims, parties to the claims, and an association of facts to such parties. It requires Plaintiffs to provide notice of just who did what to whom. It avoids the unfairness of allowing Plaintiffs to shoot first and seek names, addresses, and facts later.

This procedure, provided under Rule 12(e), is especially helpful in a more complex case where class certification is being sought. That Plaintiffs fail to possess information upon which to base their claims for class action is revealed in *paragraph 25* of their Complaint, which improperly and speculatively avers “upon information and belief” the possible existence of 500 individuals as members of a class or subclass, without identifying the specific members of the class or how they will or can be provided reasonable notice for proper representation under Rule 23(c). Plaintiffs in their opposition fail to address this deficiency. Complaints may not be based “upon information and belief”, but must rather be based upon fact, whether or not the pleading is for purposes of providing “reasonable notice”. Major class action litigation, possibly ruinous to a small business, should not be brought on whimsy. Discretion of the court should be applied to balance interests. Requiring these simple details within a more definite statement, so as to satisfy the pleading requirements of the Federal Rules, is not too much to ask, and would certainly not delay procedures, as such detail should have been provided within the Complaint in the first place.

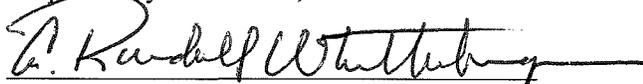
The federal statute involved also requires individualized proof of damages, which in this instance clashes with the class action concept. In order to determine the feasibility of a class action, Defendants desire “each claim founded upon a separate transaction or occurrence” be pleaded for each individual plaintiff and class member, as required by Rule 10(b), so as to have

the proper notice and information necessary to analyze the matter under the pleading requirements of the federal statute itself. This defect is also overlooked by Plaintiffs in their opposition.

Obtaining a true identity of a Plaintiff, or where he lives, is not something that need be gained only through discovery. And, Plaintiffs' flippant argument in *footnote 2* that they do not concede that Defendants would even receive such information if sought in discovery, speaks volumes. Knowing about the party one must defend against is an initial notice requirement. Rule 12(e) properly allows the Court the discretion to prevent Plaintiffs from disguising their full names and addresses for class or subclass purposes, and permits the Court to require these defects be cured through a more definite statement.

WHEREFORE, Defendants respectfully request this Court to *grant* Defendants' Motion for More Definite Statement.

Respectfully submitted,



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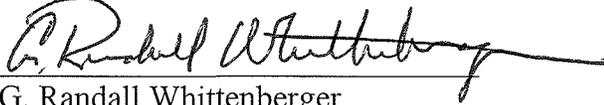
Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 23rd day of April, 2007, a copy of the foregoing *Reply to Opposition to Motion for More Definite Statement* was automatically transmitted by the Court in accordance with the Local Rules for Electronic Filing, to:

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