

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAI-TRANG THI NGUYEN,

No. C-08-03354 EDL

Plaintiff,

**ORDER GRANTING WITH LEAVE TO
AMEND DEFENDANTS' MOTION TO
DISMISS AND DENYING AS MOOT
DEFENDANT'S MOTION FOR A MORE
DEFINITE STATEMENT**

v.

STARBUCKS COFFEE CORP.,

Defendant.

Plaintiff Mai-Trang Thi Nguyen is proceeding *pro se* in this employment discrimination action against Defendant Starbucks Corporation. Plaintiff's complaint consists of a two-page letter stating generally that she has suffered "prejudice and discrimination" during her eight months of employment with Defendant as a barista, and that she didn't "get the same protection from the upper-management staff" based on her race, her religion, her gender, and her sexual orientation. There are, however, no specific facts about what happened to her. By separate pleading, she seeks \$250,000,000.00 in damages.

On September 24, 2008, Defendant moved to dismiss for failure to state a claim, or for a more definite statement. Plaintiff did not file an opposition to Defendant's motion. On October 27, 2008, however, Plaintiff filed a 136-page document entitled "Brief Chronology of Facts and Explanation," containing several exhibits. The Court held a hearing on November 4, 2008, which was attended by Plaintiff and Defendant's counsel. For the reasons stated at the hearing and in this order, the Court grants with leave to amend Defendant's motion to dismiss and denies as moot Defendant's motion for a more definite statement.

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. *See Iletto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). Review is

1 limited to the contents of the complaint. See Allarcom Pay Television, Ltd. v. Gen. Instrument
2 Corp., 69 F.3d 381, 385 (9th Cir. 1995). To survive a motion to dismiss for failure to state a claim, a
3 complaint generally must satisfy the notice pleading requirements of Federal Rule of Civil
4 Procedure 8, which requires that the complaint include a “short and plain statement of the claim
5 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); see also Swierkiewicz v.
6 Sorema N .A., 534 U.S. 506, 508 (2002) (holding that Title VII employment discrimination claims
7 need not include facts or evidence establishing a prima facie case, and need only contain “a short
8 and plain statement of the claim showing that the pleader is entitled to relief” as required by
9 Fed.R.Civ.P. 8(a)(2)). A plaintiff’s obligation to provide the grounds of his entitlement to relief
10 “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
11 action will not do.”Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1964-65 (2007)(citations and
12 quotations omitted).

13 Here, Plaintiff’s complaint, which does not make any allegations to support her claims of
14 “prejudice and discrimination,” must be dismissed for failure to state a claim. As stated at the
15 hearing, the Court gives Plaintiff leave to amend her complaint. In amending her complaint,
16 Plaintiff must focus her allegations to provide a short and concise statement of what happened to her
17 that she believes constitutes discrimination. Plaintiff is cautioned that a 136-page document such as
18 the one entitled “Brief Chronology of Facts and Explanation” that she filed on October 27, 2008
19 after the opposition was due, is not a short and concise statement as required by Rule 8.

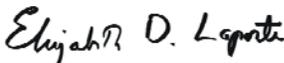
20 Plaintiff appears to be trying to allege discrimination in violation of Title VII. In order to
21 proceed with a Title VII claim in federal court, a plaintiff is required to present her complaint to the
22 Equal Employment Opportunity Commission (“EEOC”) before bringing a lawsuit in federal court.
23 See Lyons v. England, 307 F.3d 1092, 1103-04 (9th Cir. 2002). This is called exhaustion of
24 administrative remedies, which requires that Plaintiff file a timely complaint with the EEOC,
25 thereby allowing the agency time to investigate the charge, and that Plaintiff receive a right to sue
26 letter from the EEOC following their investigation. Id. at 1104. Here, Plaintiff’s complaint does not
27 allege that she has filed a timely administrative charge with the EEOC and has received a right to
28 sue letter.

1 In addition, proper pleading of a Title VII claim generally requires, among other things,
2 allegations that plaintiff: (1) belongs to a protected class; (2) was qualified for the position or benefit
3 she sought; (3) was subject to an adverse employment action; and (4) similarly situated individuals
4 outside the protected class were treated more favorably. See McDonnell Douglas Corp. v. Green,
5 411 U.S. 792 (1973); see, e.g., Chuang v. University of California Davis, 225 F.3d 1115, 1123-24
6 (9th Cir. 2000). Although Plaintiff's complaint appears to adequately allege her membership in one
7 or more protected classes, Plaintiff's complaint does not contain any allegations regarding her
8 qualifications, adverse employment actions (such as the denial of a promotion, termination of
9 employment or receipt of a negative employment evaluation, but not simply shunning or ostracism
10 in the workplace) or individuals outside of her protected class who were treated more favorably than
11 Plaintiff.

12 No later than November 25, 2008, Plaintiff shall file an amended complaint setting out a
13 short and concise statement using the framework described above and at the hearing. Because the
14 Court grants Defendant's Motion to Dismiss, the alternative Motion for a More Definite Statement is
15 denied as moot.

16 **IT IS SO ORDERED.**

17 Dated: November 6, 2008

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20 ELIZABETH D. LAPORTE
21 United States Magistrate Judge
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