

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

AHMED MADRY,
Plaintiff,

No. C 09-1663 SI

v.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS COMPLAINT
WITHOUT PREJUDICE**

INTEROCEAN AMERICAN SHIPPING
CORPORATION, a corporation, BOB LAYCO,
and individual, and DOES 1-10,
Defendants.

Defendants, by and through the United States Department of Justice, move to dismiss the complaint on the ground that this Court lacks subject matter jurisdiction. On June 19, 2009, the Court heard oral argument on the motion. Having considered the arguments of the parties and the papers submitted and for good cause shown, the Court hereby GRANTS defendants' motion.

BACKGROUND

On March 16, 2009, plaintiff Ahmed Madry filed a complaint against defendants Interocean American Shipping Corporation ("Interocean"), Bob Layco, and Does 1-10 ("defendants") in the Superior Court of California, County of Alameda. Plaintiff alleges that during his service as a seaman on the *SS Beaver State*, "Interocean permitted Bob Layco, Madry's supervisor, to engage in a campaign of abuse that included threats, slurs, physical endangerment and injury because of Madry's race and nationality." Compl. ¶ 7. Plaintiff alleges claims for battery, harassment, and employment discrimination under the California Fair Employment and Housing Act ("FEHA"). Plaintiff seeks, *inter*

1 *alia*, damages, past and future income and benefits. On April 15, 2009, defendant Interocean removed
2 this action to this Court pursuant to 28 U.S.C. § 1441.

3 Defendants, by and through the United States Department of Justice, move to dismiss the
4 complaint on the ground that this Court lacks subject matter jurisdiction. Plaintiff did not name the
5 United States as defendant. However, defendants have submitted evidence showing that the *SS Beaver*
6 *State* was owned by the United States through the Maritime Administration (“MARAD”) under a
7 General Agency Agreement by the United States’ General Agent, Interocean. *See* Declaration of Otto
8 A. Strassburg, ¶ 1; Declaration of Eric Kaufman-Cohen Ex. A. Defendants contend that as a result of
9 the General Agency Agreement, plaintiff’s claims fall under the purview of the Clarification Act, 50
10 U.S.C. Appx. § 1291(a), and the Suits in Admiralty Act, 46 U.S.C. §§ 30901, *et seq.* (“SIAA”), and thus
11 that plaintiff’s remedy lies solely and exclusively against the United States. Furthermore, defendants
12 contend that the complaint cannot be amended to name the United States as a proper party because
13 plaintiff has not exhausted his administrative remedies as required by the Clarification Act and the
14 SIAA.

16 LEGAL STANDARD

17 Federal Rule of Civil Procedure 12(b)(1) allows a party to challenge a federal court’s jurisdiction
18 over the subject matter of the complaint. *See* Fed. R. Civ. Pro. 12(b)(1). As the party invoking the
19 jurisdiction of the federal court, the plaintiff bears the burden of establishing that the court has the
20 requisite subject matter jurisdiction to grant the relief requested. *See Kokkonen v. Guardian Life Ins.*
21 *Co. of America*, 511 U.S. 375, 377 (1994) (citation omitted). A complaint will be dismissed if, looking
22 at the complaint as a whole, it appears to lack federal jurisdiction either “facially” or “factually.”
23 *Thornhill Pub’g Co., Inc. v. General Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). When the
24 complaint is challenged for lack of subject matter jurisdiction on its face, all material allegations in the
25 complaint will be taken as true and construed in the light most favorable to the plaintiff. *NL Indus. v.*
26 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

27 In deciding a Rule 12(b)(1) motion which mounts a factual attack on jurisdiction, “no
28 presumption of truthfulness attaches to plaintiff’s allegations, and the existence of disputed material

1 facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.
2 Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist.” *Mortensen v.*
3 *First Fed. Savings & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977).

4 5 DISCUSSION

6 Defendants contend that this Court lacks subject matter jurisdiction because (1) plaintiff’s
7 exclusive remedy lies solely against the United States, which was not a named party; and (2) plaintiff
8 has failed to comply with the mandatory administrative prerequisites to suit, which cannot be cured by
9 amending the complaint to add the United States as the proper party. The Court will address each
10 argument in turn.

11 12 I. Plaintiff’s Exclusive Remedy

13 Defendants contend that because Interocean and Mr. Layco were acting as agents of the United
14 States pursuant to 47 C.F.R. Part 315.2 and the SIAA, plaintiff’s exclusive remedy lies against the
15 United States and not defendants. According to defendants, “under the SIAA, suits arising from conduct
16 of agents of the United States, such as Interocean and Mr. Layko, may only be maintained against the
17 United States directly, and not its agent or employee.”

18 Plaintiff contends that the Clarification Act is inapplicable to his claims because Congress did
19 not intend for the Act to immunize employers who violate an employee’s civil rights. Plaintiff notes
20 that the Clarification Act, which was passed during World War II, predates the Civil Rights Act of 1964
21 and that Congress did not intend to preempt state and federal employment discrimination claims.¹
22 Plaintiff does not cite any authority for this contention.

23 The Court finds plaintiff’s reasoning unavailing. Defendant has submitted uncontroverted
24 evidence that the *SS Beaver State* is owned by MARAD and is a public vessel of the United States.
25 Strassburg Decl. ¶ 1; Kaufman-Cohen Decl. Ex. A. As a result, Interocean is a General Agent of the
26 United States and its employees, such as Mr. Layco, are agents of the United States. *See* 46 C.F.R. Part

27
28 ¹ Although plaintiff’s opposition repeatedly references Title VII of the Civil Rights Act, plaintiff
does not allege any claims under Title VII.

1 315.3. Because the ship was owned and operated by the United States, plaintiff’s remedy regarding
2 these injuries is governed by the SIAA, 46 U.S.C. § 30904 , which is incorporated into the Clarification
3 Act, 50 U.S.C. App. § 1291. *See Smith v. United States*, 873 F.2d 218 (9th Cir. 1989). Furthermore,
4 the kinds of claims alleged by plaintiff are governed by the SIAA. *See, e.g., Kasprick v. United States*,
5 87 F.3d 462, 465 (11th Cir. 1996) (“... seaman’s claims arising from employment aboard vessels owned
6 by the United States are governed by the Clarification Act, and enforced pursuant to the terms of the
7 Suits in Admiralty Act.”).

8 Because of the applicability of the Clarification Act, plaintiff’s action must be enforced pursuant
9 to the requirements of the SIAA, which prohibits suits against any “officer, employee, or agent of the
10 United States or federally-owned corporation whose act or omission gave rise to the claim.” 46 U.S.C.
11 § 30904 (2006). As agents of the United States through the General Agency Agreement, Interocean
12 and Mr. Layco are improper defendants as a matter of law, and plaintiff’s exclusive remedy is against
13 the United States. *See Dearborn v. Mar Ship Operations, Inc.*, 113 F.3d 995, 996 (9th Cir. 1997)
14 (holding that the exclusivity provisions of the SIAA mandate that an action in admiralty be brought
15 solely against the United States).

16 Even if the Clarification Act did not apply to plaintiff’s claims, the United States’ ownership of
17 the *SS Beaver State* under a General Agency Agreement would bring the complaint under the Public
18 Vessels Act, 46 U.S.C. §§ 31101-13 (“PVA”), which also incorporates the SIAA and its exclusivity
19 requirement. *See Cosmopolitan Shipping Co., Inc. v. McAllister*, 337 U.S. 783; *Dearborn*, 113 F.3d at
20 996.

21
22 **II. Amending the Complaint to Include the United States as a Proper Party**

23 Defendants also argue that the jurisdictional defect cannot be cured by amending the complaint
24 to add the United States as the proper party. Defendants contend that plaintiff failed to file an
25 administrative claim with MARAD, which the SIAA requires as a prerequisite to filing suit against the
26 United States in federal court.

27 Where the United States has consented to be sued, the terms of its consent define the court’s
28 jurisdiction. *United States v. Sherwood*, 312 U.S. 584 (1941). Congress has provided a limited

1 opportunity to recover damages from the United States by allowing for a waiver of the nation's
2 sovereign immunity in the SIAA and the Clarification Act. *Smith*, 873 F.2d at 219. However, Congress
3 has restricted this waiver in two ways. *Id.* at 220. First, under the SIAA, a plaintiff is required to bring
4 suit within a two-year statute of limitations. *See* 46 U.S.C. § 3095 (2006). Second, under the
5 Clarification Act, a plaintiff must exhaust administrative remedies before filing suit in court. *See* 50
6 U.S.C. App. § 1291(a).


7 Plaintiff does not directly address the Clarification Act's administrative requirement, and instead
8 continues to assert that the Act does not preempt claims under the Fair Employment and Housing Act
9 ("FEHA"). Relatedly, plaintiff contends that he has exhausted his administrative remedies by filing a
10 complaint with the Department of Fair Housing and Employment. However, plaintiff has not exhausted
11 his claims with MARAD as required by the Clarification Act. *See Smith*, 873 F.2d at 222. The Ninth
12 Circuit has held that failure to abide by the above-cited regulations is a jurisdictional bar to suit. *Id.* at
13 221. Because plaintiff has not filed the necessary administrative claim with MARAD, any amendment
14 would be futile.

15
16 **CONCLUSION**

17 For the foregoing reasons and for good cause shown, the Court GRANTS defendants' motion
18 to dismiss plaintiff's complaint without prejudice. [Docket No. 4] If plaintiff wishes to pursue a lawsuit
19 against the United States, he must first comply with the administrative prerequisites mandated by the
20 Clarification Act and the SIAA. The Court notes that at oral argument, plaintiff's counsel stated that
21 there is still time for plaintiff to comply with these requirements.

22
23 **IT IS SO ORDERED.**

24
25 Dated: June 19, 2009

26 
27 _____
28 SUSAN ILLSTON
United States District Judge