

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

FORT LAUDERDALE DIVISION

Case No. 09-CV-60761-MARRA

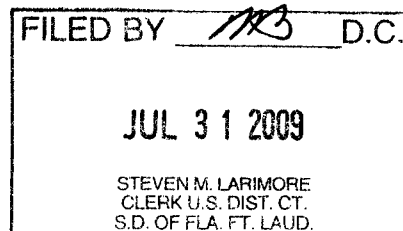
EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

MAN MAR, INC.,

Defendant.



MOTION TO DISMISS

COMES NOW the Defendant, MAN MAR, INC. (MAN MAR) by and through the undersigned counsel and respectfully moves this Honorable Court to dismiss the underlying action and in support thereof states as follows:

SUBJECT MATTER JURISDICTION

1. Plaintiff, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) claim must be dismissed pursuant to FRCP 12(b)(1) as MAN MAR does not meet the jurisdictional requirement of twenty employees as required under 29 U.S.C.A Sec. 621 et seq., Age Discrimination in Employment Act (ADEA).

WHEREFORE, for the reasons cited herein, Defendant, MAN MAR, INC. respectfully demands this Honorable Court dismiss the claims as presented by Plaintiff, EEOC and for any further relief deemed just.

FAILURE TO STATE A CAUSE OF ACTION

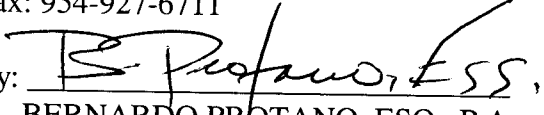
2. Plaintiff, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC) fails to state a cause of action under ADEA for which relief can be granted therefore the action must be dismissed under FRCP 12(b)(6).
3. EEOC fails to adequately enumerate, elementize or otherwise present a claim to which MAN MAR is able to address due to EEOC'S lack of presentation of facts, circumstances or parties which may be addressed by MAN MAR; the factual allegations as presented by EEOC are insufficient to raise a right to relief.
4. EEOC has failed to establish a *prima facie* case for discrimination based on its failure to plead with specificity, without revealing any potential Claimants other than **EDITH CRUSE**, and even in the case of **EDITH CRUSE**, EEOC fails to state whether the alleged affected group are within the age range specified for protection under ADEA, whether there was any discharge of the alleged protected persons, as there are no identities revealed it is impossible to know whether any of the alleged protected group were qualified to fulfill the job duties for which the unknown Claimants are claiming, EEOC further fails to allege that there has been any replacement of **EDITH CRUSE** or any other of the unknown Claimants for their unknown positions and or whether any alleged replacement personnel were outside of the alleged protected group.
5. EEOC has failed to meet the burden of proof necessary to demand and be awarded liquidated damages having failed to properly plead, allege or prove the requisite intent of MAN MAR.

WHEREFORE, for the reasons cited herein, Defendant, MAN MAR, INC. respectfully demands this Honorable Court dismiss the claims as presented by Plaintiff, EEOC

and for any further relief deemed just.

DATED this 29th day of July, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 29, 2009 a true and correct copy of the foregoing Defendant, MAN MAR, INC.'s Motion to Dismiss was sent via regular mail to AARRIN GOLSON, 2 South Biscayne Boulevard, Suite 2700, Miami, Florida 33131, and fax (305)808-1835.


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