

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

12 ISAAC AVENDANO and ROLAND DUENAS,) 3:13-cv-00168-HDM-VPC
13 Plaintiffs,)
14 vs.) ORDER
15 SECURITY CONSULTANTS GROUP, INC.,)
et al.,)
16 Defendants.)
17)

18 Before the court is a motion to dismiss pursuant to Federal
19 Rule of Civil Procedure 12(b) (6) (#62), filed by defendants
20 Security Consultants Group, Inc. ("SCG"), Paragon Systems, Inc.
21 ("Paragon"), and Securitas Security Services USA, Inc.
22 ("Securitas"). The plaintiffs have opposed (#68), and the
23 defendants have replied (#71).

24 The plaintiffs, who were employees of SCG (Compl. ¶¶ 12-13),
25 assert in their complaint eleven different claims for relief
26 against defendants SCG, Paragon, and Securitas. These include
27 multiple Title VII claims, a claim under § 1981, claims under NRS
28 §§ 613.330 and 613.340, a breach of contract claim under

1 NLRA § 301, and a claim of "tortious interference with prospective
2 business relationship / economic advantage." (See Compl. ¶¶ 112-
3 197, 204-212.) Plaintiffs also assert one claim for relief under
4 NLRA § 301 against defendants United Government Security Officers
5 of America, International Union ("UGSOA International") and United
6 Government Security Officers of America, Local 283 ("UGSOA Local
7 238"). (See Compl. ¶¶ 198-203.) Defendants UGSOA International
8 and UGSOA Local 238 are not parties to the motion (#62) presently
9 before the court.

10 **Standard**

11 In considering a motion to dismiss under Rule 12(b)(6), the
12 court must accept as true all material allegations in the complaint
13 as well as all reasonable inferences that may be drawn from such
14 allegations. *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1150 n.2 (9th Cir.
15 2000). The allegations of the complaint also must be construed in
16 the light most favorable to the nonmoving party. *Shwarz v. United*
17 *States*, 234 F.3d 428, 435 (9th Cir. 2000).

18 "Under the notice pleading standard of the Federal Rules,
19 plaintiffs are only required to give a 'short and plain statement'
20 of their claims in the complaint." *Paulsen v. CNF, Inc.*, 559 F.3d
21 1061, 1071 (9th Cir. 2009) (quoting *Diaz v. Int'l Longshore &*
22 *Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007)).
23 While this rule "does not require 'detailed factual allegations,' . . . it demands more than an unadorned, the-defendant-unlawfully-
24 harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
25 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
26 A pleading is insufficient if it offers only labels and
27 conclusions, a formulaic recitation of the elements of a cause of
28

1 action, or "naked assertions devoid of further factual
2 enhancement." *Id.* (internal punctuation omitted). Thus, a
3 complaint "must contain sufficient factual matter . . . to state a
4 claim to relief that is plausible on its face." *Id.* The
5 plausibility standard demands "more than a sheer possibility that a
6 defendant has acted unlawfully." *Id.*

7 **Procedural History**

8 Defendants SCG, Paragon, and Securitas previously filed a
9 Motion to Dismiss pursuant to Federal Rule of Civil Procedure
10 12(b) (6), or in the alternative a motion for a more definite
11 statement pursuant to Federal Rule of Civil Procedure 12(e) (#17).
12 The court denied the motion to dismiss without prejudice and
13 granted the motion for a more definite statement, ordering
14 plaintiffs to file an amended complaint "that clearly identifies
15 the alleged conduct engaged in by defendants Paragon and Securitas
16 that forms the basis for their liability under the plaintiffs'
17 claims." (#51 at 6.)

18 Plaintiffs filed their first amended complaint on February 14,
19 2014 (#58). Defendants SCG, Paragon, and Securitas subsequently
20 filed their renewed motion to dismiss pursuant to Federal Rule of
21 Civil Procedure 12(b) (6) as to Defendant Securitas only.

22 **Analysis**

23 Defendants SCG, Paragon, and Securitas jointly move to dismiss
24 all claims against Securitas. The defendants state that at the
25 time of the plaintiffs' alleged injuries, the plaintiffs were
26 employed by SCG, not by Securitas. (#62 at 3.) Additionally,
27 defendants assert plaintiffs "have failed to make any legally-
28 significant allegations against Securitas USA to differentiate them

1 from Plaintiffs' employer SCG." *Id.*

2 Plaintiffs aver they "are not and have never claimed any
3 theory of liability based on a parent/subsidiary or piercing the
4 corporate veil or even . . . an indirect employer theory." (#68 at
5 2-3). Plaintiffs instead assert SCG, Paragon, and Securitas "have
6 acted with such interrelation of operations that they are, for the
7 purpose of liability to their employees . . . operating as one and
8 the same consolidated entity since April 2011. Plaintiff's [sic]
9 Amended Complaint clearly alleges that the Company Defendants are
10 'Joint Employers.'" (*Id.* at 3).

11 Plaintiffs attempt to apply an integrated enterprise test to
12 demonstrate defendants are joint employers. This test "does not
13 determine joint liability as the parties suggest, but instead
14 determines whether a defendant *can meet the statutory criteria of*
15 an 'employer' for Title VII applicability." *Anderson v. Pacific*
16 *Maritime Association*, 336 F.3d 924, 928 (9th Cir. 2003).

17 The correct standard is the joint employment standard, which
18 is made up of various factors, such as:

19 (A) The nature and degree of control of the workers;
20 (B) The degree of supervision, direct or indirect, of
21 the work; (C) The power to determine the pay rates or
22 the methods of payment of the workers; (D) The right,
directly or indirectly to hire, fire, or modify the
employment conditions of the workers; [and]
23 (E) Preparation of payroll and payment of wages.

24 *E.E.O.C. v. Pacific Maritime Ass'n*, 351 F.3d 1270, 1275 (9th
25 Cir. 2003) (alteration in original). An alternative phrasing of
26 the standard explains the employer is "the person, or group of
27 persons, who owns and manages the enterprise. The employer can
28 hire and fire employees, can assign tasks to employees and
supervise their performance, and can decide how the profits and

1 losses of the business are to be distributed." *Clackamas*
2 *Gastroenterology Assocs. V. Wells*, 538 U.S. 440, 450, 123 S.Ct.
3 1673, 1680 (2003).

4 ¶ 12 of the amended complaint reads:

5 In its capacity as the Plaintiffs' employer, since on
6 our [sic] about April, 2011, Securitas maintained
7 employee records on the Plaintiffs, tracked their hours
8 of work and maintained payroll records, provided them
9 with a vacation plan, provided them with insurance
10 benefits, maintained a Securitas employee number form
11 [sic] them, coordinated labor relations issues and
responses to unfair labor practice charges pertaining
to the Plaintiffs, handled their employment claims,
coordinated and prepared responses to Plaintiffs [sic]
EEOC charges, maintained employment records and
performed other employment related functions.

12 Amended Compl. ¶ 12. Additionally, plaintiffs allege inter-
13 relation of operations including common financial control. See
14 Amended Compl. ¶ 17.

15 The court must accept the plaintiffs' material allegations as
16 true (*LSO*, 205 F.3d at 1150 n.2) and construe them in the light
17 most favorable to the plaintiffs (*Shwarz v. United States*, 234 F.3d
18 at 435). At this stage, the averments in the amended complaint are
19 sufficient to allow defendant Securitas to prepare a response.
20 Plaintiffs aver common financial control, that defendant Securitas
21 coordinated the preparation of a response to plaintiffs' EEOC
22 charges, and that defendant Securitas controlled Plaintiffs'
23 benefits. Under the joint employment standard enumerated in
24 *E.E.O.C. v. Pacific Maritime Ass'n*, and accepting the material
25 allegations of the amended complaint as true, plaintiffs have
26 stated a claim that entitles them to relief.

27 Defendant Securitas may renew its assertion that it is not a
28 joint employer at the summary judgment stage or at trial, when the

1 court need not construe the material allegations of the amended
2 complaint in the light most favorable to plaintiff.¹

3 The motion of defendants Security Consultants Group, Inc.,
4 Paragon Systems, Inc., and Securitas Security Services USA, Inc. to
5 dismiss defendant Securitas is **DENIED**.

6 **IT IS SO ORDERED.**

7 DATED: This 15th day of September, 2014.

8 
9

10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ¹ The issue of joint employment is routinely deferred until the parties are
28 able to conduct discovery. See e.g., *Courtland v. GCEP-Surprise, LLC*, 119 Fair
Empl.Prac.Cas. (BNA) 806 (2013); *Garcia v. Courtesy Ford, Inc.*, 2007 WL 1192681
(2007); *Ford-Torres v. Cascade Valley Telecom, Inc.*, 374 Fed.Appx. 698 (2010).