

court as to the denial of the Rule 12(b)(6) motion. A motion under Rule 12(b)(6) tests the formal sufficiency of the plaintiffs' statement of their claim for relief, and cannot be used to resolve factual issues or the merits of the case. Dismissal under Rule 12(b)(6) is appropriate only if plaintiffs have not provided fair notice of their claims. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Generally, motions to dismiss for failure to state a claim are viewed with disfavor. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). It is within the power of a court to require a party to produce evidence rather than lengthy, convoluted, and sometimes misleading arguments, before deciding that judgment should be granted. And, in this case, if the facts are as clear as defendants claim, a motion for summary judgment should accomplish the "just, speedy, and inexpensive determination" of this action. *See Fed. R. Civ. P. 1*. However, the court does not agree to the finding that discovery is necessary before proceeding to a motion for summary judgment. That decision will depend on the facts presented and the issues raised in such a motion.

It is, therefore, **ORDERED** that Defendants' Motion to Dismiss First Amended Complaint [Doc. #13] is **DENIED**.

So **ORDERED** and **SIGNED** this **22** day of **August, 2013**.



Ron Clark, United States District Judge