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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MINUTE ORDER

Case No.: CV-02-06937 CAS (JTLx) November 10, 2003

Title: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. UNICOM  
ELECTRIC, INC., et al.

PRESIDING: HONORABLE CHRISTINA A. SNYDER, U.S. DISTRICT JUDGE

Maynor Galvez,  
Deputy Clerk

LOURA ELIAS ✓  
Court Reporter

PLAINTIFF COUNSEL PRESENT:

DEFENDANT COUNSEL PRESENT:

SUE J. NOH ✓

STUART L. LEVITON ✓  
ROBERT A. LEVINSON ✓

PROCEEDINGS: DEFENDANT'S MOTION TO PRECLUDE PLAINTIFF EEOC  
FROM OBTAINING INDIVIDUAL SPECIFIC RELIEF ON  
BEHALF OF ANY INDIVIDUAL  
(filed October 20, 2003)

I. INTRODUCTION

This case arises from alleged employment discrimination based on gender, race and national origin. The Equal Employment Opportunity Commission ("the EEOC") brought suit pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq., on behalf of employees Marie Younger, Marc Sorko-Ram, Adriana Preciado and a class of similarly situated employees.

At a scheduling conference on January 13, 2003, the Court set August 1, 2003, as the date by which the EEOC was required to disclose the identity of all class members on whose behalf it is proceeding.<sup>1</sup> The EEOC disclosed all of the class members to

<sup>1</sup> At the January 13, 2003 scheduling conference, the Court stated:

August 1<sup>st</sup> would be acceptable. So by August 1, 2003 the EEOC must disclose in writing to the defendants and file.

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defendant Unicom Electric, Inc. ("Unicom") on August 4, 2003. Declaration of Elizabeth Esparza-Cervantes in Support of EEOC's Opposition, Exhibit 143. Those disclosures were filed with the Court on October 9, 2003. Declaration of Stuart L. Leviton, Exhibit G. Unicom filed the instant motion to preclude the EEOC from obtaining individual specific relief on behalf of any individual on October 20, 2003.

## II. DISCUSSION

Federal Rule of Civil Procedure 37(b)(2) provides that if a party "fails to obey an order to provide or permit discovery... the court in which the action is pending may make such orders in regard to the failure as are just..." The Federal Rules of Civil Procedure further provide that the failure to disclose required information may be subject to sanctions unless the failure to disclose is substantially justified or harmless. Fed. R. Civ. Pro. 37(c)(1).

Unicom argues that the EEOC should be precluded from obtaining individual specific relief on behalf of any individual due to the EEOC's failure to comply with the deadline to disclose all class members on or before August 1, 2003. Defendant's Motion ("Mot.") at 6-7. Unicom further argues that the EEOC has not yet fully complied with the Court's deadline because its August 4, 2003 disclosure and October 9, 2003 filing with the Court included a reservation of rights by the EEOC to disclose other class members if warranted by newly discovered evidence.<sup>2</sup> Id. at 7.

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with the Court a copy - a document which contains the identity of the claimants upon which the plaintiff will constitute the class for whom it will proceed.

<sup>2</sup> The August 4, 2003 disclosure made to Unicom provided: "The EEOC will seasonably supplement as it discovers additional class members." Declaration of Elizabeth Esparza-Cervantes, Exhibit 143. Both the August 4, 2003 and the October 9, 2003 disclosures provided:

Plaintiff expressly reserves the right to rely on, at any time, including but not limited to trial, subsequently discovered information that might be contrary to its disclosure herein where such disclosure is the product of error, oversight, or inadvertence.

Id.; Declaration of Stuart L. Leviton, Exhibit G.

The EEOC responds that its failure to meet the August 1, 2003 disclosure deadline by three days was an inadvertent error which has not harmed Unicom. EEOC's Opposition ("Opp.") at 1. Counsel for the EEOC asserts that she believed the disclosure deadline to be August 2, 2003, which was a Saturday. Declaration of Elizabeth Esparza-Cervantes ¶ 3. Counsel asserts that she therefore believed that disclosure on the following Monday, August 4, 2003, would still be timely. Id. ¶ 5. Counsel further asserts that the EEOC did not realize its error in not filing the disclosure with the Court until Unicom provided it with a copy of the transcript of the January 13, 2003 scheduling conference on October 2, 2003. Id. ¶ 6.

The EEOC argues that the EEOC's reservation of the right to modify or supplement its disclosures of class members does not harm Unicom. Opp. at 1. The EEOC further argues:

As the federal agency mandated by Congress to enforce the federal anti-discrimination laws, the EEOC reserved its right to supplement or modify the class member disclosure to protect the public interest in case an extreme and/or unexpected circumstance were to arise where the EEOC would specifically seek leave of this Court to add a class member as an exception to the Court's Scheduling Order. Despite the caveat in the EEOC's disclosure, the EEOC hereby represents to the Court that the list of class members provided to Defendant on August 4, 2003 is the entire class on whose behalf the EEOC seeks relief through this litigation.

Id.

The Court finds that the EEOC's failure to disclose class members on August 1, 2003, is harmless. See Fed. R. Civ. Pro. 37(c)(1). Unicom has not demonstrated that it has been prejudiced by the delay. Therefore, the Court finds that the sanctions that it requests are not appropriate. However, should Unicom demonstrate good cause, the Court will grant it additional time in which to complete discovery regarding the newly disclosed class members.

### III. CONCLUSION

For the foregoing reasons, defendant's motion to preclude the EEOC from obtaining individual specific relief on behalf of any individual is DENIED.

IT IS SO ORDERED.