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MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

UNITED STATES EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION, et al.,

Plaintiffs,

-vs-

Case No. 8:03-cv-568-T-24MAP

CHECKERS DRIVE-IN RESTAURANTS, INC.,

Defendant.

\_\_\_\_\_ /

**ORDER**

This cause comes before the Court for **consideration** of Defendant's Motion to Dismiss the Complaint in Intervention of Stephanie P. Credit (Doc. No. 15) and Motion to Dismiss the Complaint in Intervention of Inelia Pino-King (Doc. No. 22). Plaintiff Stephanie Credit filed a Response to Defendant's Motion to Dismiss **the** Complaint in Intervention of Stephanie P. Credit (Doc. No. 16). Plaintiff Inelia Pino-King **filed a Response** to Defendant's Motion to Dismiss the Complaint in Intervention of Inelia Pino-King (Doc. No. 23).

Defendant moves this Court to **dismiss the** intervening Plaintiffs' Title VII claims as time-barred. In the event the EEOC chooses **to file** suit under Title VII as in the case at bar, a charging party may not bring a lawsuit to **redress the** alleged discrimination. However, a charging party has an absolute right to **intervene in the** EEOC's suit. See 42 U.S.C. § 2000e-5(f)(1). Defendant argues that although **Plaintiffs** must intervene in this action brought by the EEOC and may not bring their own lawsuits, **their** Title VII claims should be dismissed because the underlying EEOC action is invalid as a **matter** of law. Specifically, Defendant contends that

the EEOC's "Notice of Revocation" of the **Right to Sue** Notice was ineffective due to the fact that it was not authorized by any statute or **regulation** governing the EEOC.

Defendant's motions to dismiss are **properly** considered as motions for summary judgment because they require the Court to **consider** affidavits and other documents outside of the four corners of the complaint. See Garcia v. Copenhagen, Bell & Assocs., M.D.'s, P.A., 104 F.3d 1256, 1266 n.11 (11th Cir. 1997). **Although** the Court would normally give ten days notice to all the parties that it was converting the **motions** to dismiss into motions for summary judgment, the Court is foregoing the notice **because** it is ultimately finding in favor of the intervening Plaintiffs, and Defendant was **aware** that the Court would consider matters outside the record. See id.; Defendant's Motion to **Dismiss** (Doc. No. 22 at p.5 n.1).

The Court finds Defendant's contention **that** the Title VII claims should be dismissed based on the EEOC's allegedly invalid **Notice of Revocation** to be meritless. "Neither statutory nor regulatory language prevents the EEOC's **from** correcting a clerical error." Puscar v. Hale Prods., Inc., No. Civ. A. 96-CV-8442, 1997 **WL** 570914, at \*2 n.3 (E.D. Pa. Sept. 5, 1997). In addition, this Court will not visit the effects **of the** EEOC's allegedly erroneous practice on the intervening Plaintiffs. See, e.g., Zambuto v. American Tel. & Tel. Co., 544 F.2d 1333, 1336 (5th Cir. 1977).<sup>1</sup>

Defendant has not cited any authority **which** specifically holds that a notice of intent to reconsider and actual reconsideration is **required** when the EEOC finds reasonable cause to believe that violations of Title VII have **occurred**, inadvertently sends a Notice of Right to Sue,

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<sup>1</sup>The case law of the Fifth Circuit **prior** to September 30, 1981 has been adopted as precedent in this judicial circuit. Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir. 1981) (en banc).

then revokes the Notice of Right to Sue to **pursue** the litigation itself. The case law cited by Defendant is not on point and inapplicable to **the facts** of this case. Further, assuming but not deciding that EEOC failed to abide by its **procedures**, this would be a sufficient reason to equitably toll the 90-day period Defendant **claims had** elapsed prior to the intervening Plaintiff's filing their intervening complaints. See Puscar, 1997 WL 570914, at \*2. Accordingly, the Court finds that the intervening Plaintiffs' Title VII **claims** are not time barred, and the Defendant's motions to dismiss should be denied.

Accordingly, it is **ORDERED AND ADJUDGED** that:

- (1) Defendant's Motion to Dismiss **the** Complaint in Intervention of Stephanie P. Credit (Doc. No. 15) is **DENIED**.
- (2) Defendant's Motion to Dismiss **the** Complaint in Intervention of Inelia Pino-King (Doc. No. 22) is **DENIED**.

**DONE AND ORDERED** at Tampa, Florida, this 26<sup>th</sup> day of January, 2004.

  
SUSAN C. BUCKLEW  
United States District Judge

Copies to:

Counsel of Record

F I L E C O P Y

Date Printed: 01/26/2004

Notice sent to:

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