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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SANDI DORMAN, PAMELA BRIGGS,
YOLANDA THOMAS, MARY McGAHEE,
BARBARA MITCHELL, AMBROSE DANCY,
TERRY WYATT, ANGELA KIRCUS,
ANGELA HUBBARD, TAMRAH L. HARRIS,
MARVIN BROWN, HENRY DuBOSE,
and RANOLDO BOSTON, individually
and on behalf of all other
persons similarly situated,

Plaintiffs,

vs.

Case No. 99-722-Civ-J-21B

WINN-DIXIE STORES, INC.,
WINN-DIXIE CHARLOTTE, INC.,
WINN-DIXIE RALEIGH, INC., WINN-DIXIE
TEXAS, INC., WINN-DIXIE MIDWEST,
INC., WINN-DIXIE ATLANTA, INC.,
WINN-DIXIE MONTGOMERY, INC. and
WINN-DIXIE LOUISIANA, INC.,

Defendants.

ORDER

This matter is before the Court on the Motion to Intervene of Yolanda Flynn As A Party Plaintiff As a Matter of Right (Doc. #9), filed on August 3, 1999. Both plaintiffs and defendants have filed responses opposing intervention. (Docs. #17, 18).

Yolanda Flynn (Flynn) seeks to intervene as a matter of right as a named plaintiff in this class action litigation. Flynn, a

current employee of defendant Winn-Dixie Stores, Inc. (Winn-Dixie) and a member of the classes certified for settlement purposes in this case, bases her request to intervene on two factors: (1) she "may have been a victim of race and sex discrimination" in 1999 when she was not selected as the permanent produce manager at a Winn-Dixie store in Jacksonville; and (2) she "has knowledge of facts that the proposed packaged settlement may be tainted based upon erroneous documentation concerning Winn-Dixie's Human Resources Development Plan." (Doc. #9, p. 1).

Flynn seeks intervention pursuant to Fed. R. Civ. P. 24(a), which provides for intervention as a matter of right when the application is timely filed and:

. . . (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

To intervene as a matter of right pursuant to Fed. R. Civ. P. 24(a)(2), a movant must establish all of the following four elements:

(1) his application to intervene is timely; (2) he has an interest relating to the property or transaction which is the subject of the action; (3) he is so situated that disposition of the action, as a practical matter, may impede or impair his ability to protect that interest; and (4) his interest is represented inadequately by the existing parties to the suit.

Purcell v. BankAtlantic Financial Corp., 85 F.3d 1508, 1512 (11th Cir. 1996), cert. denied, 519 U.S. 867 (1996) (citing Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989)). Flynn, plaintiffs, and defendants all agree that this is the appropriate standard. "Once a party establishes all the prerequisites to intervention, the district court has no discretion to deny the motion." Purcell v. BankAtlantic Financial Corp., 85 F.3d at 1512 (quoting United States v. Georgia, 19 F.3d 1388, 1393 (11th Cir. 1994)).

As to the first element, the Court finds Flynn's motion to intervene to have been filed in a timely fashion. See Maddow v. Procter & Gamble Co., 107 F.3d 846, 853 (11th Cir. 1997) (holding that whether a motion to intervene is timely is within the district court's discretion). The motion was filed less than three weeks after the filing of the Complaint in this court.

As to the second element, the Court finds that Flynn has a sufficient interest relating to the matters which are the subject of this action. Plaintiffs assume that Flynn's potential claims of racial and sex discrimination satisfy this element (Doc. #17, p. 4), and defendants have adopted this position. (Doc. #18, pp. 1-2).

Both plaintiffs and defendants assert that Flynn does not satisfy the third element because she is not so situated that the

disposition of the action, as a practical matter, may impede or impair her ability to protect her interest, i.e., her claim of racial and sex discrimination against Winn-Dixie. The parties argue that Flynn may simply opt out of the settlement and bring her own suit, thereby fully preserving her rights against Winn-Dixie for its conduct in 1999 in Jacksonville. The Court agrees. The Order of Preliminary Approval of Proposed Consent Decree (Doc. #11) provides a procedure by which Flynn can exclude herself from the classes. (Doc. #11, pp. 12-14). Additionally, to the extent Flynn feels the settlement is inappropriate, she may file objections and appear at the fairness hearing. (Doc. #11, pp. 11-12).

Finally, the parties assert that Flynn has not shown that her interest is inadequately represented in this case. Representation is found to be adequate "if no collusion is shown between the representative and an opposing party, if the representative does not have or represent an interest adverse to the proposed intervenor, and if the representative does not fail in fulfillment of his duty." Clark v. Putnam County, 168 F.3d 458, 461 (11th Cir. 1999); Fed. Savings and Loan Ins. Corp. v. Falls Chase Special Taxing Dist., 983 F.2d 211, 215 (11th Cir. 1993) (citations omitted). Flynn has not met even the minimal burden established by this rule. The only suggestion of inadequate representation is the events concerning "erroneous documentation" submitted to employees


on an after the July 20, 1999 public announcement of the settlement of the litigation. There is no suggestion that plaintiffs' attorneys were involved in those events or that the events suggest inadequate representation.

Accordingly, it is now


ORDERED:

The Motion to Intervene of Yolanda Flynn As a Party Plaintiff As a Matter of Right (Doc. #9), filed on August 3, 1999, is **DENIED**.

DONE AND ORDERED at Jacksonville, Florida, this 10th day of ~~August~~ Sept, 1999.


UNITED STATES MAGISTRATE JUDGE

Copies:

 Hon. Ralph W. Nimmons, Jr.
United States District Court Judge

Counsel of Record