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United States District Court,
S.D. Illinois.

Claudine WILFONG, et al., Plaintiffs,
v.
RENT-A-CENTER, INC., Defendant.

No. 3:00-CV-680-DRH. | March 14, 2001.

Attorneys and Law Firms

Mary Anne Sedey, Jon A. Ray, Attorney at Law, St. Louis, MO, Jerome J. Schlichter, Schlichter, Bogard et al., Swansea, IL, for Plaintiffs.

John D. Smart, Winstead, Sechrest et al., Dallas, TX, Dan C. Dargene, Lisa W. Sorrell, Franklin E. Wright, Michael E. Coles, Michael V. Abcarian, Eric A. Todd, Stinson, Morrison et al., Larry M. Bauer, Kevin J. Lorenz, McMahon, Berger et al., St. Louis, MO, Thomas E. Berry, Jr., John L. Gilbert, Hinshaw & Culbertson, Belleville, IL, for Defendant.

Opinion

ORDER

COHN, Magistrate J.

*1 Before the Court are Plaintiffs' Motion to Compel (Doc. 26), filed February 13, 2001; Defendant's Request to Extend the Deadline for Filing Expert Reports (Doc. 32), filed March 5, 2001; and Defendant's Request for Leave to File It's (sic) Response in Opposition to Plaintiffs' Motion to Compel in Excess of 10 Pages (Doc. 33), filed March 5, 2001.

The Court will grant Defendant's Request for Leave to File It's (sic) Response in Opposition to Plaintiffs' Motion to Compel in Excess of 10 Pages in order that it may consider in full the parties' positions.

This action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* (2000). Plaintiffs are residents of various states and allegedly have all been employed or have applied for employment with defendant, a corporation which operates rent-to-own stores nationwide. Plaintiffs seek to be certified as representatives of a class, alleging that defendant has maintained a pattern and practice of sex discrimination against women employees and women applicants for employment.

Plaintiffs move the Court to Order defendant to respond to Plaintiffs' First Interrogatories and First Request for Production. In support of said Motion, plaintiffs state that defendant filed more than three pages of "General Objections" and objected to each of plaintiffs' twenty interrogatories and seven document requests. Plaintiffs state that defendant's response centers on its claim that the company's human resources functions are "largely decentralized" and that store managers, market managers and regional directors are responsible for personnel decisions. Plaintiffs state that the prerequisites of Fed.R.Civ.P. 23(a) place a demanding burden on Title VII plaintiffs seeking to certify a class. Plaintiffs state that a class plaintiff in a Title VII action can make this showing through statistics which persuasively demonstrate the existence of a pattern of discriminatory treatment and anecdotal evidence. Plaintiffs state that, to the extent that statistics offered by plaintiff at the class certification stage logically support an inference of discrimination, evidence relevant to demonstrating commonality and typicality is intertwined with the merits of the case. Therefore, plaintiffs maintain that they must be allowed to conduct pre-certification discovery on what appear to be merits issues. Plaintiffs state that defendant concedes that it has used and continues to use computerized payroll systems which contain substantial personnel information which is precisely the information which plaintiffs must have in order to make both the statistical and anecdotal showing required by Rule 23(a). Plaintiffs further state that they are entitled to the opportunity to challenge defendant's decentralized decision-making assertion and to analyze

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company-wide data to show that sex-based disparities exist across regions and markets and within individual stores. In their Interrogatories, plaintiffs seek the names of putative class members; information about complaints of sex discrimination made against defendant since July 1, 1998; information about validation of tests administered as part of the hiring or promotion process as well as other policy, practice or procedure in use regarding promotions; identification of managers by name, gender, address and period of incumbency; and information for the time period prior to the August, 1998, acquisition of Rent-A-Center by Renters Choice. Plaintiffs state that discovery is limited to a five-year period.

*2 Defendant responds that the Court established a bifurcated discovery schedule that provided first for discovery on issues related only to class certification, followed by a merits discovery phase after completion of the class certification process. Defendant maintains that the information sought by plaintiffs is outside the permissible realm of class certification issues. Defendant states that it has offered to produce relevant statistical information, but plaintiffs seek access to all employee records from which statistical data could be compiled without any showing that the numbers defendant is willing to produce are deficient or inaccurate. Defendant maintains that plaintiffs are not entitled to the names, addresses and contact information for all of defendant's employees during the pre-certification phase and that plaintiffs' reading of caselaw is expansive, irrelevant or contradictory to the holding of the court. Defendant also states that plaintiffs seek information on unrelated complaints of sex discrimination that may have been lodged against defendant, without geographical limitation and predating the time frame for which complaints are actionable. Defendant maintains plaintiffs' request for the identity of and other information about thousands of defendant's managers relates to the merits of plaintiffs' claims rather than to the issue of class certification. Defendant further states that it has agreed to provide the names of managers who supervised plaintiffs and the names of its senior vice-presidents and other senior managers. Lastly, defendant states that the requests for information about Thorn America's, Inc., prior to the Renters Choice, Inc.'s, acquisition of its stores is outside the relevant time frame and that plaintiffs' discussion of its need for this information distorts the record.

Valid class action certifications must fall within the bounds of Rule 23 of the Federal Rules of Civil Procedure. To begin with, there must be an identifiable "class" before there can be a class certification. Although this requirement is only suggested in the text of Rule 23, it surely is a prerequisite. See Fed.R.Civ.P. 23(a) ("One or more members of a class may sue or be sued..."). Secondly, the purported class representative must be a member of the proposed class. Furthermore, a validly certified class must meet all four of the prerequisites of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. Without satisfying these prerequisites, there can be no class action lawsuit. See *General Tel. Co. v. Falcon*, 457 U.S. 147, 161, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982) (stating that a class action "may only be certified if the trial court is satisfied after rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied").¹ Additionally, any proposed class action must also fit within one of the three types of class actions set out in Rule 23(b). See Fed.R.Civ.P. 23(b).

The requirements relied upon by plaintiffs in bringing their Motion are that there are questions of law or fact common to the class and that the claims or defenses of the representative parties are typical of the claims or defenses of the class. Plaintiffs must provide adequate proof of an aggrieved class to support a finding that plaintiffs can bridge the gap between their individual claims and the putative class claims so as to ensure that the individual and class claims share common questions of law or fact and that the individuals' claims are typical of the class claims. See *Falcon*, 457 U.S. at 157, 102 S.Ct. at 2370. In other words, plaintiffs must demonstrate that their claims are susceptible of class-wide proof. In cases such as this, plaintiffs typically offer a combination of statistical and testimonial evidence. The testimonial proof must identify a statistically significant number of aggrieved persons in the putative class in relation to the size of defendant's relevant work force.

*3 In light of the foregoing, the Court will grant plaintiffs' Motion to Compel. With respect to Interrogatory No. 4, plaintiffs seek to represent a nationwide class of women employees and applicants for employment; therefore, they must be afforded opportunity to obtain names of putative class members and personnel information about members of the class they seek to represent. In order for plaintiffs to offer meaningful statistical proof of a pattern and practice of discrimination and anecdotal evidence from putative class members, plaintiffs are entitled to original data rather than defendant's select compilation of data. Interrogatory No. 20 and Request for Production No. 7 seek information about complaints of sex discrimination made against defendant since July 1, 1998. The information sought is probative of typicality and commonality, evidencing that others have been injured by the pattern of discriminatory conduct alleged by class plaintiffs. Interrogatory Nos. 9 and 15 seek information about tests used to determine eligibility for promotion. In its Determination, the EEOC found "... reasonable cause to believe that Respondent (here, defendant) has discriminated against women in promotions, ..." Plaintiffs' Exhibit 1. Because plaintiffs allege that they were discriminatorily denied promotions or the opportunity to compete for promotion, they are entitled to information regarding the process by which defendant awarded promotions and the tests used to determine eligibility for promotion. In Interrogatory No. 2 and Request No. 3, plaintiffs seek organizational charts which detail defendant's management structure and the identity of individuals who filled management positions with the company from July 1, 1998. Defendant has stated that personnel decisions are made on a decentralized basis. Therefore, defendant's managers are the individuals who can provide information on whether sex was a factor in personnel decisions and to what

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extent discriminatory policies were directed by defendant's top management. Lastly, defendant objects to providing any information for the time period prior to its August, 1998, acquisition of the Rent-A-Center stores. Plaintiffs' Amended Complaint alleges that, when defendant acquired Rent-A-Center, it intentionally engaged in a systematic and company-wide elimination of women employees. Nineteen of the twenty-one named plaintiffs allege that they were discharged or forced out after the acquisition. Because the changes initiated by defendant when it acquired Rent-A-Center are a central issue in plaintiffs' Complaint, plaintiffs must be allowed access to information about store operation prior to the acquisition. Plaintiffs request information on this issue from July 1, 1998, one month prior to the acquisition, which the Court finds to be reasonable. The Court also finds reasonable that plaintiffs' discovery requests are limited to a five-year period.

Accordingly, for the above-stated reasons, IT IS THE ORDER of this COURT that Plaintiffs' Motion to Compel (Doc. 26) be GRANTED. Defendant shall fully respond to outstanding discovery requests within twenty (20) days of the date of this Order. Pending discovery issues having been resolved, Defendant's Request to Extend the Deadline for Filing Expert Reports (Doc. 32) is DENIED as MOOT. Defendant's Request for Leave to File It's (sic) Response in Opposition to Plaintiffs' Motion to Compel in Excess of 10 Pages (Doc. 33) is GRANTED.

***4 IT IS SO ORDERED.**

Footnotes

¹ Defendant states that plaintiffs erroneously rely on *Gilchrist v. Bolger*, 89 F.R.D. 402 (S.D.Ga.1981) and *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982), which defendant states was overruled by the Supreme Court. The Court has reviewed these cases and has determined that it is defendant who errs and should re-check these cites.