

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
and)	
)	
PEARLE PHILLIPS,)	
)	
Proposed Plaintiff-Intervenor,)	
)	
v.)	Civil No. 07-172-MJR-CJP
)	
WALGREEN CO.,)	
)	
Defendant.)	

MOTION TO CONSOLIDATE

Before this Court are two race discrimination cases seeking enforcement of federal civil rights statutes against a single employer, Walgreen Company. The Equal Employment Opportunity Commission moves this Court pursuant to Fed. R. Civ. Proc. 42(a) to consolidate the cases because the factual and legal issues in the cases are virtually identical, there are common plaintiffs in both cases, and consolidation will promote convenience and judicial economy. For these reasons, as explained more fully below, the EEOC urges this Court to exercise its discretion and consolidate the Tucker case (Case No. 05-440-GPM-CJP) and the EEOC case (Case No. 07-172-MJR-CJP) for purposes of discovery and trial.

1. Fed. R. Civ. Proc. 42(a) provides for consolidation of cases involving common questions of law or fact:

When actions involving common questions of law or fact are pending before the court, it may order a joint hearing or trial of any

or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.

The purpose in consolidating cases under this rule is “to promote convenience and judicial economy.” *Midwest Community Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491, 499 (N.D. Ill. 1983) (citing *Johnson v. Manhattan Railway Co.*, 289 U.S. 479, 496-497 (1973)). It is within the Court’s discretionary power to order consolidation if two cases appear to be of like nature and relative to the same question, if a joint trial of them would avoid unnecessary costs and delay, and it is reasonable to try them together. *Id.* at 499-500 (citing *Mutual Life Ins. Co. v. Hillmon*, 145 U.S. 285 (1892)).

2. The Tucker case and the EEOC case involve common questions of both law and fact. In the Tucker case, the Second Amended Complaint alleges that defendant Walgreen Co. “practices nationwide systemic racial discrimination against its African-American management and employees, Staff Pharmacists, and African-Americans seeking to enter the ‘Retail Career Path.’” Exhibit A, Tucker Second Amended Complaint ¶ 23. Specifically, the Tucker plaintiffs allege that Walgreen Co. discriminates against African-Americans in the selection of Assistant Manager / Management Trainees, in the promotion of African-American employees seeking advancement in the Retail and Pharmacy Career Paths, in the promotion of African-Americans seeking advancement into district and corporate management, and in the assignment of African-American management employees and Pharmacists. Exhibit A, Tucker Second Amended Complaint ¶ 23.

3. Similarly, the Complaint filed by the EEOC alleges that defendant Walgreen Co. has engaged in unlawful conduct by “denying promotions to African-American employees who have applied for or have been in the Retail Career Path and the Pharmacy Career Path because of their race” and by “making store assignments to African-American management trainees, managers, and pharmacists because of their race.” Exhibit B, EEOC Complaint ¶ 8. Several of the named plaintiffs in the Tucker case, including Johnny Tucker, submitted charges of discrimination to the EEOC on which the Commission’s allegations are based. *See* Exhibit B, EEOC Complaint ¶ 7. Likewise, the proposed plaintiff-intervenor in the EEOC case, Pearle Phillips, alleges that Walgreen Co. denied her promotions because of her race and that the company gave her store assignments based on her race.
4. With respect to the issues of law, all of the Plaintiffs allege that Walgreen’s actions violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* Exhibit A, Tucker Second Amended Complaint ¶ 2; Exhibit B, EEOC Complaint ¶ 1. The Tucker plaintiffs and proposed plaintiff-intervenor Phillips (in the EEOC case) also allege that Walgreen’s actions violated 42 U.S.C. § 1981. Exhibit A, Tucker Second Amended Complaint ¶ 2.
5. Moreover, consolidation of the Tucker case and the EEOC case will promote convenience and judicial economy. *See Midwest Community Council, Inc.*, 98 F.R.D. at 499. Convenience will be promoted by allowing the parties to engage in one discovery track, preventing the need for duplicate depositions, document requests and written discovery, and to prepare for only one trial. Because of the similarity of their claims and their related factual allegations, the plaintiffs in both

cases expect to rely on much of the same evidence, including statistical analysis, to support their claims.

6. Consolidation will promote judicial economy by placing the cases before one judge, allowing the parties to present legal disputes to the Court in one forum, and allowing the Court to resolve those disputes in one order that is applicable to all parties.
7. Consolidation of the Tucker and EEOC cases will not prejudice the defendant, but will, in fact, benefit the defendant because consolidation will reduce, if not eliminate, the need for duplicative discovery. Although some discovery has already taken place in the Tucker case, that discovery has focused on issues pertaining to class certification under Fed. R. Civ. Proc. 23. Because the EEOC is not subject to the certification requirements of Rule 23, *General Tel. Co. v. EEOC*, 446 U.S. 318, 323 (1980); *In re Bemis Co., Inc.* 279 F.3d 419, 421 (7th Cir. 2002), its discovery will focus on the merits of the case and not class certification issues. Moreover, consolidation will not delay prosecution of the Tucker case because the EEOC case will not go through the lengthy class certification process.
8. Further, for purposes of convenience and judicial economy, the plaintiffs will agree to a joint scheduling order set by the Court. While consolidation does not merge two suits into a single cause, *Midwest Community Council, Inc.*, 98 F.R.D. at 499, placing both cases on a single discovery and trial schedule will allow all the parties and the Court to focus on the same issues at the same time, eliminating duplicative discovery and presentation of legal disputes.

9. Counsel for the EEOC has consulted with counsel for the Tucker plaintiffs and counsel for proposed plaintiff-intervenor Phillips, and neither of those parties objects to the EEOC's motion.

WHEREFORE, because consolidation of the Tucker case (Case No. 05-440-GPM-CJP) and the EEOC case (Case No. 07-172-MJR-CJP) will promote convenience and judicial economy and will not prejudice any party, the Equal Employment Opportunity Commission respectfully requests this Court to enter an Order consolidating all further proceedings in these actions.

Respectfully submitted,

s/ Robert G. Johnson (with consent)

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I certify that on March 12, 2007, I electronically filed the above and foregoing document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following CM/ECF participants:

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