

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MIRNA E. SERRANO, STEFANIE L. MCVAY, AND
LINDA D. ALLEN,

individually and on behalf of
all others similarly situated,

Plaintiffs

vs.

CINTAS CORPORATION,
an Ohio Corporation,

Defendant.

File No. 04-cv-40132

Hon. Paul V. Gadola

Demand For Jury Trial

Class Action

SECOND AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs, through counsel, state the following complaint against Defendant:

NATURE OF CLAIM

1. This is a gender discrimination class action to redress defendant's violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, as amended, (hereafter "Title VII") by engaging in a nationwide policy, pattern or practice of denying "Service Sales Representative" positions to female applicants. Plaintiffs seek declaratory relief, as well as all relief available under Title VII and under § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. This case concerns defendant Cintas' hiring in thousands of "Service Sales Representative" or "SSR" positions nationwide from 1999 to the present. The employees in SSR positions service 25 to 30 customers a day by gathering information on customers' orders; gathering the uniforms, mats and other materials needed to fill orders from a Cintas location; loading the uniforms and other materials in their trucks and driving them to the customer's

location; gathering and bagging soiled uniforms and other materials from employee lockers or other customer areas; replacing the soiled uniforms and other materials with cleaned materials; interacting with customers and obtaining renewals of service contracts or new contracts; and driving soiled uniforms and other materials back to their Cintas location.

3. Plaintiffs raise (a) claims of intentional discrimination under § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), and (b) claims of disparate-impact discrimination under §§ 703(a) and 703(k) of Title VII, 42 U.S.C. §§ 2000e-2(a) and 2000e-2(k), and the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. §§ 1607.1 *et seq.*

JURISDICTION, VENUE, AND PARTIES

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), 2201 and 2202 and § 706 of Title VII, 42 U.S.C. § 2000e-5.

5. Plaintiff Mirna Serrano is an adult woman residing in Canton, Michigan. She applied for employment with defendant in an SSR position on or about June 2, 1999, November 6, 1999, and January 5, 2000. She applied at the Westland and Madison Heights locations. She was qualified for these positions, but was not hired.

6. Plaintiff Linda D. Allen is an adult woman residing in Ferndale, Michigan. She applied at defendant's Madison Heights, Michigan, location, for employment in an SSR position on or about February 20, 2001. She was qualified for this position, but was not hired.

7. Plaintiff Stefanie McVay is an adult woman residing in Romulus, Michigan. She applied at defendant's Westland, Michigan, location, for employment in an SSR position on or about August 18, 2000. She was qualified for this position, but was not hired.

8. Venue within this District is proper. Plaintiffs reside within the Eastern District of Michigan, applied for employment at locations within the Eastern District of Michigan, and would have worked within the Eastern District of Michigan if they had been hired.

9. Defendant is an employer engaged in an industry affecting commerce, within the meaning of Title VII. Its corporate web site, www.cintas.com, states: “Cintas designs, manufactures, and implements corporate identity uniform programs, provides entrance mats, restroom supplies, promotional products, and first aid and safety products for over 500,000 businesses”; that it provides uniforms and other products “for over 500,000 businesses,” and that it “operates 351 facilities in the U.S. and Canada . . . that employ more than 28,000 people.” It reported fiscal 2004 sales of \$2.81 billion, with a net income of \$272.2 million. It is headquartered in Cincinnati, Ohio. At all relevant times, it has had more than 500 employees. It operates at least 17 facilities in the State of Michigan.

ADMINISTRATIVE PROCEEDINGS

10. On or about April 7, 2000, plaintiff Serrano filed a charge with the U.S. Equal Employment Opportunity Commission or “EEOC” alleging that defendant discriminated against her on the basis of her sex, in refusing to hire her for the SSR position. Her charge stated that she had applied at two locations, and continued: “There are no female Drivers at either of their locations.” She was not represented by counsel at the time she filed her charge, and relied on the EEOC to fill out the charge form properly. The EEOC quickly commenced a class investigation of sex discrimination in hiring for the SSR position, sought nationwide information, and placed defendant on notice of a possible nationwide class. While defendant ultimately succeeded in limiting the EEOC investigation to Michigan locations, defendant never provided any information to the EEOC suggesting that its practices at these locations were in any way atypical of its nationwide practices.

11. On July 3, 2002, the EEOC issued its Determination, stating in pertinent part:

Evidence gathered during the course of the investigation reveals that there is reasonable cause to believe that the Charging Party’s allegations are true. Furthermore, like and related and

growing out of this investigation, there is reasonable cause to believe that the Respondent has discriminated against females as a class by failing to hire them as Route Sales Drivers/Services Sales Representatives in violation of Title VII of the Civil Rights Act of 1964, as amended.

The Determination did not state that it was limited to Michigan facilities.

12. At the time of its Determination, the EEOC listed over a hundred female applicants for SSR positions that it found entitled to relief at just two of defendant's Michigan facilities. The EEOC unsuccessfully sought to conciliate with defendant on a classwide basis within the State of Michigan, and unsuccessfully sought relief for all female applicants for SSR positions adversely affected by defendant's practices within the State of Michigan.

13. The original Complaint in this action was filed on May 10, 2004. The EEOC issued a Notice of Right to Sue to plaintiff Serrano on May 26, 2004, and she received it in due course.

STATEMENT OF THE CASE

14. Defendant did not hire the named plaintiffs and other female applicants for SSR positions nationwide from June 12, 1999, through the present, because of their sex.

15. Defendant has followed a nationwide practice of delegating broad subjective discretion to its managers at its locations nationwide, allowing them to determine the standards they will or will not follow in hiring applicants for SSR positions. The qualifications defendant posts on its web site are predominantly subjective, with only minimal objective requirements prior to an offer of employment. The only other factors are either subjective or stated as a "plus" rather than a requirement. The listed qualifications are:

- Previous customer service experience, preferably in an industrial or service industry, a plus
- Previous experience working in a sales-related role, a plus

- Excellent interpersonal skills
- The ability to multi-task and set/achieve goals
- Strong motivation to succeed
- A strong work-ethic
- Attention to detail
- Ability to accurately follow instructions
- A positive, team-player attitude
- The ability to stand for an extended amount of time over the course of the day
- The ability to handle physical requirements, including but not limited to, repeated bending, stretching, twisting, and lifting up to a minimum of 40 lbs.
- A valid driver's license and a safe driving record (please note that candidates who receive an offer of employment will be subject to a MVR check)
- A high school diploma, a plus

The qualifications listed appear to be virtually identical for SSR positions nationwide.

Defendant's system is to give virtually untrammelled discretion to location managers and officials.

16. The SSR position is a non-traditional job for women. The managers and officials at its locations who are involved in hiring and exercising this broad, subjective discretion are predominantly male. Under the design of this system, gender stereotyping was foreseeable and did in fact occur. Defendant knew or should have known that its managers were using their authority to discriminate against female applicants because of their sex, and has failed or refused to take effective action to stop its local managers from discriminating on the basis of sex in filling SSR positions. It is therefore liable for its managers' intentional discrimination against

female applicants for SSR positions.

17. Defendant's managers at locations hired, and continue to hire, male applicants for SSR positions with qualifications equal to, or worse than, the qualifications of female applicants whom they did not hire for such positions.

18. Defendant's managers at locations failed to hire, and continue to fail to hire, female applicants with qualifications for SSR positions equal to, or better than, the qualifications of male applicants whom they hired for such positions.

19. Defendant's officials at its locations employing SSRs have at all relevant times discriminated against female applicants because of their sex.

20. On or about April 20, 2005, defendant produced to plaintiffs computer-readable Applicant Flow Logs for Michigan locations. These logs showed that women were 15% of the sex-identified applicants for SSR positions in Michigan locations in 2004 and the first part of 2005.

21. On or about April 20, 2005, defendant transmitted to plaintiffs a computer-readable SSR Payroll data base containing information about paychecks issued to male and female SSRs between June 1, 1999, and September 20, 2002. The hires reflected in this data base almost all occurred prior to the July 3, 2002, EEOC Determination. On information and belief, defendant's managers and officials at its various locations would likely have taken some time to learn of the EEOC Determination, and this would likely have occurred by September 20, 2002, but perhaps not long before that date. From June 5, 1999, through September 20, 2002, the data base shows that defendant hired 627 men, and only 33 women, as SSRs. Women were thus only 5% of the new SSR hires in Michigan during the period prior to the EEOC Determination and its immediate aftermath.

22. Using as the measure of the availability of women for defendant's SSR positions the defendant's figure that women were 15% of the sex-identified applicants for SSR positions in Michigan locations in 2004 and the first part of 2005, there was a shortfall of 66 female hires in Michigan alone in the period prior to the EEOC Determination and its immediate aftermath. The difference between the expected and actual hiring of women in this period was statistically significant at 7.2 standard deviations.

23. Defendant's nationwide practices with respect to the hiring of women as SSRs produced the same results nationally as they did in Michigan. On April 26, 2005, defendant admitted in another case that fewer than 5% of its SSRs nationwide were female.

24. After the EEOC's Determination that there was reasonable cause to believe defendant had discriminated against female applicants because of their sex, defendant more than doubled the proportion of its Michigan SSR hires who were female, although its hiring still fell short of women's level of availability.

25. Defendant's ability to increase the hiring of women sharply in a short period of time, without any intervening change in its hiring system, shows that defendant's failure to hire qualified female applicants in the period from June 1, 1999 through September 20, 2002, was caused only by its own actions.

26. During the administrative investigation of plaintiff Serrano's EEOC charge, defendant failed to provide the EEOC with any nondiscriminatory explanation of its failure to hire plaintiff Serrano, the other named plaintiffs, or any of the other women whose unsuccessful applications it provided to the EEOC, although defendant had a duty to produce such information if it existed, and it would have been strongly in the company's interest to have provided such information. This failure allows the Court to infer that there is no legitimate nondiscriminatory

explanation for these refusals to hire women on the present record.

27. During the administrative investigation of plaintiff Serrano's EEOC charge, defendant failed to provide the EEOC with any nondiscriminatory explanation of the sexual disparities in its hiring decisions, although it would have been strongly in the company's interest to do so if any such nondiscriminatory explanation existed. This failure allows the Court to infer that there is no legitimate nondiscriminatory explanation for these disparities on the present record.

28. During the administrative investigation of plaintiff Serrano's EEOC charge, defendant failed to provide the EEOC with any information showing that defendant's delegation of such broad and uncontrolled subjective discretion to local managers in hiring for SSR positions is job related for the position in question and consistent with business necessity under the standards of § 703(k) of Title VII, 42 U.S.C. § 2000e-2(k), and the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607.1 *et seq.*, although defendant had a duty to provide such information in light of the adverse impact of this practice on female applicants for the SSR position. This failure allows the Court to infer that defendant's delegation of broad and uncontrolled subjective discretion to local managers in hiring for SSR positions is neither job related for the position in question nor consistent with business necessity on the present record.

29. Defendant has failed to validate its delegation of such broad authority to local managers under the standards of the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607.1 *et seq.* It is therefore liable for the disparate impact this practice has caused against female applicants for SSR positions.

30. Defendant is also liable for the disparate treatment discrimination caused by the challenged policy, pattern or practice against female applicants for SSR positions.

CLASS ALLEGATIONS

31. Plaintiffs sue on their own behalf and on behalf of a nationwide class of female applicants for SSR positions who sought such employment on or after June 12, 1999, 300 days before the filing of the EEOC charge herein.

32. The class is so numerous that joinder of all members is impracticable. Defendant has produced in discovery the application forms of hundreds of women who applied unsuccessfully for SSR positions between June 1999 and May 2001 in Michigan alone.

33. There are questions of law and of fact common to the class, including but not limited to the following:

Questions Common to the Disparate-Treatment and Disparate-Impact Claims

a. Did defendant follow a nationwide practice of delegating to its location managers broad subjective discretion in choosing the standards they would or would not use in hiring applicants for SSR positions and in making hiring decisions?

b. Did defendant follow a nationwide practice of failing to prevent its local managers from using their broad subjective discretion to discriminate against female applicants for SSR positions because of their sex?

c. Did defendant's managers at locations hire male applicants for SSR positions with qualifications equal to, or worse than, the qualifications of female applicants whom they did not hire for such positions?

d. Did defendant's managers at locations fail to hire female applicants with qualifications for SSR positions equal to, or better than, the qualifications of male applicants whom they hired for such positions?

e. May defendant rely on the letters it sent class members in 2004, inviting them to re-apply but not offering any positions or stating that any different practices would be followed in handling their applications, to limit any of the relief that may be awarded in this case?

Questions as to the Disparate-Treatment Claim

f. Did defendant thus allow its local managers to discriminate against female applicants for SSR positions because of their sex?

g. Did defendant know, or should it have known, that its local managers were discriminating against female applicants in hiring for SSR positions?

h. Are nominal compensatory damages for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses an appropriate remedy for female applicants who were not hired in SSR positions because of defendant's unlawful discrimination?

i. Is defendant liable for classwide punitive damages for its unlawful discrimination against female applicants for SSR positions?

Questions as to the Disparate-Impact Claim

j. Did defendant's delegation to its location managers of uncontrolled broad subjective discretion in hiring applicants for SSR positions result in adverse impact against female applicants for these positions?

k. Did defendant validate its hiring practices for SSR positions under the Uniform Guidelines on Employee Selection Procedures?

l. Are there alternative hiring practices that would have reduced or eliminated the adverse impact against female applicants for SSR positions?

34. The claims of the plaintiffs are typical of the claims of the class. Plaintiffs make no claims on their own behalves that differ from the claims of the class. Proof of classwide discrimination would assist plaintiffs greatly in proving their own claims. To prevail on their own claims, plaintiffs rely on the same types of evidence and patterns needed to prevail on behalf of the class.

35. Plaintiffs will fairly and adequately protect the interests of the class. Their claims are identical to those of the class, and are limited to sex discrimination in hiring for the SSR position. They have no conflict with any members of the class. They have retained counsel who are experienced in litigating class actions and have achieved excellent results in the past.

36. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole. Plaintiffs complain of a policy, pattern or practice that has adversely affected female applicants nationwide in the same way as they themselves have been adversely affected.

37. The questions of law and of fact common to the members of the class predominate over any questions affecting only individual members.

38. A class action is superior to other available methods for the fair and efficient adjudication of the controversy:

a. There is little interest among members of the class in individually controlling the prosecution or defense of separate actions. The EEOC sex discrimination charge filed by plaintiff Serrano, and the June 23, 2004, EEOC sex and national origin discrimination charge filed by plaintiff Avalos in *Ramirez v. Cintas*, Case No. C 04-00281 JSW (N.D. Calif.), are the only EEOC charges involving this issue. Plaintiff Avalos and the claim of sex and

national origin discrimination in hiring applicants for the SSR position were added to the *Ramirez* litigation in the Second Amended Complaint, filed by leave of the court on July 7, 2004.

b. At this time, no one else can file an EEOC charge that can reach back to June 12, 1999. If class certification were denied, the class would be deprived of the benefit of plaintiff Serrano's early charge filing date, and the great majority of the class would be deprived of all relief.

c. This case and the *Ramirez* action in California are the only cases that challenge defendant's sex discrimination in hiring for SSR positions.

d. It is desirable to concentrate the litigation of the claims in this forum because the sex discrimination administrative charge that gave rise to the instant case was submitted to the EEOC more than four years before the charge in the *Ramirez* litigation, permitting the class greater potential relief. Plaintiff Serrano's EEOC charge in this case would allow more than fifty months of additional class relief, and would make it possible to provide relief to thousands of additional women.

e. A nationwide class action would be manageable. A hiring discrimination case in which there are no qualifications not possessed by the general population, and in which defendant made hiring decisions without much regard to plaintiffs' and class members' qualifications, presents relatively few individual factual issues. Nor does this hiring case present the possibility of individualistic awards of damages for humiliation and emotional distress. Plaintiffs seek only the traditional equitable relief of a systemic decree, back pay, front pay, prejudgment interest, hiring orders, and constructive seniority, nominal compensatory damages on the disparate treatment count, and an award of punitive damages that can be made on a classwide basis.

FIRST CAUSE OF ACTION: DISPARATE IMPACT

39. Plaintiffs incorporate paragraphs 1 through 37 above, with the same force and effect as if fully set forth herein.

40. The practices alleged above have a disproportionately adverse impact on female applicants, and defendant has not shown that they are justified by business necessity.

41. These practices violate §§ 703(a) and (k) of Title VII, 42 U.S.C. §§ 2000e-2(a) and (k), and continue to violate the statute.

42. Plaintiffs seek certification of the class on this count under Rule 23(b)(2), Federal Rules of Civil Procedure, for declaratory relief and for the following equitable relief: (a) a systemic decree ending the discriminatory practices and establishing a reporting, recordkeeping, and monitoring system to ensure that they not recur, (b) classwide back pay, front pay, prejudgment interest, hiring orders, and constructive seniority, and (c) their reasonable attorneys' fees and expenses.

SECOND CAUSE OF ACTION: DISPARATE TREATMENT

43. Plaintiffs incorporate paragraphs 1 through 37 above, with the same force and effect as if fully set forth herein.

44. These practices violate § 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), and continue to violate the statute.

45. Plaintiffs seek certification of the class on this count under Rule 23(b)(2), Federal Rules of Civil Procedure, for declaratory relief and the following equitable relief: (a) a systemic decree ending the discriminatory practices and establishing a reporting, recordkeeping, and monitoring system to ensure that they not recur, (b) classwide back pay, front pay, prejudgment interest, hiring orders, and constructive seniority, and (c) their reasonable attorneys' fees and expenses.

46. Plaintiffs seek certification of the class on this count under Rule 23(b)(3), Federal Rules of Civil Procedure, for the following relief under § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a: (a) nominal compensatory damages, (b) punitive damages, and (c) their reasonable attorneys' fees and expenses.

WHEREFORE, plaintiffs pray that the Court award the following relief:

1. Certification of the class on both counts under Rule 23(b)(2), Federal Rules of Civil Procedure, for declaratory relief and for the following equitable relief: (a) a systemic decree ending the discriminatory practices and establishing a reporting, recordkeeping, and monitoring system to ensure that they not recur, (b) classwide back pay, front pay, prejudgment interest, hiring orders, and constructive seniority, and (c) their reasonable attorneys' fees and expenses;

2. Certification of the class on the disparate treatment count under Rule 23(b)(3), Federal Rules of Civil Procedure, for the following relief under § 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a: (a) nominal compensatory damages, (b) punitive damages, and (c) their reasonable attorneys' fees and expenses;

3. A declaration that defendant discriminated against the plaintiffs and class members because of their sex in hiring for the SSR position;

4. A systemic decree ending the discriminatory practices and establishing a reporting, recordkeeping, and monitoring system to ensure that they not recur;

5. Back pay, front pay, and prejudgment interest;

6. Orders that defendant hire the named plaintiffs and class members, with seniority back to the dates, determined by a classwide mechanism, on which they would have been hired in the absence of discrimination;

7. Nominal compensatory damages for non-economic injury, in the amount of a dollar per plaintiff and class member;
8. Punitive damages to be determined on a classwide basis; and
9. Reasonable attorneys' fees and expenses.

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Dated: September 12, 2005.

JURY DEMAND

NOW COME the Plaintiffs, through counsel, and hereby demand trial by jury on the disparate-treatment claims in the above-captioned matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2005, I electronically filed the foregoing Second Amended Complaint with the Clerk of the Court using the ECF system which will send notification of such filing to the following, who are counsel of record for defendant:

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