

FILED BY RUM D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ROBERT R. DI TROLIO
CLERK, U.S. DIST. CT.
W.D. OF TN, MEMPHIS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	*	
	*	
Plaintiff,	*	
	*	
VS.	*	No. 01-2076-D/A
	*	
CHILI'S Inc.; BRINKER INTERNATIONAL PAYROLL CORPORATION; and BRINKER INTERNATIONAL, Inc., d/b/a COZYMEL'S COASTAL MEXICAN GRILL,	*	
	*	
Defendants.	*	
	*	

ORDER ON PLAINTIFF'S MOTION TO COMPEL

Before the court is plaintiff's motion to compel and for an extension of time in which to identify class members.

Plaintiff Equal Employment Opportunity Commission (hereinafter "EEOC") has sued defendant Chili's Inc.; Brinker International Payroll Corporation; and Brinker International, Inc., d/b/a Cozymel's Coastal Mexican Grill (hereinafter "Cozymel's") under Title VII of the Civil Rights Act of 1964, contending that Jake Hart, manager of Cozymel's Memphis restaurant, sexually assaulted and harassed certain employees of Cozymel's, who were supervised by him, for a period from at least October 19, 1997, to August of 1999 (when Hart was re-assigned to Cozymel's restaurant in Nashville Tennessee¹), and that, although complaints were made to Cozymel's, no action was taken in response to these complaints. EEOC seeks injunctive relief,

¹According to Cozymel's Response to EEOC's Motion to Compel, Hart's employment with Cozymel's "ended" on approximately December 26, 1999.

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compensatory and punitive damages, and “make-whole” relief for certain named individual employees of Cozymel’s.

This complaint was filed on January 30, 2001. At a scheduling conference held on April 17, 2001, the court set July 22, 2002, as the trial date, and set March 31, 2002, as a discovery cutoff date. The court also set July 31, 2001, as a deadline for plaintiff to identify all class members (although the nature of the class had not been defined).

The claimed Title VII violation(s) by Cozymel’s was apparently first brought to EEOC’s attention on October 19, 1999, by the filing of a charge of discrimination by Ms. Tara L. Hedges (see Ex. 1 to Plaintiff’s Memorandum of Facts and Law in Support of Plaintiff’s Motion to File an Amended Complaint, filed herein on June 29, 2001)(hereinafter “Plaintiff’s Memo”).

EEOC notified Cozymel’s, and, on November 17, 1999, counsel for Cozymel’s² wrote EEOC, responding to Ms. Hedges’ complaint, and enclosed a list of employees of the Memphis restaurant from June 1998 until the present (Exh. 3, Plaintiff’s Memo).

On June 19, 2001, EEOC served upon Cozymel’s its Second Request for Production of Documents, seeking the production of:

“ . . . the Employment Application, and any other documents indicating, for each of the following individuals (listing 116 names) who were employed at the Cozymel’s restaurant in Memphis, a more recent home address Defendant has for the individual, a more recent home telephone number Defendant has for the individual, and a more recent name and telephone number of any person who was identified to Defendant by the individual for purposes of contact during an emergency ”

Cozymel’s response was that it:

“ . . . objects to this request on the grounds that it is overly broad and unduly burdensome . . . that the phrase ‘a more recent’ is vague and ambiguous . . . (;) . . . (that it seeks) information that is irrelevant to the issues in this lawsuit and on the grounds that it is not reasonably calculated to lead to the discovery of admissible

²The same counsel now representing Cozymel’s in this court.

evidence . . . (;) that personal, private and confidential information is sought regarding individuals who are not named as parties and its disclosure would invade (these) employees' privacy and property rights under state and federal law. . . . “

Cozymel's further responded that, subject to these objections, and without waiving them, it was:

“ . . . producing the address and telephone numbers it has listed in its system for each of the above referenced individuals and a list providing the name and telephone number of any person who was identified to Defendant by the individual as an emergency contact, if any, as the information appeared either on the application or the employee folder . . . “

Later, as part of the required consultation of the parties prior to filing its motion to compel, Cozymel's further forwarded to EEOC “copies of redacted employment applications or copies of the cover of the person's employee file, in regards to the employment applications, the social security number, address, telephone number and emergency contact information . . . (but) . . . [t]he rest of the information (on the employment applications) has been redacted as privileged. . . . “ (Ex. C. to EEOC's Memorandum in Support of Motion to Compel).

Counsel for EEOC responded by indicating that EEOC was still not satisfied, and asked for documents indicating “more recent” information than that indicated on the employment application, and asked that Cozymel's should produce labor rosters (which might contain these “more current” numbers). Counsel for EEOC also complained of any redaction of references information, contending that this was information that could be used in efforts to locate others. Finally, counsel for EEOC indicated dissatisfaction with the response provided by Cozymel's, showing telephone numbers for only 25% of the women listed.

Later, EEOC, in its Second Supplemental Memorandum in Support of Motion to Compel (filed on August 8, 2001), indicated that it was satisfied as to the majority of those 116 listed in Cozymel's discovery response, but contended that Cozymel's had still not provided any

of the documents requested by EEOC on 11 of the women listed, and had failed to provide documents indicating the home telephone numbers on 35 of the women listed.

Cozymel's filed, on August 15, 2001, its Response to Plaintiff's Motion to Compel Discovery, indicating that, as to the information requested relating to the 11 women listed by EEOC, no employment application or file folder could be found. Further, Cozymel's states that last known addresses have already been provided EEOC as to these 11; that home telephone numbers for 4 of them have previously been provided; that upon a followup search of Cozymel's records as to 6 of the 11 listed, telephone numbers were found for 4 of them; and that no further information could be found as to the rest.

Cozymel's further indicated, on August 25, 2001, that, as to the information requested relating to the 35 women listed by EEOC, telephone numbers were in fact produced for 8 of them previously, and that, upon a further review, telephone numbers were found for 26 of them, leaving one for which no telephone number could be found.

EEOC has requested copies of Cozymel's Memphis restaurant "labor rosters", but counsel for Cozymel's has, by letter of August 2, 2001, indicated that these are not kept.

A party to litigation is required, upon receipt of a proper document request under Fed. R. Civ. P. 34, to produce for inspection and copying those documents, etc., which are "in the possession, custody or control of" his opponent. Rule 34 (a). Cozymel's has stated that it has produced all documents (except for redaction) responsive to EEOC's request that it has, and this court (as well as EEOC) will treat this as stating that Cozymel's has produced all that are "in the possession, custody or control of" Cozymel's. If it is developed later in discovery that Cozymel's has failed to make appropriate production(or if Cozymel's attempts to make use of documents that should have been produced in response to EEOC's Second Request for Production of

Documents), appropriate sanctions may be in order.

Insofar as Cozymel's has withheld production of those portions of the employment applications or employee files relating to the 116 listed present or former employees, having to do with information relating to "emergency contact" individuals, this is inappropriate. Cozymel's is not justified in withholding this part of these employment records because of any alleged "privacy rights" of those "emergency contact" individuals. The information sought was presented by the employees, not the "emergency contact" individuals.


Accordingly, Cozymel's must produce, for inspection and copying by EEOC, within FIFTEEN (15) DAYS of the docketing of this order, the above-mentioned portions of these employment applications or employee files.

EEOC has also requested that the court's deadline of July 31, 2001 for identifying class members (set by its Order of April 18, 2001) be extended. In light of the foregoing, this request appears reasonable, and EEOC is given to and including **October 1, 2001** to identify class members. Cozymel's is given to and including **November 1, 2001**, to file any motion to dismiss.

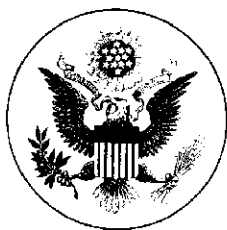
In all other respects, the court's order of April 18, 2001, is in full force and effect.

IT IS SO ORDERED.

ENTER THIS 20th DAY OF AUGUST, 2001.



JAMES H. ALLEN
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 30 in case 2:01-CV-02076 was distributed by fax, mail, or direct printing on August 22, 2001 to the parties listed.

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