

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

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
vs.) No. 99-2427 GV (M1)
)
RENT-A-CENTER, INC.,)
)
Defendant.)
)

ORDER ON DEFENDANT'S MOTION TO STRIKE OR
IN THE ALTERNATIVE TO ENFORCE THE PARTIES' AGREEMENT

Before the court is the motion of the defendant, Rent-A-Center, Inc., filed January 23, 2002, to strike the EEOC's supplemental Rule 26(a)(1) disclosures identifying seventy (70) additional women as potential class members in this lawsuit. In the alternative, Rent-A-Center asks the court to enforce the parties' letter agreement permitting Rent-A-Center to depose, after the discovery deadline, each of the women identified in the supplemental disclosure without the necessity of filing a motion to modify the scheduling order. In addition, Rent-A-Center asks the court to extend its expert designation deadline in light of the number of potential claimants now identified. Rent-A-Center also seeks its attorney fees and expenses in bringing this motion. For

the reasons that follow, the motion is granted in part and denied in part.

The EEOC filed suit against Rent-A-Center on May 14, 1999, on behalf of Sheila Harford, Edith Ruby, Tequila Burse and LaDonna Fason, as well as "a class of other females who have been adversely affected," all alleging sex discrimination in the employment process. (Compl. at 1.) The late Judge Turner initially presided over this case and set a scheduling order calling for an expert designation deadline for Rent-A-Center of June 30, 2000, and a discovery deadline of April 30, 2001. On joint motions of the parties, Rent-A-Center's expert designation deadline was ultimately extended to September 11, 2000, (Order, June 29, 2000), and the discovery deadline was subsequently extended to October 1, 2001. (Order, May 2, 2001.)

On September 28, 2001, three days before the expiration of the discovery deadline, the EEOC supplemented its initial disclosures by providing the names, addresses, telephone numbers, and social security numbers of seventy (70) women who are potential class members and who have information regarding the allegations of sex discrimination raised in the lawsuit. The EEOC also transmitted a cover letter which stated in relevant part:

I have attached Supplemental Rule 26(a) Disclosures which contain the names, addresses and telephone numbers of women the Commission has identified as potential class

members in this case. We agreed that Defendant may take the depositions of any of these women after the October 1, 2001 discovery deadline, without the necessity of filing a motion to modify the scheduling order. We also agreed that the Commission will be allowed the opportunity to depose Mike Tucker, located in West Tennessee and two other management officials, located in Arkansas.

(Def.'s Mot. to Strike, Ex. A.) In the present motion filed January 23, 2002, Rent-A-Center insists that the EEOC has refused to honor its agreement, and therefore Rent-a-Center moves to strike the names of the additional class members.

In its response to the motion, the EEOC contends that it has not refused to honor its agreement and that it remains willing to allow Rent-A-Center to depose the additional, potential class members but that Rent-A-Center has not noticed any depositions. The EEOC opposes Rent-A-Center's request to strike the EEOC's supplemental disclosures and further opposes an extension of the expert designation deadline and any award of fees and expenses.

At the same time the EEOC filed its response to the motion, the EEOC moved to bifurcate the issues of liability and individual relief during the trial of this case. (Mot. to Bifurcate, February 7, 2002.) If the motion to bifurcate is granted, the EEOC argues, the depositions of these additional seventy (70) women could be deferred until after the liability phase and before the commencement of the remedial phase if the EEOC is successful in

establishing a policy or practice of sex discrimination in hiring and firing on the part of Rent-A-Center. The trial is scheduled to begin in approximately one month on March 25, 2002.

As a general rule, the court frowns upon agreements of counsel to extend discovery without court approval beyond the dates established by the court, and the court is generally reluctant to intervene to enforce such agreements. Because the EEOC stands willing to honor its agreement to allow Rent-A-Center to depose the additional potential class members after the discovery deadline, however, it is unnecessary for the court to determine the merits of the agreement. The only question is when the depositions should be taken.

Rent-A-Center posits that it is entitled to depose each potential claimant before any trial commences because this case is not a class action even though there are multiple claimants. Rather, according to Rent-A-Center, this case consists of individual cases of disparate treatment in which each potential claimant seeks individual relief, and in individual disparate treatment claims, each claimant must prove individually that she was treated differently than similarly situated male employees. The EEOC disagrees and points out to the contrary that this is a class action.

The EEOC may bring actions for enforcement of federal

discrimination laws in its own name for the purpose, among others, of obtaining relief for a group of aggrieved individuals. *General Telephone Co. of Northwest v. EEOC*, 446 U.S. 318, 324-25 (1980). The Supreme Court has made clear that the EEOC is not bound by the normal class certification requirements of Rule 23 in seeking relief for a group of aggrieved individuals. *EEOC v. Waffle House, Inc.*, 122 S. Ct. 754, 766 (2002) (citing *General Telephone Co.*, 446 U.S. at 326). Technically, the EEOC case is not a class action in the classic sense of the term because the EEOC does not proceed under Rule 23, but courts have held the term "class" may be used to describe the EEOC's action. *EEOC v. Monarch Machine Tool Co.*, 737 F.2d 1444, 1449 (6th Cir. 1980); *EEOC v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 467 (6th Cir. 1999). In seeking relief for a class, the burden is on the EEOC at the initial, liability stage to show discrimination was "the company's standard operating procedure - the regular rather than the unusual practice." *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 336 (1977). After the initial liability stage, the court must conduct additional proceedings - the remedial stage - to determine the extent of individual relief. *Teamsters*, 431 U.S. at 360-62. In EEOC lawsuits involving class-wide relief, a bifurcated procedure has been followed in most cases. *Monarch*, 737 F.2d at 1449. Therefore, it is highly likely that the EEOC's motion to bifurcate

will be granted. If it is granted, the depositions should be deferred until after the liability stage is completed.

In addition, Rent-A-Center seeks an extension of time to retain an expert in light of the seventy (70) additional plaintiffs included in the EEOC's supplemental Rule 26 disclosure. The deadline for expert disclosures, however, has come and gone. According to Rule 6, when an extension of time is sought after the expiration of the time specified, the court may, in its discretion, extend the time "where the failure to act was the result of excusable neglect" Fed.R.Civ.P. 6(b). Here, the grounds Rent-A-Center now seeks to assert in the instant motion were not known to it prior to the expiration of the expert disclosure deadline. Hence, the request falls under the specifications of Rule 6 as "excusable neglect," as Rent-A-Center was ignorant at the time of the deadline that the EEOC would add seventy (70) claimants to the case. So as not to delay trial but to allow Rent-A-Center the opportunity to select an appropriate expert, this court will extend the deadline for expert disclosure to ten (10) days from the filing of this order.

For the foregoing reasons, the motion of Rent-A-Center to depose the seventy (70) additional, potential claimants is granted. If the district court bifurcates the trial, the depositions are to be deferred until after the liability phase of the trial. If the

district court does not bifurcate the trial, the depositions are to be scheduled as soon as possible at a mutually convenient date and time. The motion of Rent-A-Center to strike the EEOC's supplemental Rule 26(a) disclosures is denied. The request of Rent-A-Center for its fees and expenses is likewise denied. Rent-A-Center's request for additional time to designate an expert is granted in the amount of ten (10) days from the filing of this order on the grounds that it was not aware of the large number of additional claimants at the time of the expert disclosure deadline.

IT IS SO ORDERED this 20th day of February, 2002.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE