

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

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DONALD ALDRIDGE, et al.,                    )  
  )  
      Plaintiffs,                                )  
  )  
vs.    )            No. 05-2966-BV  
  )  
  )  
CITY OF MEMPHIS, et al.,                    )  
  )  
      Defendants.                                )

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ORDER DENYING DEFENDANT'S MOTION TO STRIKE PORTIONS OF  
PLAINTIFFS' AMENDED COMPLAINT

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Before the court is the February 15, 2008 motion of the defendant, City of Memphis (the "City"), asking the court to strike portions of the Amended Complaint filed by the plaintiffs, Donald Aldridge, Norma Julie Brown, and twenty-four others (collectively the "Plaintiffs"). The motion is made pursuant to Federal Rules of Civil Procedure 12(f), 15, 16, 26, and 37. Specifically, the Defendant seeks to have this court strike all portions of the Plaintiffs' Amended Complaint that are different than the *Proposed* Amended Complaint that was attached to the Plaintiffs' earlier filed motion to amend. The Plaintiffs have filed a response in opposition to the City's motion. The motion was referred to the United States Magistrate Judge for a determination. For the reasons stated below, the City's motion is denied.

## BACKGROUND

This is an employment discrimination case in which the Plaintiffs filed their initial complaint on December 27, 2005. By order dated December 10, 2007, the court denied the Plaintiffs' motion for partial summary judgment, citing deficiencies in the pleadings, particularly the Plaintiffs' failure to plead a disparate impact claim under the ADEA. (Pls.' Resp. Opp'n 1; Order Denying Pls.' Second Mot. Partial Summ. J., Doc. No. 140, Dec. 10, 2007.) In the order, the court noted that it would normally allow a plaintiff to cure pleading defects by amendment, but the time for amending the complaint had expired. (Order at 7-8, Doc. No. 140.) Subsequently, on December 14, 2007, the Plaintiffs filed a motion to modify the scheduling order and amend their original complaint to address the deficiencies identified by the court (the "Motion to Amend"). (Pls.' Mot. to Modify Scheduling Order and Mot. to File an Am. Compl., Doc. No. 142, Dec. 14, 2007.) Along with their Motion to Amend, the Plaintiffs filed a *Proposed* Amended Complaint detailing the changes they sought to make. (Am. Compl., Doc. No. 143, Dec. 14, 2007.) The *Proposed* Amended Complaint added three additional paragraphs asserting a disparate impact method of proof and stating that all the claims brought under the Fourteenth Amendment and 42 U.S.C. § 1981 were asserted under 42 U.S.C. § 1983. (Pls.' Resp. Opp'n 2.)

On January 22, 2008, while the Motion to Amend was still

pending, the court granted the City's motion for partial summary judgment. (Order Granting Def.'s Mot. Summ. J., Doc. No. 156, Jan. 22, 2008.) In that order, the court found that the equal protection violations in the complaint were invalid because they were not brought pursuant to 42 U.S.C. § 1983, and noted that the City had not sought dismissal of the Plaintiffs' 42 U.S.C. § 1981 race discrimination claims that were properly brought pursuant to 42 U.S.C. § 1983. (*Id.* at 10-11, 19.) Thereafter, on January 29, 2008, a status conference was held before Judge J. Daniel Breen, U.S. District Judge, during which Judge Breen granted *ore tenus* the Plaintiffs' motion to modify the scheduling order and to file an amended complaint. (See Minute Entry for Proceedings Held Before Judge J. Daniel Breen, Doc. No. 162, Jan. 29, 2008; see also Hr'g Tr., Doc. No. 165, Feb. 7, 2008.) The Plaintiffs filed an Amended Complaint on February 1, 2008.

In its present motion, the City argues that the Plaintiffs' Motion to Amend only sought to make two very specific changes, i.e., to assert a disparate impact claim and Equal Protection claims against the City under 42 U.S.C. § 1983, as evidenced in the *Proposed* Amended Complaint that was submitted to the court along with the motion. (Def.'s Mem. Supp. 1-2.) The City contends that the actual Amended Complaint filed by the Plaintiffs contains amendments and additions in excess of those in the *Proposed* Amended Complaint, and that by doing so, the Plaintiffs materially exceeded

the court's order because the court ordered that the Plaintiffs could amend their complaint for the limited purpose of asserting a disparate impact claim and Equal Protection claims against the City under 42 U.S.C. § 1983. (*Id.* at 2.)

In response, the Plaintiffs argue that no portions of their Amended Complaint are redundant, immaterial, impertinent, or scandalous as required by Rule 12(f) to support a motion to strike. (Pls.' Resp. Opp'n 3.) They claim that the differences between the *Proposed* Amended Complaint and the filed Amended Complaint are simply reflections of changes necessitated by the court's orders and factual updates and corrections based on discovery. (*Id.* at 3-4.) Citing *Mapp v. Board of Education*, 319 F.2d 571, 576 (6th Cir. 1963), the Plaintiffs assert that motions to strike are disfavored and should only be granted "when the pleading to be stricken has no possible relation to the controversy." (Pls.' Resp. Opp'n 3.) They argue that all portions of the amended complaint are related to the controversy. (*Id.*)

#### ANALYSIS

During the status conference on January 29, 2008, the court discussed several issues with both parties' counsel regarding the Plaintiffs' pending Motion to Amend. (See Hr'g Tr., Doc. No. 165.) Included among these were discussions relating to the pleading defects with the disparate impact claim and the relationship between § 1983 and claims involving Equal Protection violations and

§ 1981 race discrimination. (*Id.*) The discussion culminated with Judge Breen stating to the Plaintiffs' counsel:

Tell you what I'll do, you asked me to modify the scheduling order to allow you to amend. I'm going to do that. I'll give you to the end of the week to file your amended complaint to cure what you claim are defects and what the court has felt are defects. You can go ahead and do that.

(*Id.* at 9.)

The court possesses broad discretion in the area of allowing amendments to the pleadings when leave is sought under Rule 15(a). See *Estes v. Ky. Utils. Co.*, 636 F.2d 1131, 1134 (6th Cir. 1980). The language used by Judge Breen in granting the motion to amend during the status conference was extremely broad. This court does not interpret Judge Breen's ruling to require the Plaintiffs to file an amended complaint identical to the *Proposed Amended Complaint*.<sup>1</sup> Rather, Judge Breen's language in granting the Plaintiffs leave to amend their complaint gave the Plaintiffs wide latitude to correct defects recognized by both the Plaintiffs and the court. Accordingly, the Plaintiffs made amendments to add a disparate impact claim and to cure defects in the Equal Protection and race discrimination claims, all matters which were discussed before the court granted its broad leave to amend the complaint.

To the extent that the Plaintiffs also made factual and

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<sup>1</sup> Of course, Judge Breen would be in a better position to explain what he meant, and this court defers to Judge Breen in that respect.

editorial revisions of other paragraphs in the original complaint, those amendments do not rise to a redundant, immaterial, impertinent, or scandalous level as required by Rule 12(f) before they can be stricken. See FED R. CIV. P. 12(f). The City has not shown that any of the amendments made were prejudicial, unrelated to the controversy, or exceeded the scope of Judge Breen's statement granting broad leave to amend.

#### CONCLUSION

Because the court did not require the Plaintiffs' amended complaint to be identical to the *Proposed* Amended Complaint and it granted broad leave to amend the defects as identified by the Plaintiffs and by the court in its rulings and comments, the City's motion to strike portions of the amended complaint is DENIED.

IT IS SO ORDERED this 14th day of March, 2008.

s/ Diane K. Vescovo  
DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE