IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

VENDOL BLACK, CAROLYN GARD,
and ARLINDA STALLWORTH,

Plaintiffs,

v. CASE NUMBER: 3:98cv323/LAC

HEILIG-MEYERS FURNITURE
COMPANY,

Defendant.
_____/

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO SEVER

COME NOW the plaintiffs, by and through their undersigned counsel, and hereby file this memorandum of law in opposition to the motion to sever filed by defendant, Heilig-Meyers Furniture Company (hereinafter "Heilig-Meyers"). Because plaintiffs' causes of action all arise from the same series of transactions, and because plaintiffs' claims present common questions of law and fact, plaintiffs are properly joined as parties to this suit under Rule 20(a), Fed.R.Civ.P., and Heilig-Meyers' motion to sever under Rules 21 and 42(b) must fail.

I. Statement of Facts

As stated in the Complaint, all three plaintiffs are African-Americans. Each of the plaintiffs was employed by Heilig-Meyers in store #490, located in Pensacola, Florida. On March 1, 1996, Marshall Johnson became the manager of store #490 where all three plaintiffs were employed. During 1996 and 1997, Heilig-Meyers implemented a racially discriminatory scheme to alter store personnel at Heilig-Meyers facilities throughout the nation. Within one year of Johnson's assuming control of the store, all three plaintiffs suffered injuries as a result of the racially discriminatory scheme implemented by Heilig-Meyers. Plaintiffs' injuries included their receiving less pay than similarly situated white employees and their being denied other equal employment opportunities, such as pay raises and advancements.

All three plaintiffs seek redress of their injuries under Title VII of the Civil Rights Act of 1964, as amended, as well as the Florida Civil Rights Act of 1992. All plaintiffs in this case have chosen to be represented by the same law firm. Many of the facts and witnesses on which the plaintiffs rely will be identical. These considerations sufficiently satisfy the requirements for joinder under Rule 20(a).

II. Policy Favoring Joinder

Rule 20, Fed.R.Civ.P., governs the permissive joinder of parties. It provides:

> **[a]ll persons may join in one action as plaintiffs if they assert any right to relief**

> jointly, severally, or in the alternative, in respect of or **arising out of the same** transaction, occurrence, or **series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action.**

Rule 20(a)(emphasis added). There have been no substantive changes to this Rule since 1966, when it was amended in order to further broaden the situations in which permissive joinder applied. See Advisory Committee Notes to Rule 20; see also 7 C. Wright, A. Miller & M. Kane, Federal Practice and Procedure §1654 (explaining that Rule 20(a) serves the purpose of substantially expanding party joinder beyond that allowed under common law). Thus, it has been long-established that joinder is generally favored under the federal rules. E.g., United Mine Workers v. Gibbs, 383 U.S. 715, 724 (1966).

In fact, in Gibbs the Court explained that "[u]nder the Rules [of Federal Civil Procedure], the impulse is toward entertaining the **broadest possible scope** of action consistent with fairness to the parties; **joinder of** claims, **parties** and remedies **is strongly encouraged.**" Id. (emphasis added). Shortly thereafter, the Sixth Circuit enunciated an identical view:

> [t]he intent of the rules is that all issues be resolved in one action, with all parties before one court, complex though the action may be.

Lasa Per L'Industria Del Marmo Soc. Per Azioni v. Alexander, 414 F.2d 143, 147 (6th Cir. 1969). With these principles in mind, it has been noted that joinder promotes judicial economy and trial

convenience, and it expedites the final determination of disputes. E.g., Mosley v. General Motors Corp., 497 F.2d 1330, 1332 (8th Cir. 1974). Moreover, it is well recognized that these principles remain true to this day. E.g., DeShiro v. Branch, 1996 WL 663973 (M.D. Fla. 1996); Guedry v. Marino, 164 F.R.D. 181, 184 (E.D. La. 1995); Ohio ex rel Fisher v. Louis Trauth Dairy, Inc., 856 F.Supp. 1229, 1239 (S.D. Ohio 1994). Additionally, another reason for favoring joinder is that it guards against the "significant danger of inconsistent judgments in the separate actions." German by German v. Federal Home Loan Mort. Corp., 896 F.Supp. 1385, 1401 (S.D.N.Y. 1995). Thus, the dictates of the Supreme Court as well as other courts indicate that the joinder of multiple plaintiffs in a single lawsuit should be favorably viewed by district courts because of a variety of public policy concerns.

III. Joinder in the Employment Context

It has been recognized that Rule 20(a) should be broadly interpreted in order to

> permit all reasonably related claims for relief by or against different parties to be tried in a single proceeding. **Absolute identity of all events is unnecessary.**

Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974)(emphasis added). The Supreme Court has also explained that the use of the word "transaction" in Rule 20(a) has flexible meanings and comprehends "a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical

relationship." Moore v. New York Cotton Exchange, 270 U.S. 593, 610 (1926); see also, e.g., Nor-Tex Agencies, Inc. v. Jones, 482 F.2d 1093, 1099-1100 (5th Cir. 1973)(joinder is proper where there is a logical relationship between operative facts)cert. denied, 415 U.S. 977 (1974); Mosely, 497 F.2d at 1330 (adopting the "logical relationship" analysis); Hanley v. First Investors Corp., 151 F.R.D. 76, 78-80 (E.D. Tex. 1993)(employing the "logical relationship" standard). With these principles in mind -- that identity of all of the events is unnecessary and that parties may be joined as long as their causes of action are logically related -- a variety of courts have permitted joinder in the context of employment discrimination.

In DeShiro v. Branch, 1996 WL 663973 (M.D. Fla. 1996), for instance, the court permitted three former employees to be joined in the same lawsuit against their former employer even though they had not even worked for the same employer during the same time period. Despite this difference, the court concluded that plaintiffs established a logical relationship between their individual claims because they alleged their employer had sexually harassed them all and then ended their employment. Id. at *2. Under these circumstances, the court held that joinder of their claims was appropriate because of the commonalities of their individual claims, arising from their having worked in the same office for the same employer, and the perpetrators were the same individuals. Id. at *2,3. Many other cases are in accord.

Also in the context of sexual harassment, the court in Ward v. Johns Hopkins Univ., 861 F.Supp. 367, 378-79 (D. Md. 1994),

explained that joinder of plaintiffs was proper even where the employees had not been employed by defendant at the same time, where their cases nonetheless arose out of the same series of occurrences. In Duke v. Uniroyal, Inc., 928 F.2d 1413, 1421 (4th Cir.), cert. denied, 502 U.S. 963 (1991), the Fourth Circuit affirmed the district court's denial of the defendant's motion to sever where the plaintiffs alleged discrimination in their employment and raised common questions of law and fact. A similar conclusion was reached in King v. Ralston Purina Co., 97 F.R.D. 477, 480 (W.D.N.C. 1983), where the court allowed joinder of plaintiffs who worked in different divisions of the defendant company, because the plaintiffs alleged that they had been discriminated against as part of a pattern and practice conducted by defendant. See also Blesedell v. Mobil Oil Co., 708 F.Supp. 1408, 1422 (S.D.N.Y. 1989), where joinder of plaintiffs was permissible because they alleged they had been injured by the same general policy which permitted discrimination. Plaintiffs' allegations in the instant case are similar -- but even more compelling, as will be discussed in the following section.

IV. Joinder is Appropriate in the Instant Case

While interpreting Rule 20(a), it has been explained that

> [t]he rule imposes two specific requisites to the joinder of parties: (1) a right to relief must be asserted by, or against, each plaintiff ... relating to or arising out of the same transaction or occurrence, or series of transactions or occurrences; and (2) some question of law or fact common to all parties must arise in the action.

Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974);

see also Poindexter v. Louisianna Fin. Assistance Comm'n, 258 F.Supp. 158, 165-66 (E.D. La. 1966), aff'd, 389 U.S. 571 (1968). The courts within this Circuit have stated it more succinctly:

> [i]f it is shown that a claim arises out of the same series of occurrences ... and the claims present common questions of law or fact, addition of a party is permissible under the rule.

City of Tampa v. Fourth Tug/Barge Corp., 163 F.R.D. 622, 624 (M.D. Fla. 1995)(citing Moore v. Comfed Sav. Bank, 908 F.2d 834, 839 (11th Cir. 1990)). Plaintiffs in the instant case have clearly fulfilled these prerequisites.

A. Plaintiffs' claims arise out of the same series of transactions and present common questions of law and fact

Plaintiffs' causes of action all arise out of the same series of transactions which were perpetrated by Heilig-Meyers. Each of the plaintiffs is an African-American, and each was employed in the same Heilig-Meyers store in Pensacola, Florida. However, contrary to defendant's assertions, plaintiffs have alleged substantially more than simply that they were black and employed at the same store.

Rather, plaintiffs have alleged that they were employed by Heilig-Meyers during 1996 and 1997 when Heilig-Meyers implemented its discriminatory scheme. All three plaintiffs have alleged that they were subject, along with other black employees, to implementation of this discriminatory scheme under the same manager, Marshall Johnson. All three of the plaintiffs have alleged similar injuries, including receiving less pay than similarly situated white

employees and disparate treatment regarding the opportunity for raises and advancement. Clearly these factual similarities are sufficient to satisfy the requirements of Rule 20(a). Additionally, all three plaintiffs have raised identical questions of law. Courts have explained that Rule 20(a) "permits party joinder whenever there will be at least **one** common question of law **or** fact." Guedry v. Marino, 164 F.R.D. 181, 184 (E.D. La. 1995)(emphasis added)(citing 7 C. Wright, A. Miller and M. Kane, Federal Practice and Procedures §1653, at 387 (1986)); see also Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974). Here, however, plaintiffs have shown common questions of law **and** fact. Joinder of the plaintiffs is clearly proper.

Furthermore, plaintiffs' actions are infinitely more intertwined than the employment cases referenced above, where joinder was appropriate even though many of the plaintiffs in those cases worked at different job-sites and in completely different time periods. Similar to the plaintiffs in King and Blesedell, this Court should allow joinder, as plaintiffs in the instant case have alleged discrimination as a result of the general policy of racial discrimination implemented by Heilig-Meyers.

In opposition, Heilig-Meyers cites Grayson v. K-Mart Corporation, 849 F.Supp. 785 (N.D. Ga. 1994), as the sole authority in support of its assertion that plaintiffs have failed to allege a claim arising out of the same transaction or occurrence and have failed to allege common issues of law and fact. Grayson however, is clearly distinguishable. In Grayson, eleven plaintiffs brought

a discrimination action against the defendant company; however, each of the plaintiffs worked in a different store, geographically remote from the other plaintiffs. Id. at 786, 788-89. Furthermore, each of the discriminatory employment decisions in Grayson was made by a different manager within the defendant company. Id. at 788. While recognizing that the issue of joinder was a "close question," the Grayson court found that the actions taken against the plaintiffs were discrete and not part of one logical transaction or occurrence. Id. at 788-89. Such is clearly not the case here.

The circumstances in the instant case do not present a close question. In contrast to Grayson, the instant plaintiffs were employed at the same Heilig-Meyers store, suffered similar injuries under the same discriminatory scheme implemented by the same Heilig-Meyers manager. Consequently, Grayson cannot be compared to the circumstances in the instant case, and provides no relevant guidance. Consequently, this court should deny Heilig-Meyers motion to sever.

B. This Court's recognition that plaintiffs are properly joined as parties will not unfairly prejudice Heilig-Meyers

In its motion to sever, Heilig-Meyers suggests that the allegations and evidence presented by the three plaintiffs would cause unnecessary confusion and impart undeserved credibility on plaintiffs' testimony, resulting in prejudice which could not be cured with a limiting instruction. Heilig-Meyers' arguments, however, are without merit. Many courts have noted that any undue

prejudice to a defendant can easily be eliminated at trial by giving the jury a limiting instruction. See, e.g., Duke v. Uniroyal, Inc., 928 F.2d 1413, 1421 (4th Cir.), cert. denied, 502 U.S. 963 (1991). Indeed, in the case of Hanley v. First Investors Corp., 151 F.R.D. 76, 80 (E.D. Tex. 1993), the court went through a lengthy discussion explaining that jury prejudice and confusion could be prevented by limiting instructions:

> It seems well within the jury's abilities to distinguish between the idiosyncrasies of each case. They will be instructed to keep each plaintiff's claim separate, and to force each plaintiff to prove his or her claim and damages separately. In addition, they will be instructed that the mere presence of several plaintiffs does not permit an inference of liability.

Numerous other courts have reached similar conclusions. E.g., DeShiro v. Branch, 1996 WL 663973 (M.D. Fla. 1996)(explaining that specially tailored verdict forms might also help protect against confusion); Guedry v. Marino, 164 F.R.D. 181, 185 (E.D. La. 1995); Ward v. Johns Hopkins Univ., 861 F.Supp. 367, 379 (D. Md. 1994).[1]

Further, even if the causes of action were severed, plaintiffs would present many of the same witnesses and testify in each others' cases. Clearly, under the law of the Eleventh Circuit a plaintiff may present testimony of other individuals who have been subjected to similar discrimination in order to demonstrate the employer's motive, intent, or plan for dealing with a particular plaintiff. Phillips v. Smalley Maintenance Servs., Inc., 711 F.2d 1524, 1532

[1]This court should have similar faith in its jurors.

(11th Cir. 1983); Harpring v. Continental Oil Co., 628 F.2d 406, 409 (5th Cir. 1980)(stating that it "is clear that the testimony of the similarly situated employees ... [is] relevant ..."), cert. denied, 454 U.S. 819, 102 S.Ct. 100 (1981); Stockett v. Tolin, 791 F.Supp. 1536, 1553 (S.D. Fla. 1992); Sowers v. Kemira, Inc., 701 F.Supp. 809, 816-17 (S.D. Ga. 1988).

Numerous other circuits have reached similar conclusions. E.g., Hayne v. Caruso, 69 F.3d 1475, 1480 (9th Cir. 1995)(finding reversible error where district court excluded such testimony; after all, "[i]t is clear that an employer's conduct tending to demonstrate hostility towards a certain group is both relevant and admissible ..."); Spulak v. K Mart Corp., 894 F.2d 1150, 1156 (10th Cir. 1990)(it is a general rule that the testimony of other employees concerning their treatment by their employer is relevant and admissible); Estes v. Dick Smith Ford, Inc., 856 F.2d 1097, 1104-05 (8th Cir. 1988)(reversing the district court for having excluded evidence of prior acts of discrimination against others and explaining that such evidence is relevant to an employer's motive; also explaining that it defied "common sense to say ... that evidence of an employer's discriminatory treatment [of a class of people] might not have some bearing on the question of the same employer's motive in discharging a [member of the same class]."); Hunter v. Allis-Chalmers Corp., 797 F.2d 1417, 1423 (7th Cir. 1986)(evidence of discrimination against other workers was admissible to show employer's motive); Vinson v. Taylor, 753 F.2d 141, 146 (D.C. Cir. 1985)(reversing trial court for excluding the testimony of others

who had been discriminated against), aff'd in part, remanded on other grounds, 477 U.S. 57 (1986); Stumpf v. Thomas & Skinner, Inc., 770 F.2d 93, 97 (7th Cir. 1985)(evidence of incidents of discrimination, even if they are unrelated to a plaintiff's specific disputed action, are still admissible in order to show a discriminatory attitude); Morris v. Washington Metropolitan Area Transit, 702 F.2d 1037, 1045-46 (D.C. Cir. 1983).

Further, contrary to the allegations of Heilig-Meyers, presenting identical witnesses and evidence at three separate trials would unnecessarily burden the plaintiffs and this Court. Judicial economy, trial convenience, the expeditious final determination of disputes, the danger of possibly inconsistent judgments, and the convenience of the parties all point to recognition that plaintiffs' joinder in one action is appropriate in this case. It is plainly more judicially economical to uphold plaintiffs' joinder than to force the plaintiffs to pursue their causes of action in three separate trials in which all three plaintiffs testify in their companions' cases, further crowding an already overcrowded court docket. Clearly, the risk of any unfair prejudice is negligible when compared to the burden on the parties and the Court where the causes of action severed.

VI. Conclusion

The foregoing reasons indicate that joinder is proper in the

instant case. Each of the three plaintiffs' causes of action arises out of the same transaction or occurrence, in that each plaintiff was the victim of a discriminatory employment policy implemented by Heilig-Meyers. Further, each of the plaintiffs' causes of action raises common questions of law and fact. Each plaintiff seeks redress of their injuries under identical legal theories, and each of the plaintiffs suffered similar injuries, during the same period, by the same manager, in the same Heilig-Meyers store in Pensacola, Florida. Finally, joinder of the plaintiffs in the instant case presents little danger of confusion or unnecessary prejudice. Plaintiffs' causes of action are so integrally intertwined that they will present virtually identical evidence and testify in each others cases, regardless of whether this Court severs their causes of action. As a result, severing plaintiffs' cause of action would not cure any prejudice or confusion anticipated by the defendant. Rather, a limiting instruction is a more appropriate means to address these issues, instead of imposing the burden on plaintiffs to pursue three separate causes of action. Consequently, Heilig-Meyers' motion to sever should be denied in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Richard N. Margulies, Esq. and Edward L. Birk, Esq., McGuire, Woods, Battle & Boothe, LLP, 50 North Laura Street, Suite 3300, Jacksonville, Florida 32202, by U.S. Mail, postage prepaid, on this ___ day of October, 1998.

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Bradley S. Odom