UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 96-1104-CIV-KING
Magistrate Stephen T. Brown

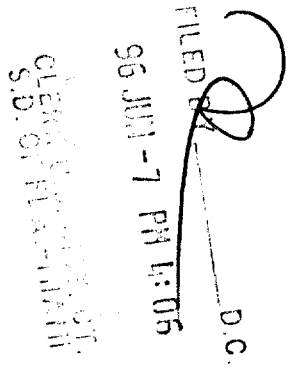
DOBSON COLLINS, an individual on behalf of himself and others similarly situated,

Plaintiffs,

-vs-

EXECUTIVE AIRLINES, INC., a Delaware corporation, d/b/a AMERICAN EAGLE AIRLINES, INC., and FLAGSHIP AIRLINES, INC., a Delaware corporation,

Defendants.



MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT OR FOR SUMMARY JUDGMENT, OR, ALTERNATIVELY, TO LIMIT DISCOVERY TO ISSUE OF CLASS CERTIFICATION

I. BACKGROUND

The Complaint in this action arises in the unusual circumstance where Defendant Flagship Airlines, Inc. ("Flagship"), Plaintiff's former employer, offered the courtesy of extensive pre-filing discovery to Plaintiff and the administrative agency charged with the obligation of investigating Plaintiff's Charge of Discrimination, the Equal Employment Opportunity Commission ("EEOC"). This context is necessary for the Court's evaluation of this broad class action Complaint because it demonstrates that the allegations are insufficient to state the claims asserted and that, in view of

this extraordinary pre-filing discovery opportunity, Plaintiff cannot in good faith correct these pleading deficiencies.

Certain documents outside the four corners of the pleading relevant here. Those are the administrative charge at issue here that must be evaluated against the claims asserted in the Complaint (Tab 1), the EEOC's determination of no cause (Tab 2), Defendant's offer of open pre-filing discovery almost fifteen (15) months prior to the initiation of this action (Tab 3), a previous administrative charge filed by Plaintiff in May 1993 which he never pursued (Tab 4), and the documentation of the number of black employees who might conceivably be at issue in any such class action claim (Tab 5).

Because Plaintiff's counsel had the unusual opportunity to examine the files of the Defendant employer while those claims were pending before the EEOC, and in fact examined those files, he presumably would have identified and described any claims of racial discrimination or class discrimination in the administrative process. Plaintiff also knows or should know that there is an insufficient number of employees to justify class action treatment. After this review, had Plaintiff or his counsel made a reasonable evaluation of the facts, they could not have filed the Complaint at issue on this Motion.

II. THE COMPLAINT

Plaintiff's complaint purports to allege both individual and class claims for violations of Title VII (Count I)

and 42 U.S.C. § 1981 (Count II). The Title VII claim is based on an administrative charge filed by Plaintiff with the EEOC on May 12, 1994 and later amended on December 14, 1994. The administrative charge complains only of retaliation and makes no allegations of race-based discrimination. The judicial Title VII claim, alleging race discrimination and retaliation is much broader in scope.[1/] It attempts to convert the retaliatory conduct alleged in the administrative charge to a judicial complaint alleging race discrimination based on conduct different from that alleged in the administrative charge. A side-by-side comparison of the EEOC charge and the Complaint clearly shows that Plaintiff attempts to expand his complaint here far beyond the scope of his charge. See chart attached at Tab 6.

Plaintiff's Complaint also seeks to expand the scope of his Title VII claim by alleging, in addition to his individual claims, race-based discrimination on behalf of a broad class including all black employees at Defendant's Miami maintenance facility "who have been, are, or will be adversely affected" by the alleged discrimination. Nowhere in the administrative charge

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1/ The section 1981 claim also purports to state a claim for both race discrimination and retaliation. The retaliation and race discrimination claims are based on different facts, will require different elements of proof and likely will be defended on different grounds. Thus, both counts fail to comply with Fed. R. Civ. P. 10(b) and the Court should require Plaintiff to separate the race discrimination and retaliation claims to facilitate "the clear presentation of the matters set forth."

or in the seventeen (17) page Complaint, however, are any instances of discrimination alleged which did not directly involve Plaintiff. Indeed, Plaintiff's complaint alleges that all but one of the alleged discriminatory actions identified in the Complaint were taken only against Plaintiff in retaliation for his actions.[2/] Complaint ¶¶ 13-15, 17, 18, 20-21, 26. In fact, Plaintiff's charge states that "[n]o other employee has been subjected to the adverse terms and conditions I have under similar conditions." (Tab 1) (emphasis added).

If Plaintiff's allegations are accepted as true, all of his claims stem from retaliation and his immediate supervisor's desire "to get [Plaintiff]". Complaint ¶ 26. Despite the limited scope of Plaintiff's EEOC charge and the very individual nature of Plaintiff's claims, Plaintiff seeks to maintain an expanded Title VII claim and asks this Court to permit both his Title VII and § 1981 claims to proceed essentially as an across-the-board race discrimination class action on behalf of a broadly defined putative class. See General Telephone Company v. Falcon, 457 U.S. 146, 160 (1982). For the reasons set forth in this memorandum, Plaintiff's Complaint should be dismissed.

2/ The only person identified in the Complaint, other than Plaintiff, is a single co-worker who allegedly was identified along with Plaintiff on an overexposed polaroid found in the facility. Complaint ¶ 22.

III. PLAINTIFF'S INDIVIDUAL TITLE VII CLAIMS AS WELL AS HIS CLASS CLAIMS ARE OUTSIDE THE SCOPE OF HIS EQUAL EMPLOYMENT OPPORTUNITY CHARGE AND SHOULD BE DISMISSED

A Title VII plaintiff's judicial complaint may only encompass claims of discrimination "like or related to allegations contained in the [EEOC] charge and growing out of such allegation[s] during the pendency of the case before the Commission." Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970). See also Mulhall v. Advance Security, Inc., 19 F.3d 586, 589 n.8 (11th Cir. 1994) (applying the Sanchez "like or related to" test in the Eleventh Circuit); Evans v. U.S. Pipe & Foundry Co., 696 F.2d 925, 928 (11th Cir. 1983) (same). This rule is intended to provide the EEOC with an opportunity to investigate a charging party's claims and to put the accused employer on notice as to the employee's allegations. This allows the EEOC and the employer an opportunity to conciliate the dispute without the disruption of public litigation. Patterson v. McLean Credit Union, 491 U.S. 164, 180-81 (1989). Evans v. U.S. Pipe & Foundry Co., 696 F.2d 925, 929 (11th Cir. 1983) (listing the dual purposes for the charge process.) Here, Plaintiff's individual Title VII claims as well as his class claims are significantly beyond the scope of his charge and should be dismissed.

A. Plaintiff's Title VII race discrimination claims should be dismissed.

Title VII does not permit a complaint alleging broad race discrimination claims where the underlying charge alleges only that the employee was retaliated against for filing an earlier administrative charge. See Williams v. Little Rock Mun. Water Works, 21 F.3d 218 (8th Cir. 1994). In Williams, a case strikingly similar to this case, the plaintiff filed a charge of discrimination with the EEOC alleging that she was denied a promotion and a pay raise in retaliation for her earlier filing a charge of race discrimination, which she never pursued. Her second charge did not mention her race, and on the charge form, the plaintiff only checked the box marked "Retaliation." Id. at 221-222.

Following receipt of a notice of right-to-sue from the EEOC on the retaliation charge, plaintiff brought suit under Title VII alleging not only retaliation, but race-based claims as well. Id. at 222. The Eighth Circuit affirmed the dismissal of the race claims, holding that they were not "like or related to" the retaliation claims raised in her charge. 21 F.3d 221-223. See Lee v. Kroger Co., 901 F. Supp. 1218, 1224 (S.D. Tex. 1995) (plaintiff's third EEOC charge alleging retaliation did not provide a basis for Title VII complaint alleging race claims because those claims are not "like or related to" charges of retaliation); see also, Whitehead v. AM Int'l Co., 860 F. Supp.

1280, 1286-88 (E.D. Ill. 1994) (race charge may not expand to sex or retaliation claims); Pellerin v. Martin Marietta Manned Space Sys., 63 Fair. Emp. Prac. (BNA) Cas. 985, 986 (E.D. La. 1993) (Race charge could not expand to sex and age claims)

In this case, Plaintiff specifically alleged in his EEOC charge only that he was charging retaliation for a previous retaliation charge he did not pursue. (Tabs 1, 3). The only box he checked in the section of the instant charge form listing types of discrimination is that for "retaliation". (Tab 1). Despite the very limited scope of the charge, the allegations of Plaintiff's complaint are broad plant-wide race claims not confined to retaliation. Plaintiff includes broad based allegations of race discrimination with respect to promotions, enforcement of company policy, work assignments and harassment/hostile work environment -- none of which are "like or related" to, or arise out of, the allegations in Plaintiff's EEOC charge. Because Plaintiff's race claims are beyond the scope of his EEOC charge, they must be dismissed.

B. Plaintiff's Title VII retaliation claim is limited to those acts of retaliation alleged in his administrative charge.

As with claims of discriminatory conduct based on different protected classifications, the "like or related to" test prevents a Title VII plaintiff from raising in his judicial complaint allegations of adverse employment actions which were not raised in his administrative charge. See e.g., Mulhall v.

Advance Security, Inc., 19 F.3d 586, 589 n.8 (11th Cir. 1994) (affirming dismissal of promotion claim where the charge only alleged wage discrimination); Henderson v. Hovnanian Enterp., Inc., 884 F. Supp. 499, 502-3 (S.D. Fla. 1995) (King, J.) (same); see also, Edmonston v. MGM Grand Air, Inc., 808 F. Supp. 197, 202 (E.D.N.Y. 1992) (employee whose EEOC charge alleged only discriminatory failure to promote cannot bring claim for racial harassment when charge mentioned nothing about allegations of harassment); Shannon v. Ford Motor Co., 72 F.3d 678, 684-85 (8th Cir. 1996) (employee cannot bring failure to promote claim where charge alleged only discrimination in failure to be selected for an apprenticeship program).

Here, Plaintiff's administrative charge was very specific as to the acts of retaliation that he claims he suffered in May and December 1994. His charge made no mention of a "noose", the picture, or the racial slurs, despite the fact that all allegedly occurred before the December 14, 1994 filing date of his charge with the EEOC. Plaintiff's new allegations, even if somehow classified as retaliation and not race discrimination, are not "like or related to" any of the specific instances raised in his charge, would not have grown out the allegations and did not place Defendants on notice as to those claims. As with Plaintiff's claims of race discrimination under Title VII, Plaintiff's allegations of retaliation, which exceed the scope of the EEOC charge, should be dismissed.

C. Plaintiff's Title VII class allegations are also beyond the scope of his EEOC charge and should be dismissed.

Plaintiff's class-wide allegations also should be dismissed for the same reasons. Plaintiff's EEOC charge does not suggest or indicate class-wide discrimination, but instead refers to specific individual instances of alleged discrimination against him. Plaintiff's class-wide allegations are not like or reasonably related to his EEOC charge, nor could an EEOC investigation encompassing those allegations reasonably have been expected to grow from the charge. See Evans v. U.S. Pipe & Foundry Co., 696 F.2d at 928-29; See also Grayson v. K Mart Corp., 79 F.3d 1086, 1107 (11th Cir. 1996) (EEOC charge will serve as a basis of a class action only where the charge contains allegations of class wide discrimination); Schnellenbaecher v. Baskin Clothing Co., 887 F.2d 124, 127 (7th Cir. 1989) (because neither the EEOC charge nor the ensuing investigation was sufficient to put defendants on notice of any intention of the plaintiff to make allegations of class-wide discrimination in their complaint, those allegations were correctly dismissed.); Grant v. Morgan Guaranty Trust Co., 548 F. Supp. 1189, 1192 (S.D.N.Y. 1982) (plaintiff's class claims were dismissed because, based on the administrative charge, the EEOC could not reasonably have been expected to investigate any claims of discrimination

other than those relating to plaintiff individually.).[3/] Plaintiff's claims of class-wide discrimination are outside the scope of his EEOC charge, which described instances of alleged discrimination only with respect to his individual circumstances, and should be dismissed.

IV. PLAINTIFF'S CLASS ALLEGATIONS AS TO BOTH THE TITLE VII AND SECTION 1981 CLAIMS SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH RULE 23(a)

Before any claim may be maintained on behalf of a class, the court must first conclude that the Rule 23 prerequisites of numerosity, commonality, typicality and adequacy of representation have been met.

In General Telephone Company v. Falcon, 457 U.S. 146 (1982) the Supreme Court rejected an across-the-board theory of discrimination as a basis for maintaining a class action and required a "rigorous" analysis of class allegations in order to determine whether the prerequisites of Rule 23(a) had been met. Falcon, 457 U.S. at 160. After Falcon, neither an individual allegation of discrimination nor across-the-board charges of discrimination will create an automatic presumption that the requirements of Rule 23 have been met and conclusory allegations

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3/ In this case, no such expectation could follow. Prior to Plaintiff initiating this action, Defendant Flagship offered, and his counsel accepted, an invitation to conduct pre-suit discovery at the Flagship maintenance facility. Flagship has employed a total of twelve Black mechanics in that facility, including Plaintiff since 1992, the earliest year within any relevant limitations period. (Tabs 3 and 5)

will not suffice. Id.; See also, Coon v. Georgia Pac-Corp., 829 F.2d 1563, 1566 (11th Cir. 1987) ("[M]erely reciting the language of Rule 23(a) is not enough: a potential class representative must specifically identify the questions of law or fact that are common to his claims and to those of the members of his class."); Brooks v. Southern Bell Tel. & Tel. Co., 133 F.R.D. 54, 56 (S.D. Fla. 1990) (Moreno, J.) ("The Court cannot rely on conclusory allegations which parrot the provisions of Rule 23 to support certification.").

In order to bridge the gap between individual and class claims, a plaintiff must identify a class and make a "specific presentation identifying the questions of law or fact" that are common to the claims of plaintiff and of the members of the class he seeks to represent. Falcon, 457 U.S. at 158. Only those individuals who are "part of the class and 'possess the same interest and suffer the same injury' as the class members," are appropriate representatives. Id. at 156 (citing East Texas Motor Freight Sys., Inc. v. Rodriguez, 431 U.S. 395, 403 (1977)).

In this case, Plaintiff conclusorily asserts that he has met the prerequisites of Rule 23(a). He fails to set forth any factual allegations in support of the sufficiency of the class he proposes and alleges no facts that serve to bridge the gap between his individual and proposed class claims. Accordingly, Plaintiff's class allegations should be dismissed.

Numerosity

The initial requirement imposed by Rule 23 is that the members of the alleged class be so numerous that joinder of all members is impracticable. A very small class generally does not meet the numerosity requirement because joinder of all members is practicable. Andrews v. Bechtel Power Corp., 780 F.2d 124, 131 (1st Cir. 1985) citing Gilchrist v. Bolger, 733 F.2d 1551, 1555 (11th Cir. 1984). Similarly, joinder is considered practicable if all class members are from the same geographic area or can be easily identified or served with process if joined. Kilgo v. Bowman Transportation, Inc., 789 F.2d 859, 878 (11th Cir. 1986).

In this case, perhaps acknowledging what investigation has revealed, Plaintiff has not alleged any facts concerning the size of the class, their geographic dispersion or susceptibility to joinder. In fact, Plaintiff cannot make these allegations. (Tab 5).

In February 1995, at Defendant Flagship's invitation, Plaintiff and his counsel reviewed Defendant's records. They reflect that Defendant Flagship has employed only 12 black airplane mechanics since 1992. Seven are active employees. Five are inactive and of those, only three, including Plaintiff, were discharged. (Tab 5). Given the size of the putative class, 12 employees at most, all of whom are easily identified and could be joined if necessary, Plaintiff cannot meet the numerosity

requirement.[4/] See Cox v. American Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986) citing Moore, Federal Practice & Procedure, ¶ 23.05[1] at note 7. (generally class consisting of less than 21 persons is inadequate).

Commonality

If the proposed representative's claims are clearly founded upon individual rather than class issues, a class action is improper. Falcon, 457 U.S. at 157. Plaintiff must identify the specific questions of law or fact that he has in common with the putative class members. Falcon, 457 U.S. at 158.

In Ezell v. Mobile Housing Board, 709 F.2d 1376 (11th Cir. 1983) the Eleventh Circuit found that the district court correctly decertified a class of black employees and job applicants when the only evidence presented by the named plaintiffs concerned individual, not class-wide acts of discrimination by the employer. See also, Washington v. Brown & Williamson Tobacco Corp., 959 F. 2d 1566, 1570 (11th Cir. 1992) (class certification denied where plaintiffs alleging disparate treatment had only their race in common); Chaffin v. Rheem Manufacturing Co., 904 F.2d 1269, 1276 (8th Cir. 1990) (Plaintiff's "claims of disparate treatment were primarily claims of racial discrimination individual to him and, as such, did not support a class action."); Henderson v. National R.R. Passenger

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4/ Plaintiff's counsel has identified five as his clients. Messrs. Canejo, Rollins, Russell, McLean and Lee.

Corp., 117 F.R.D. 620, 622-23 (D.Ill. 1987) (claims for discriminatory discharge are generally inappropriate for class certification due to unique circumstances surrounding each termination); Pendleton v. Crown, Cork & Seal Co., 31 Fair Emp. Prac. (BNA) Cas. 1701, 1705 (D. Md. 1981) (plaintiff cannot represent class of black employees on issue of retaliation; such claims "do not lend themselves readily to class treatment since they usually involve facts and circumstances unique to the claim of the person against whom the retaliation is directed.").

Plaintiff has not identified one instance of alleged discrimination affecting another black employee. Thus, Plaintiff fails even to allege even the existence of a class of similarly situated employees. Plaintiff's claims focus instead on actions directed solely at him and are clearly, by their very nature, individual claims which do not present common issues of fact or law.

Typicality

Plaintiff's complaint also fails to establish that Plaintiff's claims are typical of those of the putative class. The mere fact that the Plaintiff is a member of an identifiable racial group is insufficient to give him standing to litigate all possible claims against an employer on behalf of a class. Falcon, 457 U.S. at 157. See also Chaffin v. Rheem Manufacturing Co., 904 F.2d at 1275 (A finding of typicality "requires something more than general conclusory allegations that unnamed blacks have

been discriminated against."). When "unique defenses will consume the merits of the case" certification should be denied for lack of typicality. Henderson, 117 F.R.D. at 623; Martin v. Beaumont, 125 F.R.D. 435, 438 (E.D. Tex. 1989) (Black officer's claims of racial discrimination not typical of class claims because the officers had been disciplined numerous times and officers' legal disputations of individual issues would not allow them to adequately represent the interests of the proposed class.)

Plaintiff, by his own admission, has been the subject of multiple disciplinary encounters with his employer over a five year period, ranging from failure to comply with company policies to insubordination. As a result, a major focus of the litigation will be on the myriad of defenses applicable only to Plaintiff's claims. Because individual questions will predominate over any common questions, Plaintiff's claims are not typical of the class.

Adequacy of Representation

The representative Plaintiff must fairly and adequately protect the interests of the class. If a class representative's claims are not typical of the class, he cannot be an adequate representative. Falcon, supra at 158, n. 13 and accompanying text. The rationale for the requirement involves the protection of the interests of the absent class members. In this case Plaintiff's history of individual employment problems and the unique defenses applicable to him render his claims atypical.

Moreover, the investigation of his charge resulted in a no cause finding. (Tab 2.) Accordingly, he cannot adequately represent the absent class members who are not similarly situated, especially current or former employees who have never experienced similar disciplinary problems.

Although a class certification hearing is often necessary to determine whether the proposed class can be maintained, in some cases whether or not the interests of the putative class members are encompassed within the plaintiff's claim so that a class action is appropriate may be plain from the pleadings. See Falcon, 457 U.S. at 160. The Court's obligation to accept plaintiff's substantive allegations as true on a motion to dismiss does not mean that the Court must accept conclusory or generic allegations regarding the suitability of the litigation for resolution through class action. Burkhalter Travel Agency v. MacFarms Internatl., Inc., 141 F.R.D. 144, 151 (N.D. Cal. 1991), citing Morrison v. Booth, 763 F.2d 1366, 1371 (11th Cir. 1985). In this case, it is plain from Plaintiff's pleadings that he cannot meet the prerequisites for maintaining an action on behalf of the class described in his complaint. Instead, he simply leaps from the premise that he was a victim of discrimination to the conclusion that others must also have been. See Morrison v. Booth, 763 F.2d at 1371. Accordingly, Plaintiff's class-wide allegations must be dismissed.

V. PLAINTIFF'S RETALIATION CLAIM CANNOT BE MAINTAINED UNDER SECTION 1981 AND SHOULD BE DISMISSED

Section 1981, as amended in 1991, prohibits discrimination in the making and enforcement of contracts and encompasses discrimination which prevents "enjoyment of all benefits, privileges, terms and conditions of the contractual relationship" on the same basis as enjoyed by "white citizens". 42 U.S.C. § 1981(b). The language of Section 1981, as amended, is very similar to the language of Section 2000e-2 of Title VII which also provides a remedy for race discrimination. See 42 U.S.C. § 2000e-2 (discrimination against employees with respect to the "terms conditions or privileges of employment, because of such individual's race..." is prohibited.).

Section 2000e-2 does not, however, prevent retaliation. The prohibition against retaliatory conduct on the part of the employer is addressed separately in Section 2000e-3 titled "Other unlawful employment practices." Section 2000e-3 defines certain protected activity and explicitly proscribes discrimination against employees engaging in the protected activity. Retaliation is not race discrimination.

Section 1981, even after the 1991 amendments, does not include a prohibition against any discrimination for engaging in protected activity similar to section 2000e-3. Indeed, Section 1981 creates no category of protected activity.

Despite the lack of any language in the statute expressly creating a remedy for retaliation, some courts have found that Section 1981, as amended, creates a remedy for retaliation based certain comments in the legislative history that included references to retaliation. See eg., Adams v. City of Chicago, 865 F.Supp. 445 (N.D. Ill. 1994); Steverson v. Goldstein, 24 F.3d 666 (5th Cir. 1994). The legislative history shows, however, that the discussion on the amendments surrounded Congress' desire to ensure that Section 1981 encompass race discrimination. H.R. No. 102-40I 102nd Cong. 1st Sess. (1991). The references to retaliation are tangential and appear to assume, incorrectly, that retaliation constitutes race discrimination.

Congress expressly set out to overturn a Supreme Court decision which severely limited the scope of Section 1981 and led the Eleventh Circuit to hold that Section 1981 did not apply to "retaliation" claims. See Sherman v. Burke Contracting, Inc., 891 F.2d 1527 (11th Cir. 1990). Yet, notwithstanding the tangential references in the legislative history to retaliation claims, Congress did not include "retaliation" within the amendment intended to reverse the effects of that decision.[5/] The plain

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5/ In any event, Congress does not have the power to overrule decisions of the Supreme Court but, rather, may promulgate new law for interpretation by the Court. Ribando v. United Airlines, Inc., 787 F.Supp. 727, 833, n.8 (N.D. Ill. 1992) citing Marbury v. Madison, 5 U.S. (1 Cranch) 137, 178 (1803).

language of Section 1981, as amended, provides a remedy for race discrimination, not retaliation. The statute should not be extended beyond its plain meaning and the Court should dismiss the Plaintiff's Section 1981 retaliation claim.

VI. PLAINTIFF'S COMPLAINT AGAINST DEFENDANT EXECUTIVE AIRLINES, INC. SHOULD BE DISMISSED IN ITS ENTIRETY BECAUSE PLAINTIFF WAS NEVER EMPLOYED BY EXECUTIVE AIRLINES, INC.

Plaintiff's complaint attempts to state claims against Executive Airlines, Inc. ("Executive") for violations of Title VII and Section 1981. Plaintiff, however, was never employed by Executive. As shown by the affidavit of Cathy Janas attached at Tab 7, Plaintiff was employed by Defendant Flagship Airlines, Inc. or its predecessor Nashville Eagle from December 1989 through December 1994 when he was discharged by Flagship. Because Plaintiff was never employed by Executive, he cannot maintain his Title VII or section 1981 claims against Executive and they should be dismissed. 42 U.S.C. §2000e-2; 42 U.S.C. §1981.

VII. ALTERNATIVELY, IF PLAINTIFF'S CLASS CLAIMS ARE NOT DISMISSED, THIS COURT SHOULD ISSUE AN ORDER LIMITING DISCOVERY TO CERTIFICATION ISSUES

If Plaintiff's class claims are not dismissed, this Court should limit discovery to certification issues (i.e., facts relevant to numerosity, commonality, typicality and adequacy of representation) and discovery on the merits should be postponed

until the Court has made a determination on the certification question. Washington v. Brown and Williamson Tobacco Corp., 959 F.2d at 1570-71 ("To make early class determination practicable and to best serve the ends of fairness and efficiency, courts may allow classwide discovery on the certification issue and postpone classwide discovery on the merits."(citation omitted)). Given the paucity of allegations supporting the propriety of a class action and the undue burden it would place on Defendants to be required to respond to classwide discovery on the merits without a determination on certification, the Court should, in its discretion, enter an order limiting discovery, establishing a discovery schedule for discovery on class issues, and establishing a date by which the Plaintiff is required to move for certification.

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CERTIFICATE OF SERVICE

We hereby certify that a true copy of the foregoing was mailed this 7th day of June, 1996, to Ira J. Kurzban, Esquire,

Kurzban, Kurzban, Weinger & Tetzeli, P.A., 2650 S.W. 27th Avenue, Second Floor, Miami, Florida 33133.

By: _____
Terence G. Connor

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