IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	C.A. No. H-84-2949
	)	
v.	)	
	)	
SPRING BRANCH INDEPENDENT SCHOOL DISTRICT, et al.,	)	
	)	
Defendants.	)	
	)	

PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER

Pursuant to Rule 26(c), F.R.Civ.P., Plaintiff United States hereby moves this Court to issue a Protective Order with respect to Defendants' Rule 26 and 30(b)(6) Notice of Deposition upon the United States, scheduled for August 18, 1986. As grounds therefor, Plaintiff states that such deposition is duplicative of interrogatories previously filed and is premature and burdensome.

Respectfully submitted,

Melissa P Marshall

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SPRING BRANCH INDEPENDENT SCHOOL DISTRICT, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A PROTECTIVE ORDER

BACKGROUND

The United States filed this action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq., alleging that the Spring Branch Independent School District (hereinafter variously referred to as "SBISD," "Spring Branch," or the "Spring Branch defendants") engaged in a pattern and practice of employment discrimination on the basis of race with respect to its teaching faculty and clerical positions. Specifically, the United States alleged in its Complaint that, inter alia, SBISD failed and refused to recruit and hire blacks for teaching and clerical positions on the same basis as whites were recruited and hired.

Following a motion to compel filed by the United States, on November 1, 1985, Magistrate Botley ordered the Spring Branch defendants to produce and make available for copying all documents relating to SBISD teaching and clerical employees, from 1965 forward, and all documents relating to applicants for teaching and clerical positions during that period. For approximately eight (8) months, from November 13, 1985, to July 1986, two employees of a contractor of the United States worked every day that SBISD permitted microfilming these documents. Information from these microfilm copies is in the process of being coded to form a computerized data base.

On October 15, 1984, the Spring Branch defendants served the United States with defendant SBISD's first set of 18 interrogatories.

On July 7, 1986, the United States was served with defendants SBISD's Second Set of Interrogatories, consisting of 29 interrogatories and with defendants Henry Wheeler's First Set of Interrogatories, consisting of 17 interrogatories (See, Attachment A). This brought the total number of interrogatories served by the Spring Branch defendants to 64; of those, 47 had been propounded by defendant SBISD.

Rather than condone a breach of Local Rule 10(E)(4), Plaintiff informed the Spring Branch defendants that it would only respond to 12 of defendant SBISD's second set of

interrogatories (Attachment B). Plaintiff also noted that in suits such as this, extended numbers of interrogatories were appropriate and therefore no objection would be made to a motion by the Spring Branch defendants for relief from Rule 10(E)(4). Plaintiff then responded to the first 12 of SBISD's second set of interrogatories and to all of the interrogatories propounded by defendant Wheeler (Attachment A); however, because Plaintiff is still in the process of coding information from the microfilm into the data base, much of the information requested could not be provided.

On July 23, 1986, Defendants served the United States with a Notice of Deposition pursuant to Rules 26 and 30(b)(6), F.R.Civ.P., and as an attachment thereto listed areas of inquiry which are essentially identical to the July 7 interrogatories (See, Attachment C). The Spring Branch defendants have not moved for waiver of Rule 10(E)(4). In an effort to comply with the local rules and to facilitate discovery, the Plaintiffs served such a motion on August 13, 1986.

ARGUMENT

The Spring Branch defendants' Rule 26 and 30(b)(6), F.R.Civ.P., deposition of the United States is duplicative of information sought through interrogatories. The areas of inquiry listed as an attachment to the Notice of Deposition are

essentially an identical listing of the two sets of interrogatories propounded to the United States on July 7.

The 1983 Amendments to Rule 26(b)(1), F.R.Civ.P., provide that a court may limit discovery if it determines that the discovery is unreasonably duplicative or if it may be obtained from some other source that is more convenient, less burdensome or less expensive. 1/ The anticipated objective was to guard against redundant or disproportionate discovery. Fed.R.Civ.P. 26(b)(1) Notes of Advisory Committee on Rules, 1983 Amendment;

1/ Rule 26, F.R.Civ.P., states in pertinent part:

> (b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:
>
> (1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery....
>
> The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive....

(Language of the 1983 Amendment is underscored.)

Heat and Control, Inc. v. Hester Industries, Inc., 785 F.2d 1017, 1023-24 (Fed. Cir. 1986). Here, the Spring Branch defendants are seeking by deposition exactly the same information as they have already sought through interrogatories.

The information sought by Defendants is not only duplicative, it is also premature. As Attachment A reflects, much of the information sought is simply not yet available: the United States only recently completed eight months of diligent work copying the SBISD employee and applicant files, and it is still in the process of coding the massive amount of information from these documents into its data base. Furthermore, as Attachment A also reflects, much of the analytical information sought is dependent upon information that Plaintiff anticipates acquiring through its Rule 30(b)(6) deposition of SBISD, which is scheduled to continue beginning September 30, 1986. Therefore, the method of demanding discovery does not alter the fact that the information sought is simply not yet available. 2/

Plaintiff brought to the Spring Branch Defendants' attention on July 16, 1986, that the number of interrogatories had

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2/ Plaintiff, prior to responding to the interrogatories and at the time the Notice of Deposition was received, repeatedly explained to Defendants that the information was not yet available.

exceeded the limitation imposed by Local Rule 14(E)(4) [3] and that as there was a continuing lack of cooperation on defendant's part with respect to any discovery not backed by a court order, Plaintiff would not condone a breach of the local rule. [4] However, defendants were assured that should they move for waiver of the rule, plaintiff would not object as such an extension is appropriate in actions like this that involve complex factual and legal questions. Attachment B.

Plaintiff United States, in an effort to provide timely discovery, has itself moved this Court to extend the number of interrogatories permitted under Rule 14. If as we expect that motion is granted, plaintiff will fully respond to the interrogatories, thereby obviating the need for any deposition of the kind noticed.

Defendants further demand that the deposition be taken in Houston, and that the requested documents be produced there,

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3/ Local Rule 14(E)(4) provides:

> (4) Interrogatories. No party shall serve more than thirty (30) interrogatories, including subparts, without leave of the Judge first obtained.

The defendants did not obtain leave prior to propounding the excessive number of interrogatories.

4/ Defendants' effort to avoid Local Rule 14(E)(4) is also evinced by the fact that although two sets of interrogatories were served, the information sought is not particular to the individual defendant; rather both sets of interrogatories form a continuous line of questioning, broken into two sections.

unless the United States will pay the expense of bringing counsel for the defendants to Washington, D.C. for the deposition. As the deposition is both duplicative and premature, it is clearly unreasonable to force the United States to send a witness, lawyer, and extensive files to Houston, or to pay all expenses for its deposition to be taken in Washington.

Plaintiff United States also seeks this protective order with respect to the date on which Defendants have noticed the deposition to be taken. In that Notice of Deposition, Defendants request the production of all documents and other materials relating to "the scope of Defendants' examination" (Attachment C, Notice of Deposition, p. 2). However, Defendants' Notice was served on July 23, 1986, for a deposition to be taken on August 18; such notice does not comply with Rule 34, F.R.Civ.P., which affords a party 30 days in which to respond to a request for production of documents and things. Further, counsel for Plaintiff has explained that a scheduling conflict precludes conducting the deposition on that date has proposed several alternative dates.

Plaintiff conferred by telephone on August 14, 1986, with counsel for the SBISD defendants, but was unable to reach an agreement with respect to the matters raised by this Motion.

CONCLUSION

Plaintiff United States' Motion for a Protective Order should be granted.

Respectfully submitted,

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ORDER

This matter comes before this Court on the motion by plaintiff United States for a protective order under Rule 26(c), F.R.Civ.P., with respect to the taking its deposition by the Spring Branch defendants. It is hereby,

ORDERED that Defendants' Notice of Deposition of Plaintiff United States be stricken without prejudice to serving a new notice after Plaintiff has completed its Rule 30(b)(6), F.R.Civ.P., deposition of the Spring Branch Independent School District and has fully responded to the interrogatories propounded by Defendants on July 7, 1986.

Signed this _____day of _____, 1986.

_____
CALVIN BOTLEY
United States Magistrate

CERTIFICATE OF SERVICE

I, David L. Rose, hereby certify that a copy of Plaintiff's Motion For Protective Order, a Memorandum in Support thereof, and a proposed Order were served, by DHL Express, on August 15, 1986, on the following counsel:

Jeffrey A. Davis, Esquire
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