

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

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	Civil Action No 2:06-cv-02624
v.)	
)	Judge McCalla
PARAMOUNT STAFFING, INC.,)	Magistrate Judge Cohn
)	
Defendant.)	JURY DEMAND
)	

ORDER DENYING DEFENDANT'S MOTION TO COMPEL

Before the Court is Defendant's Motion to Compel (D.E. # 22) and Plaintiff's Response in Opposition to Defendant's Motion to Compel (D.E. # 26). Defendant requests that the Court order Plaintiff to compel certain non-party putative class members to appear for noticed depositions. Plaintiff responds that it has made earnest attempts to encourage potential class members to appear voluntarily but that these efforts have been largely unsuccessful. Accordingly, Plaintiff argues that Defendant's remedy to secure attendance is to issue a subpoena pursuant to Rule 30(a) and Rule 45 of the Federal Rules of Civil Procedure. For the reasons set forth herein, Defendant's Motion is **DENIED**.

I. Background

This case arises from Plaintiff Equal Employment Opportunity Commission's ("EEOC") allegations that Defendant

Paramount Staffing, Inc. ("Paramount"), a temporary staffing agency, engaged in intentional discrimination on the basis of race and national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"). Specifically, Plaintiff contends that Paramount favored individuals with Hispanic origin over African Americans when referring temporary employees for positions at a local warehouse. Plaintiff's complaint seeks relief on behalf of the charging party, Earnestine Tolar, and a class of African Americans who unsuccessfully sought temporary employment through Paramount.

During the discovery phase of this case, Defendant has sought to depose fifteen non-party putative class members, as named in Plaintiff's initial disclosures and responses to interrogatories and requests for production. Defendant issued notices of depositions to these individuals, but only one person attended the noticed deposition. Accordingly, Defendant filed the instant motion to compel requesting the Court to order Plaintiff to make the noticed non-party putative class members appear for deposition.

II. Analysis

Under Rule 30 of the Federal Rules of Civil Procedure, a party may depose any person and may compel attendance by subpoena. Fed. R. Civ. P. 30(a)(1); see also Fed. R. Civ. P.

45. If the person sought to be deposed is a *non-party*, a notice of deposition is insufficient to compel attendance; instead, the deponent must be subpoenaed pursuant to Rule 45. See 8A Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d §§ 2106-07 (2d ed. 1994); see, e.g. Williams v. Gilles, Nos. 00-3049/ 02-2982, 2004 WL 792788 at *1 (W.D. Tenn. Mar. 15, 2004).

In the present case, the Court finds that the proper remedy for Defendant to require the attendance of non-party deponents is by issuance of a subpoena under Rule 45. If the non-party deponents fail to attend under subpoena, they may be held in contempt of court and may be subject to sanctions. Fed. R. Civ. P. 37(b)(1). However, there is no basis in the Federal Rules of Civil Procedure to grant a motion to compel based upon failure of a non-party to voluntarily attend a noticed deposition. See Fed. R. Civ. P. 37. Accordingly, Defendant's motion to compel is DENIED.

III. Conclusion

For the reasons set forth herein, Defendant's Motion to Compel (D.E. #22) is DENIED.

It is SO ORDERED this 25th day of June, 2008.

s/ Gerald B. Cohn
GERALD B. COHN
U.S. MAGISTRATE JUDGE