ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	
Plaintiff	**CIVIL ACTION NO. 3-01CV0619-P**
NICOLLE BRENNAN GAFFNEY, NICOLE CLEVELAND, ROBYN PURVIS MCGEHEE, and LISA RAMIREZ THORNTON,	
Intervenors,	
v.	
HOOTERS ARLINGTON VENTURE I. a Texas Partnership; TWI IV Inc.; TEXAS WINGS INC. d/b/a HOOTERS RESTAURANT	
Defendants.	

PLAINTIFF EEOC'S AND INTERVENOR'S BRIEF IN SUPPORT OF THEIR RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO INTERVENOR ROBYN PURVIS MCGEHEE'S CLAIMS INDIVIDUALLY, AND THROUGH EEOC AND IN THE ALTERNATIVE REQUEST FOR A CONTINUANCE UNDER RULE 56(f)

Respectfully submitted,

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COMES NOW the Plaintiff Equal Employment Opportunity Commission (hereafter "EEOC" or "the Commission"), and Intervenors, and jointly file this Brief in Support of Their Response in Opposition to Defendant's Motion for Summary Judgment as to Intervenor Robyn Purvis McGehee's Claims, Individually, and Through EEOC. EEOC requests that this Court deny the Defendant's Motion for Partial Summary Judgment. In the alternative, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, EEOC and Intervenors seek a continuance under Rule 56(f) in order to conduct important additional discovery.

STATEMENT OF UNDISPUTED FACTS

1. Robyn Purvis McGehee was hired by the Defendants as a waitress on or about October 1997. (App.1a). Her job responsibilities included serving food and drinks to the customers of Hooters as well as having fun with customers, whether as a "Hooters Girl" or as a member of the "lean, mean, kitchen machine." (App.1b).

2. Ms. McGehee worked directly under the supervision of Assistant Manager Chris Uffman. (App.1a).

3. During Ms. McGehee's employment with the Defendants, she was subjected to sexually provocative remarks from supervisor Chris Uffman. According to the Intake Questionnaire filed with the EEOC, Ms. McGehee indicated that she was subjected to sexual remarks, touching, being asked for sexual favors in order that she could leave the premises, asked about her sex life and looked at in a very inappropriate manner. (App.1a).

4. On February 4, 1998, Ms. McGehee filed a sworn Charge of Discrimination with the EEOC. In that Charge of Discrimination, Ms. McGehee alleged that she believed she had been discriminated against because of her sex because she was subjected to a sexually hostile work environment and retaliated against for opposing sexual harassment. (App.2).

5. Ms. McGehee's complaints of sexual harassment and retaliation were similar to complaints made by Intervenors Nicolle Brennan Gaffney, Nicole Cleveland and Lisa Ramirez Thornton. Ms. Gaffney, Ms. Cleveland and Ms. Thornton also filed Charges of Discrimination with the EEOC, alleging discrimination because they were subjected to unwelcome sexual conduct and comments by Assistant Manager Chris Uffman and other co-workers at Hooters. (App.3 a,b,c).

6. On March 22, 1999 EEOC issued a Letter of Determination on all four of the

Charges, finding that the Defendants subjected the four Intervenors to sexual harassment, and two of the Intervenors (Brennan Gaffney and Ramirez Thornton), to retaliation in violation of Title VII.. (App.4 a,b,c,d).

7. On March 30, 2001, EEOC filed its lawsuit in this case, alleging that the Defendants violated Title VII by subjecting Ms. McGehee, Ms. Cleveland, Ms. Gaffney, Ms. Thornton and a class of similarly situated female employees to a sexually hostile work environment, sex-based discrimination, retaliation, and/or constructive discharge.

8. On June 20, 2001, the Intervenors filed their Complaint, also alleging that the four Intervenors were subjected to a sexually hostile work environment, sex-based discrimination and two of the Intervenors (Brennan Gaffney and Ramirez Thornton), were subjected to retaliation.

9. On July 17, 2001, Defendant filed a motion to dismiss, claiming that the case should be dismissed because the Intervenors had signed arbitration agreements with the Defendants.

10. On October 16, 2001, the Court denied the Defendants's motion to dismiss, finding that the Court could not determine, based on the record before it, whether there was a valid agreement to arbitrate.

11. On August 8, 2002, Ms. Cleveland was deposed by the Defendants in this case. The deposition, which lasted from 10:19 a.m. until 4:14 p.m., included testimony that Ms. Cleveland was subjected to unwelcome sexual conduct and comments by Chris Uffman at Hooters, including but not limited to, asking about her sex life, what sexual positions she liked, and telling her she could leave early if she would show him her breasts.

12. On August 28, 2002, Ms. Thornton was deposed by the Defendants in this case. The deposition, which lasted from 10:09 a.m. until 4:27 p.m. (with numerous breaks), was cut short when

Ms. Thornton became ill as a result of her pregnancy. As the deposition was cut short due to illness, defense counsel had not yet begun asking her many questions about specific instances of sexual harassment. However, Ms. Thornton did confirm that she was offended by pornography in the bathroom and in the manager's office.

13. On August 27, 2002, Ms. Gaffney was deposed by the Defendants in this case. The deposition, which lasted from 11:27 a.m. until 3:47 p.m., was cut short when Ms. Gaffney became ill as a result of her pregnancy. During the deposition, Ms. Gaffney testified that she was subjected to unwelcome sexual conduct and comments by Chris Uffman at Hooters, including but not limited to a comment by him about "licking pussy." She was also offended by a Barbie Doll dressed in a Hooters outfit (with her hand poised down her pants) hanging by her neck in the manager's office, the word "hymen" written on the break room wall and being made to wear a shirt to the company picnic that referenced male ejaculate.

14. The parties agreed that Ms. Gaffney and Ms. Thornton would be unable to complete their depositions until after the end of their pregnancies. Pursuant to the Court's Order, dated September 30, 2002, the Court extended the discovery deadline until May 15, 2003.

15. The EEOC has been unable to produce Ms. McGehee for a deposition in this case because EEOC and counsel for the Intervenors have been unable to reach Ms. McGehee as of this time. Counsel for EEOC and the Intervenors have attempted to contact Ms. McGehee by telephone on numerous occasions during the time period December 1999 to present. Intervenors sent Ms. McGehee a letter dated December 29, 1999 in which she was asked to contact the law firm in order to schedule a meeting. Subsequently, counsel for EEOC and the Intervenors have left messages on Ms. McGehee's voicemail, but she has not responded to their telephone calls. As of July 26, 2001,

the contact numbers and address for Ms. McGehee were no longer accurate according to Intervenor's records. On July 26, 2001, Intervenors ran a Texas Dossier Cover Sheet on her that revealed data such as last known addresses, possible businesses owned, possible associated persons, vehicle information, possible ownership of boats, aircraft, corporate affiliations, miscellaneous information and neighbors for each former address. Intervenors also checked the following information on July 26, 2001: Texas Driver's License, Texas Voter's Registration and Texas Alcoholic Beverage License. Any information that was gleaned from the search efforts of July 26, 2001 was pursued. On August 3, 2001, Intervenors sent Ms. McGehee a fifteen page affidavit, basically addressing the relevant allegations of her claims. Further, by letter dated April 10, 2002, EEOC requested that Ms. McGehee contact the EEOC or Intervenor's counsel to discuss the case and a date for deposition. Ms. McGehee has failed to respond to this letter. EEOC may have emergency and family telephone numbers and addresses to use to contact Ms. McGehee, but has not yet taken that additional step.

16. EEOC has only taken one partial deposition in this case: Christopher Uffman on August 29, 2002. EEOC has requested that the Defendants at least produce the following additional persons for deposition: Troy Cates, Kris Venable, Ron Asdahl, Terry Rabe, Stephanie Lewis, Kent Childs and Chris McNeff. Defendants have agreed to produce these important witnesses for depositions, but only after the Defendants have had the opportunity to complete the depositions of Ms. Thornton and Ms. Gaffney.

I. SUMMARY JUDGMENT STANDARD OF NON-MOVANT

An order of summary judgment is only appropriate when there is no genuine issue of a material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c);

LTV Educational Systems, Inc. v. Bell, 862 F.2d 1168, 1172 (5th Cir. 1989). The proper inquiry is whether there are any genuine factual issues that properly can be resolved only by a trial of the matter because they may reasonably be resolved in favor of either party. *Anderson v. Liberty Lobby*, 477 U.S. 242, 250 (1986). Where the movant makes a proper showing of the absence of genuine issue for trial, the burden of proof shifts to the non-movant to come forward with evidence showing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). The party opposing summary judgment must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electrical Industries Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Once summary judgment is made, the non-movant must go beyond the pleadings and designate specific facts in the record showing that there is a genuine issue for trial. And the court must examine the evidence in the light most favorable to the non-movant. *Id.* at 587-88. Summary judgment may be granted only when the moving party has established his right to judgment with such clarity that the non-moving party cannot recover (or establish the defense) under ***any discernible circumstance*** (emphasis added). *Everhart v. Drake Management, Inc.*, 627 F.2d 686, 690 (5th Cir. 1980).

II. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED

In its Motion, Defendants move for summary judgment, asserting that the summary judgment evidence establishes as a matter of law that Intervenor Robyn Purvis McGehee was not subjected to a sexually hostile work environment because of her sex in violation of Title VII.

Despite the fact that Ms. McGehee's deposition has not yet been taken, sworn evidence shows that Ms. McGehee was subjected to constant severe and pervasive sexual harassment while employed as a waitress at Hooters. As attested to in the Charge of Discrimination signed by Ms.

McGehee and provided to the EEOC, Ms. McGehee states that her supervisor, Chris Uffman, sexually harassed her, made sexually provocative remarks to other waitresses about himself in her presence, and made sexual remarks during Jumpstart meetings and at closing. Furthermore, she avers that pornographic pictures appeared in the bathroom during December 1887 and January 1998. (App.2)

This affidavit testimony from Ms. McGehee is consistent with the deposition testimony already provided in this case by Ms. Gaffney, Ms. Thornton and Ms. Cleveland. During her deposition, Ms. Cleveland testified that she was subjected to unwelcome sexual conduct and comments by Chris Uffman at Hooters, including but not limited to, asking about her sex life, what sexual positions she liked, and telling her she could leave early if she would show him her breasts. During her deposition, Ms. Gaffney testified that she was subjected to unwelcome sexual conduct and comments by Chris Uffman at Hooters, including but not limited to a comment by him about "licking pussy." She was also offended by a Barbie Doll dressed in a Hooters outfit (with her hand poised down her pants) hanging by her neck in the manager's office, the word "hymen" written on the break room wall and being made to wear a shirt to the company picnic that referenced male ejaculate. During her deposition, Ms. Thornton, whose deposition barely reached specific questioning on specific incidents of sexual harassment, testified that she was offended by pornography in the bathroom and in the manager's office. Ms. McGehee worked at Hooters during the same time period as Ms. Gaffney, Cleveland and Thornton.

In order to establish a *prima facie* claim of hostile work environment sexual harassment, a plaintiff must establish the following: (1) that she belongs to a protected class; (2) that she was subject to unwelcome harassment of a sexual nature; (3) that the harassment was based on sex; (4)

that the harassment affected a term, condition or privilege of employment; and (5) that the defendant knew or should have known of the harassment and failed to take prompt remedial action. *See EEOC v. Café Acapulco, Inc.*, No. 3-98CV2302-P, 2000 U.S. Dist. LEXIS 3670, at *6 (N.D. Tex. Mar. 23, 2000)(*citing Shepherd v. Comptroller of Public Accounts*, 168 F.3d 871, 873 (5th Cir. 1999)). To be actionable under Title VII, the conduct alleged must create an environment that a reasonable person would find hostile or abusive, and such a determination depends on the "totality of the circumstances." *See Farpella-Crosby v. Horizon Health Care*, 97 F.3d 803, 806 (5th Cir. 1996).

Further, for the sexual harassment to be actionable under Title VII, it must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. *Farpella-Crosby,* 97 F.3d 806. The Supreme Court has held that sexually discriminatory verbal intimidation, ridicule, and insults may be sufficiently severe or pervasive as to alter the conditions of the victim's employment and create an abusive working environment that violates Title VII. *See Harris v. Forklift Sys., Inc.,* 510 U.S. 17, 21 (1993). The summary judgment evidence raises genuine factual issues about the sexual conduct and comments to which Ms. McGehee was subjected at Hooters that properly can be resolved only by a trial of the matter. Defendant has failed to meet its summary judgment burden of establishing its right to judgment with such clarity that the non-moving party cannot recover under ***any discernible circumstance.*** *Everhart v. Drake Management, Inc.*, 627 F.2d 686, 690 (5th Cir. 1980).

Therefore, Defendant is not entitled to summary judgment on the issue of whether Robyn Purvis McGehee was subjected to a sexually hostile work environment at Hooters.

III. THE ARBITRATION AGREEMENT IS NOT SUFFICIENT TO WARRANT SUMMARY JUDGMENT IN THIS CASE

In Defendants' Motion for Summary Judgment, Defendants argue that they should be entitled to summary judgment because Ms. McGehee signed an arbitration agreement with the Defendants. Ms. McGehee has yet to be deposed on this subject. However, during their depositions, Ms. Thornton, Ms. Cleveland and Ms. Gaffney testified that they did not knowingly or voluntarily sign any agreements to arbitrate, and if they did, they did not understand what they were signing. Defense counsel, much to his exasperation, spent hours and hours trying to get the three Intervenors, two of whom were visibly pregnant and uncomfortable, to admit that they knowingly and voluntarily signed agreements to arbitrate. They would not admit to this, other than admit to signing documents hastily placed under their noses prior to being rushed to get to work out on the floor. Ms. McGehee has not yet had the opportunity to testify on this issue, but it is expected that her testimony would be consistent with all other class members in this case. The Intervenors' persuasive testimony on the issue of arbitration supports the Court's ruling in this case of October 16, 2001 that the record was not clear as to whether there was a valid agreement to arbitrate between the Intervenors and the Defendants.

Even assuming *arguendo* that there are valid agreements to arbitrate the employment-related disputes made the subject of this lawsuit, such agreements between private parties do not materially change the EEOC's statutory function or the remedies that are otherwise available to the EEOC. The EEOC never agreed to mediate its statutory claim. The EEOC is not a signatory to any arbitration agreement(s). The EEOC has independent statutory authority to vindicate the public interest. The Federal Arbitration Act ("FAA") directs courts to place arbitration agreements on

equal footing with other contracts, but it "does not require parties to arbitrate when they have not agreed to do so." *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University,* 489 U.S. 468, 478 (1989).

No one asserts that EEOC is a party to any arbitration agreements, or that it agreed to arbitrate its claims. It goes without saying that a contract cannot bind a nonparty; therefore, the pro-arbitration policy goals of the FAA do not require a statutory agency such as the EEOC to relinquish its statutory authority if it has not agreed to do so. *Equal Employment Opportunity Commission v. Waffle House, Inc.*, 122 S. Ct. 754, 764 (2002).

The EEOC has the authority to pursue victim-specific relief for Robyn Purvis McGehee regardless of the forum that the Defendants have attempted to mandate to resolve the employment-related disputes made the subject of this class action hostile environment sexual harassment lawsuit. *Equal Employment Opportunity Commission v. Waffle House, Inc.*, 122 S. Ct. 754, 765 (2002).

The EEOC seeks to vindicate the interests of all of the Intervenors, and the public, and does not seek only to provide make-whole relief for Robyn Purvis McGehee. Summary judgment as to Robyn Purvis McGehee's claims through the EEOC should not be granted. Summary Judgment should not be granted as to Robyn Purvis McGehee because additional discovery within the time period allotted by the Court will present evidence of genuine issues of material fact that will preclude the granting of summary judgment on the issue of sexual harassment.

IV. IN THE ALTERNATIVE, EEOC SEEKS A RULE 56(f) CONTINUANCE

If this Court cannot find that the evidence is sufficient to deny the Defendants' Motion for Partial Summary Judgment, EEOC requests that this Court grant a continuance pursuant to Rule

56(f) to allow the EEOC and Intervenors additional time to locate Ms. McGehee and to conduct additional discovery.

To obtain a continuance of a motion for summary judgment under Rule 56(f) in order to obtain further discovery, a party must indicate to the court by some statement, preferably in writing (but not necessarily in the form of an affidavit), why he needs additional discovery and *how* the additional discovery will create a genuine issue of material fact. *Stults v. Conoco, Inc.* 76 F.3d 651, 657-58 (5th Cir. 1996); *Krim v. Banctexas Group, Inc.*, 989 F.2d 1435, 1442 (5th Cir. 1993); *International Shortstop, Inc. v. Rally's, Inc.*, 939 F.2d 1257, 1266-67 (5th Cir. 1991), *cert. denied*, 502 U.S. 1059 (1992); *Washington v. Allstate Ins. Co.*, 901 F.2d 1281, 1286 (5th Cir. 1990). The nonmoving party "may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts." *Spence v. Green Chemical Co.*, 612 F.2d 896, 901 (5th Cir. 1980), *cert. denied*, 449 U.S. 1082 (1981). If it appears that further discovery will not produce evidence creating a genuine issue of material fact, the district court may, in its discretion, grant summary judgment. *Netto v. Amtrak*, 863 F.2d 1210,1216 (5th Cir. 1989); *International Shortstop*, 9939 F.2d at 1267.

In *International Shortstop,* the Fifth Circuit held that a continuance to permit further discovery was appropriate despite the non-movant's failure to request one in accord with the precise terms of Rule 56(f) because the non-movant had indicated to the court in no uncertain terms why further discovery was needed, and why discovery had not yet been completed. *Krim v. Banctexas Group, Inc.* at 1443. The non-movant had sought a continuance of discovery three times, had informed the court that depositions remained to be completed, had explained to the court *how* the discovery sought pertained to an essential element of the case, and had not been dilatory in seeking

discovery. Krim v. Banctexas Group, Inc. at 1443; International Shortstop, 939 F.2d at 1267-68.

V. A RULE 56(f) CONTINUANCE IS NECESSARY TO PROVIDE THE EEOC AND INTERVENORS WITH ADDITIONAL TIME TO LOCATE MS. MCGEHEE

The EEOC has attempted on more than several occasions to contact Ms. McGehee by telephone and by letter. Intervenors have also attempted to contact her by phone and by letter. All of the telephone numbers Ms. McGehee provided to the EEOC and Intervenor are out-of-date and no longer valid. EEOC will next attempt to locate her through next of kin and an emergency telephone numbers provided by Ms. McGehee during EEOC's investigation. EEOC will also attempt more advanced Internet searches in order to locate her whereabouts. Intervenors plan to conduct database search of the type that they have performed in the past to locate Ms. McGehee.

VI. A RULE 56(f) CONTINUANCE IS NECESSARY FOR THE EEOC AND INTERVENORS TO CONDUCT ADDITIONAL DISCOVERY

This is a class hostile environment sexual harassment case brought under Title VII of the Civil Rights Act of 1964, as amended. Being a hostile environment case, much of the evidence overlaps. There is a commonality of actors, conduct and environment. Granting summary judgment as to Robyn Purvis McGehee at this early stage in discovery could seriously and negatively impact the claims of the other three Intervenors.

Pursuant to the First Amended Scheduling Order entered September 30, 2002, the discovery deadline is not until May 15, 2003, and the dispositive motion deadline is not until June 15, 2003. The Court granted this extension of the deadlines, in part, because two of the Intervenors, Nicolle Brennan Gaffney and Lisa Ramirez Thornton were unable to withstand the rigors of deposition due to symptoms associated with their pregnancies. Intervenor Nicole Cleveland has been deposed. Both EEOC and counsel for Intervenors are having difficulty locating Robyn Purvis McGehee. The EEOC

and Intervenors need more time in which to attempt to locate her.

Until the depositions of Nicolle Brennan Gaffney and Lisa Ramirez Thornton are completed, and further attempts to depose and/or take affidavits from Robyn Purvis McGehee and other witnesses are made, discovery is still in the early stage, and adjudication on the merits of Robyn Purvis McGehee's claims will, in effect, result in the trial in abstentia of the claims of the other Intervenors insofar as the chilling specter of unknown arbitration is concerned. If this Court finds, based upon no testimony or affidavit from Robyn Purvis McGehee, that she knowingly and voluntarily agreed to arbitrate her employment-related claims pursuant to unspecified and highly suspect arbitration "agreements," then this creates an unfair and unsupported presumption as to the other Intervenors, at least on the points that (1) there were legal arbitration agreements and rules in effect at the time that Intervenors applied to work at Defendants, and (2) at least one of the Interevenors knowingly and voluntarily agreed to arbitrate pursuant to them. Defendants know this, and take the opportunity of summary judgment to again try to remove this case from the courtroom to the backroom.

VII. HOW ADDITIONAL DISCOVERY WILL CREATE GENUINE ISSUES OF MATERIAL FACT

The Parties have not conducted sufficient discovery to clarify the issues of arbitration, involved in this case, including a determination of which document(s) constitute(s) the arbitration agreement(s), if any, and whether the Intervenors knowingly and voluntarily agreed to arbitrate pursuant to any such arbitration "agreement(s)." Three of the four Intervenors have not been fully deposed on the subject. The EEOC has only taken half of the deposition of Chris Uffman, the chief perpetrator. The EEOC has taken no other defense depositions. This fact is of great importance

because the EEOC has yet to have the opportunity to depose and examine defense witnesses on the subject of arbitration agreement(s). Counsel for Intervenors has taken no depositions.

Additional discovery will, at the least, create the following genuine issues of material fact:

1. Whether Robyn Purvis McGehee signed an agreement(s) to arbitrate the sexual harassment claims made the subject of this lawsuit;

2. Whether Robyn Purvis McGehee knowingly and voluntarily consented to arbitrate these employment-related disputes;

3. What rules govern arbitration proceedings, the Hooters rules or the JAMS rules;

4. Whether employees, including management employees, knowingly and voluntarily consented to arbitrate employment related disputes;

5. Whether during the employment of Robyn Purvis McGehee , Defendants engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1) and Section 704 (a) of Title VII, 42 U.S.C. § 2000e-3(a) by subjecting Robyn Purvis McGehee to a sexually hostile work environment, discriminating against her because of her sex, retaliating against her, and/or constructively discharging her;

6. Whether the sexually harassing conduct and atmosphere was so severe as to cause Robyn Purvis great humiliation and emotional distress, resulting in a material alteration of the terms and conditions of her employment, including retaliation and/or discharge;

7. Whether the unlawful employment acts complained of were intentional;

8. Whether the unlawful employment acts complained of were done by supervisors

and/or other management personnel;

9. Whether the unlawful employment practices were done with malice or reckless indifference to the federally protected rights of Robyn Purvis McGehee

VIII. CONCLUSION

In conclusion, granting of summary judgement as to Robyn Purvis McGehee is inappropriate. Defendants cannot establish as a matter of law that Intervenor Robyn Purvis McGehee was not subjected to a sexually hostile work environment because of her sex in violation of Title VII. Competent summary judgment evidence indicates that Ms. McGehee was subjected to a sexually hostile work environment. There is no evidence in the record that Ms. McGehee knowingly and voluntarily signed any agreement to arbitrate her employment-related claims. EEOC's statutory authority to pursue victim-specific relief on behalf of Ms. Purvis is unaffected by any purported arbitration agreement(s) under the holding of *EEOC v. Waffle House, Inc.* Now is not the time to revisit the Court's ruling of October 16, 2001 on the issue of arbitration. EEOC requests that this Court deny Defendant's motion for partial summary judgment.

In the alternative, EEOC requests that this Court grant a continuance under Rule 56(f). There is a discovery extension in place and all of the relevant testimony on this issue has not been taken. A Rule 56(f) continuance is appropriate because EEOC and Intervenors have indicated to the Court why discovery is needed and how the additional discovery will create genuine issues of fact.

WHEREFORE PREMISES CONSIDERED, the EEOC prays pursuant to F.R.C.P. 56(f) that this Court deny the Motion for Summary Judgment as to Intervenor Robyn Purvis McGehee's Claims, Individually, and Through the EEOC, or in the alternative order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be conducted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing has been served on all counsel of record for the Defendant at the address below via United States first class mail, postage prepaid, on this the 23rd day of October, 2002.

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