UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION

JOHN TUCKER, et al.
 	
               Plaintiffs,
 	
vs.
 	
Walgreen Company,
 	
               Defendant.
	Case No.: 05-cv-440-GPM

SUPPLEMENTARY DECLARATION OF
MARC BENDICK, JR., Ph.D.

1. I know the following facts of my own personal knowledge and based on my experience as described herein. If called as a witness, I could and would testify thereto under oath.

2. I am a labor economist who previously authored a *Declaration of Marc Bendick, Jr., Ph.D.*, in this case, dated October 20, 2005.

3. Since preparing that earlier declaration, I have read *Defendant's Response to Plaintiffs' Motion to Compel Responses to Plaintiffs' First Request for Production of Documents,* dated November 14, 2005 (hereafter, *Defendant's Response*). Nothing in that document changed my opinions on matters I discussed in my earlier declaration. In fact, some of the issues raised were anticipated and addressed there.

4. However, the *Defendant's Response* raises additional issues concerning the feasibility and burdensomeness of data processing which warrant comment. Specifically, the Defendant raises these issues with respect to Plaintiffs' request for "All electronic and machine readable databases and files containing basic personnel information for all present and past employees

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during the period January 1, 1998 to the present...."[1] The *Defendant's Response* calls this request "astonishing."[2] It notes that the request "...includes information from multiple Walgreens data bases that contain millions of records, and would occupy at least ten data disks, the equivalent of hundreds of thousands of pages."[3]

5.   With modern data processing technology, the size of a firm and its employee data bases, by themselves, present no barrier to rapid, efficient data analysis. Over the past decade, my colleagues and I have conducted statistical analyses of alleged employment discrimination in five retail firms with more than 100,000 employees:[4]

Retailer	Approximate Current Employees[5]	Approximate Current Stores	Store Locations
Wal-Mart	1,700,000	5,700	nationwide
Home Depot	325,000	1,950	nationwide
Kroger	289,000	3,750	nationwide
Publix	163,000	865	Southeast
Costco	113,000	460	37 states

In each of these cases, we completed our analyses with no unusual effort on our part. We stored and manipulated data on the same notebook personal computers we use every day, and we used standard, commercially-available software. According to the *Defendant's Response*, Walgreens has 180,000 employees and 5,000 stores in 45 states.[6] These figures place it comfortably within the range of retail firms with which we have successful data analysis experience. I do not anticipate that analysis of the data described in paragraph 4 above would present greater data processing challenges than these previous cases.

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[1] *Defendant's Response*, p. 9.

[2] *Defendant's Response*, p. 8.

[3] *Defendant's Response*, p. 8; see also paragraphs 3-5 of *Affidavit of Carol Spitz*, which is Attachment B to *Defendant's Response*.

[4] Citations for these cases are available in Attachment B to my earlier declaration.

[5] Data on employees, stores, and locations was downloaded from the business analysis website www.hoovers.com on November 16, 2005

[6] Paragraph 3 of *Affidavit of Carol Spitz*, which is Exhibit B to *Defendant's Response*.

6.   None of these five large retail firms listed in paragraph 5 above encountered insurmountable problems in identifying, extracting, assembling, documenting, and transmitting the data required for our analysis. In the business and technology environment of 2005, all competently-managed firms with more than 100,000 employees have sophisticated computerized human resources information systems. These firms constantly use these systems to write payroll checks; provide mandatory tax reporting to federal and state governments; implement personnel actions such as hires, transfers, raises, promotions, and terminations; calculate bonuses; prepare federally-required equal employment opportunity and affirmative action analyses; inventory employees' qualifications and performance; forecast staffing needs; conduct other special studies on personnel issues; and many other uses. To support such widely varying uses, these human resource information systems are designed to:

- be highly flexible to accommodate a wide variety of data requests;
- be efficient to program;
- locate and assemble data elements from multiple separate databases if required;
- assemble information for individual stores, districts, store "peer groups," or other collections of stores as needed; and
- cheaply and rapidly "export" data sets for others to use.

The data request in this case is not qualitatively different from requests Walgreens' human resource information system staff are called upon to fulfill routinely every working day.

7.   The Defendant further argues that the plaintiffs' "...requested data bases contain a wide variety of information that in no way relates to plaintiffs' claims of race discrimination."[7] As examples of irrelevant information, the *Defendant's Response* lists the number of dependents claimed for federal tax withholding purposes, the names of beneficiaries of employee fringe benefits, monthly amounts paid to pensioners, and employees' claims for educational reimbursements.

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[7] *Defendant's Response*, pp.8-9; see also paragraph 6 of *Affidavit of Carol Spitz.*

8.   Large firms' human resource management information systems normally contain many such pieces of information, and I assume that Walgreens' is no exception. Therefore, as in the five previous cases listed in paragraph 5 above, the company's data processing staff must extract the relevant variables from the firm's databases and leave the irrelevant variables behind.[8] This is a routine task for a firm's data processing staff, which they are called upon to do every working day. In fact, according to Carol Spitz, this task has essentially already been completed. At the cost of 320 hours, her staff has already isolated the appropriate variables for the subset of stores and years for which Walgreens proposes to provide data to plaintiffs.[9]

9.   Ms. Spitz's Affidavit states that, if she had to provide such data for Walgreens company-wide for the entire period requested, rather than for the subset of stores and years for which she has already extracted data, her staff would have to duplicate their entire previous effort, and the work would require 60 days to complete.[10]   In reality, all that her staff would have to do is rerun the data extraction programs they have *already written,* after deleting the lines of computer code which instruct the computer to limit its search to certain divisions and time periods. *Simplifying* the computer programs her staff has already written should require only minutes, and preparing and delivering the data sets the computer would subsequently produce should require at most a few hours, not 60 days. The fact that this data set might be five times the size of the extract Ms. Spitz's staff has already prepared[11] makes essentially no difference in how long the extract would take to prepare because the additional work is done by the computer, not by employees.

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[8] An alternative, equally workable procedure would have the defendant deliver a data base including all variables, after which the plaintiffs' data analysts could quickly and easily delete the irrelevant variables. In previous employment discrimination litigation, I have seen both approaches applied successfully and efficiently.

[9] *Affidavit of Carol Spitz,* paragraph 7.

[10] *Affidavit of Carol Spitz,* paragraph 7.

[11] Paragraph 7 of the *Affidavit of Carol Spitz* says that the extract her staff has already prepared contains 500,000 records, and paragraph 5 of that *Affidavit* states that complying with the full request would create a data set five times that size. Since I have not yet had access to any data in this case, I have no way of verifying the correctness of these figures.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 17th day of November 2005 at Washington, D.C.

Marc Bendick, Jr., Ph. D.

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