

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KATHARINE BUSH,
MELIA WILDER (f/n/a STOPA),
SHELLY GOOREVICH, and
LADAWN HARRIS-ROBINSON,

Plaintiffs,

v.

RUTH'S CHRIS STEAK HOUSE, INC.,
RUTH'S HOSPITALITY GROUP, INC.,
RCSH MANAGEMENT, INC., and
RCSH OPERATIONS, LLC.,

Defendants.

Civil Action No. 10-cv-01721 (BJR)

SCHEDULING AND CLASS
CERTIFICATION DISCOVERY
ORDER

This matter is before the court on the parties' **Joint Meet and Confer Report** [Docket No. 49; Filed November 23, 2011] (the "Report"). This order establishes a schedule for class certification pre-trial and resolves disputes regarding discovery limitations identified in the Report. Having considered the parties' proposal and arguments and being fully advised, **no additional briefing shall be permitted unless otherwise directed.**

Plaintiffs are former employees of Ruth's Chris who allege that they were subjected to employment discrimination on the basis of their gender and that this discrimination against women occurs companywide. Plaintiffs seek to represent a class of similarly situated women, prosecuting the following class claims: gender discrimination in violation of Title VII, 42 U.S.C. § 2000(e) *et seq.*, and the District of Columbia Human Rights Act.

Defendants deny that Plaintiffs, or any class of women that Plaintiffs purport to represent, were subjected to any unlawful treatment, or that class treatment is appropriate.

1. The court, adopting the parties' agreement, bifurcates class and merits discovery. There will be no dispositive motions until the merits phase of the case. Once the issue of class certification is resolved, the parties will submit a new case management plan for the merits issues which will include a schedule for dispositive motions.

2. Having considered the positions of the parties, the court orders that the deadline for adding any new parties and for amending the pleadings shall be **January 31, 2012**.

3. Although the parties do not oppose assigning discovery matters in whole or in part to a magistrate judge, this court will handle discovery.

4. The parties have no currently scheduled settlement talks although they have had them in the past. The court will not refer the parties to settlement or ADR at this time but may consider doing so in the future.

5. Having considered the parties' arguments concerning the scope of discovery for the class certification portion of the case,¹ IT IS HEREBY **ORDERED** as follows:

Discovery in this case shall comply with the court's prior order directing that the time period for class discovery be limited to January 1, 2006 to December 31, 2009 (hereinafter the "Time Period"). *See Order* [#41] at 1. The court has ordered that discovery should include positions which were either held by Plaintiffs or positions they hoped to obtain. *See id.* The court finds that discovery should also include positions which are similar or functionally comparable to those positions. *See Cook v. Boorstin*, 763 F.2d 1462, 1468-69 (D.C. Cir. 1985). The relevant categories, therefore, are Regional Vice President, General Manager, Sales Manager, National Sales Manager, Assistant General Manager, Assistant Sales Manager, Key Employee, and Bartender. The court excludes managers, hostesses, and servers.

Moreover, the court concludes that discovery related to positions relevant to yet to be added Plaintiffs is not appropriate at this time. If Plaintiffs are added in the future, discovery shall be expanded to include positions relevant to their claims. Finally, although Plaintiff Harris-Robinson's claims are more limited than

¹ The court notes that the Report contains briefing on discovery disputes that currently exist between the parties. Although this briefing arguably violates the court's procedure for resolving discovery disputes, see, e.g., *Standing Order* [Docket No. 50], the court elects to consider the issues raised.

other putative class members, the court finds that discovery should not be limited to her restaurant as Defendants suggest. However, as shown below, the court concludes that a smaller sample of information related to positions relevant to her claims is appropriate.

Accordingly, IT IS FURTHER **ORDERED**:

A. Human Resources Data

On or before **January 13, 2012**, Defendants shall produce to Plaintiffs a computer-readable copy of the following information from its database(s) for all persons employed during the Time Period as Regional Vice President, General Manager, Sales Manager, National Sales Manager, Assistant General Manager, and Assistant Sales Manager, as well as for a random sample of 100 persons employed as Bartender and Key Employee:

1. basic employee information, including, where available, unique identifier; initial salary and job function; subfunction and title; grade; job history including any changes in job function, subfunction and title, or grade; gender; date of service; date of hire or any rehire;
2. educational background, where available;
3. evaluation score and date of evaluation for each performance evaluation (including, but not limited to, a All Performance Plus results and information);
4. all data relating to compensation (including initial salary, merit

increases, other increases, bonuses, stock option allocations, other benefits, and any other employee compensation), including each raise, other increase, decrease, or any other change;

5. pay grade, job title or position (including job code, if any), location, division, department, and months in position, including the date of and decision maker(s) responsible for any promotions, transfers, demotions, or other job changes;²
6. W-2 data; and
7. any disciplinary action.

By the same date, Defendants shall produce any codebook, key, handbook, or other documents that may be necessary to read the data or may aid in interpreting the information on the database. **Defendants' responsibility to produce the information is limited by what is presently available in their database(s) for the relevant time period. Defendants shall not be required to compile results from review of employee records.**

B. Job Posting

On or before **January 13, 2012**, Defendants shall produce to Plaintiffs in computer-readable form any applicant tracking records of Defendants' job posting system(s), if any, that existed during the Time Period, and any other computerized

² It is unclear how status changes between full and part-time positions is relevant to this request, and the court removes any reference to such information here.

data or data collections regarding positions that were posted for Regional Vice President, General Manager, Sales Manager, National Sales Manager, Assistant General Manager, Sales Manager, and Key Employee, applications for these positions, and information regarding those applications including the position description, the applicant's unique identifier, the gender of the applicants, any information contained on the application, and the disposition of the applications. By the same date, Defendants shall produce any codebook, key, handbook, or other documents that may be necessary to read this data or may aid in interpreting the information on the database.

C. Personnel Files

On or before **January 13, 2011**, Defendants shall produce to Plaintiffs any information relevant to Plaintiffs' claims created during the Time Period contained in personnel files (excluding medical information and private information that could not reasonably be related to Plaintiffs' claims),³ including the supplementation of any files previously produced, for the following persons:

Kevin Armantrout, Jeff Blair, Matthew Brice, Michael Connolly, Greg Dabran, David Delulio, Kelly Duerr, Mohammed Fakhara, Amy Fischer, Gil Fornaris, Brian Forster, LaDawn Harris-Robinson, Kurt Hamilton, Anthony Hensley,

³ To the extent that Plaintiffs wish to define the type of information contained in personnel files that they believe is relevant to their claims, they should do so consistent with this order, but they are not entitled to complete sets of personnel files for nonparties. Further, to the extent that Defendants contend that privacy concerns prevent disclosure of certain information, the protective order entered by the court should adequately address those concerns.

Jacques Hermier, Doranne Hughes, Chuck Jalowski, Indy James, Lanette Jarvis, Rik Jenkins, Tom Khandakar, Chuck Lamb, Anthony Lavelly, Susan Lum b, John Maloney, Jeffrey Menzer, Angela Miceli, Noad (last name currently unknown), Joe O'Donnell, Eric Ostrow, Juan Carlos Parkhurst, Kim Redmond, Juan Rodriguez, Jason Ruderman, Geoffrey Stiles, Pete Tambini, Scott Uguccioni, Michael Wellikoff, and Steve Wells.

D. Sex and/or Gender Discrimination Complaints

On or before **January 13, 2011**, Defendants shall produce all available documents related to complaints, both formal and informal, alleging of sex and/or gender discrimination by Defendants and/or any of their agents, employees, etc. during the Time Period.

E. Data and Reports on Sex and/or Gender Representation of Workforce

On or before **January 13, 2012**, *unless otherwise privileged*, Defendants shall produce in complete, readable, and useable form any previously compiled computerized or hard-copy data and information that investigate, analyze, report, study, or comment on, the gender representation of Defendants' workforce during the Time Period. Any privilege log submitted in reference to this information shall comply with Fed. R. Civ. P. 26(b). If, after this deadline, disputes remain about the validity of the privilege log or the assertion of a privilege, Plaintiffs may file a five-page motion addressing the dispute and attaching the privilege log. Any

response by Defendants shall be limited to five pages.

F. Test Data

On or before **January 13, 2012**, Defendants shall produce information on any test results, including but not limited to the Batrus Hollweg test,⁴ used in the evaluation and/or assessment of all persons employed as Regional Vice President, General Manager, Sales Manager, National Sales Manager, Assistant General Manager and Assistant Sales Manager, as well as for a random sample of 100 persons employed as Bartender and Key Employee during the relevant Time Period.

6. Each party shall be permitted to take **TEN (10) depositions**, exclusive of expert witnesses, not to exceed **SEVEN (7) hours** each except that one Rule 30(b)(6) deposition may last an additional seven (7) hours.

7. Plaintiffs shall provide Defendants with their expert witness reports no later than **June 1, 2012**. Defendants shall provide Plaintiffs with their expert witness reports no later than **August 2, 2012**. Depositions of Plaintiffs' class certification experts must be completed by **July 2, 2012**. Depositions of Defendants' class certification experts must be completed by **September 3, 2012**.

8. **IS HEREBY ORDERED** that the following schedule for class certification shall govern this case:

⁴ In the Second Amended Complaint, Plaintiffs allege that "[t]he Batrus Hollweg testing potentially contributes to barriers in advancement for female employees at the company." Second Am. Cmplt. ¶ 56.

Exchange of class certification witness lists	March 2, 2012
Non-expert Class certification discovery deadline	April 2, 2012
Deadline for Motion for Class Certification	October 3, 2012
Deadline for Opposition to Motion for Class Certification	November 2, 2012
Deadline for Reply	December 3, 2012
Class Certification Hearing	January 2013 TBD

9. As noted earlier, IT IS HEREBY **ORDERED** that discovery shall be bifurcated between class discovery and merits discovery. The issue of bifurcation of liability and damages shall be addressed pursuant to the merits phase case management plan.

10. IT IS HEREBY **ORDERED** that a new case management plan should be prepared and filed by the parties within 30 days after resolution of the class certification.

11. A trial date will be set after receipt of the merits phase case management plan.

No other matters need to be included in the scheduling order.

Dated: December 19, 2011



BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE