1996 WL 164427
Only the Westlaw citation is currently available.
United States District Court, N.D. Illinois, Eastern Division.

Savino LATUGA, individually, and David Gonzalez, individually and as representative of a plaintiff class of similarly situated persons, Plaintiffs,
v.
HOOTERS, INC. d/b/a Hooters, individually, and Hooters of Orland Park, Inc. d/b/a/ Hooters, individually and as representatives of a defendant class of similarly situated entities, Defendants.
John GINTER and Patrick Salisbury, individually and as representatives of a plaintiff class of similarly situated persons, Plaintiffs,
v.
HOOTERS, INC. and Hooters Management Corporation, each d/b/a Hooters, individually, Hooters of Orland Park, Inc. and Hooters of Downers Grove, Inc., each d/b/a/ Hooters, individually and as representatives of a defendant class of similarly situated entities, Defendants.

No. 93 C 7709, 94 C 6338. | March 29, 1996.

Opinion

MEMORANDUM OPINION AND ORDER

MANNING, District Judge.

***1** This matter comes before this court in response to the defendants' timely objections to Magistrate Judge Rosemond's report and recommendation to grant plaintiffs' motion for class certification in its entirety. Plaintiffs, David Gonzalez, John Ginter and Patrick Salisbury, bring this class action complaint against defendants, Hooters, Inc. (HI), Hooters Management Corporation (HMC), Hooters of Orland Park, Inc. (HOOP), and Hooters of Downers Grove, Inc. (HODG), alleging sex discrimination, in violation of 42 U.S.C. § 2000e *et seq.,* (1988 & Supp V. 1994) ("Title VII"), because of defendants refusal to hire men to work the "front of house" positions of wait staff, bartender or host. Plaintiff Savino Latuga has filed a seperate motion before the court requesting that he be allowed to withdraw as a representative of the plaintiff class. Plaintiffs Gonzalez, Ginter and Salisbury also move to include within the class all male applicants to Hooters of America (HOA) restaurants and franchises because of HOA's continuing obligation to follow HI's allegedly discriminatory hiring policy. Plaintiffs move this court for class certification under Federal Rule of Civil Procedure 23.

This court has reviewed the Magistrate Judge's recommendation, both parties' written submissions in their entirety, defendants' objections to the Magistrate's recommendation and report and the respective responses and replies to those objections. For the reasons set forth below, the court affirms the Magistrate Judge's Recommendation and Report and grants plaintiffs' motion to certify the class. This class is to include applicants to all HI and HMC operated restaurants, including HOOP and HODG, and all HOA restaurants. It will also include the deterred applicants who are current or former employees of HI, and HMC operated, and HOA restaurants. The class period begins on April 18, 1992.

BACKGROUND

Defendants HOOP and HODG are corporations which own and operate Hooters restaurants in, respectively, Orland Park and Downers Grove, Illinois. HOOP and HODG have license agreements with defendant HI, a Florida corporation which owns the Hooters trademarks and trade names, and is owned by shareholders of HI. HI shareholders own seven other Hooter's restaurants in addition to HOOP and HODG (HI restaurants). HMC, also owned by the shareholders of HI, provides management services to both HOOP and HODG, as well as all the other HI restaurants. Hooters of America (HOA) is a Georgia corporation which has a license agreement with HI allowing HOA to use and franchise the Hooters trademarks and

trade names. HOA has franchise agreements with over 150 restaurants (HOA restaurants) located in 38 states. HOA is not a party in this case, nor are any of the 150 HOA restaurants. Plaintiffs Latuga, Gonzalez and Salisbury unsuccessfully applied for jobs as waiters at HOOP, while defendant Ginter unsuccessfully applied at HODG.[1] Plaintiffs allege that they were not hired because defendants discriminated against them on the basis of their sex.

LEGAL STANDARD

***2** The United States Magistrates Act allows Magistrate Judges to hear and propose recommendations on various dispositive motions, including any motions to "dismiss or to permit maintenance of a class action." 28 U.S.C. § 636 (b)(1)(A). The Act requires that the district courts "make a de novo determination of the those portions of the [Magistrates Judge's] recommendations to which objections are made." 28 U.S.C. §636 (b) (1); *see also Delgado v. Bowen,* 782 F.2d 79, 81-82 (7th Cir. 1986). In making the determination "[a] judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. §636 (b) (1).

DISCUSSION

In order to obtain class certification the plaintiffs must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and (b). Under 23(a) the plaintiffs must show that: (1) the class is so numerous that joinder is impracticable; (2) there are questions of law or fact common to the named plaintiffs and the class; (3) the claims of the named plaintiffs are typical of the class claims; and (4) the named plaintiffs will fairly and adequately represent the interests of the class. Additionally, under Rule 23(b), for the plaintiffs' to maintain the class action they must show that either: (1) the prosecution of separate actions by individual class members would either (a) create the risk of inconsistent or varying adjudications and establish incompatible standards of conduct for the defendants, or (b) substantially impair other members' ability to protect their interests; or (2) that the defendants have acted or refused to act on grounds generally applicable to the class, thereby making final declaratory or injunctive relief appropriate to the class as a whole.

On a motion for class certification, plaintiffs must establish that each element necessary for class certification is present. *Retired Chicago Police Assn. v. City of Chicago,* 7 F.3d 584, 596 (7th Cir. 1993). Further, a class action "may only be certified if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *General Tel. Co. v. Falcon,* 457 U.S. 147, 161 (1982). However, the court should not, and in this case the court does not, address the merits of the case in deciding the motion for class certification. *Eisen v. Carlisle and Jacqualin,* 417 U.S. 156, 177-78 (1974).

The court finds that the class is so numerous that joinder of all members is impracticable. The exact number and identity of members of the proposed class need not be established for the court to certify a class, and the numerosity requirement may be supported by common sense. *Brewer v. Friedman,* 152 F.R.D. 142, 143 (N.D.Ill. 1993). Defendants have produced over 150 applications from males from a single Hooter's restaurant. The numerosity requirement has been satisfied with a smaller number of class participants in previous cases. *E.g., Swanson v. Am. Consumer Indus.,* 415 F.2d 1326 (7th Cir. 1969) (40 persons); *Allen v. Isaac,* 99 F.R.D. 45 (N.D.Ill. 1983) (17 persons); *Rosario v. Cook County,* 101 F.R.D. 659 (N.D.Ill. 1983) (20 persons). Further, the defendants have not challenged whether the numerosity requirement has been met by the plaintiffs. The court therefore finds that the numerosity requirement is satisfied in this case.

***3** There are also questions of law or fact common to the entire class. The main question here is the legality of the defendants' policy of refusing to hire males to certain positions at Hooter's restaurants. Further, the defendants support their policy by asserting that being a female is a Bona Fide Occupational Qualification ("BFOQ") for the positions which are at issue in this case. Courts have consistently held that the applicability of a Bona Fide Occupational Qualification defense is a common question which satisfies the second requirement of Rule 23(a). *See, e.g., International Union UAW v. Johnson Controls,* 499 U.S. 187 (1991); *Dothard v. Rawlinson,* 433 U.S. 321 (1977); *Spurgis v. United Airlines, Inc.,* 444 F.2d 1194 (7th Cir. 1971), *cert. denied,* 404 U.S. 991 (1971); *Bowe v. Colgate Palmolive Co.,* 416 F.2d 711 (7th Cir. 1969). These questions are common to the entire class, and the defendants also do not challenge the sufficiency of the plaintiffs' showing of the commonality requirement. Therefore, the court finds that the commonality requirement is satisfied in this case.

Thirdly, the typicality requirement is satisfied because the plaintiffs' claims arise from the same practice or course of conduct engaged in by the defendants. The Seventh Circuit has held that a "plaintiff's claim is typical if it arises from the same event or course of conduct that gives rise to the claims of the other class members and his or her claims are based on the same legal theory." *Rosario v. Livaditis,* 963 F.2d 1013, 1018 (7th Cir. 1992), *cert. denied,* 113 S. Ct. 972 (1993) (citations omitted). The named plaintiffs in this case allege that they were denied employment by a Hooter's restaurant as a result of HI's policy of refusing to hire males in certain positions and have brought suit under the same legal theory as the class has available. Further, the defendants have only challenged the sufficiency of the plaintiffs' showing of the typicality requirement with respect to the scope of the class, not with respect to the plaintiffs' representative capacity. The court will address the challenge to the scope of the class below. The court therefore finds that the typicality requirement is satisfied in this case.

It is on the fourth and final requirement of Rule 23(a), that the named plaintiffs fairly and adequately represent the interest of the class, that defendants offer their strongest objections. The court finds that this requirement is also satisfied. This fourth requirement is the single most important requirement of Rule 23(a) because it implicates constitutional due process principles. *Lirtzman v. Spiegel, Inc.,* 493 F.Supp. 1029, 1032 (N.D.Ill. 1980). Absent an adequate class representative, it is a violation of due process to bind absent class members to a final judgment. *Susman v. Lincoln Am. Corp.,* 561 F.2d 86, 90 (7th Cir. 1977).

The adequacy of representation requirement has two distinct parts: (1) that the class representative will prosecute the action vigorously and will not have interests which are antagonistic to those of other class members; and (2) that the class counsel is qualified and experienced. *Id.* Defendants do not challenge whether the class counsel is qualified and experienced in this case, but instead challenge the adequacy of representation on several other grounds related directly to the named plaintiffs. Defendants claim that Gonzalez is an inadequate class representative because he has no real interest in the job for which he applied, that he faces serious credibility challenges at trial on matters which go to the heart of his employment discrimination claim, and that he knows next to nothing about his lawsuit or the lawyers who control it. In addition, defendants claim that plaintiffs Ginter and Salisbury are inadequate representatives because they had no claims against any of the defendants until they created the claims by applying for jobs after they became aware of the pending lawsuit. The court will address each of these challenges in turn.

***4** Defendants claim that Gonzalez is inadequate class representatives because he has no real interest in the jobs for which he applied. Defendants seem to be arguing that because Gonzalez had no real interest in the job because he had a high-paying job, only wanted to work nights to make extra funds, and had never worked as waiter before. However, the defendants have failed to cite any case law discussing how the named plaintiffs' level of interest in the denied job affects their adequacy of representation. Instead, the defendants seem to be arguing that Gonzalez's level of interest somehow affect his credibility. However, the level of interest in the jobs applied for does not affect the credibility of the plaintiff's testimony that he applied for a wait staff position, and was rejected because he is a male. Further, there is evidence that Gonzalez had a real interest in the jobs for which he applied, and his injury stems from the denial of the job. In this case, the named plaintiffs allege, along with members of the proposed class, that they were denied employment because they are male. Because the injury is the same, the level of damages is irrelevant.

Defendants claim that Gonzalez is an inadequate class representative because he faces serious credibility challenges at trial on matters which go to the heart of his employment discrimination claim. Where a plaintiff's credibility is open to attack, they may not be adequate class representatives. *Kline v. Wolf,* 702 F.2d 400, 403 (2d Cir. 1983); *Panzirer v. Wolf,* 663 F.2d 365, 368 (2d. Cir. 1981), *cert. granted sub nom., Price Waterhouse v. Panzirer,* 458 U.S. 1105 (1982), *vacated as moot,* 459 U.S. 1027 (1982). However, unlike this case, the cases which the defendants cite in support of their contention involve issues which so severely damage the plaintiff's credibility that it was fair to say no cause of action ever existed.

In *Kline,* the plaintiffs were suing for detrimental reliance due to an allegedly misleading statement in the company's annual report prepared by the defendants. As a result of the plaintiffs reliance on the allegedly misleading report, the plaintiffs purchased stock in the company and lost money on the stock. However, the plaintiff seeking to be class representative admitted that the report in question did not even exist at the time he allegedly relied upon it. *Kline,* 702 F.2d at 403. Without this critical evidence, the plaintiffs failed to have a cause of action. Therefore, the representative plaintiff's questionable credibility went right to the heart of the claim, and the court refused to certify the class. *Id.,* 702 F.2d at 402.

In *Panzirer* the plaintiff was suing because she had detrimentally relied upon a newspaper article, that was based upon a false and misleading annual company report, to purchase stock in the company. She subsequently lost money on the purchase of the stock. The court found that her credibility was seriously questionable because she gave no less than four different versions of the conversation she had with her stock broker when she placed the order to purchase the stock. *Panzirer,* 663 F.2d at 368. Again, this testimony is critical to the class representative's case, because it is used to establish that the plaintiff

detrimentally relied upon the annual report. Without this reliance, the plaintiff fails to have a case. So again, as in *Kline,* the credibility issue goes to the heart of the plaintiff's case, and therefore, the court refused to certify the class. *Id.* at 368-69.

***5** In the present case, the defendants point to the fact that Gonzalez's has offered different versions of exactly how he applied for the job at HOOP. There is some dispute between the complaint and Gonzalez's deposition as to exactly who picked up and dropped off the application, and as to the timing of when his application was filled out. However, these issues are strictly peripheral. The heart of the case is that Gonzalez applied for, and was denied employment at HOOP, a fact which the defendants do not dispute. Therefore, unlike the cases the defendants cite in support of their position, the credibility issues cited by the defendants in this case do not go to the heart of the dispute. In general, it is up to the fact finder to determine the credibility of the witnesses. *Scholes v. Stone, McGuire & Benjamin,* 143 F.R.D. 181, 187 (N.D.Ill. 1991). Therefore, while a representative plaintiff's credibility should be included in a class certification calculus, class representation should not be denied where the inconsistencies in the plaintiff's testimony are peripheral, and do not go to the heart of the case as they do in *Kline* and *Panzirer. Michaels v. Ambassador Group, Inc.,* 110 F.R.D. 84, 91 (E.D.N.Y. 1986).

Defendants claim that Gonzalez is an inadequate class representative because he knows next to nothing about his lawsuit or the lawyers who control it. "[A] named plaintiff must have some commitment to the case, so that the 'representative' in a class action is not a fictive concept." *Rand v. Monsanto Co.,* 926 F.2d 596, 599 (7th Cir. 1991). However, a representative plaintiff need not immerse himself in the case. *Id.* at598. The modern trend is to require little in the way of factual knowledge on the part of the class representative. Maria L. Fiala and Melanie C. Gold, *Opposing Class Actions,* 653 Prac. Law Inst./Corp. Law and Prac. 261, 266 (1989). Generally, where a proposed representative demonstrates a familiarity with the action's outlines, he or she will be deemed adequate. *Id.* (citing *In re Diasonics Sec. Litig.,* 599 F.Supp. 447, 452-53 (N.D.Cal. 1984); *In re AM Int'l, Inc. Sec. Litig.,* 108 F.R.D. 190, 196-97 (S.D.N.Y. 1985)).

The Seventh Circuit has shown that it agrees with this analysis in *Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130, U.A.,* 657 F.2d 890 (7th Cir. 1981), *cert. denied,* 455 U.S. 1017 (1982). The Seventh Circuit cites a Supreme Court case, *Surowitz v. Hilton Hotels Corp.,* 383 U.S. 363 (1966), in which it was not enough to defeat the class where the named plaintiff did not understand her complaint at all, could not explain the statements in it, had little knowledge about what the lawsuit was about, did not know the defendants by name, nor even the nature of the misconduct of the defendants, to illustrate the flexibility and broad area for the trial court's common sense and good judgment in particular instances. *Eggleston,* 657 F.2d at 896. The Seventh Circuit further warns that "it is often the defendant, preferring not to be successfully sued by anyone, who supposedly undertakes to assist the court in determining ... whether the representative parties will fairly and adequately protect the interests of the class, ... [this] is a bit like permitting the fox, although with a pious countenance, to take charge of the chicken house." *Id.* at 895.

***6** Against this backdrop, the court finds that the representative plaintiffs are adequately enough involved in the case to represent the class interests. The named plaintiffs know the nature of their complaint against the defendants, they have been in contact with their attorneys, they are aware that they may be called to testify at trial, and they are aware that they are representing a class of similarly situated people.

Defendants claim that plaintiffs Ginter and Salisbury are inadequate representatives because they had no claims against any of the defendants until they created the claims by applying for the jobs only after they became aware of the pending lawsuit. However, there is adequate support in the record to find that Ginter and Salisbury applied for the Hooter's positions out of a desire to work there, not solely to create a class action claim. There is sufficient evidence that, had they been offered the position, they would have accepted, and therefore, they were injured in the same way as other members of the class. Further, the actions of Ginter and Salisbury are not what created the claim in this case; rather, the alleged actions of the defendants in denying employment on the basis of gender allegedly created the cause of action. Therefore, plaintiffs have satisfied the requirements of 23(a).

The court also finds that the plaintiffs have satisfied the requirement of Rule 23(b)(2). Rule 23(b)(2) requires the plaintiffs to show that the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate declaratory or injunctive relief. The Seventh Circuit, citing the Advisory Committee Notes on Rule 23, has recognized that Rule 23(b)(2) was drafted primarily for discrimination cases. *Eggleston,* 657 F.2d at 896. Therefore, because it appears that this type of case is the reason behind the drafting of Rule 23(b)(2), the court finds that the Rule is satisfied in this case.

Because the plaintiffs are only required to satisfy one subpart of Rule 23(b), it is not necessary for the court to rule on the defendants' challenge to the plaintiffs' satisfaction of Rule 23(b)(1)(A). As discussed above, the court finds that all the relevant requirements of Rule 23 are met in this case. The court affirms the Magistrate's report and certifies the plaintiffs as

representatives of the class of persons similarly situated and allows the case to proceed as a class action.

The court now addresses the defendant's objections to the scope of the class. The plaintiffs contend that the class should include all applicants and deterred applicants to HI restaurants and HOA restaurants. The plaintiff's argue, and the evidence supports, that the HI restaurants, including HODG and HOOP, and HMC are a single employer. Further, the plaintiffs' maintain that HI enforces and controls the allegedly discriminatory hiring practice at the HOA restaurants by retaining a tight rein on the franchise and licenses it has with HOA. The defendants argue that the class should only include actual applicants to HOOP or HODG. The defendants object to any inclusion of HOA because they maintain that HOA is a separate entity that is not connected with HI except by an arm's length license agreement. The court rules that the certified class includes actual applicants to all HI and HOA restaurants. The class period begins on April 18, 1992, which is 300 days prior to the date that Gonzalez filed his charges of discrimination. *See Movement For Opportunity v. General Motors,* 622 F.2d 1235, 1248 (7th Cir. 1980).

***7** The court finds that HI, HMC, and the nine HI restaurants are so interrelated as to constitute a single employer for Title VII discrimination purposes. Where a number of business entities are so interrelated that they can fairly be considered a "single enterprise," they will be considered a single employer for purposes of Title VII. *Rogers v. Sugar Tree Products, Inc.,* 7 F.3d 577, 582 (7th Cir. 1993) (dealing with Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.*); *Trevino v. Celanese Corp.,* 701 F.2d 397, 404 (5th Cir. 1983). The *Rogers*' court cites four factors a court should consider in determining whether a number of entities constitute a single employer: (1) interrelation of operations; (2) common management, common directors and boards; (3) centralized control of labor relations and personnel; and (4) common ownership or financial control. *Rogers,* 7 F.3d at 582. Applying these four factors to the relationship of HI, HMC, and the HI restaurants results in a finding that they are a single employer for the purposes of Title VII. This can be seen in the control and common ownership that HI and HMC have over all nine restaurants, including HOOP and HODG. Also the common management that HMC, a business established and primarily owned by the same parties that own HI, provides over the HI restaurants is indicative of the single employer nature of the defendants HI, HMC, HOOP and HODG. Further, HI's continuing control over the hiring policy at issue in this case shows that there is a centralized control over employment policies. Therefore, the class includes applicants to the nine HI restaurants.

Plaintiffs move that all men who were denied employment at HOA due to HI's allegedly discriminatory policy should be included in the class. The plaintiffs claim that the relationship between HI and HOA significantly defines the hiring policies of HOA restaurants and interferes with all male applicants' job opportunities. Defendants object to the inclusion of any HOA applicants into the class on several grounds. First they point out that relationship between HI and HOA is that of two separate corporations. Secondly, defendants claim that including HOA in the class would destroy the typicality requirement of Rule 23(a)(3). Finally, defendants claim that the plaintiffs' lack standing to sue HOA and that the court would find this class unmanageable if HOA was included in the class. However, in evaluating the evidence and the law this court finds that males who were discouraged from applying to front of the house positions at HOA restaurants are properly within the class.

In this case the evidence presented to the court shows that the license agreement between HI and HOA gives HI considerable control over the various HOA franchisees. The agreement allows HI a continuing right to approve the uniforms worn by the "Hooter Girls", to maintain exclusive control over the concepts embodied in the Hooter's core operating system and to take all action HI deems necessary to insure that each HOA franchise is maintaining the standards embodied in the Hooter's core operating system. The prospective HOA franchisee is informed that the Hooter's core operating system includes the trade name and restaurant's concept. The restaurant concept includes certain ambience requirements and a female waitstaff wearing cutoff t-shirts, tanktops and orange jogging shorts. This concept, the prospective HOA franchisee is told, creates a restaurant that can compete with any casual dining restaurant, particularly those featuring female sex appeal. Furthermore, the prospective franchisee is told that both HI and HOA believe the Hooter's restaurant concept to be protected by a BFOQ against any Title VII challenges. Once operational the HOA franchisee can be evaluated by an HI representative. And, while the HI representative cannot direct the HOA franchisee to do anything at that time, the evaluation can be sent back to HOA, where HI can then exercise its license rights to take any action it deems necessary to protect its core operating system.

***8** The Seventh Circuit recognizes that "courts should keep in mind the remedial nature of Title VII and construe it liberally so as to further the goals and purposes of eliminating discrimination in employment." *Unger v. Consol. Foods Corp.,* 657 F.2d 909, 915 n.8 (7th Cir. 1981), *vacated on other grounds,* 456 U.S. 1002 (1982). This mandate has resulted in numerous cases where an employer-employee relationship is found to exist due to the ability of the defendant to significantly interfere with the employment opportunities of an individual. *See, e.g., Doe on Behalf of Doe v. St. Joseph's Hosp.,* 788 F.2d 411, 422-24 (7th Cir. 1986); *Unger,* 915 F.2d at 915-16; *EEOC v. City of Evanston,* 854 F. Supp. 534, 537-38 (N.D.Ill. 1994); *Mitchell v. Tenney,* 650 F. Supp. 703, 707-09 (N.D. Ill. 1986); *Shannon v. Village of Broadway,* 682 F. Supp. 391, 394 (N.D. Ill. 1988); *Vakharia v. Swedish Covenant Hosp.,* 765 F. Supp. 461, 467-68 (N.D. Ill. 1991). If this case dealt with some other

legal issues, such as a breach of contract dispute or a dram shop act violation, then perhaps HOA and HI should not be treated as joint employers. But in this case the issue is over HI's control of the allegedly discriminatory hiring policy that significantly interferes with the opportunity for males to obtain jobs at Hooters restaurants nationwide. Therefore, applicants to HOA restaurants are properly within the class.

Defendants claim that including HOA in the class destroys the typicality requirement of Rule 23(a)(3) because it causes plaintiff's to advance differing legal theories to show discrimination at HI and HOA stores. The essence of the plaintiffs' claim is that HI's hiring policy is discriminatory. Because plaintiffs allege that HI's hiring policy has been transferred, via the HI and HOA licensing arrangement, to all Hooters restaurants nationwide the class members will have the same typical experience. That typical experience will be one of alleged discrimination in hiring because of their sex. Therefore, even with HOA included in the class, the court finds that the typicality requirement is satisfied.

Defendants object to including HOA in the class because plaintiffs lack standing to assert any claim against HOA. Defendants argument, when not mirroring their earlier typicality argument, is, in short, that plaintiffs' have failed to meet the "case or controversy" requirement of Article III of the Constitution. For there to be no standing due to a lack of any "case or controversy" the injuries of the proposed class representative and the class members must be of a differing nature, *Blum v. Yaretsky,* 457 U.S. 991, 999 (1982), but "[w]hen the named plaintiffs allege that they are suffering from the symptoms of a system-wide policy of sex discrimination emanating from the central corporate administration, the injury they suffer is the same as the injury suffered by all employees victimized by that policy." *Karan v. Nabisco Inc.,* 78 F.R.D. 388, 399 (W.D. Pa. 1978). Furthermore, when evaluating standing in a civil rights class action suit the "violation of Title VII is necessarily a class action as the evil sought to be ended is discrimination on the basis of a class characteristic." *Bowe,* 416 F.2d at 719. The court is satisfied that the plaintiffs are within a class concretely affected by the Hooters system-wide policy and have standing to represent applicants at HOA restaurants.

***9** Defendants also argue that any class including HOA applicants would soon become unmanageable due to the extensive discovery into the daily functions of over 150 Hooters restaurants. However, the primary issues in this case are HI's control over the allegedly discriminatory hiring policy and HI's BFOQ defense; therefore the court feels confident that counsel for each side will focus on these issues and that discovery will be manageable. Furthermore, it is not unprecedented for courts to certify large regional or nationwide class actions. *See, e.g., Appleton v. Elec. Co. v. Advance-United Expressways,* 494 F.2d 126, 135 (7th Cir. 1974); *Grueshaw v. Harris,* 492 F. Supp. 419, 422 (D.S.D. 1980), *aff'd,* 633 F.2d 1264; *Eirhart v. Libbey-Owens-Ford Co.,* 89 F.R.D. 424, 428 (N.D. Ill. 1981).

Defendants also object to certifying a class larger than the actual applicants at HOOP and HODG because of the burden it will place on defendants. However, the court does recognize that including deterred applicants in the class is often appropriate. *Int'l Bhd. of Teamsters v. United States,* 431 U.S. 324, 365-67 (1977). Therefore, in balancing the hardship to the defendants as a result of including deterred applicants, and the rights of deterred applicants in obtaining employment, the court rules that current and former male employees of HI and HOA restaurants who were deterred from applying for "front of the house" (i.e Waitstaff, Bartenders and Hosts) positions are included in the class.

CONCLUSION

For the reasons stated above, the Magistrate Judge's Recommendation to allow plaintiffs' motion for class certification is accepted. The scope of the class shall encompass applicants to HI-HMC operated and HOA restaurants. It will also include deterred applicants who are current or former employees of HI-HMC operated and HOA restaurants. The class period begins on April 18, 1992.

Footnotes

[1] The court has granted, in a separate order, Latuga's motion to withdraw as a class representative.