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15 Attorneys for Plaintiff and the Proposed Class

16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19
20 SHIRLEY "RAE" ELLIS, on behalf of
herself and all others similarly situated,

21 Plaintiffs,

22 v.

23 COSTCO WHOLESALE
24 CORPORATION,

25 Defendant.

Case No. C 04 3341 MHP

COMPLAINT

[CLASS ACTION]

DEMAND FOR JURY TRIAL

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INTRODUCTION

1. Costco is known for its “members only” wholesale clubs. For the public, membership in a Costco club is easy to obtain. But for women employees trying to gain entry into the most exclusive of the Costco clubs – store management – the door is too often barred. Although women comprise almost half of Costco’s workforce, their numbers shrink considerably at the management level. At the top two levels of Costco store management, Assistant Managers and General Managers, fewer than one in six of the managers are female. These are the most highly compensated positions in Costco’s stores. This glass ceiling for women cannot be explained or justified by any reasonable business purpose, since Costco has virtually no meaningful promotion process for these jobs; there are no published promotion criteria, nor any posting or application processes. The substantial under representation of women in the most lucrative store level positions Costco has to offer is the result of practices that purposefully discriminate against women.

2. This class action is brought by a current female Costco employee, Shirley “Rae” Ellis (“Plaintiff”), on behalf of herself and all similarly situated current and former female Costco employees who have been subjected to Costco’s continuing policies and practices of gender discrimination. Plaintiff, on behalf of herself and the class she represents, charges that Costco discriminates against its female employees by failing to promote equally or better qualified women to upper store management positions. This class action seeks to end Costco’s discriminatory practices and to provide monetary relief including punitive damages to those who have been affected by these practices.

JURISDICTION AND VENUE

3. Plaintiff’s claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), et. seq. This Court has jurisdiction over this matter pursuant to 42 U.S.C. §§ 1331 and 1343(a) (4). The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over claims under the California Fair Employment & Housing Act, Government Code § 12940,

1 et. seq. Jurisdiction is proper in this Court because the Plaintiff expressed an interest in positions
2 in California and some of the positions that Plaintiff was denied were in California.

3 4. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28
4 U.S.C. § 1391(b) & (c). Some of the positions that Plaintiff was denied were in California.
5 Accordingly, but for defendant's discriminatory conduct, Plaintiff would have been promoted to a
6 position in California. Members of the class reside throughout the United States, including
7 Northern California. Many of the acts alleged in this Complaint occurred in this District and gave
8 rise to the claims alleged.

9 **PARTIES**

10 5. Plaintiff Shirley Rae Ellis is currently employed by Costco Wholesale
11 Corporation. She resides in Arvada, Colorado.

12 6. Defendant Costco Wholesale Corporation is a Washington corporation
13 with stores throughout California. Costco's corporate headquarters are in Issaquah, Washington.

14 **CLASS ALLEGATIONS**

15 7. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil
16 Procedure on behalf of a Title VII class of all women employed by Costco in the United States
17 denied promotion to assistant and/or general manager positions.

18 8. The members of the class are sufficiently numerous that joinder of all
19 members is impracticable. Plaintiff is informed and believes that the class exceeds 650 former
20 and current female employees of Costco.

21 9. There are questions of law and fact common to the class and these
22 questions predominate over individual questions. Such questions include, among others: (1)
23 whether Costco's policies and practices have a disparate impact on female employees with
24 respect to promotion; (2) whether any disparate impact is justified by business necessity; (3)
25 whether the disparate impact constitutes a violation of Title VII of the 1964 Civil Rights Act, 42
26 U.S.C. § 2000e, et. seq.; (4) whether Costco has engaged in a pattern and practice of disparate
27 treatment adverse to female employees; (5) whether injunctive relief and other equitable
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1 remedies (including back pay and front pay) and compensatory damages are warranted for the
2 female employee class, and (6) whether punitive damages are warranted.

3 10. The claims alleged by Plaintiff are typical of the claims of the class.

4 11. The Plaintiff will fairly and adequately represent the interests of the class.

5 12. Class certification is appropriate pursuant to Fed. R. Civ. P. 23 (b)(2)
6 because Costco has acted and/or refused to act on grounds generally applicable to the class,
7 making appropriate declaratory and injunctive relief with respect to Plaintiff and the class as a
8 whole. The members of the class are entitled to injunctive relief to end Costco's common,
9 uniform, and unfair discriminatory personnel policies and practices.

10 13. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
11 because common questions of fact and law predominate over any questions affecting only
12 individual members of the class, and because a class action is superior to other available methods
13 for the fair and efficient adjudication of this litigation. The members of the class have been
14 damaged and are entitled to recovery as a result of Costco's common, uniform, and unfair
15 discriminatory personnel policies and practices.

16 14. Plaintiff also brings this action pursuant to Fed. R. Civ. P. 23 on behalf of a
17 California Fair Employment & Housing Act subclass ("FEHA Subclass") of all women
18 employees of Costco denied promotions to Assistant Manager and/or General Manager positions
19 in California or who were employed in California and were denied such promotions outside of
20 California, in violation of Section 12940, et. seq. of the California Government Code, known as
21 the Fair Employment and Housing Act. The members of the subclass are sufficiently numerous
22 that joinder of all members is impracticable. Plaintiff is informed and believes that the subclass
23 exceeds 250 former and current female employees of Costco.

24 15. There are questions of law and fact common to the subclass and these
25 questions predominate over individual questions. Such questions include, among others: (1)
26 whether Costco's policies and practices have a disparate impact on female employees with
27 respect to promotion; (2) whether any disparate impact is justified by business necessity; (3)
28 whether the disparate impact constitutes a violation of Government Code §12940, et. seq.; (4)

1 whether Costco has engaged in a pattern and practice of disparate treatment adverse to female
2 employees; (5) whether that disparate treatment violates Government Code § 12940, et. seq. (6)
3 whether injunctive relief and other equitable remedies (including back pay and front pay) and
4 compensatory and punitive damages are warranted for the female employee subclass.

5 16. The claims alleged by Plaintiff are typical of the claims of the subclass.

6 17. The Plaintiff will fairly and adequately represent the interests of the
7 subclass.

8 18. Class certification is appropriate pursuant to Fed. R. Civ. P. 23 (b)(2)
9 because Costco has acted and/or refused to act on grounds generally applicable to the subclass,
10 making appropriate declaratory and injunctive relief with respect to Plaintiff and the subclass as a
11 whole. The members of the subclass are entitled to injunctive relief to end Costco's common,
12 uniform, and unfair discriminatory personnel policies and practices.

13 19. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
14 because common questions of fact and law predominate over any questions affecting only
15 individual members of the subclass, because a class action is superior to other available methods
16 for the fair and efficient adjudication of this litigation. The members of the subclass have been
17 damaged and are entitled to recovery as a result of Costco's common, uniform, and unfair
18 discriminatory personnel policies and practices. Plaintiff is informed and believes and therefore
19 alleges that Costco has computerized payroll and personnel data that will make calculation of
20 back pay and front pay for specific members of the subclass relatively simple.

21 **COSTCO'S GENERAL PRACTICE OF DISCRIMINATION**

22 20. Costco Wholesale Corporation operates an international chain of
23 membership stores, mostly under the "Costco Wholesale" name. It refers to its stores as
24 "warehouses." Costco offers three levels of membership, Business, Gold Star, and Executive,
25 which come with different benefits. Costco, a Fortune 500 company, operates 433 warehouses
26 worldwide, with approximately 320 warehouses located in 38 U.S. states and Puerto Rico. As of
27 early 2004, Costco claimed 42 million "cardholders," covering over 23 million households.
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1 During its last reported fiscal year, ended August 31, 2003, Costco reported almost \$42 billion in
2 revenues. It employs over 103,000 people worldwide, including over 78,000 in the United States.

3 21. In its warehouses throughout the U.S., Costco employs standardized
4 policies and procedures related to staffing and promotion. The hierarchy of job positions is the
5 same everywhere. At the warehouse level, this hierarchy includes the following classifications:
6 (1) hourly employees; (2) hourly supervisors; (3) Area Managers and Ancillary Managers; (4)
7 Senior Area Managers; (5) Assistant Managers; (6) General Managers.

8 22. The number of management positions in each warehouse is also
9 standardized. There are three Area Managers per warehouse and they oversee three different
10 geographical zones of the store. There are five Ancillary Managers who oversee particular
11 departments, such as the deli or tire center. Each warehouse has four Senior Area Managers, two
12 Assistant General Managers, and one General Manager. There are no warehouse level positions
13 above General Manager. The next higher position in the Costco hierarchy is regional in scope.

14 23. At the warehouse level, promotion to General Manager is the brass ring.
15 General Managers report to the company's Vice Presidents. General Managers are the only
16 warehouse level employees eligible for bonuses, which can be substantial. Likewise, they are the
17 only warehouse level employees eligible for potentially lucrative stock options. The Assistant
18 Manager position is the gateway to General Manager. One becomes a General Manager almost
19 always by promotion from Assistant Manager. Although there are no written criteria for
20 promotion to either Assistant Manager or General Manager, Costco claims that such promotions
21 are based on merit and experience, not seniority.

22 24. The senior management of Costco is virtually all male. Nationwide, fewer
23 than 12 percent of General Managers are female. Among more than 30 Executive and Senior
24 Officers of the company, only two are women. There are no female operational Vice Presidents.

25 25. Promotions into Assistant Manager and General Manager positions are not
26 based on any stated criteria. Openings are not posted. Nor are there any application procedures
27 for such positions. Instead, such promotions are based on a "tap on the shoulder," a tap usually
28 made by one of Costco's all male operational Vice Presidents. On information and belief,

1 plaintiff is informed that those few women who do receive a “tap” mostly find themselves
2 relegated to the warehouse locations that generate the lowest revenue, which directly affects the
3 women’s earning potential. Consequently, promotion into Costco’s most lucrative warehouse
4 level positions is based on entirely subjective judgments, which are often infected with conscious
5 or unconscious prejudices and gender-based stereotypes, which explains why so few women out
6 of Costco’s large female employee population advance to senior store management positions.

7 26. Costco has pursued policies and practices on a continuing basis which have
8 had the effect of denying equal job opportunities to qualified women. Such policies and practices
9 include, without limitation:

10 a. Reliance upon unweighted subjective, gender-based and/or arbitrary
11 criteria utilized by a nearly all male managerial workforce in making promotion decisions;

12 b. Failure to follow a uniform job posting procedure to guarantee that
13 all employees have notice of openings;

14 c. Discouraging females from seeking or applying for senior store
15 level management positions;

16 d. Failing and refusing to consider females for promotion on the same
17 basis as males are considered;

18 e. Failing and refusing to promote females on the same basis as males
19 are promoted and compensated;

20 f. Failing to provide females with accurate and timely notice of
21 promotional opportunities;

22 g. Maintaining and fostering a reputation for discriminatory conduct
23 which deters females from pursuing promotional opportunities with Costco;

24 h. Establishing and maintaining arbitrary and subjective requirements
25 for promotions which have the effect of excluding qualified women and which have not been
26 shown to have any significant relationship to job performance or to be necessary to the safe and
27 efficient conduct of Costco’s business;

1 i. Placing females who do attain the position of General Manager in
2 the least desirable locations, thereby depressing their earnings;

3 j. Failing and refusing to take adequate steps to eliminate the effects
4 of its past discriminatory practices; and

5 k. Retaliating against women employees who complain of unequal
6 treatment.

7 27. Plaintiffs are informed and believe that because of its discriminatory
8 policies, Costco promotes women to Assistant Manager positions at one half the rate that would
9 be expected based on the number of women in the pool of lower positions from which promotions
10 to Assistant Manager are made. This in turn has the effect of diminishing the pool of eligible
11 women for promotion to General Manager positions, since promotions to such positions are
12 usually drawn from the Assistant Manager ranks.

13 28. As a result of Costco's discriminatory policies and practices, it lags behind
14 its competitors in the representation of women in management positions. As of year 2000, for
15 example, 26.4% of Costco's managers were female, compared to an industry average of more
16 than 33% for other large chains in the same business.

17 **CLAIM OF NAMED PLAINTIFF**

18 29. Plaintiff Shirley "Rae" Ellis, a female, was hired by Costco as an Assistant
19 Manager in 1998. She is currently an Assistant Manager at Costco's Douglas County, Colorado
20 warehouse.

21 30. Prior to being recruited to join Costco, Ms. Ellis had extensive
22 management experience. At the time Costco hired Ms. Ellis, she was working as a General
23 Manager for Wal-Mart's Sam's Club, one of Costco's main competitors. The position of General
24 Manager at Sam's Club is similar in function and job duties to the General Manager position at
25 Costco.

26 31. Ms. Ellis agreed to take a step down in pay and seniority and join Costco as
27 an Assistant Manager rather than a General Manager because she was told that Costco did not
28 hire General Managers from the outside and that she would be eligible for promotion to General

1 Manager within a year. Promotion to General Manager would bring increased salary and
2 substantial bonuses that would raise her compensation above what she was then earning at Sam's
3 Club. Ms. Ellis repeatedly told Costco during the interview process that, due to her age (45) and
4 experience, she did not want to come to Costco just to be an Assistant Manager. Costco assured
5 her that she would not have to wait long for promotion to General Manager.

6 32. Since joining Costco, Ms. Ellis has received excellent performance reviews
7 and has been told that she is eligible for promotion and that promotion was imminent. She has
8 repeatedly told Costco of her interest in promotion to General Manager. Ms. Ellis has advised
9 Costco of her willingness to move anywhere Costco desired to fill a General Manager opening,
10 and also has expressed her interest in a General Manager position in a California warehouse.
11 However, despite the fact that Costco has at least 100 warehouses in California and that there
12 have been numerous openings for General Manager in these warehouses and others during the
13 relevant time, Ms. Ellis has not been offered a position in any of them. Ms. Ellis has been
14 prevented from applying for specific openings in these warehouses because Costco does not post
15 or otherwise notify employees of these openings. Instead, plaintiff is informed and believes that
16 these openings have been filled mostly with males with less experience and inferior
17 qualifications.

18 33. On or about October 24, 2002, Ms. Ellis filed a charge of discrimination
19 with the United States Equal Employment Opportunity Commission ("EEOC") and the California
20 Department of Fair Employment and Housing ("DFEH"). Attached to this Complaint as Exhibit
21 A, and incorporated herein by reference, is a copy of that charge. Ms. Ellis has received a Notice
22 of Right to Sue from the EEOC and has timely filed this action.

23 34. In 2004, after she filed her charge of discrimination with the EEOC and the
24 DFEH, Costco retaliated against Ms. Ellis by, among other things, moving her from her
25 warehouse in Aurora, Colorado to a remote location, requiring a multi-hour commute. On or
26 about April 23, 2004, Ms. Ellis filed a retaliation charge with the EEOC. Attached hereto as
27 Exhibit B and incorporated by reference is a copy of the charge of retaliation Ms. Ellis filed.
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FIFTH CLAIM FOR RELIEF

**(California Fair Employment And Housing Act,
Govt. Code §§ 12940, et. seq.)**

62. Plaintiff incorporates Paragraphs 1 through 61.

63. This claim is brought on behalf of the Plaintiff individually for her retaliation claim.

64. Defendant discriminated against the Plaintiff on the basis of her gender by refusing to promote her and by retaliating against her for filing a charge of discrimination with the EEOC and DFEH.

65. Defendant's discriminatory and retaliatory practices have resulted in the loss of past and future wages and other job benefits, and have caused Plaintiff to suffer humiliation, embarrassment, and emotional distress.

66. Defendant did the acts alleged herein with oppression, fraud and malice. Plaintiff is thus entitled to recover punitive damages in an amount to be determined according to proof.

67. Plaintiff therefore requests relief as provided for below in the Prayer.

RELIEF ALLEGATIONS

68. Plaintiff and the class and subclass she represents have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the class and the subclass she represents are now suffering and will continue to suffer irreparable injury from Defendant's discriminatory acts and commissions.

69. The actions on the part of Defendant have caused and will continue to cause Plaintiff and all class and subclass members substantial losses in earnings, promotional opportunities, and other employment benefits, and have caused Plaintiff all class and subclass members to suffer and continue to suffer humiliation, embarrassment, and anguish, all to their damage in an amount according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the class and subclass pray for relief as follows:

1. Certification of the class and subclass as a class action on behalf of the proposed Plaintiff class and subclass and designation of Plaintiff as a representative of the class and subclass and their counsel of record as Class Counsel;

2. All damages which the individual Plaintiff and the class have sustained as a result of Defendant's conduct, including back pay, front pay, general and special damages for lost compensation and job benefits that they would have received but for the discriminatory practices of Defendant, and for emotional distress, humiliation, embarrassment, and anguish, according to proof;

3. For Plaintiff's individual, non-class claims, all damages she has sustained as a result of Defendant's conduct, including back pay, front pay, general and specific damages for lost compensation and job benefits they would have received but for the discriminatory practices of defendant, and damages for emotional distress, , according to proof;

4. Exemplary and punitive damages in an amount consistent with the law;

5. A preliminary and permanent injunction against Defendant and its partners, officers, owners, agents, successors, employees, representatives, and any and all persons acting in concert with them, that requires the following:

a. desisting from engaging in each of the unlawful practices, policies, customs, and usages set forth in this complaint;

b. adopting non-discriminatory and objective promotion standards;

c. creating a transparent and non-discriminatory job posting and application process for Assistant Manager and General Manager positions;

d. instituting an affirmative action policy to insure that women receive the share of Assistant Manager and General Manager positions they would have obtained were it not for Costco's discriminatory practices; and

e. creating a monitoring and reporting system to insure that injunctive relief is fully implemented.

1 6. A declaratory judgment that the practices complained of herein are
2 unlawful and violative of 42 U.S.C. §§ 2000(e), et. seq., Title VII of the Civil Rights Act of 1964,
3 and the California Fair Employment and Housing Act, Government Code §§ 12940, et. seq.

4 7. An order assigning Plaintiff and the class and subclass to those jobs they
5 would have held but for Defendant's discriminatory practices;

6 8. An adjustment of the wage rates, benefits, and seniority rights for Plaintiff
7 and the class and subclass to that level which Plaintiff and the class would be enjoying but for
8 Defendant's discriminatory practices;

9 9. For prejudgment interest to the extent permitted by law;

10 10. For costs and expenses of suit incurred herein, including reasonable
11 attorneys' fees to the extent available by law; and

12 11. For such other and further legal and equitable relief as the Court may deem
13 just and proper.

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Dated: July 17, 2004

Respectfully submitted,

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Bill Lann Lee

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JURY DEMAND

Plaintiff and the class she represents demand a jury trial on all claims where such trial is authorized by law.

Dated: July 17, 2004

Respectfully submitted,

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