IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 99-WM-2086

JULIE FARRAR-KUHN and CARRIE ANN LUCAS, for themselves and all others similarly situated,

Plaintiffs,

v.

CONOCO, INC.,

Defendant.

ORDER GRANTING JOINT MOTION FOR CLASS CERTIFICATION

Plaintiffs Julie Farrar-Kuhn and Carrie Ann Lucas, and Defendant Conoco, Inc., jointly moved to certify a class in this action involving alleged violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213 (1998). After considering the parties' motion and brief, the Court will grant the motion to certify a class action under Rule 23(b)(2).

I. FACTS

This action encompasses Conoco service stations and convenience stores that are owned by the defendant (collectively "Conoco Corporate Stations"). Currently there are approximately 200 such Stations in 11 states. The plaintiffs allege that Conoco Corporate Stations have various architectural barriers and policies that discriminate against persons who use wheelchairs or scooters for mobility in violation of the ADA.

According to census figures, there are more than 300,000 persons who use wheelchairs and/or scooters for mobility in the 11 states in which the relevant Conoco Corporate Stations are

located. In addition, Conoco Corporate Stations may be patronized by travelers with disabilities from other states. Plaintiffs Julie Farrar-Kuhn and Carrie Lucas are among those individuals who use wheelchairs who have encountered various accessibility problems while attempting to patronize certain Conoco Corporate Stations.

The class that the parties seek to be certified consists of:

> All persons with disabilities who use wheelchairs or scooters for mobility who, within four years of the filing of the Complaint in this case, have been denied, or are currently being denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any service station or convenience store that is owned by Conoco, Inc.

II. ANALYSIS OF CLASS CERTIFICATION PURSUANT TO RULE 23

A. Legal Standards Applicable to Class Certification

To be certified pursuant to Rule 23, a class must meet the requirements of Rule 23(a), which states:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition to the four prerequisites of Rule 23(a), the class must satisfy one of the three subsections of Rule 23(b). Even though the defendant does not contest class certification in this case, the proposed class must meet the requirements of Rule 23. See Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620-21 (1997).

B. The Four Prerequisites of Rule 23(a)

1. Numerosity.

Rule 23(a)(1) requires that a class be so numerous that joinder of all members is impracticable. There are a number of factors that are relevant to whether joinder is impracticable, including the class size, the geographic diversity of class members, the relative ease or difficulty in identifying members of the class for joinder, the financial resources of class members and the ability of class members to institute individual lawsuits. Colorado Cross-Disability Coalition v. Taco Bell Corp., 184 F.R.D. 354, 357 (D. Colo. 1999); see also Anderson v. Department of Pub. Welfare, 1 F. Supp. 2d 456, 461 (E.D. Pa. 1998); 1 Robert Newberg, Newberg on Class Actions, § 3.06 at 3-27 -35 (3d ed. 1992) (and cases cited therein) (hereinafter "Newberg"). Each of these factors show that joinder is impracticable in the case at hand.

Class size. The class alleged in this case is large. The defendant owns approximately 200 Conoco Corporate Stations in 11 states, and census figures demonstrate that in these 11 states, there are over 300,000 noninstitutionalized persons age 16 or older who use wheelchairs. In addition, it is likely that persons who use wheelchairs who reside outside of these 11 states have patronized Conoco Corporate Stations while traveling through these states, thereby increasing the size of the class.

Geographical diversity. "The fact that a class is dispersed over several counties weighs in favor of a finding of numerosity." Taco Bell, 184 F.R.D. at 358 (citation omitted). In the case at hand, the proposed class covers at least eleven states and thus joinder would be difficult or impossible.

Identity of class members. Joinder is impracticable where, as here, it is very difficult to identify individual class members. See, e.g., id. at 358-59; Phillips v. Joint Legislative Comm., 637 F.2d 1014, 1022 (5th Cir. 1981), cert. denied, 456 U.S. 960 (1982) (joinder impracticable in part because neither party could identify class members); 1 Newberg § 3.05 at 3-18 -19 & n.61 (and cases cited therein); Arnold v. United Artists Theatre Circuit, Inc., 158 F.R.D. 439, 448 (N.D. Cal.), modified, 158 F.R.D. 439, 464 (1994) (finding that "by the very nature" of the class of persons with disabilities affected by the defendant's architectural barriers, its members were "unknown" and could not be "readily identified" and thus joinder of class members was impracticable).

Difficulty of bringing individual suits. Finally, joinder is impracticable because it is difficult or impossible for class members to bring individual suits. For example, according to census information, 23.7% of persons aged 15 to 64 years who use wheelchairs have household incomes below the poverty level, a much higher percentage than the overall population. Thus many class members cannot afford to bring individual actions. See Taco Bell, 184 F.R.D. at 359.

For these reasons, the Court finds that the class is so numerous that joinder is impracticable and thus satisfies Rule 23(a)(1).

2. Common questions of law and fact.

Rule 23(a)(2) requires that there be questions of law or fact common to the class which predominate over questions peculiar to individual members of the class. "Where a class of persons sharing a common disability complain of the identical architectural barrier based on the

same alleged violations of law, commonality is unquestionably established." Taco Bell, 184 F.R.D. at 359.

The Court finds that the members of the proposed class in this case share many issues of fact and law, including: (1) the class members complain of the same architectural barriers and policies; (2) the plaintiffs allege that by these architectural barriers and policies, the defendant discriminated against all members of the class; and (3) the determination of whether these barriers and policies violate the ADA is the same whether there is one plaintiff or a class of plaintiffs. No individual issues of law or fact for a particular class member are asserted and hence the common questions predominate. Thus the Court finds that the class meets the requirements of Rule 23(a)(2).

3. Typicality of the claims.

Rule 23(a)(3) requires that the claims asserted by the representative plaintiff be typical of the claims of the class. In this case, both the representative plaintiffs and the members of the class have disabilities that require the use of a wheelchair or scooter for mobility. Thus, the effect of the disability is shared by all class members. Further, the representative plaintiffs contest the legality of architectural barriers under the same statutes as the class. Therefore the Court finds that the claims of the representative plaintiffs are typical of the class. See Taco Bell, 184 F.R.D. at 360; Arnold, 158 F.R.D. at 450 ("Indeed, in a public accommodations suit such as this one where disabled persons challenge the legal permissibility of architectural design features, the interests, injuries, and claims of the class members are, in truth, identical such that any class member could satisfy the typicality requirement for class representation.").

4. Adequacy of Proposed Representative Plaintiffs.

The final requirement of Rule 23(a) is adequate representation. The Court finds that the representative plaintiffs have common interests with the class members and appear able to prosecute the interests of the class through qualified counsel. See Cook v. Rockwell Int'l Corp., 151 F.R.D. 378, 386 (D.Colo. 1993); 2 Newberg § 7.24 at 7-80 - 7-81.

For the reasons set forth above, the proposed class satisfies the four prerequisites of Rule 23(a).

C. The Requirements of Rule 23(b)(2)

A class is proper under Rule 23(b)(2) if the party opposing the class "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole . . ." and the representatives are seeking "final injunctive relief or corresponding declaratory relief." "A class action in which all members of the class complain of the identical architectural barrier necessarily involves acts that are generally applicable to the class." Taco Bell, 184 F.R.D. at 361 (citing Arnold, 158 F.R.D. at 452, and Civic Ass'n of the Deaf of New York City, Inc. v. Giuliani, 915 F. Supp. 622, 634 (S.D.N.Y. 1996)). Indeed, the Advisory Committee Notes to the 1966 amendment to Rule 23 demonstrate that subdivision (b)(2) was intended to reach precisely the type of class proposed here: "Illustrative are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration."

In the case at bar, the plaintiffs allege that the defendant's architectural barriers and policies discriminate against all persons who use wheelchairs and scooters and thus that the defendant has acted in a manner applicable to the entire class. Further, the members of the class are incapable of specific enumeration. Finally, the plaintiffs seek injunctive and declaratory relief -- but not monetary relief -- on behalf of the class. Therefore the Court finds that the class meets the requirements of Rule 23(b)(2).

Accordingly, I ORDER that:

(1) the joint motion to certify an ADA class action is GRANTED;

(2) plaintiffs Julie Farrar-Kuhn and Carrie Ann Lucas are hereby certified as representatives of the plaintiff class;

(3) the ADA plaintiff class shall consist of:

> All persons with disabilities who use wheelchairs or scooters for mobility who, within four years of the filing of the Complaint in this case, have been denied, or are currently being denied, full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any service station or convenience store that is owned by Conoco, Inc.

Dated this 21 day of August, 2000.

BY THE COURT:

WALKER D. MILLER
United States District Judge