

on behalf of the class of women who have held Assistant Manager and General Manager positions at Fogo de Chao; an individual and class claim of violation of the Equal Pay Act, 29 U.S.C. 206(d) (“the Equal Pay Act”) on behalf of the class of women who have held Assistant Manager and General Manager positions at Fogo de Chao; and an individual claim of age discrimination in promotions pursuant to the Age Discrimination and Employment Act, 29 U.S.C. 621 *et seq.* (“the ADEA”).

Jurisdiction and Venue

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331, 28 U.S.C. 1343, 42 U.S.C. 2000e(5), 42 U.S.C. 2000e-16(c), 29 U.S.C. 216(b), and 29 U.S.C. 626(c)(1).

5. Venue is appropriate in this judicial district pursuant to 28 U.S.C. 1391(b) and (c) because a defendant resides in this district and the events giving rise to the claim arose in this district.

Exhaustion of Administrative Remedies

6. Plaintiff filed a timely charge of discrimination with the federal Equal Employment Opportunity Commission on or about August 21, 2020 alleging both sex and age discrimination and alleging sex discrimination in pay on behalf of a class of women similarly situated. She received a right-to-sue notice from the EEOC on or about April 23, 2021 and has brought this suit within the ninety (90) day time limit.

Parties

7. Defendant Fogo de Chao Naperville LLC is a corporation that does business in the Northern District of Illinois.

8. Defendants Fogo de Chao Inc. and Fogo de Chao Holdings, Inc. are corporate parents of Fogo De Chao Naperville LLC. They do business in the state of Illinois.

9. Defendants Fogo de Chao Inc. and Fogo de Chao Holdings, Inc. manage the operations of the Fogo de Chao restaurants, maintain an administrative structure for management of the Fogo de Chao restaurants, and arrange for the compensation, promotion, and transfer of employees in Fogo de Chao restaurants.

10. Plaintiff Elvira Hyska is a 46 year old woman who is a resident of the Northern District of Illinois. Ms. Hyska is an employee of defendant Fogo de Chao Naperville LLC, Fogo de Chao Holdings, Inc., and/or Fogo de Chao Holdings, Inc., as that term is used in Title VII, 42 U.S.C. 2000e(f) and the Equal Pay Act and the ADEA, 29 U.S.C. 626 (incorporating provisions of the Fair Labor Standards Act, 29 U.S.C. 216).

11. At all times relevant to this Complaint, defendants have engaged in business affecting interstate commerce, have employed more than 15 employees, and have been employers within the meaning of Title VII.

12. There are approximately 44 Fogo de Chao restaurant locations in the United States, each of which is incorporated separately as an LLC.

Facts

13. Plaintiff Elvira Hyska has over fifteen years of experience working in the restaurant industry and managing restaurants. Since December 2015, Ms. Hyska has worked at defendant Fogo de Chao Naperville LLC as an Assistant Manager, serving as both a back of the house and front of the house manager.

14. Each Fogo de Chao restaurant is managed by a General Manager to whom two Assistant Managers report: one who is a front of the house manager and one who is a back of the house manager.

15. Since November 2016, Ms. Hyska has repeatedly applied for and been rejected for General Manager positions, which have gone instead to younger, less experienced and less qualified men.

16. Ms. Hyska first applied for the General Manager position at the Naperville restaurant at the end of November 2016. She was not even interviewed for the position. Instead of selecting Ms. Hyska, defendants promoted Joe Pasquesi, a man who was approximately 28 years old at the time. Ms. Pasquesi had much less relevant experience than Ms. Hyska. In the course of less than a year he was promoted from being a server in February, 2016 to become the General Manager at the Naperville restaurant in January, 2017.

17. Ms. Hyska again applied for the General Manager position at the Naperville restaurant in January 2018. Again, she was not even interviewed. Instead of promoting Ms. Hyska, defendants gave the position to Rafael Schmidt, approximate age 31.

18. In July 2019, Ms. Hyska applied for four General Manager positions at Fogo de Chao restaurants in White Plains, NY.; Long Island, NY; Irvine, CA; and Orlando, FL. She did not receive any of these promotions and again was not even interviewed for them. Three of those positions were filled by men. The White Plains position was filled by Lucio J. Rodrigues de Almeida, a man. The Long Island position was filled by Long D. Phu, a man. And the Orlando position was filled by Neimer P. Hensel, a man.

19. In July 2020, Ms. Hyska applied for the General Manager position for the downtown Chicago restaurant. Instead of promoting Ms. Hyska to fill the position, defendants promoted Atanas Angelov, a man who was approximately 24 years old, who was much less experienced than Ms. Hyska.

20. Defendants have repeatedly discriminated against women in promotions to the General Manager position. Of approximately 44 General Managers in the company, only five are women.

21. In addition to the denial of promotion, Ms. Hyska has been subject to sex discrimination in pay by being paid less than the man who works at her Naperville location as another Assistant Manager.

22. Defendants systematically pay female General Managers and Assistant Managers less than male General Managers and Assistant Managers doing substantially equal work.

23. As a result of defendants' denial of her promotion to the General Manager position and the denial to her of equal pay, Ms. Hyska has lost substantial employment pay and benefits.

24. As a result of defendants' sex discrimination in pay, the class of women Ms. Hyska represents has lost substantial employment pay and benefits.

25. As a result of defendants' denial of her promotion to the General Manager position, plaintiff Ms. Hyska has suffered significant emotional distress.

26. The actions of defendants were willful and taken in reckless disregard of the rights of Ms. Hyska and the class of women she represents.

Class Action Allegations

27. Plaintiff Elvira Hyska brings her sex discrimination claims on her own behalf and the class of women who have worked as General Managers and Assistant Managers from May 3, 2018 to the present.

28. Plaintiff is a member of the class.

29. On information and belief, the class is so numerous that joinder of all of them is impracticable.

30. There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. Those common questions include whether the Defendants have systematically paid female General Managers and Assistant Managers less than Male General Managers and Assistant Managers.

31. Plaintiff's claims are typical of the class, in that she has been paid less than the male Assistant Manager at her Naperville location.

32. Plaintiff will fairly and adequately represent and protect the interests of the members of the class. Plaintiff has no conflict with any other class member. Plaintiff is committed to the goal of having defendants revise their compensation practices and eliminate their discriminatory practice of paying female General Managers and Assistant Managers less than male General Managers and Assistant Managers.

33. Plaintiff has retained and is represented by counsel who are experienced and qualified in litigating employment discrimination class actions.

34. Class certification is appropriate pursuant to Fed.R.Civ.P. 23(b)(2) because defendants have acted or refused to act on grounds generally applicable to the class, making appropriate declaratory and injunctive relief with respect to plaintiff and the class.

35. Class certification is further appropriate pursuant to Fed.R.Civ.P. 23(b)(3) because the questions of law or fact common to class members predominate over any questions affecting only individual class members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

COUNT I
INDIVIDUAL CLAIM OF SEX DISCRIMINATION
IN PROMOTIONS PURSUANT TO TITLE VII

36. Plaintiff re-alleges and incorporates by reference paragraphs 1-35 above as paragraphs 1-35 of this Count I.

37. By taking the actions described above defendants discriminated in their promotion practices and decisions against plaintiff Elvira Hyska on account of her sex in violation of the provisions of Title VII, 42 U.S.C. 2000e-2(a).

COUNT II
INDIVIDUAL AND CLASS CLAIMS OF SEX DISCRIMINATION IN
PAY PURSUANT TO TITLE VII

38. Plaintiff re-alleges and incorporates by reference paragraphs 1-37 above as paragraphs 1-39 above as paragraphs 1-37 of this Count II.

39. By taking the actions described above defendants discriminated against plaintiff Elvira Hyska and the women in the class she represents on account of their sex in violation of the provisions of Title VII, 42 U.S.C. 2000e-2(a).

COUNT III
INDIVIDUAL AND CLASS CLAIMS OF SEX DISCRIMINATION IN
PAY PURSUANT TO THE EQUAL PAY ACT

40. Plaintiff re-alleges and incorporates by reference paragraphs 1-39 above as paragraphs 1-39 above as paragraphs 1-39 of this Count III.

41. By taking the actions described above defendants discriminated against plaintiff Elvira Hyska and the women in the class she represents on account of their sex in violation of the provisions of the Equal Pay Act, 29 U.S.C. 206(d).

**COUNT IV
INDIVIDUAL CLAIM OF AGE DISCRIMINATION
IN VIOLATION OF THE ADEA**

42. Plaintiff re-alleges and incorporates by reference paragraphs 1-41 above as paragraphs 1-41 of this Count IV.

43. By taking the actions above, defendants discriminated against plaintiff Elvira Hyska because of her age in violation of the provisions of the ADEA, 29 U.S.C. 623(a).

PRAYER FOR RELIEF

Accordingly, plaintiff Elvira Hyska, on her own behalf and on behalf of the class she represents, prays for the following relief:

- (a) Issuance of a declaratory judgment that defendants have discriminated against plaintiff Elvira Hyska in denial of promotions because of her sex in violation of Title VII, 42 U.S.C. 2000e-2(a);
- (b) Issuance of a declaratory judgment that defendants have discriminated in their pay practices against Plaintiff Elvira Hyska and the class of women she represents in violation of Title VII, 42 U.S.C. 2000e-2(a) and the Equal Pay Act, 29 U.S.C. 206(d);
- (c) Issuance of an injunction enjoining defendants from continuing to discriminate against women General Managers and Assistant Managers in pay practices and enjoining defendants to adopt remedial relief to the women who have suffered from such discrimination and adopting affirmative remedial measures to ensure that discrimination does not continue in the future;
- (d) An award of back pay to compensate plaintiff Elvira Hyska and the class she represents for the value of employment pay and benefits they have lost as a result of defendants' conduct;

- (e) An award of compensatory damages to compensate plaintiff Elvira Hyska and the class she represents for the emotional distress they have suffered as a result of defendants' conduct;
- (f) An award of liquidated damages to plaintiff Elvira Hyska and the class of female General Managers and Assistant Managers she represents equal to the damages owed for discrimination in pay, as authorized by the Equal Pay Act, 29 U.S.C. 216(b);
- (g) Punitive damages;
- (h) An award of liquidated damages to plaintiff Elvira Hyska, equal to the amount owed to her for damages for age discrimination, as authorized by the ADEA, 29 U.S.C. 626 (incorporating the provisions of the Fair Labor Standards Act, 29 U.S.C. 216(b));
- (i) Pre-judgment and post-judgment interest;
- (j) Reasonable attorneys' fees and costs; and
- (k) Such other relief, whether legal or equitable, as the Court may find just and reasonable.

Plaintiff demands a trial by jury.

By: /s/ Paul Strauss
Paul Strauss
Jamie S. Franklin

Paul Strauss
5525 S. Woodlawn Ave.
Chicago, IL 60637
(312) 751-1170
pstr1968@gmail.com

Jamie S. Franklin, ARDC No. 6242916
Assistant Clinical Professor of Law
The Civil Litigation Clinic at
Chicago-Kent College of Law

565 West Adams Street, Suite 600
Chicago, IL 60661
(312) 906-5048
(773) 696-1478 (fax)
jfranklin5@kentlaw.iit.edu