



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
General Counsel

March 29, 2016

Lyle W. Cayce, Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
Office of the Clerk
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: EEOC v. Bass Pro Outdoor World, L.L.C., et al.,
Appeal No. 15-20078

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiff-Appellee Equal Employment Opportunity Commission (“Commission”) offers its response to the March 25, 2016, letter by Bass Pro.

Bass Pro presents to this Court the Supreme Court’s recent decision in *Tyson Foods, Inc. v. Bouaphakeo*, No. 14-1146, 2016 WL1092414 (Mar. 22, 2016), but that decision does not implicate the issues before this Court in this appeal. In *Tyson*, the Supreme Court addressed the lower courts’ conclusion that the private suit in that Fair Labor Standards Act (“FLSA”) case was properly certified as a class action, in accordance with Federal Rule of Civil Procedure 23(b)’s requirements for class certification. Slip op. at *6-*7. However, as discussed in the Commission’s brief at pages 22-24, the Supreme Court long ago held that the Commission is not subject to Rule 23(b) and “need look no further than §706 (of Title VII) for its authority to bring suit in its own name for the purpose, among others, of securing relief for a group of aggrieved individuals.” *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 324 (1980).

Bass Pro disregards the inapplicability of the class certification requirements at issue in *Tyson* to the Commission’s litigation authority under §706 of Title VII. Bass Pro states that *Tyson* rejects the use of “representative proof” where claimants are not “similarly situated.” This, however, ignores that Title VII does not require the Commission to establish that all potential victims of Bass Pro’s alleged pattern-or-practice hiring discrimination are “similarly situated,” as that term is used in FLSA collective actions and discussed in *Tyson*. See slip op. at *5.

Bass Pro is equally incorrect that *Tyson* suggests the propriety of the *Teamsters* bifurcated proof framework depends on the number of potential victims, with that framework unavailable in large cases. Neither *Tyson* nor any other precedent suggests that the broad scope of a defendant’s alleged unlawful conduct necessarily renders the *Teamsters* framework unavailable to the Commission.

Respectfully submitted,

s/ James M. Tucker

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Certificate of Service

I certify that on March 29, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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