

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DEBRA RING,

Plaintiff,

vs.

ROTO-ROOTER SERVICES COMPANY,

Defendant.

SERVE:

The Corporation Company
120 South Central Avenue
Clayton, Missouri 63105

JURY TRIAL DEMANDED

Cause Number:

CLASS ACTION COMPLAINT

COMES NOW Plaintiff, by and through counsel, and for her Class Action Complaint, states as follows:

NATURE OF THE CLAIM

1. Defendant Roto Rooter Services Company (hereinafter "Roto-Rooter") is the largest provider of plumbing and drain cleaning services.
2. Roto-Rooter systematically discriminates against female employees on the basis of gender with respect to opportunity for upper management positions in Roto-Rooter all in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 2000e et seq.
3. Roto-Rooter's policies and practices with regard to job promotions deny qualified female employees equal opportunities to serve as general managers, production managers, field

managers, jetting managers, excavation manager, or in any other upper management positions.

4. In fact, within Roto-Rooter's entire upper management, consisting of approximately 180 employees, there was only one female manager, Sandra Findeiss, and Roto-Rooter demoted her without cause on two occasions, resulting in lawsuits for gender discrimination.
5. Despite a pool of qualified female applicants, including Plaintiff Ring and other lower level female employees, Roto-Rooter has made a purposeful effort to ensure that only men are promoted to upper level manager positions.
6. Upon information and belief, Roto-Rooter's policy of preventing women from obtaining various managerial positions ensures that women at Roto-Rooter, regardless of qualification, are excluded from all of the highest paying positions at Roto-Rooter. This results in significant pay disparity between the average male employee at Roto-Rooter and the average female employee.
7. The decision to promote men, to the exclusion of women, into high paying positions at Roto-Rooter is not based on the qualifications of applicants.
8. Upon information and belief, the pool from which Roto-Rooter could select people for managerial and high paying similar positions consists of men and women with similar training, education and experience.
9. Despite this, in Roto-Rooter's entire upper management, consisting of well over 100 employees, a female named Sandra Findeiss was the only female manager. Ms. Findeiss was demoted, twice, by Roto-Rooter and is currently pursuing a claim against Roto-Rooter for gender discrimination.

10. Ring and the class she seeks to represent are victims of Roto-rooter's behavior described above.
11. Roto-Rooter's systematic effort to keep women from all levels of upper management is illegal.

JURISDICTION AND VENUE

12. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 1343 and 1367. This action is authorized and instituted pursuant to §706(f)(1), (3) of Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. §2000(e), et seq., ("Title VII"), and §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981.
13. The unlawful employment practices alleged herein were committed within the jurisdiction of the United States District Court for the Eastern District of Missouri, Eastern Division.

PARTIES

14. Plaintiff Debra Ring (hereinafter "Ring") is a citizen and resident of St. Charles County, Missouri, and has been so at all times pertinent to this action. Plaintiff is authorized to bring this action pursuant to §706(f)(1) of Title VII and 42 U.S.C. §2000(e)(5)(f)(1). Plaintiff was employed by Roto-Rooter in November of 1998 as an accounts receivable manager earning approximately \$10.00 per hour. Ring continues to maintain employment with Defendant as an office manager.
15. Defendant Roto-Rooter is a corporation organized and existing under the laws of the State of Ohio, is duly registered with and authorized by the Office of the Secretary of State of Missouri to do business in the State of Missouri. Defendant has a duly appointed Registered Agent in the State of Missouri.

16. Defendant has at all times pertinent hereto, continuously been, and is now, an “employer” pursuant to §701 of Title VII, 42 U.S.C. §2000(e)(b), and a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year as required by 42 U.S.C. §2000(e)(b), (g) and (h).
17. Defendant Roto-Rooter operates a plumbing and sewer repair service in St. Charles County, Missouri. Plaintiff Debra Ring is employed by Roto-Rooter, located at 3041 Elm Point Industrial Drive, St. Charles, Missouri 63301.

STATEMENT OF CLAIM

18. All conditions precedent to the institution of this lawsuit have been fulfilled. Plaintiff has filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission, St Louis, Missouri Division (hereinafter “EEOC”) on July 7th, 2009 and an Amended Charge on August 3rd, 2009. The charge provided notice to Roto-Rooter of class complaints regarding systemic gender discrimination. A copy of Ring’s Amended Charge of Discrimination (Charge No. 560200902591) is attached hereto as Exhibit A and incorporated by reference herein. The EEOC issued a Notice of Right to Sue to the Plaintiff on December 30th, 2009, more than 180 days after the filing of the underlying Charges. A copy of Ring’s Notice of Right to Sue is attached hereto as Exhibit B and incorporated by reference herein. The present action is being brought within ninety-days (90) of Plaintiffs’ receipt of their Notice of Right to Sue letters.
19. Ring began her employment with Roto-Rooter on or about November 1998 as an office manager.

20. Ring was transferred to the St. Louis North branch where she was employed as an office manager, a salaried position, working six days per week and significant overtime due to covering shifts for other employees.
21. Ring's responsibilities as an office manager included scheduling office personnel, accounts payable/receivable, managing customer service, dispatching Roto-Rooter technicians to job sites, order entries, and other service related duties.
22. In addition to her duties as office manager Ring held the title of Direct Sales Specialist for both the North and South Roto-Rooter branches establishing customer accounts. Ring did not receive any additional pay or benefits for these added duties.
23. As a Direct Sales Specialist Ring increased sales for Roto-Rooter by educating customers as to the services that Roto-Rooter provided as well as initiating a preventive maintenance agreement to sell to commercial customers that had not been available in the past to those customers. Ring was qualified for the job of Sales Specialist.
24. After Ring built sales volume and demonstrated an aptitude for the position, Roto-Rooter took this job position from Ring and gave it to Mike Gunning, a Roto-Rooter Field Training Manager.
25. Mr. Gunning enjoys a company car and an expense report while working as a Sales specialist. Ring received neither.
26. In addition to an expense report and company car, Mr. Gunning earned, and continues to earn, significantly more money than Ring did in that position.
27. The Sales Specialist position, when given to Mr. Gunning, was not posted, meaning that Ring did not have an opportunity to bid on the position.

28. Many, if not most, of Roto-Rooter's upper management positions and other positions affording opportunities to earn higher wages and career advancement have been awarded to men without Roto-Rooter ever posting the availability of those jobs.
29. In most cases Roto-Rooter only announced the filled position after the fact and never posted these available openings.
30. Prior to being demoted from the Sales Specialist position, without the job being posted at all, Ring had expressed on many occasions during her 11 years of employment with Roto-Rooter that she had an interest in acquiring a position as a Sales Manager as well as an opportunity to advance to other management positions within Roto-Rooter.
31. Rick Maloney, Ring's General Manager, told her that there was no position for her to advance to and that she was at the top of her pay scale. Ring's wage was approximately \$14.50 per hour.
32. Upon information and belief, Roto-Rooter jobs paying \$50,000.00 or more are routinely given to men. This constitutes a very real and tangible glass-ceiling at Roto-Rooter that prevents qualified women from obtaining high paying jobs.
33. In fact, although Ring is imminently qualified for any management position within Roto-Rooter, and although many women have the experience with the company that would qualify them for management jobs, upon information and belief, there are well over one hundred managers at Roto-Rooter, yet none are female.
34. The only possible exception is Sandy Findeiss. She was once a general manager. However, Findeiss has twice sued Roto-Rooter for gender discrimination. The second case is ongoing, as Findeiss was recently demoted.

35. Ring, and the class she seeks to represent has been systematically prevented from applying for any open management position within Roto-Rooter because Roto-Rooter fails to post or notify the open management positions that become available.
36. Further, Ring and the class she seeks to represent have been systematically excluded from management position within Roto-Rooter, resulting in a power structure that is composed exclusively of males.
37. Roto-Rooter's discriminatory policies have served to dissuade women from applying for jobs, they have suppressed women's wages at Roto-Rooter, and have created a company atmosphere in which women are viewed as inferior to men for performing critical company functions. This has dissuaded women from remaining employed at Roto-Rooter and from seeking promotion.
38. Upon information and belief, Ring and other similarly situated female employees of Roto-Rooter are paid less than men, without relation to their ability. This practice is ongoing.
39. The implementation and pervasive practice by Roto-Rooter of their discriminatory policies prevent women from applying for management positions, and if women are able to apply, they are systematically excluded from consideration for the upper management positions.
40. The discrimination in which Roto-Rooter has engaged is pervasive, complete and decimating to the careers of its female employees.
41. The actions of the Defendant and Defendant's employees as alleged above were done with malice and/or reckless indifference to the federally protected rights of the Plaintiff and Class.

CLASS ALLEGATIONS

42. Plaintiff brings this Class Action pursuant to Federal Rule of Civil Procedure 23 on behalf of a class of all past, present and future female employees of Roto-Rooter in the United States.
43. Plaintiff is a member of the class she seeks to represent.
44. The predominant purpose for which Plaintiff is bringing this suit is to seek to enjoin Defendant's discriminatory and illegal conduct.
45. The members of the Class identified herein are so numerous that joinder of all members is impracticable. Although the precise number of female employees denied opportunities in upper management is currently unknown, it is greater than can be reasonably addressed through joinder.
46. There are questions of law and fact common to the class, and these questions predominate over any questions affecting only individual members. Common questions include, among others:
- a) Whether Roto-Rooter's policies or practices discriminated against female employees seeking upper management positions;
 - b) Whether Roto-Rooter's policies and practices have a disparate impact on female employees with respect to promotion;
 - a) Whether Roto-Rooter's policies and practices violate Title VII;
 - b) Whether Defendant's actions were intentional;
 - c) Whether any disparate impact is justified by business necessity;
 - d) Whether Roto-Rooter fostered a culture of discrimination; and
 - e) Whether equitable remedies, injunctive relief, compensatory, and punitive damages for the Class are warranted.
47. Plaintiff's claims are typical of the claims of the class.

48. The Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in complex class actions, employment discrimination litigation, and the intersection thereof.
49. Class certification is appropriate pursuant to Federal Rule of Civil Procedure 23(b)(2) because Roto-Rooter has acted and/or refused to act on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and the Class as a whole. The Class members are entitled to injunctive relief to end Roto-Rooter's common, uniform, unfair and discriminatory policies and practices.
50. Class certification is also appropriate pursuant to Federal Rule of Civil Procedure 23(b)(3) because common questions of fact and law predominate over any questions that affect only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class members have been damaged and are entitled to recovery as a result of Roto-Rooter's common, uniform, unfair and discriminatory policies and practices. Roto-Rooter has computerized payroll and personal data that will make calculation of damages for specific Class members relatively simple. The propriety and amount of punitive damages are based on the conduct of the Defendant, making these issues common to the class.

RELIEF ALLEGATIONS

51. Plaintiffs and Class 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 Class are now suffering and will continue to suffer irreparable injury from Defendant's discriminatory acts and omissions.
52. The actions on the part of Defendant have caused and will continue to cause Plaintiffs and all class members substantial losses in earnings, promotional opportunities, and other employment benefits.

FIRST CAUSE OF ACTION
SEXUAL DISCRIMINATION BY DISPARATE TREATMENT

53. Plaintiff incorporates all preceding paragraphs as if fully set forth herein.
54. This Claim is brought by the Plaintiff on behalf of herself and the Class she represents.
55. On information and belief, Roto-Rooter has pursued policies and practices on a continuing basis, which has had the effect of denying equal job opportunities to qualified women. Such policies and practices include, without limitation:
- a. Failure to follow a uniform job posting procedure to guarantee that all employees have notice of openings;
 - b. Discouraging females from seeking or applying for management positions;
 - c. Failing and refusing to consider females for promotion on the same basis as males are considered;
 - d. Failing and refusing to promote females on the same basis as males are promoted and compensated;
 - e. Failing to provide females with accurate and timely notice of promotional opportunities;
 - f. Providing female employees interested in promotion shifting, inconsistent and inaccurate statements about the requirements and qualifications necessary for promotion;
 - g. Denying female employees the training and assignments that would enhance their promotability;
 - h. Maintaining and fostering a reputation for discriminatory conduct which deters females from pursuing promotional opportunities with Roto-Rooter;

- i. Establishing and maintaining arbitrary and subjective requirements for promotions which have the effect of excluding qualified women and which have not been shown to have any significant relationship to job performance or to be necessary to the safe and efficient conduct of Roto-Rooter's business; and
- j. Failing and refusing to take adequate steps to eliminate the effects of its past discriminatory practices.

56. As described herein, Roto-Rooter's actions constituted sexual discrimination in violation of Ring's rights under title VII of the Civil Rights Act of 1964 and in violation of 42 U.S.C. § 2000 et seq. in that such actions created disparate treatment on account of her gender.

Plaintiff has timely complied with all prerequisites to suit.

57. The conduct of Defendant and its employees, as alleged above, affected a term, condition or privilege of Plaintiff's and Class' employment.

58. The disparate treatment of the Plaintiff and Class, as practiced by the Defendant and their employees, as alleged above, constituted sexual discrimination.

59. The sexual discrimination by Defendant and its employees, as alleged above, was sufficiently pervasive and severe to create a discriminatory work environment for Plaintiff and Class.

60. The conduct of the Defendant and its employees, as alleged above, was engaged in while in the scope of, and during their course of employment.

61. Defendant Roto-Rooter was fully informed, or should have been fully informed, to have sufficient knowledge of the material facts and circumstances relevant to the conduct of the Defendant and its employees, and did nothing to prevent further acts of misconduct, acquiesced in, approved and ratified the actions of its employees, and is therefore liable for the actions of its employees.

62. The actions of the Defendant and its employees were intentional.
63. The actions of the Defendant and its employees, as alleged above, were intentional and demonstrated a willful, wanton, and/or reckless indifference and disregard to the rights of the Plaintiff and Class such that punitive damages should be assessed against Defendant Roto-Rooter.
64. As a direct and proximate result of Defendant Roto-Rooter's unlawful acts, Plaintiff and Class have suffered economic loss in the form of lost wages, lost benefits and related consequential damages; vocational and professional losses in the form of a detrimental job record, career damage, a diminished career potential and future pecuniary losses.
65. The discrimination described herein above against Plaintiff and Class by Roto-Rooter was intentional, willful, wanton, malicious, and/or reckless indifference to the rights of others, thus entitling Plaintiff and Class to exemplary damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray for relief as follows:

- a. Certification of the case as a class action on behalf of the proposed Class;
- b. An order declaring the action of the Defendant Roto-Rooter to be in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, as amended, based upon Plaintiff's and Class' sex, that being female;
- c. Plaintiff and proposed class are seeking in excess of \$5,000,000.00 in total damages, attorneys' fees and injunctive relief as well as damages which the 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.

- d. An order awarding Plaintiff and Class punitive damages from Defendant Roto-Rooter for its malicious and/or reckless conduct in an amount to be determined at trial;
- e. A preliminary and permanent injunction against Defendant and its directors, officers, owners, agents, successors, employees and representatives and any and persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein;
- f. 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:
 - i. restoring Plaintiff and class members to their rightful positions at Roto-Rooter, with attendant title, compensation and benefits ;
 - ii. desist from engaging in each of the unlawful practices, policies, customs, and usages set forth in this complaint;
 - iii. adopting non-discriminatory and objective promotion standards;
 - iv. creating a transparent and non-discriminatory job posting and application process for Manager positions;
 - v. instituting an affirmative action policy to insure that women receive the share of manager positions they would have obtained were it not for Roto-Rooter's discriminatory practices;
 - vi. enjoining all Defendant, its agents and employees, and all persons in concert or participation with them, including any successors and assigns, to take all

affirmative steps necessary to remedy the past and present effects of the illegal, discriminatory conduct described herein and to prevent similar occurrences in the future;

- vii. requiring that Defendant institute appropriate procedures to ensure that the discriminatory culture described herein is eliminated;
 - viii. creating a long-term monitoring and reporting system to insure that injunctive relief is fully implemented.
- g. An order awarding the costs of this action, including reasonable attorneys fees to Plaintiff and Class to be paid by Defendant Roto-Rooter;
- h. That all issues of fact be tried by a jury as provided by Section 102 of the Civil Rights Act of 1991; and
- i. That this Court award such other and further relief as the Court may deem just and proper

Respectfully submitted,

THE SIMON LAW FIRM

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