

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER STRANGE, MAGEN MORRIS, on
behalf of themselves and all other similarly
situated,

NO. C06-0045 RSM

FIRST AMENDED COMPLAINT

Plaintiffs,

CLASS ACTION

vs.

DEMAND FOR JURY TRIAL

LES SCHWAB TIRE CENTERS OF
OREGON, INC.; LES SCHWAB TIRE
CENTERS OF PORTLAND, INC.; LES
SCHWAB TIRE CENTERS OF
WASHINGTON, INC.; LES SCHWAB
WAREHOUSE CENTERS, INC.,

Defendants.

I. JURISDICTION

1.1 Plaintiffs Strange and Morris are both citizens of the State of Washington.

1.2 Defendant Les Schwab Tire Centers of Washington, Inc. is a corporation incorporated under the laws of the State of Washington.

1.3 Defendant Les Schwab Tire Centers of Oregon, Inc. is a corporation incorporated under the laws of the State of Oregon.

1 this action, the defendants together constitute a single integrated enterprise. The principal
2 place of business of all Les Schwab Tire Center operations is Prineville, Oregon.

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4 **III. CLASS ACTION ALLEGATIONS**

5 3.1 Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure on behalf of a class of all women employed by any or all defendants in Washington
7 and Oregon and who were denied promotion, training and other employment opportunities
8 because of their sex. The class also includes women who applied for employment with the
9 defendants but were not hired because of their sex and thus lost the opportunity for
10 promotions, training and other employment opportunities with the defendants. After training,
11 plaintiffs and other class members were eligible to, and were expected to, make themselves
12 available for transfer to any store in any state where the defendants operate if they wanted to
13 work in a management position. Plaintiffs and other class members sought or would have
14 sought, but for defendants' discriminating practice, management positions in any or all states
15 in which there is any Les Schwab retail store.

16 3.2 The members of the class are sufficiently numerous that joinder of all members
17 is impracticable. Plaintiffs are informed and believe that the class exceeds 200 female
18 applicants and former and current female employees of defendants.

19 3.3 There are questions of law and fact common to the class and these questions
20 predominate over individual questions. These same questions arise under Washington and
21 Oregon non-discrimination statutes. These common questions include, among others, (1)
22 whether defendants' policies and practices have a disparate impact on female employees and
23 applicants with respect to hiring, promotions, training and other opportunities because of their
24 sex; (2) whether any disparate impact is justified by business necessity; (3) whether disparate
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1 impact constitutes a violation of the state nondiscrimination statutes in the states in which the
2 defendants do business; (4) whether defendants have engaged in a pattern and practice of
3 disparate treatment adverse to female applicants and employees; (5) whether such remedies as
4 front and back pay and compensatory damages and emotional distress damages are warranted
5 for the female employee class; and (6) whether punitive damages are warranted under
6 applicable state law.
7

8 3.4 The claims alleged by the plaintiffs are typical of the claims of the class.

9 3.5 The plaintiffs will fairly and adequately represent the interests of the class.

10 3.6 Class certification is also appropriate pursuant to Federal Rule of Civil
11 Procedure 23(b)(3) because common questions of fact and law predominate over questions
12 effecting only individual members of the class and because a class action is superior to other
13 available methods for the fair and efficient adjudication of this litigation. The members of the
14 class have been damaged and are entitled to recovery as a result of defendants' common,
15 uniform and unfair discriminatory personnel policies and practices.
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17 **IV. DEFENDANTS' GENERAL PRACTICES OF DISCRIMINATION**

18 4.1 There are more than 400 retail tire stores in the Western United States. All the
19 stores operate under the title of Les Schwab Tire Centers.

20 4.2 In their retail store operations, including those in Washington and Oregon,
21 defendants employ standardized policies and procedures relating to hiring, staffing and
22 promotions. The hierarchy of job positions in the retail stores are similar. There is one
23 Manager, one or more Assistant Managers, and two operating departments ("Sales and
24 Service" and "Sales and Administration"). Sales and Service is that part of the store
25 operations where tires are changed and some automotive repair work is done. The other
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1 Department, Sales and Administration, consists of office and clerical positions. Defendants
2 have more than 1,000 Manager and Assistant Manager positions in their retail stores.

3 4.3 Defendants Les Schwab Tire Centers have been in business for more than 50
4 years. To date, there has never been a female manager of any Les Schwab Tire Center retail
5 store. Only after plaintiffs filed a charge with the Equal Employment Opportunity
6 Commission did defendant Les Schwab Tire Centers of Washington hire one female as an
7 Assistant Manager. Plaintiffs are informed and so believe that none of the other defendants
8 have ever hired a female Assistant Manager.

9 4.4 Although there are no written criteria for promotion to either Assistant
10 Manager or General Manager, defendants claim that such promotions are based on merit and
11 experience from working in the Sales and Service division. Defendants systematically
12 exclude females from working in the Sales and Service departments in their retail stores.

13 4.5 Defendants have pursued policies and practices on a continuing basis which
14 have had the effect of denying equal employment opportunities to qualified women applicants
15 and employees. Such policies and practices include, without limitation:

- 16 (a) Reliance upon subjective gender based and/or arbitrary criteria used by
17 defendants in making hiring, promotion, and training decisions.
- 18 (b) Discouraging females from seeking employment, or seeking and/or applying
19 for promotions, training and other opportunities because of their sex.
- 20 (c) Failing and refusing to consider females for hire or for promotion, training and
21 other opportunities because of their sex.
- 22 (d) Failing and refusing to hire or promote females on the same basis as males are
23 hired, promoted and trained.
- 24
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1 (e) Establishing and maintaining arbitrary and subjective requirements for hiring,
2 promotions, training and other opportunities which have the effect of excluding
3 qualified female applicants and qualified female employees which have not
4 been shown to have any significant relationship to job performance or to be
5 necessary to the safe and efficient conduct of defendants' business.

6 (f) Failing and refusing to take adequate steps to eliminate the effects of its past
7 discriminatory practices.

8 (g) Retaliating against women employees who complaint of unequal treatment.

9
10 4.6 Defendants employment practices have a purpose and intent of excluding
11 women from management positions and/or positions designed to lead to management
12 positions. Such practices constitute disparate treatment on the basis of gender. Such practices
13 also have a disparate impact on the basis of gender.

14 **V. CLAIM OF NAMED PLAINTIFFS**

15 5.1 Named plaintiffs Strange and Morris both filed charges with the Equal
16 Employment Opportunity Commission ("EEOC") alleging retaliation and constructive
17 discharge. Both named plaintiffs have received a Notice of Right to Sue from the EEOC with
18 respect to their retaliation/constructive discharge claims. Plaintiffs have therefore exhausted
19 their administrative remedies and fulfilled all conditions precedent to suit under Title VII.

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21 **VI. CLAIM FOR RELIEF:**
22 **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 USC §§2000(e) et seq.**

23 6.1 Plaintiffs incorporate paragraphs 1.1 through 5.1.

24 6.2 This claim is brought on behalf of plaintiff Strange individually for her
25 retaliation, constructive discharge claim. Defendant discriminated against the plaintiff by
26 retaliating against her for filing a charge of discrimination with the EEOC. Defendant's

1 retaliatory practices resulted in plaintiff being constructively discharged. Plaintiff has
2 suffered the loss of past and future wages and other job benefits and has caused plaintiff to
3 suffer humiliation, embarrassment and emotional distress.

4
5 6.3 Defendant did the acts alleged with malice or reckless indifference to the
6 protective rights of plaintiff. Plaintiff therefore requests relief as provided for below in her
7 prayer.

8 **VII. CLAIM FOR RELIEF:**
9 **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 USC §§2000(e) et seq.**

10 7.1 Plaintiffs incorporate paragraphs 1.1 through 6.3.

11 7.2 This claim is brought on behalf of plaintiff Morris individually for her
12 retaliation, constructive discharge claim. Defendant discriminated against the plaintiff by
13 retaliating against her for filing a charge of discrimination with the EEOC. Defendant's
14 retaliatory practices resulted in plaintiff being constructively discharged. Plaintiff has
15 suffered the loss of past and future wages and other job benefits and has caused plaintiff to
16 suffer humiliation, embarrassment and emotional distress.

17 7.3 Defendant did the acts alleged with malice or reckless indifference to the
18 protective rights of plaintiff. Plaintiff therefore requests relief as provided for below in her
19 prayer.

20 **VIII. CLAIM FOR RELIEF: STATE OF WASHINGTON**

21 8.1 Plaintiffs incorporate paragraphs 1.1 through 7.3.

22 8.2 This claim is brought on behalf of named plaintiffs and all members of the
23 class.

24 8.3 The foregoing conduct violates Washington State Law Against Discrimination
25 (RCW 49.60).
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1 8.4 Defendants have engaged in the pattern and practice of intentional
2 discrimination against the class and have denied women the same opportunities for hiring,
3 promotion, training and other opportunities afforded to similarly situated male applicants and
4 employees.

5 8.5 Defendants' employment practices have an unlawful disparate impact based on
6 gender.

7 8.6 Defendants discriminatory practices described above have resulted in a loss of
8 past and future wages and other job benefits and have caused plaintiffs to suffer humiliation,
9 embarrassment and emotional distress.

10 8.7 Plaintiffs request for relief are provided for below in the prayer.

11 **IX. CLAIM FOR RELIEF: STATE OF OREGON**

12 9.1 Plaintiffs incorporate paragraphs 1.1 through 8.7.

13 9.2 This claim is brought on behalf of named plaintiffs and all members of the
14 class.

15 9.3 The foregoing conduct violates the Oregon State Fair Employment Practices
16 Act (ORS Ch. 659A).

17 9.4 Defendants have engaged in the pattern and practice of intentional
18 discrimination against the class and have denied women the same opportunities for hiring,
19 promotion, training and other opportunities afforded to similarly situated male applicants and
20 employees.

21 9.5 Defendants' employment practices have an unlawful disparate impact based on
22 gender.

1 9.6 Defendants discriminatory practices described above have resulted in a loss of
2 past and future wages and other job benefits and have caused plaintiffs to suffer humiliation,
3 embarrassment and emotional distress. Plaintiffs and class members are also entitled to
4 recover punitive damages as authorized by law in an amount to be determined according to
5 proof.

6
7 9.7 Plaintiffs request for relief are provided for below in the prayer.

8 **X. CLAIM FOR RELIEF: RETALIATION CLAIM**
9 **ARISING UNDER RCW 49.60**

10 10.1 Plaintiffs incorporate paragraphs 1.1 through 9.7.

11 10.2 This claim is brought on behalf of plaintiffs Jennifer Strange and Magen
12 Morris individually for their retaliation claims.

13 10.3 Defendants retaliated against the plaintiffs on the basis of their gender by
14 refusing to promote, train or provide them other opportunities because they filed a charge of
15 discrimination with the Equal Employment Opportunity Commission and the Washington
16 State Human Rights Commission.

17 10.4 Defendants constructively discharged plaintiffs Strange and Morris in
18 retaliation for their filing of charges with the Equal Employment Opportunity Commission
19 and Washington State Human Rights Commission.

20 10.5 Defendants discriminatory and retaliatory practices have resulted in the loss of
21 past and future wages, other job benefits and have caused plaintiffs to suffer humiliation,
22 embarrassment and emotional distress.

23 10.6 Plaintiffs' requests for relief are provided for below in the prayer.

24 **XI. PRAYER FOR RELIEF**

25 WHEREFORE, plaintiffs and members of the class pray for relief as follows:
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1 11.1 Certification of the class as a class action on behalf of the proposed plaintiff
2 class and designation as plaintiffs as representatives of the class and their counsel of record as
3 class counsel.

4 11.2 All damages which individual plaintiffs and class members have sustained as a
5 result of the defendants' conduct including back pay, front pay, general and special damages
6 for lost compensation and job benefits they would have received but for the discriminatory
7 practices of defendants.

8 11.3 For emotional distress, humiliation, embarrassment and anguish according to
9 proof.

10 11.4 For plaintiffs Jennifer Strange and Magen Morris individual non-class
11 retaliation claims of all damages they have sustained as a result of defendants conduct
12 including back pay, front pay, general and specific damages for lost compensation and job
13 benefits they would have received but for the discriminatory practices of defendants and
14 damages for emotional distress according to proof.

15 11.5 Exemplary and punitive damages in an amount consistent with the law.

16 11.6 For pre-judgment interest to the extent permitted by law.

17 11.7 For all costs and expenses incurred herein, including reasonable attorney's fees
18 to the extent available by law.

19 11.8 For such further and other legal and equitable relief as the Court may deem just
20 and proper.

1 Dated this 18th day of July, 2006.

2 GORDON, THOMAS, HONEYWELL, MALANCA,
3 PETERSON & DAHEIM LLP

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5 By: /s/ Lewis L. Ellsworth 7/18/06

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