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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER STRANGE, MAGAN MORRIS, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

LES SCHWAB TIRE CENTERS OF OREGON,
INC., et al.,

Defendants.

CASE NO. C06-045RSM

ORDER ON PENDING MOTIONS

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

LES SCHWAB TIRE CENTERS OF
WASHINGTON, INC., et al.,

Defendants.

This matter is now before the Court for consideration of four pending motions: defendants' motion for judgment on the pleadings (Dkt. # 72), the individual plaintiffs' motion for leave to amend the complaint (Dkt. # 77), plaintiff EEOC's motion for bifurcation of trial and discovery (Dkt. # 73), and

1 defendants' motion to sever the individual plaintiffs' claims from the EEOC's claims (Dkt. # 75). The
2 Court has fully considered these motions and associated memoranda and exhibits, and deems oral
3 argument unnecessary. As set forth below, the Court shall grant the individual plaintiffs' motion for leave
4 to amend, deny the motion for judgment on the pleadings as moot, grant in part the motion to bifurcate
5 trial and discovery, and deny the motion to sever.

6 7 BACKGROUND

8 Plaintiffs Jennifer Strange and Magan Morris initiated this action on January 11, 2006, by filing a
9 class action complaint against Les Schwab Tire Centers in seven western states. Dkt. # 1. Defendants
10 responded with a motion to dismiss, and the parties then stipulated to strike that motion and allow
11 plaintiffs to file an amended complaint, naming only the Les Schwab Tire Centers in Washington and
12 Oregon. Dkt. ## 15, 18. At the same time, the case was consolidated with one filed against Les Schwab
13 Tire Centers by the Equal Employment Opportunity Commission ("EEOC"). Dkt. # 18. Plaintiffs' first
14 amended complaint was filed July 18, 2006, and the EEOC's complaint, asserting claims under Title VII,
15 42 U.S.C. § 2000e-5, was filed on August 1, 2006.¹ After their motion for class certification was denied
16 as untimely (Dkt. # 62), the individual plaintiffs moved to dismiss the Oregon defendants from their
17 complaint, and that motion was granted. Dkt. ## 65, 70. Plaintiffs renewed their motion for class
18 certification and the motion was again denied. Dkt. ## 66, 71. The four motions now before the Court
19 followed.

20 DISCUSSION

21 (1) Motion for Leave to Amend the Complaint (Dkt. # 77)

22 The two individual plaintiffs move for leave to file a second amended complaint which will (1)
23 remove references to, and claims against, the Oregon defendants which have been dismissed from this
24 action; (2) add language to Claims VII and VIII to clarify that defendants' alleged conduct violates Title
25 VII; (3) amend Claim VIII to delete allegations of violation of the Washington Law Against

26
27 ¹The EEOC amended complaint requests injunctive relief and damages in the form of back pay for
the two named plaintiffs and "similarly situated individuals".

1 Discrimination (RCW 49.60) through a disparate impact on plaintiffs' class; and (4) amend the original
2 Claim X (renumbered as Claim IX due to deletion of a claim against the Oregon defendants) to include a
3 claim of failure to promote in the individual plaintiffs' claims under RCW 49.60. Dkt. # 77-2.

4 Defendants have opposed the amendments, noting in particular that nearly three years have passed
5 since the original complaint was filed, and the discovery deadline is approaching. However,
6 the Court finds that these proposed amendments conform to a theory of the case that has been known to
7 defendants since the original EEOC charge was filed—namely that plaintiffs contend they were excluded
8 from promotion due to their gender. The time that has passed since the filing of the original complaint is
9 largely due to the complicated posture of the case, involving as it does both the two individual plaintiffs
10 and the EEOC. There has been no bad faith on the part of plaintiffs in withholding claims. Further, any
11 prejudice to defendants from the approaching discovery deadline may be mitigated by extension of that
12 deadline.

13 Accordingly, plaintiffs' motion for leave to file a second amended complaint is GRANTED.
14 Plaintiffs shall promptly file their second amended complaint. The discovery deadline, along with other
15 pretrial and trial dates, shall be extended as set forth below.

16 (2) Motion for Judgment on the Pleadings (Dkt. # 72)

17 Defendants assert that they are entitled to judgment on the pleadings as to the “pattern and
18 practice” of discrimination asserted in plaintiffs' Claim VIII. However, plaintiffs' second amended
19 complaint deletes this claim, thus rendering defendants' motion moot. This motion is accordingly
20 DENIED.

21 (3) Motion to Sever Claims (Dkt. # 75)

22 In this motion, defendants request that the Court sever the individual plaintiffs' claims from those
23 of the EEOC. All plaintiffs have opposed the motion. The Court notes that defendants previously joined
24 plaintiffs in stipulating to consolidation of the two cases. Dkt. # 16. Their arguments regarding Rule
25 20(a) and the lack of common questions of fact and law are therefore unavailing. Defendants' motion is
26 accordingly DENIED.

1 (4) Motion to Bifurcate (Dkt. # 73)

2 Plaintiff EEOC asks the Court to bifurcate both the trial and discovery in this case into two
3 stages, the first directed toward liability, punitive damages, and affirmative defenses, and a second toward
4 remedial issues. Defendants do not oppose bifurcation in principle, but contend that the motion is
5 premature, in light of the other pending motions. Defendants also assert that if the case is bifurcated, the
6 Court should not adopt plaintiffs' schedule, but rather should direct the parties to "develop a realistic,
7 mutually acceptable trial plan." Dkt. # 81, p. 2.

8 The Court notes that the other pending motions have been decided, so this motion to bifurcate the
9 trial and discovery is no longer premature. The Court further finds that such bifurcation, as proposed by
10 plaintiff EEOC, is appropriate. However, rather than adopt plaintiff's proposed schedule, the Court shall
11 direct the parties to confer and develop, if possible an agreed scheduling plan.

12 Accordingly, plaintiff EEOC's motion to bifurcate both trial and discovery into two stages is
13 GRANTED IN PART. Trial of this matter shall proceed in two stages. Stage I shall cover liability and
14 punitive damage issues, subject to defendants' affirmative defenses, and shall include the claims of the
15 individual plaintiffs. If liability is found, Stage II will determine remedial issues for persons found
16 aggrieved in State I. Discovery shall be similarly bifurcated.

17 This matter shall remain on the Court's calendar for trial of Stage I as presently scheduled, for
18 May 18, 2009. The parties shall confer in an effort to develop a joint proposal for a pretrial schedule for
19 Stage I, consistent with that date if possible. In the event they cannot agree on a schedule, they may file a
20 revised joint status report, using the format previously indicated and setting forth their respective
21 positions. The parties shall file either the joint proposed trial schedule, or a joint status report, within two
22 weeks of the date of this Order.

23 Dated this 10 day of November, 2008.

24 

25 RICARDO S. MARTINEZ
26 UNITED STATES DISTRICT JUDGE