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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

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

Defendants.

CASE NO. C06-0045RSM

ORDER ON MOTION FOR PARTIAL
SUMMARY JUDGMENT ON HIRING
CLAIM

This matter comes before the Court for consideration of defendants’ motion for partial summary judgment on plaintiff Equal Employment Opportunity Commission’s (“EEOC’s”) claim of sex discrimination in hiring practices. Dkt. # 156. Plaintiffs have opposed the motion. The Court deems oral argument on this motion unnecessary and, for the reasons set forth below shall deny the motion.

DISCUSSION

The parties are familiar with the facts of this case and the Court’s prior rulings, but they shall be briefly summarized. The Court earlier granted defendants’ motion for separate trials on the claims of the individual plaintiffs, Jennifer Strange and Magen Morris, and the claims of the EEOC. Dkt. ## 204, 313. The individual plaintiffs tried their case to the jury in November and won a verdict on their claim of retaliation. Dkt. # 354. Defendants’ motion for a new trial on the individual plaintiffs’ claims of retaliation and for punitive damages has been denied. Dkt. # 383. On the EEOC’s claims, the Court has granted defendants’ motion for partial summary judgment on promotion claims, and has denied a motion for partial summary judgment as to punitive damages. Dkt. ## 312, 84. This motion remains to be

1 decided, and will determine whether the claims of the EEOC shall proceed to trial, now scheduled to
2 begin March 1, 2010. Dkt. # 323.

3 Defendants contend summary judgment is appropriate because plaintiff EEOC has no evidence
4 to support a claim of sex discrimination in hiring for the Sales and Service position. The EEOC's claim
5 is based not on disparate impact, but upon disparate treatment, which requires proof of intent.
6 Defendants argue that plaintiffs "flawed statistical methodology" and "feeble anecdotal witness
7 evidence" cannot, as a matter of law, establish the requisite inference of intent to discriminate.
8 Defendants' Motion for Partial Summary Judgment, Dkt. # 156, p. 14.

9 In opposition to the motion for summary judgment on the hiring claim, the EEOC has
10 summarized the evidence with respect to twelve women who applied for positions in Sales and Service
11 and were passed over in favor of men. Plaintiff alleges these males were in every case less qualified
12 than the women who were competing for the same positions. Defendants, however, assert that the
13 EEOC has misrepresented and mischaracterized the qualifications of some of these women, and that the
14 EEOC has ignored the important question as to whether the hiring manager was actually informed of
15 these qualifications on the women's employment applications. These objections, both as to the
16 representations made regarding the qualifications, and whether those qualifications were made known to
17 the hiring manager, create issues of fact to be determined by the jury.

18 Defendants also assert that the EEOC's statistical evidence is filled with conceptual flaws, and
19 insufficient as a matter of law to demonstrate intent. Plaintiff's expert witness Janice Madden, Ph.D.,
20 who performed an analysis of defendants' hiring practices from 2004 to 2007, testified at deposition that
21 her analysis did not consider intent. Plaintiff responds to this argument by noting that Dr. Madden's
22 original analysis indicated that the probability that the gender disparity in hiring that she found was due
23 to chance was approximately thirteen in one trillion. Plaintiff's Opposition, Dkt. # 195, p. 8. Further,
24 following her deposition, she re-analyzed the data, and found that both the shortfall in number of women
25 hired, as well as the statistical significance of the numbers, both increased. *Id.*

26 The posture of this case has changed significantly since this motion and the response and reply
27 were filed. At the time this and defendants' four other motions for partial summary judgment were
28 filed, the case was set for a trial on liability only on September 14, 2009. Dkt. # 123. One day prior to

1 the noting date for four of the summary judgment motions, on July 9, 2009, defendants filed a motion to
2 separate the trials of the EEOC from the individual plaintiffs. Dkt. # 204. The Court granted
3 defendants' motion over the objection of all plaintiffs, assigned the September 14, 2009 trial date to the
4 individual plaintiffs' trial, and set November 2, 2009 for trial as to both liability and damages on the
5 EEOC claims. Dkt. # 313. The trial date was later continued to March 1, 2010, with a deadline for
6 expert reports set for October 2, 2009. Dkt. # 323. The parties have since that date twice stipulated to
7 extend the period for expert discovery, first to December 11, 2009, and then to January 8, 2010. Dkt. ##
8 358, 369. These extensions were directed toward accommodating the testimony of defendants'
9 identified expert Dr. Michael Sinclair, who as a government employee requires the permission of his
10 agency to testify. Dkt. ## 357, 369. However, the extensions would also necessarily allow additional
11 time for plaintiff's expert to prepare rebuttal testimony. In light of these extensions and the new expert
12 testimony that has been developed, the Court cannot find, as a matter of law, that plaintiff's statistical
13 evidence is either flawed or insufficient. In addition, the Court finds that defendants' motion to strike
14 the rebuttal and revised reports of Dr. Madden (presented in defendants' reply, Dkt. # 212) is moot and
15 is accordingly DENIED.

16 CONCLUSION

17 Defendants' motion for partial summary judgment on the EEOC's hiring claim is DENIED.
18 This case shall proceed to trial as scheduled on March 1, 2010. The deadline for completion of
19 mediation, currently set for January 15, 2010, shall be extended to February 12, 2010.

20 Under the current scheduling Order, motions in limine are due February 1, 2010. Dkt. # 323.
21 That date shall remain in effect, but the parties shall conform their motions in limine to the revised
22 Local Rules of this Court, adopted December 1, 2009. Those rules provide that, absent a showing of
23 good cause, each party's motions in limine shall be filed as **one motion**, which shall be noted on the
24 Court's calendar for the third Friday after filing. Local Rule CR 7(d)(4).

25 Dated this 12 day of January 2010.

26 

27 RICARDO S. MARTINEZ
28 UNITED STATES DISTRICT JUDGE