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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,)	No. CV02-1908-PHX-ROS
Plaintiff,)	ORDER
vs.)	
Alamo Rent-A-Car LLC, et al.,)	
Defendants.)	
_____)	

Before the Court is Plaintiff’s Motion to Amend the Judgement and for Equitable Relief. (Doc. 143). For the reasons stated herein, this Motion will be granted in part and denied in part.

BACKGROUND

Alamo Rent-A-Car LLC (“Alamo”) hired Bilan Nur, a Muslim woman, as a rental agent in November 1999. (Doc. 62). In 2001, Nur requested permission to wear a head covering at work during her religious holiday Ramadan, but was denied based on Alamo’s dress-code policy. Id. She wore a head covering anyway, and was fired for non-compliance with company policy. Id.

The Equal Opportunity Commission sued Alamo, on behalf of Nur, for religious employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (Doc. 1). The Court granted summary judgment on the issue of liability.

1 (Doc. 62). The issue of damages was tried by jury. On June 11, 2007, the jury returned a
2 verdict in Plaintiff's favor and awarded \$16,000 in compensatory damages, \$250,000 in
3 punitive damages, and an advisory verdict of \$21,640 in back pay. (Doc. 137). Judgment
4 was subsequently entered. (Doc. 139).

5 Plaintiff filed a motion to amend the judgment to grant additional back pay, pre-
6 judgment interest, and other injunctive relief under Federal Rule of Civil Procedure 59(e).
7 (Doc. 143).

8 ANALYSIS

9 A. Back Pay

10 Plaintiff asks the Court to award \$54,521 in back pay to Nur, rather than the \$21,640
11 recommended by the jury. (Doc. 143). Victims of discrimination are entitled to back pay
12 under Title VII. 42 U.S.C. § 2000e-5(g)(1); Caudle v. Bristow Optical Co., 224 F.3d 1014,
13 1020 (9th Cir. 2000). Because back pay is an equitable remedy, it is awarded by the Court
14 in its discretion. Lutz v. Glendale Union High School, 403 F.3d 1061, 1069 (9th Cir. 2005).

15 Nur testified at trial that she lost wages of \$54,521. She arrived at this amount by
16 projecting the amount she would have made had she stayed in Alamo's employ at a salary
17 of \$37,922 annually, which amounts to \$189,610 over a five-year period. This evidence was
18 supported by her 2001 W-2 form and various pay stubs. She then deducted her actual
19 earnings from the expected earnings and arrived at \$54,521 in lost wages. See Gotthardt v.
20 Nat'l R.R. Passenger Corp., 191 F.3d 1148, 1158 (9th Cir. 1999) (holding that back pay is
21 determined by "measuring the difference between actual earning [] and those which she
22 would have earned absent the discrimination by defendant").

23 Nur, however, had a duty to mitigate her damages by using reasonable diligence in
24 finding other suitable employment. See Ford Motor Co. v. EEOC, 458 U.S. 219, 232 (1982);
25 Odima v. Westin Tucson Hotel, 53 F.3d 1484, 1487 (9th Cir. 1995). Consequently, if Alamo
26 unconditionally offered Nur the job she sought and she rejected it, this would toll the accrual
27 of back-pay liability. See Ford Motor Co., 458 U.S. at 232. Alamo presented evidence at
28

1 trial that it unconditionally offered Nur reinstatement with full back pay and benefits and that
2 she rejected it. (Docs. 157, Exs. A & B).

3 Having heard and evaluated all the evidence, the jury found that Nur was entitled to
4 \$21,640 in back pay. When calculating back pay, the Court must respect the findings
5 implied by the jury's verdict. Pals v. Schepel Buick & GMC Truck, Inc., 220 F.3d 495, 501
6 (7th Cir. 2000). While the exact reasons for the jury's decision are, of course, unknown, the
7 Court finds that the jury's reduction in back pay from \$54,521 to \$21,640 reflects an implied
8 finding by the jury that Nur failed to mitigate her damages. If the jury found that Nur
9 rejected Alamo's unconditional reinstatement offer about seven months after her termination,
10 her damages would be limited to lost wages for this period only. Pro-rating her annual salary
11 for a six-to-seven month period, Nur's lost wages would be between \$18,960 and \$22,120.
12 The jury's award of \$21,640 was within this range. Therefore, the Court concludes that the
13 jury impliedly found that: (1) Alamo unconditionally offered Nur the job she sought, (2) she
14 rejected it, and (3) this failure to mitigate damages tolled the accrual of back-pay liability

15 Plaintiff urges that the evidence does not support this implied finding. Plaintiff asserts
16 this on the grounds that: (1) Alamo's alleged offer of unconditional reinstatement was an
17 "illusory non-offer" because it did not explicitly state that Nur could wear her head covering
18 at work; (2) neither Ms. Nur nor her agent rejected the offer; and (3) if the offer was rejected,
19 this rejection was reasonable.

20 The Court, however, finds sufficient evidence in the record to support the jury's
21 implied finding that Nur failed to mitigate her damages. First, on June 3, 2003, Alamo sent
22 a letter to Nur's attorney stating that "[t]he purpose of this letter is to unconditionally offer
23 Ms. Nur reinstatement to her prior position with full back pay and benefits." (Doc. 157, Ex.
24 A). The jury could have reasonably concluded that to "unconditionally offer" reinstatement
25 meant that Alamo was offering her reinstatement without the condition that she refrain from
26 wearing a head covering.

27 Second, Nur's attorney sent a letter to Alamo's counsel stating he had received
28 Alamo's June 3, 2003 Letter, and that Nur decided to bring her claim to the EEOC. Id. at Ex.

1 B. It is entirely reasonable to view this letter as a rejection of Alamo’s offer for unconditional
2 reinstatement.

3 And third, the rejection of the unconditional offer could be deemed reasonable if the
4 jury concluded that the offer meant that Nur could wear a head covering, which, as discussed
5 above, it likely did.

6 Consequently, the Court adopts the jury’s implied findings and award of \$21,640 in
7 back pay.

8 B. Pre-Judgment Interest

9 Plaintiff also seeks to recover pre-judgment interest on the back-pay award. An award
10 of pre-judgment interest serves the goal of making an employee whole after a defendant has
11 violated Title VII. Ford v. Alforo, 785 F.2d 835, 842 (9th Cir. 1986). Plaintiff computed this
12 interest to be \$4,510 based on the IRS prime rate and a back-pay award of \$21,640. (Doc.
13 143 & Ex. 4). The Court takes judicial notice of the IRS interest rates used for the
14 computation. See Fed. R. Evid. 201(b)(2) (permitting judicial notice of a fact that is “not
15 subject to reasonable dispute in that it is capable of accurate and ready determination by
16 resort to sources whose accuracy cannot reasonably be questioned”).

17 Having reviewed Plaintiff’s methodology in determining the amount of interest, which
18 the Court deems reasonable, the Court awards prejudgment interest in the amount of \$4,510.

19 C. Injunctive Relief

20 Plaintiff also requests injunctive relief, including, but not limited to, training, posting
21 a notice regarding retaliation, policy changes, and reporting requirements. (Doc. 143). Title
22 VII authorizes the Court to order equitable relief once an employer has been deemed guilty
23 of unlawful employment practices. 42 U.S.C. §§ 2000e-5(g)(1); EEOC v. Goodyear
24 Aerospace Corp., 813 F.2d 1539, 1543-44 (9th Cir. 1987).

25 While, “[g]enerally, a person subjected to employment discrimination is entitled to
26 an injunction against future discrimination unless the employer proves it is unlikely to repeat
27 the practice,” EEOC v. Goodyear Aerospace Corp., 813 F.2d 1539, 1544 (9th Cir. 1987)
28 (internal citations omitted), it is undisputed that Defendants no longer operate and are


1 bankrupt companies. (Doc. 6). As such, there is no danger of recurrent violations.
2 Plaintiff's request for injunctive relief will, therefore, be denied.

3 **CONCLUSION**

4 **IT IS ORDERED** that Plaintiff's Motion to Amend the Judgment and for Equitable
5 Relief, (Doc. 143), is **GRANTED** with respect to the award of pre-judgment interest and
6 **DENIED** with respect to all other requested relief.

7 **IT IS FURTHER ORDERED** that the Judgment (Doc. 139) shall be amended in the
8 following manner: "the Jury having found in favor of Plaintiff against Defendants as follows:
9 Lost Wages, subject to her duty to mitigate: \$21,640; Compensatory Damages: \$16,000;
10 Punitive Damages: \$250,000" shall be changed to: "the Jury having found in favor of
11 Plaintiff against Defendants as follows: Compensatory Damages: \$16,000 and Punitive
12 Damages: \$250,000. The Court having found in favor of Plaintiff against Defendants as
13 follows: Back Pay: \$21,640 and Pre-Judgment Interest: \$4,510."

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15 DATED this 28th day of August, 2007.

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25 Roslyn O. Silver
26 United States District Judge
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