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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,

Plaintiff,

vs.

Lumpy LLC, d/b/a Chilly Bombers,

Defendant.

No. CV06-0830-PHX-SRB

ORDER

This case was tried to a jury over four days in March 2008. The trial issues were whether Defendant had discriminated against charging party Christine Sedita on the basis of her sex and/or pregnancy in violation of Title VII and whether Defendant had violated the Equal Pay Act by paying Ms. Sedita differently and/or less than male managers performing substantially similar work. On March 19, 2008, the jury returned a verdict in favor of Plaintiff and against Defendant on the Title VII sex and/or pregnancy discrimination claim but awarded the charging party no damages for either lost wages or earnings through the date she terminated her employment or for emotional pain. The jury also found in favor of Plaintiff and against Defendant on the Equal Pay Act claim and determined that the damages for the difference in pay for Christine Sedita was only \$200.00. The jury did not award punitive damages on the Title VII claim and found that the Defendant's violation of the

1 Equal Pay Act was not willful. After the return of the verdicts, the Court directed that
2 Plaintiff submit a proposed form of judgment.

3 On April 3, 2008, Plaintiff lodged a proposed final judgment and filed a motion
4 regarding injunctive relief and back pay. In that judgment, Plaintiff requested that the Court
5 permanently enjoin Defendant from discriminating against any individuals on the basis of
6 sex and/or pregnancy in violation of Title VII or under the Equal Pay Act and also
7 permanently enjoin the Defendant from retaliation against any individual who made a charge,
8 testified or assisted in an investigation of a claim of discrimination under Title VII or the
9 Equal Pay Act. The proposed final judgment also asks that the Court impose affirmative
10 duties on the Defendant for a three-year period as follows:

11 1. Retain and pay a consultant to provide training on prohibited workplace
12 discrimination and to develop written policies concerning work place discrimination and
13 retaliation for the Defendant;

14 2. Complete the preparation of these policies within 90 days of the entry of final
15 judgment and distribute them to current employees as well as new employees when hired.
16 The policies are also to be submitted to the Regional Attorney at the Phoenix District Office
17 of Plaintiff;

18 3. The consultant retained to perform the training must be acceptable to the Plaintiff.
19 The Plaintiff must be permitted to designate representatives to attend the training sessions.
20 All Defendant's employees must be trained. The training must included no less than two
21 hours of instructions and must be repeated periodically for new employees;

22 4. Post a notice to all employees regarding this lawsuit. A proposed form of notice
23 is attached to the lodged final judgment;

24 5. Hire an outside consultant to investigate any claims of sex, pregnancy or pay
25 discrimination. Defendant would be prohibited from investigating any claims itself;

26 6. Certain reporting requirements to the Plaintiff are imposed on Defendant;

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1 7. With respect to the charging party, a requirement that Defendant provide her with
2 a letter of recommendation in a form approved by Plaintiff. Plaintiff also requests an order
3 that Defendant pay Christine Sedita \$460.00 in back pay.

4 Defendant has objected to Plaintiff's proposed judgment. Plaintiff has filed a reply
5 in support of its proposed judgment.

6 For the reasons stated below, Defendant's objections will be sustained, and the final
7 judgment in this case will direct that \$200.00 plus prejudgment interest from August 14,
8 2004, be paid by the Defendant to the charging party.

9 The Plaintiff's first claim was for sex and/or pregnancy discrimination. The evidence
10 at trial did not show any sex discrimination against the charging party or any other female
11 employees of the Defendant except against the charging party when she became pregnant.
12 Moreover, there was no evidence that there has been any repetition of pregnancy
13 discrimination in the four years since the charging party filed her charge of discrimination.
14 There is no risk that any discrimination against the charging party will recur or that there will
15 be any retaliation because the charging party voluntarily chose not to return to Defendant's
16 employ after she gave birth to her son.

17 Because the discrimination appears to be isolated to this charging party and her
18 pregnancy and there is no possibility of future discrimination against her, equitable factors
19 do not weigh in favor of the extensive and costly injunctive relief proposed in the lodged
20 final judgment. Other equitable factors also weigh against the relief sought by the Plaintiff.
21 Defendant is a small employer of a single restaurant which is not particularly profitable.
22 There is no evidence to suggest that there were any other Title VII violations related to other
23 female employees or any other employees in a protected class. There is no evidence of any
24 other Equal Pay Act violations. The single Title VII and Equal Pay Act violation does not
25 justify the imposition of the proposed affirmative obligations and expense on the Defendant.

26 With regard to the proposed award of \$460.00 in back pay to the charging party, the
27 Court notes that there was conflicting evidence at trial concerning the reasons why the
28 charging party earned less than the similarly situated male manager. While she was refused

1 a salary and paid hourly she was sometimes paid more than the similarly situated male
2 manager because of the opportunity that she had for overtime pay. There was also conflicting
3 evidence as to whether during periods when she was prohibited from working overtime she
4 earned less because of her voluntary choice to work less than 40 hours per week. The actual
5 pay differential between Ms. Sedita's hourly wage of \$12.00 in a 40 hour work week and the
6 male manger's \$500.00 per week pay was \$20.00 per week. The Court cannot say that the
7 charging party's testimony that her back pay or pay differential of \$460.00 was undisputed.
8 Rather, the Court accepts the advisory verdict of the jury and finds that the only damages for
9 back pay sustained by the charging party are \$200.00.

10 Finally, with respect to the proposed form of judgment's requirement that the
11 Defendant provide the charging party with a letter of recommendation, there was absolutely
12 no evidence that the charging party ever requested and/or was denied a letter of
13 recommendation, that any prospective employer of the charging party ever contacted the
14 Defendant for a recommendation, or that the Defendant would not give a positive
15 recommendation upon request. The Court will not require the letter of recommendation as
16 proposed in the judgment but instead will direct that the Defendant refrain from giving any
17 negative information if ever contacted by a future prospective employer of the charging
18 party. From the evidence at trial, the Court has no reason to suspect that any inquiry
19 concerning the charging party's prior work performance would not be positive based on the
20 testimony of Defendant's owner and other employees and former employees at trial.

21 IT IS ORDERED sustaining Defendant's Objections to the Proposed Form of Final
22 Judgment and denying Plaintiff's Motion for Injunctive Relief and Back Pay. (Doc. 116).

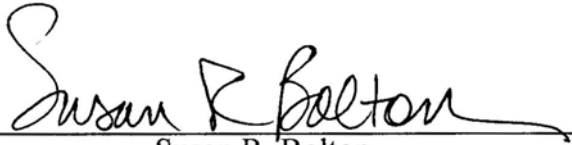
23 IT IS FURTHER ORDERED directing the Clerk to enter judgment in favor of
24 Plaintiff and against Defendant on the claim of pregnancy discrimination and on the claim
25 for violation of the Equal Pay Act.

26 IT IS FURTHER ORDERED directing that the judgment require Defendant to pay
27 the charging party, Christine Sedita, damages in the amount of \$200.00, plus interest
28 accruing from August 14, 2004 until paid in full.

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IT IS FURTHER ORDERED that if inquiry is made in the future that the Defendant refrain from providing any negative information with respect to the charging party's job performance while employed by Defendant.

DATED this 6th day of May, 2008.



Susan R. Bolton
United States District Judge