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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

S
U.S. EQUAL EMPLOYMENT) Case No. CV 06-01963 DDP (PLAx)
OPPORTUNITY COMMISSION,)
)
Plaintiff,) ORDER DENYING DEFENDANT'S MOTION
) TO DISMISS FOR EEOC'S FAILURE TO
) CONCILIATE
v.)
)
LAWRY'S RESTAURANTS, INC.;) [Motion filed on June 12, 2006]
d/b/a LAWRY'S THE PRIME RIB,)
FIVE CROWNS, AND TAM)
O'SHANTER,)
)
Defendants.) THIS CONSTITUTES NOTICE OF ENTRY
) AS REQUIRED BY FRCP, RULE 77(d).

This matter is before the Court on the defendant's motion to dismiss for failure to conciliate in good faith. After reviewing the parties' submissions, the Court denies the motion.

I. BACKGROUND

The United States Equal Employment Opportunity Commission (the "EEOC") brings suit against Lawry's Restaurants, Inc., d/b/a Lawry's The Prime Rib, Five Crowns, and Tam O'Shanter Inn (collectively "Lawry's") on behalf of Brandon Little and similarly situated males. The EEOC alleges that Lawry's engaged in a pattern

1 or practice of refusing to hire men as servers in its restaurants
2 nation-wide in violation of Title VII, 42 U.S.C. § 2000e-2(a)(1)
3 and -6.

4
5 **II. DISCUSSION**

6 **A. Legal Standard**

7 The EEOC must conduct an investigation when an individual
8 files charges of employment discrimination. If the EEOC determines
9 that reasonable cause exists to believe that the charge is true, it
10 "shall endeavor to eliminate any such alleged unlawful employment
11 practice by informal methods of conference, conciliation, and
12 persuasion." 42 U.S.C. § 2000e-5(b). The EEOC may bring suit
13 against the employer if it is unable to obtain a conciliation
14 agreement that it deems acceptable. 42 U.S.C. § 2000e-5(f)(1).
15 Genuine investigation, reasonable cause determination and
16 conciliation are jurisdictional conditions precedent that the EEOC
17 must satisfy before it may bring suit. EEOC v. Pierce Packing Co.,
18 669 F.2d 605, 607 (9th Cir. 1982).

19 **B. Analysis**

20 Lawry's argues that the Court should dismiss this action
21 because the EEOC did not conciliate in good faith in violation of
22 the statutory requirements. (Mot. 1.)

23 On August 26, 2003, the EEOC issued a determination letter
24 stating that there was reasonable cause to believe that Lawry's had
25 discriminated against Little and a class of similarly situated
26 males. (Lindsey Decl. Ex. 3.) The EEOC invited Lawry's to
27 participate in settlement discussions. On May 6, 2004, the EEOC
28 sent Lawry's a conciliation proposal detailing the monetary and

1 non-monetary relief that it was seeking from the company. (Id.,
2 Ex. 4.) On August 18, 2004, Lawry's sent the EEOC a
3 counterproposal that contained no offer of monetary relief. (Karen
4 Decl., Ex. 4.) Lawry's also proposed that the class definition
5 exclude bussers. The parties met and discussed the
6 counterproposal, and on October 4, 2004, Lawry's sent the EEOC
7 another proposal. (Lindsey Decl., Ex. 5.) The new proposal
8 contained an offer of monetary relief but the figure was
9 significantly less than the amount initially proposed by the EEOC.
10 Further, Lawry's still sought to exclude bussers from the class
11 definition. Over the next five months, the parties engaged in
12 discussions and exchanged letters in an attempt to settle the
13 matter. On March 28, 2005, the EEOC sent Lawry's another
14 counterproposal, and Lawry's responded with a letter dated April
15 12, 2005, in which it rejected the new offer. (Karen Decl., Exs.
16 F, G.)

17 After more than one year of conciliation negotiations, the
18 parties remained far apart on many issues, including the amount of
19 damages for the class and for Little. Accordingly, on July 19,
20 2005, the EEOC informed Lawry's that further settlement efforts
21 would be futile and that conciliation had failed. (Id., Ex. L.)

22 The Fifth and Eleventh Circuits have held that the district
23 court must examine the substance of the parties' negotiations in
24 determining whether the EEOC has complied with its duty to
25 conciliate. Specifically, the district court must determine
26 whether the EEOC acted reasonably during the conciliation process.
27 EEOC v. Asplundh Tree Expert Co., 340 F.3d 1256, 1259 (11th Cir.
28 2003); EEOC v. Klinger Elec. Corp., 636 F.2d 104, 107 (5th Cir.

1 1981). However, several other circuits have adopted a more
2 preferable approach. These courts have held that the EEOC
3 satisfies the conciliation condition in § 2000e-5(b) if it provides
4 the employer an opportunity to confront all the issues. EEOC v.
5 Delight Wholesale Co., 973 F.2d 664, 669 (8th Cir. 1992); EEOC v.
6 Keco Indus., Inc., 748 F.2d 1097, 1101-02 (6th Cir. 1984) ("The
7 EEOC is under no duty to attempt further conciliation after an
8 employer rejects its offer."); EEOC v. St. Anne's Hosp., 664 F.2d
9 128, 131 (7th Cir. 1981); EEOC v. Zia Co., 582 F.2d 527, 533 (10th
10 Cir. 1978). Under this approach, the district court does not
11 examine the substance of the parties' negotiations.

12 The Ninth Circuit has not considered this issue. However,
13 district courts within the Ninth Circuit have adopted the majority
14 approach and have held that the district court should focus on
15 whether the EEOC provided the employer with an opportunity to
16 confront all the issues. See, e.g., EEOC v. Canadian Indemnity
17 Co., 407 F. Supp. 1366, 1367 (C.D. Cal. 1976). This approach
18 comports with the statutory language in Title VII, which gives the
19 EEOC discretion in determining whether a conciliation agreement is
20 acceptable. See 42 U.S.C. § 2000e-5(f)(1). Consequently, the
21 Court considers whether the EEOC provided Lawry's with an
22 opportunity to address and resolve the issues in this lawsuit prior
23 to the EEOC filing suit.

24 Lawry's argues that EEOC did not negotiate in good faith by,
25 among other things, conditioning conciliation of the class claims
26 on successful settlement of Little's claims. (Mot. 13-16.)
27 However, Lawry's does not deny that it and the EEOC spent several
28 months attempting to resolve the issues raised in this lawsuit


1 prior to the EEOC initiating litigation. Given the efforts to
2 settle this matter, the EEOC has fulfilled its duty of
3 engaging in reconciliation prior to filing suit. Further, it is
4 unnecessary to stay the proceedings pending further conciliation
5 efforts because the parties have reached an impasse on a variety of
6 issues and additional settlement discussions would be futile.

7
8 **III. CONCLUSION**

9 The Court denies the defendant's motion.

10
11 IT IS SO ORDERED.

12
13
14 Dated: 7-14-06


DEAN D. PREGERSON
United States District Judge