

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

Equal Employment Opportunity	§	
Commission,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 9:06CV56
	§	
Lowe's Home Centers, Inc.	§	
	§	
Defendant.	§	JURY

PLAINTIFF'S AMENDED COMPLAINT

This is an action under the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to restrain the unlawful payment of wages to employees of one sex at rates less than the rates paid to employees of the opposite sex, and to provide appropriate relief due to employees as a result of such unlawful practices. The Commission alleges that Lowe's has paid female employees in the positions of Customer Service Associate, Team Leader, and Department Manager at wage rates which are less than the rates paid to its male employees performing substantially equal work. As alleged with greater particularity below, Carol Baudat, Carol "Joy" Bailey, and other female employees at Lowe's store 1790 in Livingston, Texas, were subjected to such unlawful pay practices. Additionally, Defendant has failed to comply with applicable record-keeping laws.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29

U.S.C. § 206(d), and pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”). This action is also authorized and instituted pursuant to Section 102 of Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful have been committed within the jurisdiction of the United States District Court for Eastern District of Texas, Lufkin Division.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the “Commission”), is the agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and Title VII, and is expressly authorized to bring this action by Sections 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705; and by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Lowe’s Home Centers, Inc. (“Lowe’s”), has continuously been a North Carolina corporation doing business in the State of Texas and the City of Livingston, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Lowe’s has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

6. At all relevant times, Defendant Lowe’s has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all relevant times, Defendant Lowe’s has continuously employed employees

engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j) and has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

STATEMENT OF TITLE VII CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Carol Baudat filed a charge with the Commission alleging violations of Title VII by Defendant Lowe's. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least February 26, 2004, Defendant Lowe's has engaged in unlawful employment practices at its store in Livingston, Texas, in violation of Section 703 of Title VII, 42 U.S.C. § 2000e-2(a).

10. Carol Baudat began working for Lowe's as a Customer Service Associate in the Paint Department of Lowe's store in Livingston, Texas. When Lowe's hired Paul "Paulie" Steil to work in the Paint Department in April 2004, it paid him a higher wage than it was paying Ms. Baudat. This difference in pay was because of sex.

11. Around May 1, 2004, Ms. Baudat received a promotion to Team Leader. As Team Leader, Ms. Baudat had the authority to oversee the work of Steil. Lowe's still paid Ms. Baudat a lower wage than it paid Steil.

12. In mid-July 2004, Ms. Baudat earned a promotion to Department Manager. Lowe's paid Ms. Baudat a lower rate than it paid any male Department Manager at that time.

13. Around the end of July 2004, Lowe's promoted Steil to Team Leader. As

Department Manager, Ms. Baudat supervised Steil. Nevertheless, Lowe's paid Ms. Baudat a lower wage than it paid Steil, an employee Ms. Baudat supervised.

14. When Carol "Joy" Bailey began as a Department Manager at Lowe's Livingston store, she already had numerous years of experience working at Lowe's. As a Department Manager, Lowe's paid her at a lower rate than it paid any male Department Managers at the Livingston store.

15. The differences in wages were discriminatorily based on sex.

16. Since at least October 2004, Defendant has failed, in violation of Section 709(c) of Title VII, 42 U.S.C. § 2000e-8(c), to make and preserve records relevant to the determination of whether unlawful employment practices have been or are being committed. The recordkeeping practices also violate 29 U.S.C. § 211(c). Specifically, Defendant's inability -- as stated in its discovery responses -- to locate and produce relevant pay records and documents indicates that it has not complied with the requirements of 42 U.S.C. § 2000e-8(c), 29 U.S.C. § 211(c), and applicable federal regulations.

17. The effect of the practices complained of in paragraphs 9-15 above has been to deprive Carol Baudat, Joy Bailey, and other female Customer Service Associates, Team Leaders, and Department Managers at Lowe's Livingston, Texas, store of equal employment opportunities and otherwise adversely affect their status as employees because of their sex.

18. The unlawful employment practices complained of in paragraphs 9-15 above were and are intentional.

19. The unlawful employment practices complained of in paragraphs 10-15 above were and are done with malice or with reckless indifference to the federally protected rights of Ms. Baudat, Ms. Bailey, and Defendant's other female employees at the Livingston store.

STATEMENT OF EPA CLAIMS

20. The factual allegations in paragraphs 10-15 are incorporated in this section.

21. Since at least February 26, 2004, Defendant Lowe's has violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying wages to its female Customer Service Associates, Team Leaders, and Department Managers in its Livingston, Texas, store at rates less than the rates paid to male employees in the same establishment for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

22. As a result of the acts complained of above, Defendant Lowe's unlawfully has withheld and is continuing to withhold the payment of wages due to Ms. Baudat, Ms. Bailey, and other females paid at rates less than the rates paid to male employees in the same establishment for substantially equal work.

23. The unlawful practices complained of in paragraphs 10-15 and 21-22 above were and are willful.

PRAYER FOR RELIEF

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining the Defendant Lowe's, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in wage discrimination and in any other employment practice which discriminates on the basis of sex.

B. Grant a permanent injunction enjoining the Defendant Lowe's, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating within any of its establishments between employees on the basis of sex, by paying wages to

employees of one sex at rates less than the rates at which it pays wages to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

C. Order Defendant Lowe's to institute and carry out policies, practices and programs which provide equal employment opportunities for women, and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendant Lowe's to make whole Carol Baudat, Joy Bailey, and other women who were unlawfully underpaid by providing appropriate backpay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to pay increases and frontpay for Ms. Baudat, Ms. Bailey, and other women at store 1790 who were similarly unlawfully underpaid.

E. Order Defendant Lowe's to make whole Carol Baudat, Joy Bailey, and other women who were unlawfully underpaid by providing compensation for past and future pecuniary losses resulting from the unlawful practices described in paragraphs 10-15 above, in amounts to be determined at trial.

F. Order Defendant Lowe's to make whole Ms. Baudat and Ms. Bailey and other women who were unlawfully underpaid by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraphs 10-15 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial.

G. Order Defendant Lowe's to pay Carol Baudat, Joy Bailey and other women who were unlawfully underpaid punitive damages for its malicious and/or reckless conduct described

in paragraphs 10-15 above, in an amount to be determined at trial.

H. Grant a judgment requiring Defendant Lowe's to pay appropriate back wages in amounts to be determined at trial, an equal sum as liquidated damages [or prejudgment interest in lieu thereof] to employees whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to Carol Baudat and Joy Bailey.

I. Grant such further relief as this Court deems necessary and proper in the public interest.

J. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission has requested a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiff's Amended Complaint was filed on August 22, 2006, with the Court's ECF system, and through that system the document should be served electronically upon the following:

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/s/ Timothy M. Bowne
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