UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Plaintiff,

v.

AAMES FINANCIAL CORPORATION

Defendant.

Case No. 98-10600 CM(AJWx)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 56(b)

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

Presently before the Court is Defendant Aames Financial Corporation's ("Aames") Motion for Summary Judgment brought pursuant to Federal Rule of Procedure 56(b). Having read and considered the moving papers, the opposition, and the reply, and having heard oral argument, the Court hereby grants in part and denies in part Defendant's Motion for Summary Judgment.

I.

Procedural and Factual Background

The United States Equal Employment Opportunity Commission's ("EEOC") claims arise from Aames' alleged unlawful business practices affecting Nanette Duff-Sullivan ("Duff-Sullivan") and Teri Williams ("Williams"). On June 21, 2000, the EEOC filed its

First Amended Complaint against Defendant Aames alleging causes of action under the Equal Pay Act of 1964, 29 U.S.C. § 206(d) et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. On June 30, Defendant moved for summary judgment pursuant to Federal Rule of Civil Procedure 56(b).

Duff-Sullivan commenced her employment at Aames in 1992 as Vice President of Human Resources and was responsible for employee relations, training, compensation and benefits. Duff-Sullivan continued in her employment until her resignation on December 31, 1996. At the time of her resignation, Duff-Sullivan's annual salary was $67,000. In January 1997, Aames decided to hire two new vice presidents for its human resources department. The objective of this decision was to hire top quality recruiters who would reduce the nearly $4 million spent on executive placement firms and temporary employees. To that end, Aames engaged an executive placement firm to seek out qualified candidates. Aames anticipated that it would have to pay between $ 90,000 and $ 115,000 to hire individuals with the necessary experience -- 10 to 15 years in the field.

In March 1997, Aames identified and hired Louella Yoshida to be its Vice President of Training and Operations Support and Patrick Gonyea to be its Vice President of Human Resources West. Yoshida's base salary was set at $120,000 and Gonyea's at $110,000. When Gonyea began work, he was given oversight responsibility for recruitment and employment relations, but unlike Duff-Sullivan, did not have responsibility for compensation and benefits, policies and procedures, workers' compensation or management training. After four months of work

at Aames, Gonyea received a salary increase to $120,000 and a bonus increase of $4,000. Around the time Gonyea was given a salary increase, he was briefly given oversight responsibility for compensation and benefits, for which Duff-Sullivan had been responsible. However, Gonyea was unable to handle the added work-load, so he was quickly relieved of this additional responsibility.

Williams started working at Aames for the second time in 1985 as Manager of Loan Servicing and Trustee Sales. In the early 1990s Williams became Vice President of Loan Services, a position she held until 1997 when she was laid off. At the time of her departure, Williams was earning $72,340 per year. Although Williams had twenty-five years of experience in the loan industry, she did not have extensive experience in large nation-wide loan servicing operations. In 1996, Aames decided to reorganize its loan department and hire two vice presidents who had experience in large nationwide loan servicing operations. Without first interviewing any other candidate, Aames hired Mark Bragg ("Bragg"), a male, to be Vice President of General Services and Ronald Holman ("Holman"), also a male, to be Vice President of Default Management.

Bragg's annual salary was set at $108,000 and Holman's at $100,000. In setting their salaries, Aames failed to take into consideration Aames' existing salary structure for its Loan Servicing Division. Moreover, Aames, without knowing what Holman was paid in his previous position, ultimately offered him a compensation package that was $27,000 to $32,000 more than his previous salary. Bragg's salary at Aames exceeded his prior

compensation by approximately $50,000.[1] Moreover, Williams had over twenty-five years experience in the loan industry including experience with out-of-state loans, while Bragg had only six years of loan servicing management experience, and the portfolio he managed consisted solely of California loans.[2]

II.

Applicable Standard

A motion for summary judgment is "properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" Celotex Corporation v. Catrett, 477 U.S. 317, 327, 106 S.Ct. 2548, 2555 (1986)(quoting Fed. R. Civ. P. 1). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

In a trilogy of 1986 cases, the Supreme Court clarified the applicable standards for summary judgment. See Celotex, supra; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505

---

[1] These numbers include their bonuses. At oral argument it was established that Holman and Bragg were paid the full bonus amount.

[2] Aames argues in its Reply that the EEOC misstates what Bragg said in his deposition on this point. Having read the relevant deposition section, the Court disagrees. The EEOC made no misstatement but the EEOC simply does not mention that 50% of loans Bragg handled while he worked in the loss mitigation group were from outside California.

(1986); Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348 (1986). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. Anderson, 477 U.S. at 256, 106 S.Ct. at 2514. The governing substantive law dictates whether a fact is material; if the fact may affect the outcome, it is material. Id. at 248, 2510. If the moving party seeks summary adjudication with respect to a claim or defense upon which it bears the burden of proof at trial, it must satisfy its burden with affirmative, admissible evidence. By contrast, when the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out the absence of evidence submitted by the non-moving party. The moving party need not disprove the other party's case. See Celotex, 477 U.S. at 325, 106 S.Ct. at 2554.

If the moving party meets its initial burden, the "adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

When assessing whether the non-moving party has raised a genuine issue, the court must believe the evidence and draw all justifiable inferences in favor of the non-moving party. Anderson, 477 U.S. at 255, 106 S.Ct. at 2513 (citing Adickes v. S. H. Kress and Company, 398 U.S. 144, 158-59, 90 S.Ct. 1598, 1608-09 (1970)). Nonetheless, "the mere existence of a scintilla of evidence" is insufficient to create a genuine issue of

material fact. Id. at 252, 2512. As the Supreme Court explained in Matsushita,

> [w]hen the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.... Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no "genuine issue for trial."

Id., 475 U.S. at 586-87, 106 S.Ct. at 1356 (citations omitted).

To be admissible for purposes of summary judgment, declarations or affidavits must be based on personal knowledge, must set forth "such facts as would be admissible in evidence," and must show that the declarant or affiant is competent to testify concerning the facts at issue. Fed. R. Civ. P. 56(e). Declarations on information and belief are insufficient to establish a factual dispute for purposes of summary judgment. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Similarly, "[a] party cannot create an issue of fact by a declaration contradicting his or her own deposition or other sworn testimony." Schwarzer, Tashima, & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial ("Fed. Civ. Proc.") ¶ 14:166 (1997), citing Bank of Illinois v. Allied Signal Safety Restraint Systems, 75 F.3d 1162, 1168-72 (7th Cir. 1996); Radobenko v. Automated Equipment Corp., 520 F.2d 540, 544 (9th Cir. 1975).

III

Discussion

The EEOC brings this action under both the Equal Pay Act of

1963 ("EPA")[3], codified by the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 206(d) et seq. and Title VII of the Civil Rights Act of 1964, as amended , 42 U.S.C. §§ 2000e, et seq. Courts have found that when a plaintiff establishes a prima facie case under the EPA, she also establishes a prima facie case under Title VII. See e.g., Forsberg v. Pacific Northwest Bell Tel.,840 F.2d 1409, 1414 (9th Cir. 1988); Piva v. Xerox Corp., 654 F.2d 591, 599 n.5 (9th Cir. 1981). In addition, the defenses available to the defendant under the EPA are also available under Title VII. See Maxwell v. City of Tuscon, 803 F.2d 444, 446 (9th Cir. 1986)("Title VII incorporates the Equal Pay Act defenses, so a defendant who proves one of the defenses cannot be held liable under either the Equal Pay Act or Title VII."). Because the standards are the same, this Court shall subsume the Title VII analysis within its analysis of the EEOC's EPA claim.

In an EPA case, the plaintiff carries the burden of establishing a prima facie case of discrimination by showing employees of different sex are paid different wages for doing the same work. See Stanley v. Univ. of S. Cal., 178 F.3d 1069, 1074 (9th Cir. 1999); Forsberg, 840 F.2d at 1414. To establish a prima facie case, plaintiff must show the jobs being compared are

---

[3] The Equal Pay Act provides in relevant part:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees . . . at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires skill, effort, and responsibility, and which are performed under similar working conditions...

"substantially equal." Stanley, 178 F.3d at 1074. Substantially equal is based on the duties actually performed in the jobs, not job description or title. See Dey v. Colt Construction & Dev. Co., 28 F.3d 1446, 1461 (7th Cir. 1994).

Recently, the Ninth Circuit adopted from the Third Circuit[4] a two-step test for determining whether jobs are "substantially equal." Under this test, courts determine whether the jobs are "substantially equal," by asking if the "jobs to be compared have a 'common core' of tasks, i.e. whether a significant portion of the two jobs is identical." Id. (citation omitted). If there is a common core of tasks, courts must then determine whether additional tasks that are part of one job but not the other make the jobs substantially different. Id. Additionally, if two jobs are "substantially similar" except that one job requires additional duties but pays less, the jobs are still "substantially similar" for purposes of the EPA. See Hein v. Oregon College of Educ., 718 F.2d 910, 917 (9th Cir. 1983).

Once an EPA plaintiff establishes a prima facie case, the burden then shifts to the defendant employer to show that the wage differential is justified under one of the four exceptions permitted under the EPA. See e.g., Corning Glass Works v. Brennan, 417 U.S. 188, 196 (1974); see also Kouba v. Allstate Ins. Co., 691 F.2d 873, 875 (9th Cir. 1982). The four exceptions are that different pay is made pursuant to "1) a seniority

---

[4] This test has also been adopted in the Fourth and Seventh Circuits. See Brewster v. Barnes, 788 F.2d 985, 991 (4th Cir. 1986); see also Fallon v. State of Illinois, 882 F.2d 1206, 1209 (7th Cir. 1989).

system; 2) a merit system; 3) a system which measures earnings by quantity or quality of production; or 4) a differential based on any other factor other than sex." Corning Glass Works, 417 U.S. at 196.[5]

If the defendant is able to show some non-discriminatory reason for its payment practice, the burden then shifts back to the plaintiff to produce evidence sufficient to raise an inference that defendant's proffered reasons are not legitimate and serve merely as a cover for sex-based discrimination. See Stanley, 178 F.3d at 1076; Maxwell, 803 F.3d at 446; Groussman v. Respiratory Home Care, 1985 WL 5621 *4 (C.D. Cal. Dec. 11, 1985). In order to survive summary judgment, the plaintiff must produce sufficient evidence to show the existence of a genuinely controverted issue of material fact as to the proffered affirmative defense. Groussman, 1985 WL 5621 at *4; see also Lowe v. City of Monrovia, 775 F.2d 998, 1009 (9th Cir. 1985)(applying the same standard for showing pretext in a Title VII case). In the Ninth Circuit, a plaintiff must present "meaningful evidence" to show pretext and survive summary judgment. Stanley, 178 F.3d at 1076.

Because the facts relating to each Plaintiff are unique, the Court discusses them in turn. Also, before proceeding, the Court

---

[5] In its Opposition and at oral argument the EEOC argued that in order to establish an affirmative defense defendant must show that the factor other than sex "provided no basis" for the wage differential. See Opp'n p. 12. However, this is not the standard in the Ninth Circuit (the EEOC cites as support an Eleventh Circuit case -- Mulhall v. Advance Sec., Inc., 19 F.3d 586 (11th Cir. 1994)), and the Court does not abide by this higher standard.

briefly notes that the principal dispute in this case is not whether plaintiff has established a prima facie case, but whether the pay differential was based on a "factor other than sex."

A. Duff-Sullivan

1. Prima Facie Case

The EEOC argues that if one looks at the duties actually performed and not the specific titles, Gonyea and Duff-Sullivan are proper comparators. As Vice President of Human Resources, Duff-Sullivan assumed responsibility for an array of tasks, some of which, but not all, were later assumed by Gonyea. Nevertheless, Gonyea was paid approximately $40,000 more than Duff-Sullivan. Aames does not appear to contest that Gonyea and Duff-Sullivan's jobs were "substantially equal." See Reply at p. 5 ("Aames does not contend, for purposes of this Motion that their duties were not substantially equal."). Accordingly, the Court also assumes for purposes of this Motion that Duff-Sullivan has established a prima facie case, and that her job was "substantially similar" to Gonyea's.

2. Affirmative Defenses and the EEOC's Rebuttal

Aames contends that even if Duff-Sullivan could establish a prima facie case, her claim nevertheless fails because Gonyea was paid a higher wage based on factors other than sex. Specifically, Aames argues Gonyea's wage was set according to how the market valued employees with skills that Aames required for the position of Vice President of Human Resources West. This argument is a proper affirmative defense under Stanley v. Univ. of Southern California, 13 F.3d 1313 (9th Cir. 1994). The court in Stanley wrote:

An employer may consider the marketplace value of the skills of a particular individual when determining his or her salary. [citation omitted] Unequal wages that reflect market conditions and demand are not prohibited by the EPA. Id., 13 F.3d at 1322. Aames stresses that it is undisputed a executive search firm was hired to find a suitable candidate as Vice President of Human Resources West and Vice President Training and Operation Support, and that before any candidate was identified, Aames and the executive search firm set the base salary according to what they believed the market required. Two individuals, a man and a woman, were then hired and the man, Gonyea, was chosen for the-then lower paying position of Vice President of Human Resources West. In view of these facts, the Court finds Aames has established an affirmative defense. That is, market conditions and demand, and not sex, dictated Gonyea's wage.

In response to Aames' market conditions defense, the EEOC presents evidence in its Opposition that Aames' defense is merely cover for sex-based discrimination. First, the EEOC points out that in 1995, Aames commissioned a consulting firm called Humanomics, to establish salary ranges. In determining the proper salary ranges, Humanomics used in part external market data and surveys. Aames then implemented a new salary scale based upon the work done by Humanomics. Yet despite this study, in late 1996 Aames decided market conditions dictated that it pay a man nearly $45,000 more to do a job it does not dispute is

"substantially similar" to Duff-Sullivan's.[6]

The EEOC also references in its Opposition, two pieces of circumstantial evidence to show that pay inequities were a result of sex. First, it cites to a chart prepared by Duff-Sullivan demonstrating that among Aames' sixteen vice presidents, with only one exception, the lowest paid male was paid more than the highest paid female. Second, the EEOC references two statements made to Duff-Sullivan by top-level Aames executives. The first statement, made by Aames' CEO, Gary Judis, in 1993, was: "I employ men and I employ women where nobody else will, and I like to take advantage of that." The second statement, made in 1996 by Bobbie Burroughs, Aames' Executive Vice President, was: "it was okay that the women be paid significantly lower in the range than the [newly-hired] males."

The Court believes the real question presented with respect to Duff-Sullivan's claim, is whether the manner in which Gonyea was hired insulates Aames from liability. The Court finds that Duff-Sullivan has simply not raised any evidence to credibly impugn Aames' reliance on market data when it hired Gonyea. In Stanley and in Groussman the court focused on whether plaintiff presented "meaningful evidence" which undermined the proffered affirmative defense. Because the plaintiff in Stanley did not present evidence to show she had equal experience as her

---

[6] In addition, Aames does not dispute the EEOC's assertion that Duff-Sullivan had at least as much experience as Gonyea. See Def.'s Reply at p. 5("the EEOC's contention that there are triable issues of fact as to whether Gonyea had more experience than Duff-Sullivan is meaningless since Aames also does not make this argument at this time.")

comparator the court affirmed the order for summary judgment.

Here, the EEOC's argument that Aames' failure to rely on its own salary structure means its market defense is pretext is simply too hypothetical. The variables present, such as the difference in when the studies were made; the fluidity of markets; the variation of market studies; the added costs of enticing an employee away from his employer; prevent the Court from concluding that Aames' defense is pretextual. Had Gonyea's salary at his previous employer been substantially less, or if there were evidence that Aames failed to interview other candidates, or that other candidates with equal experience were willing to work for less, the Court would have concluded otherwise. Moreover, comments made by Judis and Burroughs are ambiguous and Judis' comment, the more salient of the two, was made approximately four years before Gonyea was hired.

The kind of evidence the EEOC has presented to show pretext strongly contrasts with the evidence presented in Belfi v. Prendergast, 191 F.3d 129 (2nd Cir. 1999). In Belfi, the court focused on three different examples of where the employer proffered an affirmative defense and analyzed the specific evidence showing the defenses were pretextual. For example, the employer argued plaintiff was paid less pursuant to a seniority system. However the Belfi court observed that men with different levels of seniority were paid the same thus demonstrating the seniority system was merely pretextual. Id. at 138-39. Unlike the plaintiff in Belfi, the EEOC has failed to present evidence that directly challenges Aames' affirmative defense. Rather, plaintiff needed to present "specific evidence" that reliance on

"prior salary" was illegitimate and pretextual. Finally, it is worth noting that "[t]he Equal Pay Act entrusts employers, not judges, with making the often uncertain decision of how to accomplish business objectives" such as hiring employees with specific skills. Kouba, 691 F.2d at 876.

The EEOC has failed to present specific evidence which impugns Aames' reliance on market conditions. Accordingly, the Court grants Defendant's summary judgment as to Duff-Sullivan's claims.

B. Williams

1. Prima Facie Case

As discussed above, in an EPA case the plaintiff carries the burden of establishing a prima facie case of discrimination by showing employees of different sex are paid different wages for doing the same work. It is alleged that with only minor exception, Williams had substantially the same responsibilities Bragg and Holman had collectively. The sole exceptions were that Bragg was responsible for impounds and cashiering (and Williams was not) and Holman was responsible for the collection function (and Williams was not). Aames argues that Holman and Bragg were hired with expectations that they would manage their respective areas on a vastly expanded nationwide business, and therefore, they had added responsibilities which Williams did not have.

In determining whether jobs are "substantially similar" a court must determine if the job performance requires "equal skill, effort and responsibility." Corning Glass Works, 417 U.S. at 195. However, the jobs need not be identical, so long as there is a "common core." See Stanley, 178 F.3d at 1074. Aames

has failed to present clear and undisputed evidence showing Holman and Bragg's day-to-day responsibilities were different from Williams'. Accordingly, the Court finds there is a triable question of fact as to what extent Bragg and Holman's added responsibilities made their jobs different from Williams'. Additionally, there is a triable question of fact as to whether Aames' expansion rendered the day-to-day responsibilites of Bragg and Holman different from Williams'.

2. Affirmative Defenses and the EEOC's Rebuttal

Aames argues that even if Williams can establish a prima facie case, the pay differential is not actionable because it was based on a factor other than sex -- the "catchall" affirmative defense. Corning Glass Works, 417 U.S. at 196. Aames argues it sought to expand its business into a nationwide business and therefore needed more experienced individuals. Bragg and Holman had the necessary experience whereas Williams did not. Aames further argues that Bragg and Holman's salaries were dictated by the prevailing market demand for employees with their experience.

Once a defendant raises an affirmative defense, the burden shifts back to the plaintiff to show the proffered defense is nothing more than cover for sex based discrimination. See Groussman, 1985 WL 5621 at *4; see also Lowe, 775 F.2d at 1009 (applying the same standard in Title VII case).

First, the Court finds that the EEOC has presented sufficient evidence to create a triable issue of fact as to whether the experience defense was pretextual. Although, Williams conceded she did not have experience in managing a large volume loan department, she did have experience in servicing out-

of-state loans. Bragg, on the other hand, at his previous employer Great Western Bank, solely managed California loans.[7] Aames states that it was seeking "to create a department that would be capable of servicing a large volume of mortgage loans on a nationwide basis." See Def.'s Motion at p. 8. Williams had twenty-five years experience in the loan industry and had serviced loans in seven different states. Bragg, on the other hand, had only six years of loan management experience. Because Williams and Bragg's experience appears roughly equal whereas their pay was not, the Court finds that the EEOC has presented sufficient evidence to raise an inference that Aames' experience defense is pretextual.

Second, the Court finds there is a genuinely controverted issue of fact as to whether market conditions was merely pretext for paying Bragg and Holman more for doing substantially the same work. First, Aames did not interview any other candidates for the job. Second, Aames did not consult its salary grade system or industry surveys in determining Bragg and Holman's salaries. Bragg received a salary increase of $50,000 over his previous job. Holman received a salary increase from his previous job in the amount of $27,000 to $32,000, and Aames did not know what

---

[7] There appears to be some dispute as to whether or not Bragg managed non-California loans. The Court finds that based on the evidence presented, Bragg did not manage non-California loans while at Great Western. See supra at 4 n.2. The Court further notes that counsel for Aames did not dispute the EEOC's statement that Bragg was not responsible for loss mitigation at Aames and thus his experience in that field while at Great Western does not bear on whether Bragg had more experience than Williams.

Holman was paid by his previous employer. The Court finds these facts taken together raise an inference that the market factor affirmative defense is merely cover for paying Williams less because of her sex.

IV.

Conclusion

For all the above reasons, the Court hereby grants Aames' Summary Judgment Motion as to the EEOC's EPA and Title VII claims regarding Duff-Sullivan. The Court denies Aames's Motion for Summary Judgment as to the EEOC's EPA and Title VII claims regarding Williams.

IT IS SO ORDERED.

DATED: September 27, 2000

Carlos R. Moreno
United States District Judge