IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission, Plaintiff, vs. Eagle Produce, L.L.C., an Arizona Limited Liability Company, Defendant.	No. CV-06-1921-PHX-NVW **ORDER** [Not For Publication]

Before the court are Defendant Eagle Produce L.L.C.'s ("Eagle") Motion for Summary Judgment (Doc. # 55) and Additional Motion for Summary Judgment Re: Bernardo Gomez (Doc. # 82), and Plaintiff Equal Employment Opportunity Commission's ("EEOC") Motion for Partial Summary Judgment (Doc. # 57). The Motions will be granted in part and denied in part.

I. Background

Eagle Produce is an agribusiness engaged in the growing, harvesting, and marketing of produce. The company has two processing plants in Arizona, the Aguila facility and the Harquahala facility. Anita Guerrero ("Guerrero") first worked for Eagle Produce in May 2003. During the 2003 harvest season she served as a quality control inspector at the Aguila facility. She typically worked six days a week for approximately

10 to 12 hours a day, with Sundays off. Occasionally she worked 15 hours a day. In 2003 her salary was $1,000 weekly plus company housing.

Guerrero alleges that in April 2004 she was offered a job with Eagle for the 2004 season. (Doc. # 66 at ¶ 23.) On May 5, 2004 Guerrero reported for work at Aguila, but was informed that there was in fact no position available. (*Id.* at ¶¶ 28-29, 33.) She alleges that Jimmy Byrd, Eagle's general manager, told her that the company had already hired someone to work at the Harquahala facility and that a man named Bernie would be doing quality control at Aguila. (*Id.* at ¶ 29.) However, "Bernie" Gomez resigned from Eagle Produce on or about May 8, 2004. (*Id.* at ¶ 35.) On May 11, 2004, Byrd called Guerrero and offered her the job of quality control inspector for the 2004 harvest season. (*Id.* at ¶ 36.)

Unlike in 2003, Eagle offered to pay Guerrero $800 per week for the 2004 season. However, she was required to work only ten hours per day, six days a week with Sundays off. (*Id.* at ¶ 37.) Nevertheless, the duties she performed in 2003 and 2004 were essentially the same. (*Id.* at ¶ 41.) She asserts that these duties included, but were not limited to: testing the weight of melons; testing for sugar content and pressure; inspecting packed produce boxes; preparing reports and entering them into a computer; checking dates of products in the cold room; inspecting produce coming into the facility; ensuring proper fruit was loaded per bill of lading; submitting reports to the office regarding the quality of the fruit; inspecting repacked produce; keeping track of product that was outside to make sure it was put in the cold room; asking employees to pull boxes that were required to be repacked; letting the foreman know what problems were in the boxes that were already packed; inspecting the produce for clients to make sure it was not damaged; helping repack product to meet client specifications; showing buyers the company's product; and writing special reports for certain customers. (*Id.* at ¶ 13.) Although Eagle claims otherwise, Guerrero also asserts that she had authority to accept or reject fruit for a particular customer and that she made decisions on whether to accept the fruit the company purchased. (*Id.* at ¶ 14.)

1 In May 2004 Eagle hired two males who allegedly performed duties similar to
2 those Guerrero was expected to carry out. One of these men was Bernardo "Bernie"
3 Gomez. Eagle's records indicate that he was hired to conduct "quality control" at the
4 Aguila facility. (Doc. # 86, Ex. 5, Attach. A.) Gomez testified that his job duties included:
5 testing the weight of melons, testing for sugar content and pressure, and checking the
6 grade and sizing of the company's product and preparing reports. (*Id.*, Ex. 5 at 65:16-19.)
7 He also "pre-staged" product, which he described as "the same thing as just quality
8 control" —ensuring that the product selected for certain customers met certain standards
9 of quality. (*Id.*, Ex. 5 at 34:4-6.) Gomez generally worked from 6:30 a.m. to 4:00 p.m.,
10 six days a week with Sundays off. (*Id.*, Ex. 5 at 65:22-66:2.) He calculated his rate of
11 pay to be $1000 a week, which included $900 in salary plus gas expenses. (*Id.*, Ex. 5 at
12 61:15-24.) He resigned on May 8, 2004, and Eagle hired Guerrero three days later.
13 The other male Eagle hired in May 2004 was Paul Collazo. He was hired on or
14 about May 1, 2004, to work at the Harquahala facility. (DSOF at ¶ 6.) Collazo performed
15 quality control duties at Harquahala, including: testing produce for proper color, defects,
16 ripeness, firmness, and sugar content; ensuring that produce was properly handled when
17 being delivered from the fields; ensuring that inventory was properly rotated; and
18 deciding whether produce should be withdrawn and dumped. (*Id.* at ¶¶ 15-18.) At some
19 point in May 2004, Collazo assumed supervisory control over certain operations at
20 Harquahala. In this capacity he hired, reprimanded, and fired employees. He also
21 approved employee time sheets and made sure that employees at the facility worked in
22 accordance with proper safety standards. (*Id.* at ¶ 8.) The parties dispute, however,
23 whether Eagle hired Collazo with the expectation that he would be given supervisory
24 authority. Moreover, Eagle claims that any quality control duties he carried out were
25 incidental to and stemmed from his role as a supervisor. During his time at Harquahala,
26 Collazo worked at least eleven hours per day, seven days a week. (Doc. # 66, Ex. 2 at
27 97:14-24.) His salary was $1,000, paid weekly.
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1 The Harquahala facility completed its harvest of watermelons in July 2004 .
2 Because the watermelon fields at Aguila were ready to harvest, Eagle transferred the
3 Harquahala employees, including Collazo, to the Aguila facility. (*Id.* at ¶ 60). Collazo
4 continued to perform many of the same quality control duties at Aguila. (*Id.* at ¶ 61.)
5 However, the parties dispute whether he continued to supervise employees after the
6 move. Although his rate of pay did not change, Collazo worked fewer hours at Aguila
7 than he had at Harquahala and he also occasionally took days off. (*Id.*, Ex. 2 at 98:14-
8 15.) Collazo worked at Aguila until September 2004 when he terminated his employment
9 with Eagle. (DSOF at ¶ 21.)
10 At some point in October or November 2004, Guerrero learned from a coworker
11 that Collazo's weekly salary had been $1,000. (Doc. # 66 at ¶ 69.) She worked for Eagle
12 until the last day of the season, on or about November 3, 2004. On June 6, 2005,
13 Guerrero filed a charge of discrimination with the EEOC alleging discrimination under
14 the Equal Pay Act. On August 7, 2006, the EEOC filed the present suit against Eagle
15 Produce alleging a violation of the Equal Pay Act. On August 14, 2006, Guerrero
16 amended her charge of discrimination to include a claim under Title VII of the Civil
17 Rights Act of 1964. (DSOF at ¶¶ 25-28.) Subsequently, the EEOC also amended its
18 complaint to allege a claim under Title VII.
19 Both parties filed motions for summary judgment pursuant to Fed. R. Civ. P. 56.
20 Eagle argues in its motion that the EEOC lacks evidence sufficient to support its Equal
21 Pay Act and Title VII claims because Guerrero did not perform work equal to that
22 performed by either Collazo or Gomez. Additionally, Eagle argues that Guerrero's Title
23 VII claim is time-barred. The EEOC's motion seeks summary judgment on several of the
24 affirmative defenses Eagle asserted in its answer. Specifically, it requests judgment in the
25 EEOC's favor on Eagle's statute of limitations defenses, its laches defense, and its claim
26 that Guerrero failed to mitigate her damages.
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1 **II. Legal Standard**

2 Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment
3 shall be entered if the pleadings, depositions, affidavits, answers to interrogatories, and
4 admissions on file show that there is no genuine dispute regarding the material facts of
5 the case and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P.
6 56(c) (2004); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (citations
7 omitted). The court must evaluate a party's motion for summary judgment construing the
8 alleged facts with all reasonable inferences favoring the nonmoving party. *Baldwin v.*
9 *Trailer Inns, Inc.*, 266 F.3d 1104, 1117 (9th Cir. 2001).

10 The party seeking summary judgment bears the initial burden of informing the
11 court of the basis for its motion and identifying those portions of the pleadings,
12 depositions, answers to interrogatories, and admissions on file, together with the
13 affidavits, if any, which it believes demonstrate the absence of any genuine issue of
14 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (citations omitted).
15 Where the moving party has met its initial burden with a properly supported motion, the
16 party opposing the motion "may not rest upon the mere allegations or denials of his
17 pleading, but . . . must set forth specific facts showing that there is a genuine issue for
18 trial." *Anderson*, 477 U.S. at 248 (citations omitted). Summary judgment is appropriate
19 against a party who "fails to make a showing sufficient to establish the existence of an
20 element essential to that party's case, and on which that party will bear the burden of
21 proof at trial." *Celotex Corp.*, 477 U.S. at 322; *accord Citadel Holding Corp. v. Roven*,
22 26 F.3d 960, 964 (9th Cir. 1994). At the summary judgment stage, mere speculation or
23 allegations without supporting evidence do not create a factual issue necessitating a trial.
24 *See Witherow v. Paff*, 52 F.3d 264, 266 (9th Cir. 1995).

25 **III. Guerrero's Title VII Claim is Time-barred.**

26 Eagle argues that the Plaintiff's Title VII claim is time-barred because Guerrero
27 learned of the alleged gender-based discrimination no later than November, 3, 2004, but
28 did not file her charge with the EEOC until August 14, 2006. Pursuant to 42 U.S.C. §

2000e-5(e)(1), Title VII claims are subject to a limitation period. Section 2000e-5(e)(1) states that:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter. . . .

In response, the EEOC points out that Guerrero filed her EPA charge on June 6, 2005, and that the August 14, 2006 addition of the Title VII claim was merely an amendment to her original complaint. Therefore, the EEOC argues that the Title VII charge should relate back to June 6, 2005, the date she filed the original EPA charge. However, even if the court assumes that the amendments made in August 2006 should relate back to June 6, 2005, the Title VII claim still runs afoul of the statute of limitations. Assuming that Guerrero learned of Collazo's salary as late as November 30, 2004, she was required to file a Title VII charge no later than May 29, 2005. Though Eagle has briefed this issue several times, the EEOC strangely has never responded to it. Therefore, Eagle is entitled to judgment as a matter of law on the plaintiff's Title VII claims.

IV. Guerrero's Equal Pay Act Claim is Controlled by the Two-year Statute of Limitations Because the EEOC Has Not Established That Eagle "Willfully" Violated the EPA.

Eagle alleges that the plaintiff's EPA claim is similarly time-barred. Pursuant to 29 U.S.C. § 255(a), an EPA claim is time-barred if not commenced within two years after the cause of action accrues or three years if the violation was "willful." A cause of action under 29 U.S.C. § 255 "'accrues' at each regular payday immediately following the work period during which the services were rendered and for which the compensation is claimed." *Hartt v. United Const. Co., Inc.*, 655 F. Supp. 937, 938 (W.D. Mo. 1987).

Both Eagle and the EEOC seek summary judgment on the issue of whether the two- or three-year statute of limitations applies in Guerrero's case. Eagle urges the court to adopt the two-year limit and points out that the EEOC did not file its claim until August 7, 2006. Accordingly, Eagle asserts that Guerrero can only recover for damages

she allegedly suffered subsequent to the payday immediately following August 7, 2004. The EEOC asserts that Eagle's violation of the EPA was willful, and therefore Guerrero's entire term of employment falls within the three-year statute of limitations.

The Supreme Court in *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 135 (1988), declared that the standard of willfulness applied in *Trans. World Airlines v. Thurston*, 469 U.S. 111 (1985) also applies in causes of action filed under the Fair Labor Standards Act. Under this standard, "a violation is willful if the company knew or showed reckless disregard whether its conduct was prohibited" by statute. *Id.* at 128-29.

In order to obtain the benefit of the three-year statute of limitations at trial, the EEOC would bear the burden of establishing that Eagle willfully paid Guerrero less money for equal work in violation of the EPA. However, the only evidence the EEOC offers in support of this claim is that Eagle's general manager "was responsible for setting the wages for Collazo, Gomez and Guerrero" and therefore "a jury could infer that he willfully paid Guerrero less than her male counterparts because she was a woman." (Doc. # 65 at 14.) This "evidence" is merely a statement of liability and does not create an issue of fact as to whether Eagle "knew or showed reckless disregard" that its conduct was prohibited by the EPA. Having failed to carry its burden, the court denies the EEOC's request for judgment in its favor on this issue and applies the two-year statute of limitations under 29 U.S.C. § 255(a). Accordingly, all claims for back pay and liquidated damages sought pursuant to the EPA and related to conduct occurring prior to August 7, 2004, are time-barred.

V. An Equal Pay Act Plaintiff Must Show Unequal Pay For Substantially Equal Work.

"In order to make out a prima facie case under the EPA, [Plaintiff] bears the burden of establishing that [she] did not receive equal pay for equal work." *Forsberg v. Pacific Northwest Bell Tele. Co.*, 840 F.2d 1409, 1414 (9th Cir. 1988). "To make out the prima facie case, the plaintiff [must show] that the jobs being compared are 'substantially equal.'" *Stanley v. University of Southern California*, 178 F.3d 1069, 1074 (9th Cir.

1999.) However, she "need not demonstrate that the jobs in question are [completely] identical." *Id.*

The "substantially equal" analysis has two steps. *Id.* First, the court must determine "whether the jobs to be compared have a 'common core' of tasks." *Id.* In other words, whether a "significant portion" of the two jobs is identical. *Id.* If the plaintiff establishes a common core of tasks, then the court must "determine whether any additional tasks, incumbent on one job but not the other, make the two jobs 'substantially different.'" *Id.* However, even if a plaintiff succeeds in establishing a prima facie case, a defendant may refute the plaintiff's claim by showing that the pay differences resulted from differences in: "I) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex . . . ." 29 U.S.C. § 206(d)(1); *Stanley*, 178 F.3d at 1075.

A. A genuine issue of material fact exists concerning whether Guerrero and Gomez performed substantially equal work.

Eagle argues that Guerrero's job duties were not substantially equal to those performed by Gomez. However, construing the disputable evidence in favor of the EEOC on this record, the court concludes that a reasonable jury could find that Guerrero's and Gomez's jobs satisfies the "substantially equal" test. First, Gomez's and Guerrero's own descriptions of their duties reveal that they had a "common core" of tasks. Both Guerrero and Gomez tested the weight of melons, tested for sugar content and pressure, and checked the size and grade of the product. They also both prepared reports and advised their superiors about the quality of the product. Finally, both understood their primary role at the Aguila facility to be "quality control."

To establish its prima facie case, however, the EEOC must also demonstrate the lack of any additional tasks assigned to Gomez which made his job "substantially different" than Guerrero's. Eagle asserts that their jobs were substantially different because Gomez had authority to decide which fruit should be shipped to certain customers and could also reject and destroy fruit which he deemed to be substandard.

1 According to Eagle, Guerrero had no such authority. However, when describing this
2 aspect of his job, Gomez said that he "would just advise if the product was shippable or
3 not, but then [sales] made the decision whether to ship it." (Doc. # 86, Ex. 5 at 35:19-21.)
4 Guerrero testified that she had similar authority. In her deposition she stated that if she
5 felt a particular batch of fruit meant for Wal-Mart was "mediocre," then she could tell the
6 shipping department not to send it. (Doc. # 66, Ex. 1 at 148:6-9.) Like Gomez, she also
7 conceded that her decision could be overruled and that the ultimate decision about
8 whether to ship fruit that she considered substandard could be made by someone else.
9 (*Id.*, Ex. 1 at 148:11-25.) Gomez's description of his "authority" is nearly identical in
10 substance to Guerrero's. Therefore, this aspect of his job is not a task, incumbent on one
11 job but not the other, which makes the two jobs "substantially different."

12 Eagle attempts to explain away any difference in Gomez's and Guerrero's salaries
13 as based on a factor other than sex, a valid justification under 29 U.S.C. § 206(d)(1).
14 Specifically, Eagle asserts that the difference in pay was based on Gomez's knowledge
15 and expertise of retailer produce standards. For example, Eagle notes that from 1995 to
16 2001 Gomez worked for an agricultural brokerage firm in the business of procuring
17 products for large retailers. In that position he visited suppliers, inspected their products,
18 and determined whether their produce met retail standards. In response, the EEOC
19 points out that Guerrero has over 35 years experience working generally in the produce
20 industry, and 20 years experience as a quality control inspector. She formerly worked for
21 the United States Department of Agriculture ("USDA") and held a USDA inspector's
22 license which allowed her to conduct USDA approved inspections of cantaloupes and
23 honeydews.[1] There is a genuine issue of material fact concerning whether Guerrero and
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25 [1]Guerrero alleges in an affidavit prepared in response to Eagle's motion that while
26 working for a former employer, she also determined which produce met customer specifications and made suggestions about where to purchase fruit for those customers.
27 (Doc. # 86, Ex. 1 at ¶ 6.) Eagle asserts that this statement is inconsistent with her deposition testimony and urges the court to disregard it. Based on the limited excerpts of Guerrero's
28 deposition submitted to the court, it appears that her statement may be inconsistent with her

1 Gomez had comparable qualifications and experience such that a reasonable jury could
2 conclude that Eagle's proffered justification for the pay differential is merely pretextual.

3 **B. A genuine issue of material fact exists concerning whether Eagle hired**
4 **Collazo with the expectation that he would supervise the Harquahala facility.**

5 Eagle also argues that the EEOC has not shown that Collazo's and Guerrero's jobs
6 were "substantially equal." Eagle asserts that Collazo was hired as an assistant plant
7 manager and that he had supervisory authority over the Harquahala plant. The EEOC
8 does not dispute that Collazo carried out some activities as a supervisor. Rather, it argues
9 that he did not assume any such authority until after Mark Lyons, Collazo's supervisor,
10 was injured on or about May 17, 2004. The EEOC claims that before Lyon's injury,
11 Collazo's only job duties were related to quality control. Moreover, because Collazo's
12 salary was set at the time he was hired (on or about May 1, 2004), the EEOC asserts that
13 any difference between his pay rate and Guerrero's cannot be based on his status as a
14 supervisor.

15 The evidence establishes that Collazo performed at least some quality control
16 duties at Harquahala. In this role he completed many of the same tasks as Guerrero, but
17 he also made visits to the fields and made final decisions about whether produce should
18 be withdrawn and dumped. However, the record does not reveal whether these additional
19 duties were independent of his role as a supervisor.

20 The evidence also shows that at Harquahala he had authority to hire, reprimand,
21 and fire employees. In addition, he approved employee time sheets and made sure that
22 personnel at the facility worked in accordance with proper safety standards. Despite his
23 testimony that he was required to work between twelve and sixteen hours a day at
24 Harquahala, the EEOC offers evidence that he may have actually worked closer to eleven
25 hours a day. Collazo may have occasionally taken days off, but he was expected to work
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27 prior testimony. Nevertheless, given Guerrero's other claims about her background in the
28 relevant industry, her experience and expertise may be comparable to Gomez's.

seven days a week. Although job titles are not dispositive of an employee's actual position or job duties, an internal personnel document completed on May 1, 2004, notes that Collazo was hired as "Assistant Plant Mgr/Quality [indiscernible]." (Doc. # 66, Ex. 3, Attach. A.)

The EEOC offers only weak evidence in support of its theory that Eagle never intended to give Collazo any supervisory authority prior to May 17, 2004. For example, the EEOC submits testimony from two employees who worked in the Harquahala facility during the 2004 season. The first, Cecilia Bryant, worked at the Harquahala facility as a dispatcher for three to four weeks in 2004. (*Id.*, Ex. 9 at ¶ 6.) She testified that she observed Collazo carrying out quality control duties during that time and that he never supervised her work. Similarly, Daniel Gonzalez, who worked as a dock foreman at Harquahala during the 2004 season, testified that he reported to Mark Lyons, but that after Lyons was injured he reported to Collazo on a daily basis. (*Id.*, Ex. 10 at 53:9-24.) He also testified that before Lyons was injured Collazo's "duties was (sic) keeping quality control." (*Id.*, Ex. 10 at 87:7-10.)

The EEOC also cites testimony from Jimmy Byrd, Eagle's general manager, that Collazo had authority to hire and fire employees, as long as he communicated with Byrd, from the time Mark Lyons became absent. (*Id.*, Ex. 3 at 83:18-84:7.)

Bryant's testimony about what she observed only proves an undisputed fact, that Collazo performed some quality control duties at Harquahala. The fact that he may not have supervised her work does not necessarily refute Eagle's claim that he had at least some supervisory authority. Gonzalez's and Byrd's testimonies, on the other hand, suggest that Collazo did not exercise any supervisory authority until after May 17, 2004. The fact that Collazo did not actively supervise the Harquahala facility until after Lyons' injury does not necessarily disprove Eagle's claim that it hired him with the expectation that he would assume such a role. However, when the alleged facts are construed in favor of the EEOC, their testimony does provide an evidentiary basis from which a reasonable jury could find that the timing was not a coincidence. Therefore, because a material issue

of genuine fact exists concerning whether Collazo was hired as an assistant plant supervisor, the court must assume for purposes of this motion that he had no such authority when his rate of pay was established on May 1, 2004.

Unfortunately, the court is unable to determine whether the work Collazo performed after May 1, 2004, but prior to Lyons' injury was "substantially equal" to that performed by Guerrero. Eagle's argument that Collazo and Guerrero performed substantially different work is premised almost entirely on its assertion that Collazo was hired as an assistant plant supervisor. Consequently, Eagle's description of Collazo's duties is tainted by the notion that he was acting as a supervisor at all times relevant to Guerrero's claim. Therefore, the court cannot say whether Eagle has offered any evidence regarding Collazo's core, non-supervisory tasks. The EEOC, on the other hand, offers at least some evidence suggesting that Collazo's and Guerrero's jobs were substantially equal prior to Lyons' departure. Accordingly, Eagle is not entitled to summary judgment because the EEOC has shown that a genuine issue of material fact exists concerning Collazo's job duties.

VI. The EEOC is Entitled to Summary Judgement on Eagle's Defense That Guerrero Failed to Mitigate Her Damages.

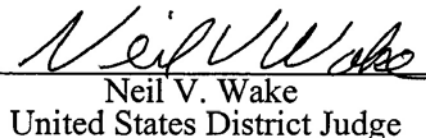
The EEOC's motion also seeks summary judgment on two additional affirmative defenses put forth by Eagle. The first is the defense of laches. Eagle argues that it was prejudiced by Guerrero's delay in filing her Title VII charge. The EEOC makes no attempt to present, much less show the insufficiency of, any specific laches circumstances in this case. Indeed, what remains of this case is only the EPA claim for wage differential between August 7 and November 3, 2004. It is not apparent that any injunctive relief would be warranted for what may be an isolated occurrence four years ago triggering strict liability. The EEOC's request for summary adjudication of an unexplained laches defense to unknown injunctive relief falls short. The motion will be denied in that respect.

Eagle's answer also alleges that Guerrero failed to mitigate her damages. Eagle argues that in May 2004 Guerrero knowingly accepted a job paying less than she earned in 2003 and that she could have mitigated her damages by seeking employment elsewhere. However, the basis of Guerrero's claim is that she received unequal pay as a result of gender discrimination, not that she was paid less from season to season. Guerrero states that she did not know about the allegedly gender-based pay disparity until October or November of 2004. Because Eagle puts forth no relevant evidence suggesting that Guerrero failed to mitigate her damages, the EEOC is entitled to summary judgment on that issue.

IT IS THEREFORE ORDERED that Defendant Eagle Produce, L.L.C.'s Motion for Summary Judgment (Doc. # 55) and Additional Motion for Summary Judgment Re: Bernardo Gomez (Doc. # 82) are DENIED as to the Equal Pay Act claim from August 7, 2004, and GRANTED as to the Title VII claim and the Equal Pay Act claim before August 7, 2004.

IT IS FURTHER ORDERED that Plaintiff's Equal Employment Opportunity Commission's Motion for Partial Summary Judgment (Doc. # 57) GRANTED as to the defense of failure to mitigate damages and is DENIED in all other respects.

Dated: June 5, 2008.



Neil V. Wake
United States District Judge