

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 ROBERT MACKINNON,
5 Plaintiff,
6 v.
7 LOGITECH INC., et al.,
8 Defendants.

Case No. 15-cv-05231-TEH

**ORDER RE: MOTIONS FOR
SUMMARY JUDGMENT**

9
10 The parties' cross-motions for summary judgment are currently scheduled for
11 hearing on April 17, 2017. The hearing date has been continued for various reasons,
12 including judicial economy in hearing both parties' motions simultaneously, counsel's
13 unavailability, the Court's unavailability, and, most recently, to allow late depositions of
14 Craig Malloy and Jeffrey Dill, as ordered by the magistrate judge on February 9, 2017.

15 On February 16, 2017, the Court held a telephonic status conference at which it
16 vacated the then-scheduled hearing date of February 27, 2017, to allow the late depositions
17 to proceed. The parties then stipulated to, and the Court ordered, the April 17, 2017
18 hearing date.

19 Neither the stipulation nor order contemplated any supplemental briefs, and
20 Defendants expressed an opposition to the filing of such briefs at the February 16
21 conference. However, the Court continued the summary judgment hearing to ensure that
22 the parties and the Court could adequately consider the late depositions. Accordingly, the
23 Court will consider the uninvited supplemental brief filed by Plaintiff on April 11, 2017.
24 In fairness, the Court will also allow Defendants an opportunity to respond.

25 After reviewing the parties' summary judgment briefs, the Court only has questions
26 about Plaintiff's statutory claim for age discrimination under Maryland law. Counsel shall
27 file supplemental briefs responding to the questions below on or before **April 19, 2017**.
28 Defendants shall include in their supplemental brief any response they wish to make to

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1 Plaintiff's April 11, 2017 supplemental brief. The hearing is continued to **May 1, 2017, at**
2 **10:00 AM**, and will be limited to Plaintiff's Maryland age discrimination claim and
3 Defendants' affirmative defenses. The Court finds the remainder of the issues suitable for
4 resolution without oral argument and intends to grant summary judgment to Defendants on
5 all other claims.

6 If the parties would prefer to discuss settlement of the only potential remaining
7 claim before devoting additional resources to preparing these supplemental briefs, the
8 Court would entertain a stipulated request to continue the dates in this order, as well as the
9 May 23, 2017 trial date. However, the Court's only available trial date after May 23 is
10 June 6, 2017.

11
12 **Questions for both parties**

13 1. In the absence of any federal or California claims, should Plaintiff's age
14 discrimination claim under Maryland state law be tried by this Court or transferred to
15 another court for resolution?

16 2. You rely on Ninth Circuit case law interpreting the federal Age
17 Discrimination in Employment Act ("ADEA") to argue for summary judgment under both
18 the ADEA and Maryland Code, State Government section 20-602. Do you agree that the
19 same analysis applies under both statutes?¹

20 3. What legal authority supports your respective positions that Sophia
21 McCulloch² or Jeffrey Dill should be considered MacKinnon's replacement for purposes
22 of determining whether MacKinnon has established a prima facie case of age
23 discrimination?

24
25 ¹ The case cited by Defendants in footnote 3 of their motion for summary judgment
26 refers to Title VII and not the ADEA. See *Wimbush v. Kaiser Found. Health Plan of the*
27 *Mid-Atlantic States, Inc.*, No. CV TDC-14-0525, 2016 WL 775410, at *19 (D. Md.
Feb. 29, 2016) ("When the same claim is pleaded under both Title VII and the FEPA, the
outcome will generally be the same.").

28 ² Plaintiff sometimes uses "Sophia McCullough," but "McCulloch" appears to be
the correct spelling. The parties should note the correct spelling in their supplemental
briefs.

1 **Questions for Plaintiff**

2 4. You failed to respond to Defendants’ argument that your Maryland statutory
3 claim fails because you did not follow the requirements of Maryland Code, State
4 Government section 20-1013. Should the Court construe your silence as a concession?

5 5. You included with your April 11, 2017 supplemental brief a declaration by
6 Robert Brown signed on February 6, 2017. Why should the Court consider this
7 declaration, when the only basis for continuing the summary judgment hearing was to
8 allow the Malloy and Dill depositions to proceed?

9
10 **Questions for Defendants**


11 6. Why couldn’t the jury conclude that MacKinnon was initially replaced by
12 Sophia McCulloch, or that Jeffrey Dill’s short tenure supports MacKinnon’s age
13 discrimination claim?

14 7. Why isn’t there enough circumstantial evidence for Plaintiff to survive
15 summary judgment, given that the Ninth Circuit has “repeatedly held that it should not
16 take much for a plaintiff in a discrimination case to overcome a summary judgment
17 motion”? France v. Johnson, 795 F.3d 1170, 1175 (9th Cir. 2015).

18 8. Which of your affirmative defenses are relevant to the Maryland statutory
19 age discrimination claim?

20
21 **IT IS SO ORDERED.**

22
23 Dated: 04/12/17

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25 _____
26 THELTON E. HENDERSON
27 United States District Judge
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