

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

LESA DAVIS

PLAINTIFF

v.

No. 4:11-cv-851-DPM

UNITED PARCEL SERVICE, INC.

DEFENDANT

ORDER

UPS's pre-emptive motion against class certification is denied without prejudice. The Court is skeptical about whether Davis can (1) propose a class that satisfies Rule 23 as construed in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), or (2) adequately represent any such class given what appear to be the undisputed facts about her situation: FMLA ineligibility, delayed request for short term disability, and union membership. But the better course is for Davis to take the previously authorized class-related depositions now and then take a hard and frank look at the class issues. If Davis proceeds with seeking certification, the Court will study that request with a weather eye.


In light of counsel's recent hospitalizations and current half-day work schedule, *Document No. 27*, the scheduling order is tweaked:

- Motion for class certification **5 November 2012**
- Response on certification **7 December 2012**
- Reply on certification **17 December 2012**

The Court will set a hearing thereafter, if need be. An amended final scheduling order noting these changes, and clarifying procedures for summary judgment and deposition designations, will issue.

Motion, *Document No. 21*, denied without prejudice.

So Ordered.



D.P. Marshall Jr.
United States District Judge

5 September 2012