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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ZANE HARDIN,)
)
 Plaintiff,)
)
 v.)
)
 WAL-MART STORES, INC.; and DOES)
 1-100,)
)
 Defendants.)
 _____)

**CIV-F-08-0617 AWI BAM
ORDER RESPONDING TO
PLAINTIFF’S REQUEST FOR
CLARIFICATION**

Plaintiff claims that he was subject to employment discrimination by Defendant. The court had granted Defendant’s motion for summary judgment, ruling in its favor on all of Plaintiff’s claims. Doc. 204. Plaintiff made a motion for reconsideration on all claims. The court reaffirmed grant of summary adjudication of the disparate treatment and most other claims; however, reconsideration was granted with respect to the disparate impact, wrongful demotion in violation of public policy, Cal. Bus. & Prof. Code § 17200, and negligent infliction of emotional distress claims (all of which are related to the disparate impact theory). Doc. 227. These claims were not directly addressed in the motion for summary judgment; the court granted leave to file a new summary judgment motion with respect to the remaining claims. Plaintiff filed motions to compel and to reopen discovery. The motions were denied by Magistrate Judge McAuliffe.

On July 17, 2012, Plaintiff filed the following statement:

4. Defendant Wal-Mart and then Magistrate McAuliffe interpreted the Court’s Order

1 granting Plaintiff's Motion for Reconsideration as only allowing [sic] a 'fully addressing
2 the causes of action related to Plaintiff's disparate impact claim.'

3 5. The Court chose not to cure any defects in its prior Motion for Summary Judgment
4 Ruling on Wrongful Demotion, Negligent Infliction of Emotional Distress, and violation
5 of Bus. & Prof. C. § 17200 outside of disparate impact claims.

6 6. For example, even though Defendant Wal-Mart did not challenge any aspect of the
7 Wrongful Demotion cause of action, Judge Ishii granted Summary Judgment on all
8 aspects of it, and his Order on Motion for Reconsideration only allowed it to proceed if
9 supported by disparate impact evidence and argument, if Defendant Wal-Mart and
10 Magistrate McAuliffe's interpretation is correct.

11 7. If their interpretation of the Court's order is in error, we ask the Court to so clarify.
12 Otherwise, we will assume their interpretation is correct.

13 Doc. 247, July 17, 2012 Declaration. The court made no response, indicating that Judge
14 McAuliffe's and Defendant's interpretation was correct.

15 Plaintiff has now filed a request for clarification: "Wal-Mart and Magistrate McAuliffe
16 interpreted the Order as only allowing claims based on disparate treatment to proceed. We have
17 a different interpretation. We do not wish to waste the court's or parties' resources presenting on
18 claims that have been dismissed, and not revived. Therefore, we respectfully request the Court
19 clarify its order, and indicate whether or not claims based on other than disparate treatment are
20 still viable, or were dismissed, and not revived." Doc. 255, July 30, 2012 Request for
21 Clarification, 1:18-26, emphasis added. The court assumes that Plaintiff mistakenly used the
22 term "disparate treatment" for "disparate impact" in their request. To clarify again, Judge
23 McAuliffe and Defendant have correctly interpreted the prior order as allowing the disparate
24 impact and certain associated claims to move forward; summary adjudication in favor of
25 Defendant was granted as to all claims regarding disparate treatment.

26 IT IS SO ORDERED.

27 Dated: August 3, 2012

28 
CHIEF UNITED STATES DISTRICT JUDGE