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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALICIA VILLALVASO,)	1:10-cv-2369 OWW MJS
)	
Plaintiff,	)	SCHEDULING CONFERENCE ORDER
)	
v.	)	Discovery Cut-Off: 6/15/12
)	
ODWALLA, INC., a California	)	Non-Dispositive Motion
Corporation; SPHERION, INC., a	)	Filing Deadline: 6/29/12
Delaware Corporation; and MARIO)	
ACOSTA, an individual,	)	Non-Dispositive Motion
	)	Hearing Date: 7/27/12 1:30
Defendants.	)	Ctrm. 6
)	
	)	Dispositive Motion Filing
	)	Deadline: 7/16/12
)	
	)	Dispositive Motion Hearing
	)	Date: 8/20/12 10:00 Ctrm. 3
)	
	)	Settlement Conference Date:
	)	6/28/12 1:30 Ctrm. 6
)	
	)	Pre-Trial Conference Date:
	)	9/24/12 11:00 Ctrm. 3
)	
	)	Trial Date: 11/6/12 9:00
	)	Ctrm. 3 (JT-10 days)

I. Date of Scheduling Conference.
June 16, 2011.

II. Appearances Of Counsel.
Felicia A. Espinosa, Esq., appeared on behalf of Plaintiff.
Curiale Hirschfeld Kraemer LLP by Kristin L. Oliveira, Esq.,

1 appeared on behalf of Defendant Odwalla, Inc. and Mario Acosta.

2 III. Summary of Pleadings.

3 A. Plaintiff's Factual and Legal Contentions.

4 1. On or around January 2006, Plaintiff applied for
5 employment with a temporary employment agency, Spherion, Inc.,
6 that provides staff services to Odwalla, Inc. (hereinafter,
7 "Defendant"). On or around February 2006, Plaintiff was
8 instructed to report to Defendant's plant located in Dinuba,
9 California. Plaintiff reported to work with Defendant. At all
10 relevant times, Plaintiff was jointly employed by Spherion, Inc.
11 and Defendant from approximately February 2006 until July 21,
12 2006. Throughout her employment with Defendant, Plaintiff's
13 direct supervisor was Mario Acosta (hereinafter "Defendant
14 Acosta").

15 2. Plaintiff worked in Defendant's cold storage and
16 shipping department under the direct supervision of Defendant
17 Acosta. During her employment, Defendant Acosta sexually
18 harassed Plaintiff by both verbal and physical acts. The
19 inappropriate physical acts included touching her against her
20 wishes and rubbing his body against her. The verbal harassment
21 included offensive and explicit details of his sexual encounters
22 and unwelcome sexual overtures. Additionally, Defendant Acosta
23 deliberately waited until Plaintiff would enter the locker room
24 and witness her zip into her work outfit that is placed over her
25 clothing. These verbal and physical acts created a hostile work
26 environment pervasive with sexual harassment.

27 3. On or about June 21, 2006, Plaintiff was
28 approached by Defendant's Manager, Christian Emrich and was told

1 that he was aware of Defendant Acosta's sexual harassment of
2 Plaintiff. Plaintiff informed Mr. Emrich that she was
3 represented by an attorney. At that time, Mr. Emrich told
4 Plaintiff to go home and to not report to work the next day, June
5 22, 2006. Plaintiff, accompanied with her counsel, made repeated
6 attempts to discuss the sexual harassment with Defendant and with
7 Spherion, Inc. As of June 22, 2006, Defendant never permitted
8 Plaintiff to return to work and failed to adequately investigate
9 and/or discipline Defendant Acosta for his actions.

10 4. Plaintiff suffered and continues to suffer severe
11 psychological and emotional distress due to the hostile work
12 environment she was forced to endure, the repeated sexual
13 harassment, retaliation and discrimination on behalf of Defendant
14 and Defendant Acosta. Plaintiff seeks compensatory, statutory,
15 and punitive damages and injunctive relief.

16 B. Defendants' Factual and Legal Contentions.

17 1. Plaintiff was an employee of Spherion, Inc., a
18 temporary employee agency that provides recruitment and staffing
19 services to Defendant. From February to June 2006, Plaintiff was
20 placed with Defendant's facility in Dinuba, California as a
21 temporary worker. During that period, she worked in Defendant's
22 Shipping Department.

23 2. On June 21, 2006, one of Plaintiff's coworkers at
24 the Defendant's plant told Christian Emrich, a Shipping Manager,
25 that Plaintiff had complained Defendant Acosta was "bragging"
26 her. Mr. Acosta was an employee in the Shipping Department.
27 (Mr. Acosta was not Plaintiff's supervisor and he did not have
28 authority or control over the terms or conditions of Plaintiff's

1 temporary placement with Defendant. Rather, Defendant Acosta was
2 only a "lead" employee in Shipping. As a lead, he was primarily
3 responsible for advising Order Selectors which orders to
4 palletize and ensuring Defendant's juices were correctly rotated
5 and utilized according to the bottling date.) Mr. Emrich
6 attempted to interview Plaintiff about any issues she had with
7 Defendant Acosta, but she stated she had legal counsel and was
8 reluctant to provide details to Mr. Emrich. Although Plaintiff
9 provided little information to Mr. Emrich, he assured her that
10 she had nothing to fear and that he would promptly speak to Human
11 Resources of Defendant. Mr. Emrich exchanged telephone numbers
12 with Plaintiff, and suggested she go home for the day if she was
13 upset. He told Plaintiff that Defendant would be in touch with
14 her regarding the next steps.

15 3. Mr. Emrich immediately notified Sharon Burg, the
16 Human Resources Manager at Defendants' plant, about Plaintiff's
17 complaint. Ms. Burg informed Spherion and also attempted to
18 telephone Plaintiff that day to discuss Plaintiff's concerns.
19 Ms. Burg, however, was unable to reach Plaintiff. The following
20 day, Spherion advised Ms. Burg that Plaintiff would be at
21 Defendant's plant on June 23, 2006 to speak with Human Resources.
22 The morning of June 23, 2006, Plaintiff and her legal counsel
23 appeared at Defendant's plant under the pretense of allowing
24 Plaintiff to be interviewed by Ms. Burg. Ms. Burg was completely
25 surprised as she was not expecting Plaintiff's attorney to
26 accompany Plaintiff. She did not feel comfortable interviewing
27 Plaintiff with her attorney present. Ms. Burg also understood
28 that Plaintiff was scheduled to meet with Spherion's manager that

1 day. Plaintiff's counsel handed Ms. Burg a one-page letter
2 signed by legal counsel containing a general description of
3 Plaintiff's harassment allegations.

4 4. Thereafter, Defendant conducted an investigation
5 by interviewing several employees who worked with Plaintiff and
6 Defendant Acosta in the Shipping Department. Defendant
7 interviewed Defendant Acosta and Rosario Serno, another female
8 employee in Shipping, on two separate occasions. Defendant
9 Acosta stated that he told Plaintiff a joke, and Defendant
10 determined that the joke could be interpreted as having a sexual
11 connotation. Defendant Acosta was orally warned for making this
12 joke in the workplace. Following a lengthy investigation,
13 Defendant could not substantiate Plaintiff's claims that
14 Defendant Acosta made sexual or lewd comments to her,
15 propositioned her for sex, and engaged in inappropriate and
16 unwelcome touching. At all times relevant to the Complaint,
17 Defendant maintained a policy prohibiting sexual harassment in
18 the workplace and this policy was published in Defendant's
19 employee handbook. In addition, Defendant provided sexual
20 harassment training to its employees.

21 5. After Plaintiff's conversation with Christian
22 Emrich, she was free to return to work at Defendant's plant.
23 Defendant tried to contact Plaintiff, but she did not respond and
24 evidently chose not to return to work at Defendant's plant.
25 Defendant did not prevent Plaintiff from returning to the plant.
26 In addition, Defendant understands that Plaintiff did not wish to
27 continue working at Defendant's plant, and she declined offers of
28 temporary assignments at other employers as presented to her by

1 Spherion after June 2006.

2 6. In sum, Defendant and Defendant Acosta deny
3 Plaintiff's claims of sexual harassment and gender
4 discrimination, and further deny that Plaintiff has been damaged
5 in any amount whatsoever. Defendants deny that Plaintiff was
6 subjected to a hostile work environment based on her gender, or
7 that Defendant retaliated against her after she complained about
8 harassment in violation of Title VII of the Civil Rights Act of
9 1964. Further, Defendant denies that it negligently supervised
10 or hired its employees, or that it failed to maintain a safe
11 working environment for Plaintiff. Defendant asserts that it is
12 not strictly liable for the actions of Defendant Acosta, as
13 Defendant Acosta was not Plaintiff's supervisor.

14 IV. Orders Re Amendments To Pleadings.

15 1. Plaintiff does not expect to add or dismiss any causes
16 of action at this time.

17 2. Defendants do not expect to add or dismiss any
18 affirmative defenses at this time.

19 3. Plaintiff has reached a settlement with Spherion, Inc.,
20 a Delaware corporation.

21 V. Factual Summary.

22 A. Admitted Facts Which Are Deemed Proven Without Further
23 Proceedings.

24 1. Plaintiff is an individual and a resident of the
25 Eastern District of California at the time of events alleged in
26 the complaint.

27 2. Odwalla, Inc., a California corporation, is
28 incorporated in and conducts business in the City of Dinuba, Inc.

1 3. Defendant Mario Acosta is an employee of Odwalla
2 and at times relevant, was employed at the Dinuba plant and an
3 employee of Odwalla at all times alleged in the Complaint.

4 4. Plaintiff was a temporary employee who had been
5 placed through Spherion, Inc. and performed work at Odwalla
6 during the period February 7, 2006 to June 21, 2006 in Dinuba,
7 California, as an Order Selector and Packer.

8 5. Plaintiff was never a regular, full-time employee
9 of Odwalla.

10 6. Plaintiff did not complain to any agent or manager
11 at Odwalla about Mario Acosta's alleged harassing conduct until
12 June 21, 2006, when she spoke with Christian Emrich at the Dinuba
13 plant.

14 B. Contested Facts.

15 1. Whether Plaintiff was an employee of Odwalla.

16 2. Whether Mario Acosta was Plaintiff's Supervisor.

17 3. Whether Mario Acosta engaged in inappropriate
18 conduct toward Plaintiff, including physical touching, sexual
19 proposition or sexual commentary, as she contends.

20 4. Whether Plaintiff refused or declined to
21 participate in Odwalla's investigation of Plaintiff's harassment
22 contentions.

23 5. Whether Plaintiff was terminated from her
24 temporary placement at Odwalla after she complained about Mario
25 Acosta's alleged harassment.

26 6. Whether Odwalla failed to rehire Plaintiff due to
27 her complaints of harassment and/or her gender.

28 7. Whether Odwalla, by and through its agents or

1 supervisors, knew or should have known of the alleged conduct by
2 Defendant Acosta and failed to take immediate and appropriate
3 corrective action.

4 8. Whether Plaintiff refused to return to work at
5 Odwalla following her complaints about Defendant Acosta.

6 9. Whether Odwalla properly trained and/or supervised
7 its employees regarding sexual harassment and retaliation.

8 10. What steps Odwalla took to prevent discrimination
9 or sexual harassment from occurring in its workplace.

10 VI. Legal Issues.

11 A. Uncontested.

12 1. Jurisdiction exists under 28 U.S.C. § 1331 and 42
13 U.S.C. §§ 2000e, et seq. Jurisdiction is further invoked under
14 28 U.S.C. § 1367 and Cal. Gov't Code §§ 12926, et seq.

15 2. Venue is proper under 28 U.S.C. § 1391.

16 3. The parties agree that the substantive law of the
17 State of California governs supplemental claims.

18 B. Contested.

19 1. Whether Plaintiff was subjected to sexual
20 harassment or sexual battery by Odwalla, by and through its
21 agents, supervisors or employees.

22 2. Whether Plaintiff was subjected to a hostile work
23 environment at Odwalla, by and through its agents, supervisors or
24 employees.

25 3. Whether Mario Acosta is a "supervisor" under the
26 California Fair Employment & Housing Act, California Government
27 Code § 12926(r).

28 4. Whether Odwalla is strictly liable for the actions

1 of Mario Acosta.

2 5. Whether the conduct of Odwalla violated public
3 policy.

4 6. Whether Odwalla negligently supervised and/or
5 trained any of its employees, causing harm to Plaintiff.

6 7. Whether Odwalla retaliated against Plaintiff for
7 retaining legal counsel in violation of California Labor Code
8 § 923.

9 8. Whether Plaintiff can pursue a claim for sexual
10 battery or wrongful termination in violation of public policy
11 based upon the applicable statute of limitations in California
12 Code of Civil Procedure § 335.1.

13 9. Whether the statute of limitations for Plaintiff's
14 sexual battery and/or wrongful termination claims was tolled on
15 the basis of equitable tolling.

16 10. Whether Plaintiff can state a claim for emotional
17 distress.

18 11. Whether Plaintiff can state a claim for
19 constructive discharge.

20 12. Whether Plaintiff can establish tolling.

21 13. Whether Plaintiff can state a claim for punitive
22 damages.

23 14. Whether Plaintiff can make any claim for damages.

24 15. Whether Plaintiff has mitigated any damages she
25 now claims she suffered because of Defendants.

26 VII. Consent to Magistrate Judge Jurisdiction.

27 1. The parties have not consented to transfer the
28 case to the Magistrate Judge for all purposes, including trial.

1 VIII. Corporate Identification Statement.

2 1. Any nongovernmental corporate party to any action in
3 this court shall file a statement identifying all its parent
4 corporations and listing any entity that owns 10% or more of the
5 party's equity securities. A party shall file the statement with
6 its initial pleading filed in this court and shall supplement the
7 statement within a reasonable time of any change in the
8 information.

9 IX. Discovery Plan and Cut-Off Date.

10 A. Proposed changes in the limits on discovery imposed by
11 Federal Rules of Civil Procedure, Rules 26(b), 30(a)(2)(A), (B)
12 or (C), 30(d) or 33(a): Defendants anticipate that it may take
13 longer than the seven hours permitted by FRCP 30 to depose
14 Plaintiff as Plaintiff requires an interpreter at the oral
15 deposition. Plaintiff agrees to a reasonable extension of the
16 seven hour limit for her deposition if necessary because of the
17 added time for using an interpreter.

18 B. Necessity of a protective order relating to the
19 discovery of information relating to trade secret or other
20 confidential research, development or commercial information.
21 The parties reserve the right to so request and formulate
22 protective orders regarding employee personnel files.

23 C. Issues or proposals as to the timing, sequencing,
24 phasing or scheduling of discovery. None at present.

25 D. Whether the parties anticipate the need to conduct
26 discovery outside the United States, and a description of the
27 proposed discovery. Not anticipated.

28 E. Whether the parties anticipate video and/or sound

1 recording of depositions. The parties reserve the right to so
2 notice depositions as required.

3 F. Proposed date for Mid-Discovery Status Report and
4 Conference: parties propose January 16, 2012.

5 G. The parties do not anticipate any issues relating to
6 either disclosure or discovery of electronically stored
7 information or claims of privilege.

8 The following schedule is adopted for the case:

9 1. The parties are ordered to complete all discovery on or
10 before June 15, 2012.

11 2. The parties are directed to disclose all expert
12 witnesses, in writing, on or before March 15, 2012. Any rebuttal
13 or supplemental expert disclosures will be made on or before May
14 15, 2012. The parties will comply with the provisions of Federal
15 Rule of Civil Procedure 26(a)(2) regarding their expert
16 designations. Local Rule 16-240(a) notwithstanding, the written
17 designation of experts shall be made pursuant to F. R. Civ. P.
18 Rule 26(a)(2), (A) and (B) and shall include all information
19 required thereunder. Failure to designate experts in compliance
20 with this order may result in the Court excluding the testimony
21 or other evidence offered through such experts that are not
22 disclosed pursuant to this order.

23 3. The provisions of F. R. Civ. P. 26(b)(4) shall
24 apply to all discovery relating to experts and their opinions.
25 Experts shall be fully prepared to be examined on all subjects
26 and opinions included in the designation and their reports, which
27 shall include every opinion to be rendered and all reasons for
28 each opinion. Failure to comply will result in the imposition of

1 sanctions.

2 X. Pre-Trial Motion Schedule.

3 1. All Non-Dispositive Pre-Trial Motions, including any
4 discovery motions, shall be filed on or before June 29, 2012, and
5 heard on July 27, 2012, at 9:30 a.m. before Magistrate Judge
6 Michael J. Seng in Courtroom 6.

7 2. In scheduling such motions, the Magistrate
8 Judge may grant applications for an order shortening time
9 pursuant to Local Rule 142(d). However, if counsel does not
10 obtain an order shortening time, the notice of motion must comply
11 with Local Rule 251 and this schedule.

12 3. All Dispositive Pre-Trial Motions are to be
13 filed no later than July 16, 2012, and will be heard on August
14 20, 2012, at 10:00 a.m. before the Honorable Oliver W. Wanger, in
15 Courtroom 3, 7th Floor. In scheduling such motions, counsel
16 shall comply with Local Rule 230.

17 XI. Pre-Trial Conference Date.

18 1. September 24, 2012, at 11:00 a.m. in Courtroom 3, 7th
19 Floor, before the Honorable Oliver W. Wanger.

20 2. The parties are ordered to file a Joint Pre-
21 Trial Statement pursuant to Local Rule 281(a)(2).

22 3. Counsel's attention is directed to Rules 281
23 and 282 of the Local Rules of Practice for the Eastern District
24 of California, as to the obligations of counsel in preparing for
25 the pre-trial conference. The Court insists upon strict
26 compliance with those rules.

27 XII. Motions - Hard Copy.

28 1. The parties shall submit one (1) courtesy paper copy to

1 the Court of any motions filed. Exhibits shall be marked with
2 protruding numbered or lettered tabs so that the Court can easily
3 identify such exhibits.

4 XIII. Trial Date.

5 1. November 6, 2012, at the hour of 9:00 a.m. in Courtroom
6 3, 7th Floor, before the Honorable Oliver W. Wanger, United
7 States District Judge.

8 2. This is a jury trial.

9 3. Counsels' Estimate Of Trial Time:

10 a. Ten days.

11 4. Counsels' attention is directed to Local Rules
12 of Practice for the Eastern District of California, Rule 285.

13 XIV. Settlement Conference.

14 1. The parties are agreeable to participate in private
15 mediation after the conclusion of Plaintiff's deposition and some
16 of Defendant's depositions, which is currently scheduled for
17 August 4-5, 2011. It is anticipated that the parties will
18 commence settlement discussions after Plaintiff's deposition, but
19 before Plaintiff conducts any depositions.

20 2. A Settlement Conference is scheduled for June 28, 2012,
21 at 1:30 p.m. in Courtroom 6 before the Honorable Michael J. Seng,
22 United States Magistrate Judge.

23 3. Unless otherwise permitted in advance by the
24 Court, the attorneys who will try the case shall appear at the
25 Settlement Conference with the parties and the person or persons
26 having full authority to negotiate and settle the case on any
27 terms at the conference.

28 4. Permission for a party [not attorney] to attend

1 by telephone may be granted upon request, by letter, with a copy
2 to the other parties, if the party [not attorney] lives and works
3 outside the Eastern District of California, and attendance in
4 person would constitute a hardship. If telephone attendance is
5 allowed, the party must be immediately available throughout the
6 conference until excused regardless of time zone differences.
7 Any other special arrangements desired in cases where settlement
8 authority rests with a governing body, shall also be proposed in
9 advance by letter copied to all other parties.

10 5. Confidential Settlement Conference Statement.

11 At least five (5) days prior to the Settlement Conference the
12 parties shall submit, directly to the Magistrate Judge's
13 chambers, a confidential settlement conference statement. The
14 statement should not be filed with the Clerk of the Court nor
15 served on any other party. Each statement shall be clearly
16 marked "confidential" with the date and time of the Settlement
17 Conference indicated prominently thereon. Counsel are urged to
18 request the return of their statements if settlement is not
19 achieved and if such a request is not made the Court will dispose
20 of the statement.

21 6. The Confidential Settlement Conference

22 Statement shall include the following:

23 a. A brief statement of the facts of the
24 case.

25 b. A brief statement of the claims and
26 defenses, i.e., statutory or other grounds upon which the claims
27 are founded; a forthright evaluation of the parties' likelihood
28 of prevailing on the claims and defenses; and a description of

1 the major issues in dispute.

2 c. A summary of the proceedings to date.

3 d. An estimate of the cost and time to be
4 expended for further discovery, pre-trial and trial.

5 e. The relief sought.

6 f. The parties' position on settlement,
7 including present demands and offers and a history of past
8 settlement discussions, offers and demands.

9 XV. Request For Bifurcation, Appointment Of Special Master,
10 Or Other Techniques To Shorten Trial.

11 1. The parties do not agree on bifurcation of liability
12 and damage phases. The issue will be addressed by motion.

13 2. The subject of the amount of punitive damages, if any,
14 shall be tried in a continuous trial, in a second phase, before
15 the same jury, after the entitlement to punitive damages and the
16 amount of compensatory damages has been determined by the jury.

17 XVI. Related Matters Pending.

18 1. There are no related matters.

19 XVII. Compliance With Federal Procedure.

20 1. The Court requires compliance with the Federal
21 Rules of Civil Procedure and the Local Rules of Practice for the
22 Eastern District of California. To aid the court in the
23 efficient administration of this case, all counsel are directed
24 to familiarize themselves with the Federal Rules of Civil
25 Procedure and the Local Rules of Practice of the Eastern District
26 of California, and keep abreast of any amendments thereto.

27 XVIII. Effect Of This Order.

28 1. The foregoing order represents the best

1 estimate of the court and counsel as to the agenda most suitable
2 to bring this case to resolution. The trial date reserved is
3 specifically reserved for this case. If the parties determine at
4 any time that the schedule outlined in this order cannot be met,
5 counsel are ordered to notify the court immediately of that fact
6 so that adjustments may be made, either by stipulation or by
7 subsequent scheduling conference.

8 2. Stipulations extending the deadlines contained
9 herein will not be considered unless they are accompanied by
10 affidavits or declarations, and where appropriate attached
11 exhibits, which establish good cause for granting the relief
12 requested.

13 3. Failure to comply with this order may result in
14 the imposition of sanctions.

15
16 IT IS SO ORDERED.

17 Dated: June 16, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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