

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KARINA RUIZ,) 1: 17-CV-00812 - DAD - JLT
Plaintiff,)
v.) SCHEDULING ORDER (Fed. R. Civ. P. 16)
WAL-MART STORES, INC., et al.,) Pleading Amendment Deadline: 2/27/2018
Defendants.)
_____) Discovery Deadlines:
) Initial Disclosures: 8/31/2017
) Non-Expert: 5/31/2018
) Expert: 8/18/2018
) Mid-Discovery Status Conference:
) 1/10/2018 at 8:30 a.m.

Non-Dispositive Motion Deadlines:
Filing: 8/24/2018
Hearing: 9/21/2018

Dispositive Motion Deadlines:
Filing: 10/2/2018
Hearing: 11/20/2018

Settlement Conference:
1/11/2019 at 9:30 a.m.
510 19th Street, Bakersfield, CA

Pre-Trial Conference:
1/28/2019 at 1:30 p.m.
Courtroom 5

Trial: 3/26/2019 at 8:30 a.m.
Courtroom 5
Jury trial: 10 days

1 **I. Date of Scheduling Conference**

2 August 16, 2018.

3 **II. Appearances of Counsel**

4 Michael Morrison appeared on behalf of Plaintiff.

5 Shanda Lowe appeared on behalf of Defendants.

6 **III. Magistrate Judge Consent:**

7 **Notice of Congested Docket and Court Policy of Trailing**

8 Due to the District Judges' heavy caseload, the newly adopted policy of the Fresno Division of
9 the Eastern District is to trail all civil cases. The parties are hereby notified that for a trial date set
10 before a District Judge, the parties will trail indefinitely behind any higher priority criminal or older
11 civil case set on the same date until a courtroom becomes available. The trial date will not be reset to a
12 continued date.

13 The Magistrate Judges' availability is far more realistic and accommodating to parties than that
14 of the U.S. District Judges who carry the heaviest caseloads in the nation and who must prioritize
15 criminal and older civil cases over more recently filed civil cases. A United States Magistrate Judge
16 may conduct trials, including entry of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of
17 Civil Procedure 73, and Local Rule 305. Any appeal from a judgment entered by a United States
18 Magistrate Judge is taken directly to the United States Court of Appeal for the Ninth Circuit.

19 The Fresno Division of the Eastern District of California, whenever possible, is utilizing United
20 States Article III District Court Judges from throughout the nation as Visiting Judges. Pursuant to the
21 Local Rules, Appendix A, such reassignments will be random, and the parties will receive no advance
22 notice before their case is reassigned to an Article III District Court Judge from outside of the Eastern
23 District of California.

24 Therefore, the parties are directed to consider consenting to Magistrate Judge jurisdiction to
25 conduct all further proceedings, including trial. **Within 10 days** of the date of this order, counsel
26 **SHALL** file a consent/decline form (provided by the Court at the inception of this case) indicating
27 whether they will consent to the jurisdiction of the Magistrate Judge.

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1 **IV. Pleading Amendment Deadline**

2 Any requested pleading amendments are ordered to be filed, either through a stipulation or
3 motion to amend, no later than **February 27, 2018**. Any motion to amend the pleadings shall be heard
4 by the Honorable Dale A. Drozd, United States District Court Judge.

5 **V. Discovery Plan and Cut-Off Date**

6 The parties are ordered to exchange the initial disclosures required by Fed. R. Civ. P. 26(a)(1)
7 on or before **August 31, 2017**.

8 The parties agree that discovery should be limited to the period of time that plaintiff was
9 employed with the defendant except that “me too” evidence may be sought from up to five years before
10 that time. (Doc. 8 at 8) The parties disagree, so some extent, as to the type of “me too” evidence that
11 may be sought. Counsel SHALL meet and confer to attempt to resolve any discovery disputes on this
12 topic or any other as set forth below. In addition, the parties agree that discovery related to the
13 plaintiff’s damages and her mitigation efforts should not be limited in terms of time. Id.

14 Counsel SHALL meet and confer to develop a stipulated protective order (Doc. 8 at 9) that may
15 be presented for the Court’s consideration. They are advised that their failure timely do so will not be
16 grounds for refusing to respond substantively to discovery requests.

17 The parties are ordered to complete all discovery pertaining to non-experts on or before **May**
18 **31, 2018** and all discovery pertaining to experts on or before **August 18, 2018**.

19 The parties are directed to disclose all expert witnesses¹, in writing, on or before **June 15, 2018**,
20 and to disclose all rebuttal experts on or before **July 13, 2018**. The written designation of retained and
21 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
22 **shall include all information required thereunder**. Failure to designate experts in compliance with
23 this order may result in the Court excluding the testimony or other evidence offered through such
24 experts that are not disclosed pursuant to this order.

25 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to experts
26 and their opinions. Experts must be fully prepared to be examined on all subjects and opinions

28 ¹ In the event an expert will offer opinions related to an independent medical or mental health evaluation, the
examination SHALL occur sufficiently in advance of the disclosure deadline so the expert’s report fully details the expert’s
opinions in this regard.

1 included in the designation. Failure to comply will result in the imposition of sanctions, which may
2 include striking the expert designation and preclusion of expert testimony.

3 The provisions of Fed. R. Civ. P. 26(e) regarding a party's duty to timely supplement
4 disclosures and responses to discovery requests will be strictly enforced.

5 A mid-discovery status conference is scheduled for **January 10, 2018** at 8:30 a.m. before the
6 Honorable Jennifer L. Thurston, U.S. Magistrate Judge, located at 510 19th Street, Bakersfield,
7 California. Counsel **SHALL** file a joint mid-discovery status conference report one week before the
8 conference. Counsel also **SHALL** lodge the status report via e-mail to JLTorders@caed.uscourts.gov.
9 The joint statement **SHALL** outline the discovery counsel have completed and that which needs to be
10 completed as well as any impediments to completing the discovery within the deadlines set forth in this
11 order. Counsel may appear via teleconference by dialing (888) 557-8511 and entering Access Code
12 1652736, provided the Magistrate Judge's Courtroom Deputy Clerk receives a written notice (to
13 SHALL@caed.uscourts.gov) of the intent to appear telephonically no later than five court days before
14 the noticed hearing date.

15 **VI. Pre-Trial Motion Schedule**

16 All non-dispositive pre-trial motions, including any discovery motions, shall be filed no later
17 than **August 24, 2018**, and heard on or before **September 21, 2018**. Discovery motions are heard
18 before the Honorable Jennifer L. Thurston, United States Magistrate Judge at the United States
19 Courthouse in Bakersfield, California. For these hearings, counsel may appear via teleconference by
20 dialing (888) 557-8511 and entering Access Code 1652736, provided the Magistrate Judge's Courtroom
21 Deputy Clerk receives a written notice of the intent to appear telephonically no later than five court
22 days before the noticed hearing date. All other non-dispositive hearings **SHALL** be set before Judge
23 Drozd.

24 **No motion to amend or stipulation to amend the case schedule will be entertained unless it**
25 **is filed at least one week before the first deadline the parties wish to extend.** Likewise, no written
26 discovery motions shall be filed without the prior approval of the assigned Magistrate Judge. A party
27 with a discovery dispute must first confer with the opposing party in a good faith effort to resolve by
28 agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party promptly

1 shall seek a telephonic hearing with all involved parties and the Magistrate Judge. It shall be the
2 obligation of the moving party to arrange and originate the conference call to the court. To schedule
3 this telephonic hearing, the parties are ordered to contact the Courtroom Deputy Clerk, Susan Hall, at
4 (661) 326-6620 or via email at SHall@caed.uscourts.gov. **Counsel must comply with Local Rule 251**
5 **with respect to discovery disputes or the motion will be denied without prejudice and dropped**
6 **from the Court's calendar.**

7 All dispositive pre-trial motions shall be filed no later than **October 2, 2018**, and heard no later
8 than **November 20, 2018**, in Courtroom 5 before the Honorable Dale A. Drozd, United States District
9 Court Judge. In scheduling such motions, **counsel shall comply with Fed. R. Civ. P. 56 and Local**
10 **Rules 230 and 260.**

11 **VII. Motions for Summary Judgment or Summary Adjudication**

12 **At least 21 days before** filing a motion for summary judgment or motion for summary
13 adjudication, the parties are **ORDERED** to meet, in person or by telephone, to confer about the issues
14 to be raised in the motion.

15 The purpose of the meeting shall be to: 1) avoid filing motions for summary judgment where a
16 question of fact exists; 2) determine whether the respondent agrees that the motion has merit in whole
17 or in part; 3) discuss whether issues can be resolved without the necessity of briefing; 4) narrow the
18 issues for review by the court; 5) explore the possibility of settlement before the parties incur the
19 expense of briefing a motion; and 6) to develop a joint statement of undisputed facts.

20 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
21 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
22 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be
23 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
24 statement of undisputed facts.

25 In the notice of motion the moving party **SHALL** certify that the parties have met and conferred
26 as ordered above, or set forth a statement of good cause for the failure to meet and confer. **Failure to**
27 **comply may result in the motion being stricken.**

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1 **VIII. Pre-Trial Conference Date**

2 **January 28, 2019**, at 1:30 p.m. in Courtroom 5 before Judge Drozd.

3 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2)**.

4 The parties are further directed to submit a digital copy of their pretrial statement in Word format,
5 directly to Judge Drozd's chambers, by email at DADorders@caed.uscourts.gov.

6 Counsels' attention is directed to **Rules 281 and 282 of the Local Rules** of Practice for the
7 Eastern District of California, as to the obligations of counsel in preparing for the pre-trial conference.
8 The Court will insist upon strict compliance with those rules. In addition to the matters set forth in the
9 Local Rules the Joint Pretrial Statement shall include a Joint Statement of the case to be used by the
10 Court to explain the nature of the case to the jury during voir dire.

11 **IX. Trial Date**

12 **March 26, 2019**, at 8:30 a.m. in Courtroom 5 before the Honorable Dale A. Drozd, United
13 States District Court Judge.

14 A. This is a jury trial.

15 B. Counsels' Estimate of Trial Time: 10 days.

16 C. Counsels' attention is directed to Local Rules of Practice for the Eastern District of
17 California, Rule 285.

18 **X. Settlement Conference**

19 A settlement conference is scheduled **January 11, 2019** at 9:30 a.m., located at 510 19th Street,
20 Bakersfield, California. Notwithstanding the provisions of Local Rule 270(b), the settlement
21 conference will be conducted by Magistrate Judge Thurston. The Court deems the deviation from the
22 Local Rule to be appropriate and in the interests of the parties and the interests of justice and sound
23 case management based upon the location of the parties. **If any party prefers that the settlement**
conference be conducted by a judicial officer not already assigned to this case, that party is
directed to notify the Court at least 60 days in advance of the scheduled settlement conference to
allow sufficient time for another judicial officer to be assigned to handle the conference.

27 Unless otherwise permitted in advance by the Court, **the attorneys who will try the case shall**
28 **appear** at the settlement conference **with the parties** and the person or persons having **full authority**

1 to negotiate and settle the case **on any terms**² at the conference. Consideration of settlement is a
2 serious matter that requires preparation prior to the settlement conference. Set forth below are the
3 procedures the Court will employ, absent good cause, in conducting the conference.

4 **At least 21 days before** the settlement conference, Plaintiff **SHALL** submit to Defendant via
5 fax or e-mail, a written itemization of damages and a meaningful³ settlement demand which includes a
6 brief explanation of why such a settlement is appropriate. Thereafter, **no later than 14 days before** the
7 settlement conference, Defendant **SHALL** respond via fax or e-mail, with an acceptance of the offer or
8 with a meaningful counteroffer, which includes a brief explanation of why such a settlement is
9 appropriate.

10 If settlement is not achieved, each party **SHALL** attach copies of their settlement offers to their
11 Confidential Settlement Conference Statement, as described below. Copies of these documents shall
12 not be filed on the court docket.

CONFIDENTIAL SETTLEMENT CONFERENCE STATEMENT

14 **At least five court days before** the settlement conference, the parties shall submit, directly to
15 Judge Thurston's chambers by e-mail to JLTorders@caed.uscourts.gov, a Confidential Settlement
16 Conference Statement. The statement **should not be filed** with the Clerk of the Court **nor served on**
17 **any other party**, although the parties may file a Notice of Lodging of Settlement Conference
18 Statement. Each statement shall be clearly marked "confidential" with the date and time of the
19 settlement conference indicated prominently thereon.

20 The Confidential Settlement Conference Statement shall include the following:

21 A. A brief statement of the facts of the case.
22 B. A brief statement of the claims and defenses, i.e., statutory or other grounds upon which
23 the claims are founded; a forthright evaluation of the parties' likelihood of prevailing on

24 _____
25 ² Insurance carriers, business organizations, and governmental bodies or agencies whose settlement agreements are
26 subject to approval by legislative bodies, executive committees, boards of directors or the like shall be represented by a
27 person or persons who occupy high executive positions in the party organization and who will be directly involved in the
process of approval of any settlement offers or agreements. To the extent possible the representative shall have the
authority, if he or she deems it appropriate, to settle the action on terms consistent with the opposing party's most recent
demand.

28 ³ "Meaningful" means that the offer is reasonably calculated to settle the case on terms acceptable to the offering
party. "Meaningful" does not include an offer which the offering party knows will not be acceptable to the other party. If,
however, the offering party is only willing to offer a settlement which it knows the other party will not accept, this should
trigger a recognition the case is not in a settlement posture and the parties should confer about continuing the settlement
conference via stipulation.

the claims and defenses; and a description of the major issues in dispute.

- C. A summary of the proceedings to date.
- D. An estimate of the cost and time to be expended for further discovery, pretrial and trial.
- E. The relief sought.
- F. The party's position on settlement, including present demands and offers and a history of past settlement discussions, offers and demands.

XI. Request for Bifurcation, Appointment of Special Master, or other

Techniques to Shorten Trial

The defendant will seek to bifurcate the issue of whether the plaintiff is an “aggrieved employee” from the issue of the rest of the merits of the PAGA claim. The plaintiff opposes this position. The defendant may raise the issue of bifurcation via a pretrial motion set before Judge Drozd.

XII. Related Matters Pending

There are no pending related matters.

XIII. Compliance with Federal Procedure

All counsel are expected to familiarize themselves with the Federal Rules of Civil Procedure and the Local Rules of Practice of the Eastern District of California, and to keep abreast of any amendments thereto. The Court must insist upon compliance with these Rules if it is to efficiently handle its increasing case load and sanctions will be imposed for failure to follow the Rules as provided in both the Federal Rules of Civil Procedure and the Local Rules of Practice for the Eastern District of California.

XIV. Effect of this Order

The foregoing order represents the best estimate of the court and counsel as to the agenda most suitable to dispose of this case. The trial date reserved is specifically reserved for this case. If the parties determine at any time that the schedule outlined in this order cannot be met, counsel are ordered to notify the court immediately of that fact so that adjustments may be made, either by stipulation or by subsequent status conference.

The dates set in this Order are considered to be firm and will not be modified absent a showing of good cause even if the request to modify is made by stipulation. Stipulations

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

4 Failure to comply with this order may result in the imposition of sanctions.
5

6 IT IS SO ORDERED.
7

Dated: August 16, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE