

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

RITA WOMACK,) Case No.: 1:22-cv-00739-AWI-BAK (BAM)
Plaintiff,)
v.) SCHEDULING ORDER (Fed. R. Civ. P. 16)
CVS PHARMACY, INC.,) Pleading Amendment Deadline: November 9, 2022
Defendants.) Discovery Deadlines:
) Initial Disclosures: September 30, 2022
) Non-Expert: June 16, 2023
) Expert: August 21, 2023

Pre-Trial Motion Deadline:
Filing: September 8, 2023

Pre-Trial Conference:
February 15, 2024, at 10:00 a.m.
Courtroom 2 (AWI)

Trial:
April 16, 2024, at 8:30 a.m.
Courtroom 2 (AWI)

1 **I. Magistrate Judge Consent:**

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

3 Due to the District Judges' heavy caseload, the adopted policy of the Fresno Division of the
4 Eastern District is to trail all civil cases. The parties are hereby notified that for a trial before a District
5 Judge, the parties will trail indefinitely behind any higher priority criminal or older civil case set on the
6 same date until a courtroom becomes available.

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

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

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

21 **II. Pleading Amendment Deadline**

22 Any requested pleading amendments are ordered to be filed, either through a stipulation or
23 motion to amend, no later than **November 9, 2022**.

24 **III. Discovery Plan and Cut-Off Date**

25 Initial disclosures required by Fed. R. Civ. P. 26(a)(1) shall be completed by **September 30, 2022**.

27 The parties are ordered to complete all discovery pertaining to non-experts on or before **June 16, 2023**, and all discovery pertaining to experts on or before **August 21, 2023**. Compliance with these

1 discovery cutoffs requires motions to compel be filed and heard sufficiently in advance of the cutoff so
2 that the Court may grant effective relief within the allotted discovery time. A parties' failure to have a
3 discovery dispute heard sufficiently in advance of the discovery cutoff may result in denial of the
4 motion as untimely.

5 The parties are directed to disclose all expert witnesses¹, in writing, on or before **June 30, 2023**,
6 and to disclose all rebuttal experts on or before **July 21, 2023**. The written designation of retained and
7 non-retained experts shall **be made pursuant to Fed. R. Civ. P. Rule 26(a)(2), (A), (B), and (C) and**
8 **shall include all information required thereunder**. Failure to designate experts in compliance with
9 this order may result in the Court excluding the testimony or other evidence offered through such
10 experts that are not disclosed pursuant to this order.

11 The provisions of Fed. R. Civ. P. 26(b)(4) and (5) shall apply to all discovery relating to
12 experts and their opinions. Experts must be fully prepared to be examined on all subjects and opinions
13 included in the designation. Failure to comply will result in the imposition of sanctions, which may
14 include striking the expert designation and preclusion of expert testimony.

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

17 **IV. Pre-Trial Motion Schedule**

18 All pre-trial motions, both dispositive and non-dispositive (except motions to compel, addressed
19 above), shall be served and filed on or before **September 8, 2023**. Non-dispositive motions are heard
20 on Fridays at 9:00 a.m., before the Honorable Barbara A. McAuliffe, United States Magistrate Judge, in
21 Courtroom 8. Before scheduling such motions, the parties shall comply with Local Rule 230 or Local
22 Rule 251.

23 Counsel must comply with Local Rule 251 with respect to discovery disputes or the motion will
24 be denied without prejudice and dropped from calendar. In addition to filing a joint statement
25 electronically, a copy of the joint statement shall also be sent Judge McAuliffe's chambers by email to
26
27

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 bamorders@caed.uscourts.gov. Counsel for the parties are additionally required to conduct at least one
2 **telephonic or in person conference** as part of their obligations to meet and confer in good faith to
3 resolve their discovery dispute prior to seeking judicial intervention. The parties are further cautioned
4 that boilerplate objections to written discovery will be summarily denied.

5 Upon stipulation of the parties, Judge McAuliffe will resolve discovery disputes by informal
6 telephonic conference outside the formal procedures of the Local Rules and Federal Rules of Civil
7 Procedure governing noticed motions to compel. The procedures for requesting an informal telephonic
8 conference are set forth in Judge McAuliffe's Case Management Procedures located on the Court's
9 website, <http://www.caed.uscourts.gov>. If the parties stipulate to an informal ruling on a discovery
10 dispute that arises during a deposition, they may request an informal ruling during the deposition by
11 contacting Judge McAuliffe's Courtroom Deputy, Esther Valdez, by telephone at (559) 499-5788.

12 The parties are advised that unless prior leave of the Court is obtained, all moving and
13 opposition briefs or legal memorandum in civil cases before Judge McAuliffe shall not exceed twenty-
14 five (25) pages. Reply briefs by the moving party shall not exceed ten (10) pages. These page
15 limitations do not include exhibits. Briefs that exceed this page limitation, or are sought to be filed
16 without leave, may not be considered by the Court.

17 **V. Motions for Summary Judgment or Summary Adjudication**

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

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

26 The moving party **SHALL** initiate the meeting and **SHALL** provide a complete, proposed
27 statement of undisputed facts **at least five days before** the conference. The finalized joint statement of
28 undisputed facts **SHALL** include all facts that the parties agree, for purposes of the motion, may be

1 deemed true. In addition to the requirements of Local Rule 260, the moving party shall file the joint
2 statement of undisputed facts.

3 In the notice of motion, the moving party **SHALL** certify that the parties have met and
4 conferred as ordered above or set forth a statement of good cause for the failure to meet and confer.

5 **Failure to comply may result in the motion being stricken.**

6 **VI. Pre-Trial Conference Date**

7 **February 15, 2024, at 10:00 a.m.** in Courtroom 2 (AWI) before Senior District Anthony W.
8 Ishii.

9 The parties are ordered to file a **Joint Pretrial Statement pursuant to Local Rule 281(a)(2).**
10 The parties are further directed to submit a digital copy of their pretrial statement in Word format via
11 email at awiorders@caed.uscourts.gov.

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

17 **VII. Trial**

18 A 5-day jury trial is set **April 16, 2024, at 8:30 a.m.** in Courtroom 2 (AWI) before Senior
19 District Judge Anthony W. Ishii.

20 **VIII. Settlement Conference**

21 The parties may file a joint written request for a settlement conference if they believe that such
22 a conference would be fruitful.

23 **IX. Request for Bifurcation, Appointment of Special Master, or other**
24 **Techniques to Shorten Trial**

25 Not applicable.

26 **X. Related Matters Pending**

27 None.

28 ///

1 **XI. Compliance with Federal Procedure**

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

7 **XII. Effect of this Order**

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

13 **The dates set in this order are firm and will not be modified absent a showing of good
14 cause even if the request to modify is made by stipulation. Stipulations extending the deadlines
15 contained herein will not be considered unless they are accompanied by affidavits or
16 declarations, and where appropriate attached exhibits, which establish good cause for granting
17 the relief requested.**

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

19
20 IT IS SO ORDERED.

21 Dated: September 15, 2022

22 /s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE