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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT WESTFALL,

Plaintiff,

v.

BALL METAL BEVERAGE
CONTAINER CORPORATION, a
Colorado Corporation,

Defendant.

No. 2:16-CV-2632 KJM GGH

STATUS (PRETRIAL SCHEDULING)

ORDER: CLASS CERTIFICATION PHASE

An initial scheduling conference was held in this case on July 19, 2016. Matthew Eason appeared for plaintiff; Katherine Sandberg appeared for defendant.

Having reviewed the parties' Joint Status Report filed on July 12, 2016, and discussed a schedule for the case with counsel at the hearing, the court makes the following orders:

I. SERVICE OF PROCESS

All named defendants have been served and no further service is permitted without leave of court, good cause having been shown.

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1 II. ADDITIONAL PARTIES/AMENDMENTS/PLEADINGS

2 Plaintiff may seek a stipulation or leave of court to add a Private Attorney General
3 Act claim. *See* Cal. Labor Code § 2698. No further joinder of parties or amendments to
4 pleadings is permitted without leave of court, good cause having been shown. *See* Fed. R. Civ. P.
5 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).

6 III. JURISDICTION/VENUE

7 Jurisdiction is predicated upon 28 U.S.C. §§ 1332(d), 1441 and 1446. Jurisdiction
8 and venue are not disputed.

9 IV. DISCOVERY

10 Generally, discovery during this phase shall focus on class certification issues,
11 while allowing for merits discovery to the extent necessary to prevent duplication of effort later in
12 the case.

13 Initial disclosures as required by Federal Rule of Civil Procedure 26(a) shall be completed
14 by **February 27, 2017**. The parties shall also file a proposed discovery protective over no later
15 than **February 27, 2017**.

16 All discovery shall be completed by **December 31, 2017**. Discovery prior to the
17 hearing on class certification shall be focused on class certification, but does not preclude further
18 fact discovery. In this context, “completed” means that all discovery shall have been conducted
19 so that all depositions have been taken and any disputes relative to discovery shall have been
20 resolved by appropriate order if necessary and, where discovery has been ordered, the order has
21 been obeyed. All motions to compel discovery must be noticed on the magistrate judge’s
22 calendar in accordance with the local rules of this court. While the assigned magistrate judge
23 reviews proposed discovery phase protective orders, requests to seal or redact are decided by
24 Judge Mueller as discussed in more detail below. In addition, while the assigned magistrate judge
25 handles discovery motions, the magistrate judge cannot change the schedule set in this order,
26 except that the magistrate judge may modify a discovery cutoff to the extent such modification
27 does not have the effect of requiring a change to the balance of the schedule.

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1 V. DISCLOSURE OF EXPERT WITNESSES

2 All counsel are to designate in writing, file with the court, and serve upon all other
3 parties the name, address, and area of expertise of each expert that they propose to tender at trial
4 not later than **January 31, 2018**. The designation shall be accompanied by a written report
5 prepared and signed by the witness. The report shall comply with Fed. R. Civ. P. 26(a)(2)(B).
6 By **February 28, 2018**, any party who previously disclosed expert witnesses may submit a
7 supplemental list of expert witnesses who will express an opinion on a subject covered by an
8 expert designated by an adverse party, if the party supplementing an expert witness designation
9 has not previously retained an expert to testify on that subject. The supplemental designation
10 shall be accompanied by a written report, which shall also comply with the conditions stated
11 above.

12 Failure of a party to comply with the disclosure schedule as set forth above in all
13 likelihood will preclude that party from calling the expert witness at the time of trial. An expert
14 witness not appearing on the designation will not be permitted to testify unless the party offering
15 the witness demonstrates: (a) that the necessity for the witness could not have been reasonably
16 anticipated at the time the list was proffered; (b) that the court and opposing counsel were
17 promptly notified upon discovery of the witness; and (c) that the witness was promptly made
18 available for deposition.

19 For purposes of this scheduling order, an “expert” is any person who may be used
20 at trial to present evidence under Rules 702, 703 and 705 of the Federal Rules of Evidence, which
21 include both “percipient experts” (persons who, because of their expertise, have rendered expert
22 opinions in the normal course of their work duties or observations pertinent to the issues in the
23 case) and “retained experts” (persons specifically designated by a party to be a testifying expert
24 for the purposes of litigation). A party shall identify whether a disclosed expert is percipient,
25 retained, or both. It will be assumed that a party designating a retained expert has acquired the
26 express permission of the witness to be so listed. Parties designating percipient experts must state
27 in the designation who is responsible for arranging the deposition of such persons.

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1 All experts designated are to be fully prepared at the time of designation to render
2 an informed opinion, and give the bases for their opinion, so that they will be able to give full and
3 complete testimony at any deposition taken by the opposing party. Experts will not be permitted
4 to testify at trial as to any information gathered or evaluated, or opinion formed, after deposition
5 taken subsequent to designation. All expert discovery shall be completed by **March 31, 2018**.

6 **VI. CLASS CERTIFICATION**

7 The following dates are set for briefing plaintiff's request for class certification:

- 8 1. Class Certification Motion shall be filed by **June 30, 2017**.
- 9 2. Opposition, if any, shall be filed by **July 28, 2017**.
- 10 3. Reply to Opposition, if any, shall be filed by **August 11, 2017**.
- 11 4. Hearing on Motion is set for **September 8, 2017, at 10:00 a.m.**

12 **VII. FURTHER STATUS CONFERENCE**

13 A further status conference is set for **January 4, 2018** at 2:30 p.m., at which time
14 the court will set a further briefing schedule. The parties are directed to file a joint status report
15 no later than seven days prior to the status conference, providing all the information required
16 by the court's initial scheduling order.

17 **VIII. MODIFICATION OF STATUS (PRETRIAL SCHEDULING) ORDER**

18 The parties are reminded that pursuant to Rule 16(b) of the Federal Rules of Civil
19 Procedure, the Status (Pretrial Scheduling) Order shall not be modified except by leave of court
20 upon a showing of good cause. Agreement of the parties by stipulation alone does not constitute
21 good cause. Except in extraordinary circumstances, unavailability of witnesses or counsel does
22 not constitute good cause.

23 As noted, the assigned magistrate judge is authorized to modify only the discovery
24 dates shown above to the extent any such modification does not impact the balance of the
25 schedule of the case.

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IX. OBJECTIONS TO STATUS (PRETRIAL SCHEDULING) ORDER

This Status Order will become final without further order of the court unless objections are filed within fourteen (14) *calendar* days of service of this Order.

IT IS SO ORDERED.

DATED: February 6, 2017



UNITED STATES DISTRICT JUDGE