

1 ROBERTA L. STEELE, SBN 188198 (CA)
2 MARCIA L. MITCHELL, SBN 18122 (WA)
3 JAMES H. BAKER, SBN 291836 (CA)
4 U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
5 San Francisco District Office
6 450 Golden Gate Ave., 5th Floor West
7 P.O. Box 36025
8 San Francisco, CA 94102
9 Telephone No. (650) 684-0950
10 Fax No. (415) 522-3425
11 james.baker@eeoc.gov

12 *Attorneys for Plaintiff EEOC*

13 DOUGLAS M. EGBERT (SBN 265062)
14 CHRISTOPHER J. TRUXLER (SBN 282354)
15 JACKSON LEWIS P.C.
16 400 Capitol Mall, Suite 1600
17 Sacramento, California 95814
18 Telephone No. (916) 341-0404
19 Fax No. (916) 341-0141
20 douglas.egbert@jacksonlewis.com
21 christopher.truxler@jacksonlewis.com

22 *Attorneys for Defendants Schwarz Partners, LP
23 And Packaging Corporation of America
24 Central California Corrugated, LLC.*

25 UNITED STATES DISTRICT COURT
26 EASTERN DISTRICT OF CALIFORNIA

27 U.S. EQUAL EMPLOYMENT
28 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

PACKAGING CORPORATION OF AMERICA
CENTRAL CALIFORNIA CORRUGATED,
LLC, and SCHWARZ PARTNERS, LP,

Defendants.

Case No.: 2:20-cv-01948-MCE-CKD

**JOINT RULE 26(f) DISCOVERY PLAN;
ORDER EXTENDING EXPERT
DISCOVERY**

Plaintiff U.S. Equal Employment Opportunity Commission (EEOC) and Defendants
Packaging Corporation of America Central California Corrugated, LLC (PCACCC) and Schwarz
Partners, LP (Schwarz) (collectively, Defendants), submit this Joint Rule 26(f) Discovery Plan &

1 [Proposed] Order pursuant to the Court’s Initial Scheduling Order (ECF 3).

2 **I. DISCOVERY PLAN**

3 **A. What changes should be made in the timing, form, or requirement for**
4 **disclosures under Rule 26(a), including a statement of when initial disclosures**
5 **were made or will be made.**

6 In accordance with Fed. R. Civ. P. 26(a), the EEOC and Defendants intend to, and stipulate
7 to exchanging Initial Disclosures on May 10, 2021.

8 **B. The subjects on which discovery may be needed, when discovery should be**
9 **completed, and whether discovery should be conducted in phases or be limited to**
10 **or focused on particular issues.**

11 The parties do not believe discovery should be conducted in phases. Without waiving any
12 rights to challenge discoverability, admissibility, or otherwise, the Parties anticipate that discovery
13 will be on those subjects related to Plaintiff’s claims and damages, and Defendants’ defenses,
14 including, but are not limited to the following:

15 **Plaintiff**

16 1. Allegations/reports of racial harassment at Defendants’ facility located in
17 McClellan, California (McClellan Facility), and Defendants’ responses to same;

18 2. The relevant personnel records of employees, managers and Human
19 Resources personnel involved in reports or investigations of racial harassment at the McClellan
20 Facility;

21 3. The training Defendants provided to their employees, including Human
22 Resources personnel and managers regarding Equal Employment Opportunity laws and policies, and
23 training, guidance or directives related to Title VII;

24 4. The corporate relationship between Defendants;

25 5. Charging Parties’ damages; and

26 6. Relevant company policies, including HR and EEO policies.

27 **Defendants**

28 1. The Charging Parties’ communications with others regarding their
employment and the facts alleged in the First Amended Complaint (FAC); and

2. Charging Parties’ medical and employment records, both prior to and after the

1 facts alleged in the FAC.

2 **Discovery Scheduling**

3 The Court’s Initial Pretrial Scheduling Order (ECF 3) sets forth the deadlines for the parties
4 to complete discovery and expert discovery, and to file dispositive motions. The parties calculate
5 those deadlines as follows:

6

EVENT	DEADLINE
Deadline to complete non-expert discovery	April 1, 2022
Deadline for expert witness disclosures	May 31, 2022
Deadline for rebuttal expert witness disclosures	June 30, 2022
Joint Trial Readiness Report (if no dispositive motions are filed)	August 1, 2022
Dispositive Motions	September 28, 2022

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14 In addition, the Parties propose that the Court set **September 14, 2022**, as the deadline for
15 the parties to complete expert discovery. Good cause exists for doing so because 1) the Initial
16 Scheduling Order does not currently address this deadline, 2) the proposed deadline will not affect
17 any other deadlines in the case, and 3) this proposed deadline will encourage the Parties to complete
18 all expert discovery before dispositive motions, thus avoiding the potential for expert discovery to
19 disrupt the dispositive motion briefing schedule.

20 **C. Any issues about disclosure, discovery, or preservation of electronically stored
21 information, including the form or forms in which it should be produced.**

22 **1. Preservation of ESI**

23 The parties met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and
24 proportionate steps taken to preserve potentially relevant ESI. The Parties continue to explore the
25 existence of custodians and systems containing ESI. Plaintiff has proposed that the parties enter into
26 an ESI Stipulation and Order. The parties will continue these discussions.

27 **2. Discovery and Form of Production**

28 The parties will conduct, serve, and respond to discovery in accordance with the Federal

1 Rules of Civil Procedure and Local Rules. Discussions relating to what search and review
2 methodology each party will employ for potentially relevant ESI are ongoing. The EEOC provided
3 Defendants with its written specifications to produce discovery in accordance with industry
4 standards for the Relativity platform. The parties are meeting and conferring concerning the form of
5 Defendants' production, and to the nature and extent of the E-discovery to be completed ahead of
6 ADR.

7 **D. Any issues about claims of privilege or of protection as trial-preparation**
8 **materials, including – if the parties agree on a procedure to assert these claims**
9 **after production – whether to ask the court to include their agreement in an**
10 **order under Federal Rule of Evidence 502.**

11 **1. Preservation of ESI**

12 The parties agree and stipulate that the following categories of documents shall be excluded
13 from privilege logs:

14 Attorney-client privilege:

- 15 (a) Communications between Defendants' in-house or outside counsel (or
16 among them) that post-date the filing of the Complaint;
- 17 (b) Communications between Defendants' in-house or outside counsel
18 (and Defendants' management personnel) that post-date the filing of
19 Mr. Calloway's Charge of Discrimination (which includes
20 communications in reference to Mr. Damon Douglas or Mr. Lyles that
21 post-date Mr. Calloway's Charge);
- 22 (c) Communications between EEOC employees and Mr. Calloway, Mr.
23 Lyles or Mr. Damon Douglas after September 28, 2019; and
- 24 (d) Communications between or amongst EEOC enforcement (i.e.
25 investigation) staff and EEOC legal staff that post-date the filing of
26 Mr. Calloway's Charge of Discrimination (which includes
27 communications in reference to Mr. Douglas or Mr. Lyles that post-
28 date Mr. Calloway's Charge).

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1 Attorney work product:

- 2 (a) Documents created by Defendants' outside or in-house counsel that
3 post-date the filing of Mr. Calloway's Charge of Discrimination; and
4 (b) Documents created by EEOC attorneys that post-date the filing of
5 Mr. Calloway's Charge of Discrimination (which includes documents
6 created in reference to Mr. Lyles or Mr. Douglas that post-date
7 Mr. Calloway's Charge).

8 **2. Fed. R. Evid. 502(d) Inadvertent Productions**

9 The parties are meeting and conferring regarding a Fed. R. Evid. 502(d) Stipulation and
10 Order and the treatment of inadvertently produced documents. In accordance with Fed. R. Evid.
11 502(d), the parties do stipulate that the production of privileged or work-product protected
12 documents or electronically stored information, whether inadvertent or otherwise, is not a waiver of
13 the privilege or protection from discovery in this case or in any other federal or state proceeding.
14 The parties further agree that this stipulation shall be interpreted to provide the maximum protection
15 allowed by Fed. R. Evid. 502(d).

16 **E. What changes should be made in the limitations on discovery imposed under
17 these rules or by local rule, and what other limitations should be imposed.**

18 The parties agree that it would be beneficial to engage in early ADR through private
19 mediation after targeted discovery. The parties agree to limit discovery to written discovery until the
20 completion of ADR and agree that each party shall serve no more than 35 separate requests for
21 production of documents prior to completing ADR. The parties do not currently anticipate seeking
22 other discovery limitations. The parties agree to meet and confer, and attempt to achieve a joint
23 resolution, regarding all discovery disputes before seeking judicial intervention.

24 The parties continue to meet and confer concerning the collection and format of ESI
25 produced in discovery. There are no current discovery disputes.

26 **F. Any other orders that the court should issue under Rule 26(c) or under Rule
27 16(b) and (c).**

28 None at this time.

1 **II. SETTLEMENT AND ADR**

2 The parties are willing to participate in private mediation following limited and tailored
3 discovery, the scope and nature of which is being negotiated. The parties anticipate completing
4 ADR by September 30, 2021.

5 **[PROPOSED] ORDER**

6 Therefore, the Parties hereby stipulate to and request that the Court order the following relief:

- 7 1. The deadline to complete expert discovery shall be September 14, 2022.

8 Respectfully Submitted,

9 Dated: April 22, 2021

/s/ James H. Baker

10 _____
11 James H. Baker
12 Trial Attorney
13 U.S. EQUAL EMPLOYMENT
14 OPPORTUNITY COMMISSION
15 *Attorneys for Plaintiff*

16 Dated: *Authorized on April 22, 2021*

/s/ Douglas Egbert

17 _____
18 Douglas Egbert
19 Partner
20 JACKSON LEWIS P.C.
21 *Attorneys for Defendants*

22 **ORDER**

23 In accordance with the foregoing stipulation of the Parties, and good cause appearing, the
24 deadline for completion of expert discovery shall be September 14, 2022.

25 IT IS SO ORDERED.

26 Dated: April 28, 2021

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28 _____
MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE