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5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 JUDY A. MCDERMOTT,

No. C 07-06300 SI

Related Case: No. 08-003432 SI

9 Plaintiff,

**ORDER DENYING PLAINTIFF'S  
MOTIONS TO BIFURCATE**

10 v.

11 JOHN E. POTTER, POSTMASTER GENERAL,

12 Defendant.  
13 \_\_\_\_\_/

14 Plaintiff has filed motions to bifurcate the liability and damages portions of trial in these related  
15 cases pursuant to Federal Rule of Civil Procedure 42(b). Pursuant to Civil Local Rule 7-1(b), the Court  
16 finds these matters appropriate for resolution without oral argument and hereby VACATES the hearing.  
17 Having considered the papers submitted, and for good cause shown, the Court DENIES the motions.  
18

19 **BACKGROUND**

20 This case arises out of plaintiff Judy McDermott's claim that the United States Postal Service  
21 ("USPS") engaged in employment discrimination and retaliation against her on the basis of gender, age,  
22 and disability. Plaintiff has been employed by USPS as a postal inspector since approximately 1982.  
23 Second Amended Complaint ("SAC") ¶ 9. Plaintiff was transferred to the San Francisco/Oakland  
24 division of USPS in 1990. *Id.* According to plaintiff, she first complained of gender discrimination in  
25 1998 because she believed she had been excluded from a postal inspection team on the basis of her  
26 gender. *Id.* ¶ 13. Plaintiff alleges that after she made her complaint, she was "negatively disparaged,  
27 labeled as a 'trouble maker,' and shunned by co-workers, many of whom were senior males . . . . Three  
28 supervisors stated Plaintiff should be sent for a fitness for duty (FFD) medical exam in response to her

1 continued EEO activity opposing unlawful employment practices.” *Id.* ¶ 15. Plaintiff filed a series of  
2 seven EEOC complaints between 1998 and 2000. *Id.* ¶ 16. An administrative law judge (“ALJ”) held  
3 a hearing on these complaints in August 2004 and determined in an order dated November 30, 2006 that  
4 USPS was liable for discrimination, harassment, retaliation, and promoting a hostile work environment.  
5 *Id.* ¶¶ 18-19; *see also* Nov. 30, 2006 ALJ Order, ex. B to Dunn Decl.

6 During and after the ALJ proceedings, plaintiff filed an additional eleven EEOC complaints that  
7 are the subject of the present litigation. SAC ¶¶ 22-24. Plaintiff’s EEOC complaints allege that USPS  
8 engaged in retaliatory acts such as assigning plaintiff to a disproportionately large geographic work area;  
9 punitively transferring her to a less desirable unit; refusing to clear plaintiff’s record of a misconduct  
10 allegation; denying plaintiff’s request to attend USPS training in the city of her choice; reassigning a  
11 specific manager to plaintiff’s unit in order to harass her; threatening plaintiff with a fitness for duty  
12 medical exam; denying plaintiff’s request for sick leave due to psychological issues; and denying  
13 plaintiff an agency representative during the EEOC proceedings. *See id.* ¶¶ 28, 30, 49, 69, 85, 90, 113.

14 Presently before the Court are plaintiff’s motions in each case to bifurcate the liability and  
15 damages portions of trial. As both motions are identical, the Court will address them together.

## 17 LEGAL STANDARD

18 Federal Rule of Civil Procedure 42(b) provides that “the court, in furtherance of convenience  
19 or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order  
20 a separate trial of any claim . . . or of any separate issue.” The decision to bifurcate is committed to the  
21 sound discretion of the trial court. *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1517 (9th Cir. 1985).  
22 Courts consider several factors in determining whether bifurcation is appropriate, including separability  
23 of the issues, simplification of discovery and conservation of resources, and prejudice to the parties.  
24 *See* Schwarzer, Tashima & Wagstaffe, *Federal Civil Procedure Before Trial* 16:160.4 (1999); *Hirst v.*  
25 *Gertzen*, 676 F.2d 1252, 1261 (9th Cir. 1982). The party requesting bifurcation has the burden to prove  
26 that it is warranted in that particular case. *Spectra-Physics Lasers, Inc. v. Uniphase Corp.*, 144 F.R.D.  
27 99, 102 (N.D. Cal. 1992).




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**CONCLUSION**

For the foregoing reasons, plaintiff's motions for bifurcation are DENIED. (Docket No. 113, Case No. 07-6300; Docket No. 136, Case No. 08-3432).

**IT IS SO ORDERED.**

Dated: March 12, 2010

  
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SUSAN ILLSTON  
United States District Judge