

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BEN LOPEZ,

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,

Defendant.

No. C 08-05396 SI

**ORDER DENYING DEFENDANT'S
MOTION TO BIFURCATE AND
MOTION TO SET ORDER OF PROOF
AT TRIAL**

Defendant has filed two motions, which the Court determines are suitable for resolution without further briefing or oral argument pursuant to Local Rule 7-1(b). The hearing set for March 26, 2010 is VACATED.

I. Motion to Bifurcate

Defendant has moved to bifurcate the liability and damages phases of trial. Defendant asserts that plaintiff's anticipated submission regarding damages, including evidence regarding his "long work hours" and "many missed lunches," will prejudice defendant if permitted during the liability phase. Defendant suggests that if bifurcation is denied, "the jury here likely will be swayed by Plaintiff's emotionally-laden testimony of long hours and missed meal breaks – issues completely unrelated and irrelevant to Plaintiff's exempt status." Mot. to Bifurcate at 4.

The Court disagrees with defendant's contentions. First of all, the subjects about which defendant has expressed concern are not solely damages issues. Testimony and other evidence regarding plaintiff's work hours will certainly be relevant to the issue of liability. Second, the Court does not believe that trying the liability and damages phase of trial before a single jury will result in a

1 biased jury or otherwise unduly prejudice defendant. Finally, bifurcation will not improve judicial
2 economy.

3 For the foregoing reasons, defendant's motion to bifurcate is DENIED. (Docket No. 119).
4

5 **II. Motion to Set Order of Proof at Trial**

6 Defendant has also moved to alter the order of proof at trial such that defendant may open first,
7 present evidence first, and present the final rebuttal argument. As defendant points out, the district court
8 has "wide discretion" to control the order of proof at trial. *See Summers v. Delta Air Lines, Inc.*, 508
9 F.3d 923, 930 (9th Cir. 2007). In this case, although defendant bears the burden of proving the
10 applicability of the claimed exemptions, there are still a number of matters on which plaintiff will bear
11 the burden. Additionally, there has been no showing that an initial presentation by plaintiff will result
12 in any prejudice to defendant.

13 Accordingly, defendant's motion to set the order of proof at trial is DENIED. (Docket No. 121).
14

15 **IT IS SO ORDERED.**

16 Dated: March 1, 2010



SUSAN ILLSTON
United States District Judge