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 8 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

9 DIANE PIEROTTI

Case No. 4:16-cv-02936-HSG

10 Plaintiff,

**PLAINTIFF'S ADMINISTRATIVE
 MOTION TO CONTINUE HEARING AND
 EXTEND TIME TO FILE A RESPONSE
 TO DEFENDANT'S MOTION FOR
 PARTIAL SUMMARY JUDGMENT**

11 v.

12 THE REGENTS OF THE UNIVERSITY OF
 13 CALIFORNIA, and DOES 1-10,

14 Defendants.
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18 Pursuant to Civil Local Rule 6-3, Plaintiff DIANE PIEROTTI ("Plaintiff") hereby moves
 19 the Court for an order extending the time to file Plaintiff's response to Defendant's Motion for
 20 Partial Summary Judgment (the "Motion") filed on December 28, 2017, and presently set for
 21 hearing on March 22, 2018. [Docket No. 59.] Plaintiff is currently required to file her Opposition
 22 to the Motion by no later than January 11, 2018, and Defendant is required to file their Reply to
 the Motion by no later than January 18, 2018.

23 Currently, the close of fact discovery deadline in this matter is March 9, 2018 and the last
 24 day to hear a dispositive motion is June 7, 2018. [Docket No. 53.] However, the Parties have
 25 recently stipulated to continuing the trial date in this matter in order to conduct additional
 26 discovery, and filed said stipulation with the Court on December 29, 2017, the day after Defendant
 27 filed its Motion. [Docket No. 62.] As per that stipulation, the Parties have agreed to extend the
 28 close of fact discovery deadline to July 20, 2018, and the last day to hear a dispositive motion to
 October 18, 2018. [Docket No. 62.] Accordingly, the granting of Plaintiff's instant
 PLAINTIFF'S ADMINISTRATIVE MOTION TO CONTINUE HEARING AND EXTEND TIME TO FILE A RESPONSE TO
 DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

1 administrative motion to continue the Motion hearing and extend Plaintiff's time to file an
2 Opposition will have no impact on either the current or the agreed-upon pre-trial schedule in this
3 matter.

4 Plaintiff respectfully requests that the Motion hearing be continued to April 19, 2018; that
5 Plaintiff not be required to file her Opposition until March 19, 2018; and for Defendants to thus
6 not have to file their Reply until March 26, 2018. This schedule would allow the Court ample
7 time to review the filings while enabling the Parties to conduct much-needed discovery ahead of
8 the Motion.

9 Defendant's Motion requests that the Court issue an Order for partial summary judgment
10 in Defendant's favor on (1) Plaintiff's Third Claim for Relief for Sexual Harassment in Violation
11 of Title VII of the Civil Rights Act of 1964 ("Title VII"); (2) Plaintiff's Fourth Claim for Relief
12 for Sexual Harassment in Violation of the Fair Employment and Housing Act ("FEHA"); and (3)
13 Plaintiff's Fifth Claim for Relief for Retaliation in Violation of Labor Code § 1102.5.

14 Defendant contends that Plaintiff failed to exhaust administrative remedies with respect
15 to the third and fourth claims and that they are all time barred by the applicable statutes of
16 limitations. [Defendant's Motion at p. 1.] Specifically, Defendant argues that Plaintiff did not
17 put Defendant on notice of her sexual harassment or retaliation claims when filing her initial
18 claims against Defendant with the United States Equal Employment Opportunity Commission
19 ("EEOC"), and that the EEOC therefore never investigated those claims. [Defendant's Motion at
20 pp. 2-3.] Defendant further claims it was not aware of Plaintiff's retaliation claims until she filed
21 her Complaint, and that it was not aware of Plaintiff's sexual harassment claims until she filed
22 her First Amended Complaint, both of which were allegedly filed untimely, after the applicable
23 statute of limitations had run. [Defendant's Motion at pp. 4-5.] Accordingly, Defendant argues
24 that it was not properly on notice of Plaintiff's claims and that they should therefore be dismissed.
25 [Defendant's Motion at pp. 13-15.]

26 Plaintiff contends that she did not fail to exhaust her administrative remedies and that her
27 claims are not time barred. However, Plaintiff has not been able to conduct sufficient discovery
28 thus far into the issues of whether Defendant was properly on notice of Plaintiff's claims upon
the filing of the EEOC action, during the EEOC investigation, or at any other time within the
applicable statute of limitations. Specifically, Plaintiff has been unable to conduct depositions of
Defendants' witnesses that she believes had notice of her claims within the above time periods,

1 nor has Plaintiff received any documents responsive to her document requests as of the time of
2 writing. Defendant chose not to file a Federal Rule of Civil Procedure (“FRCP”) 12(b)(6) motion
3 to dismiss on the above issues. Instead, Defendant filed its Motion under FRCP 56 for Partial
4 Summary Judgment which requires a factual presentation of the evidence on the defenses brought
5 forth by Defendant. Further, Defendants have brought their Motion 6 months ahead of the current
6 deadline to hear a dispositive motion and 10 months ahead of the agreed-upon extended deadline
7 to hear a dispositive motion. Defendant did so despite stipulating with Plaintiff to continue the
8 trial date and all pretrial deadlines so the parties would be able to conduct necessary discovery.
9 Because of this, there is simply no pressing need to have the Motion heard 7 months ahead of the
10 stipulated dispositive motion deadline and force Plaintiff to file an opposition 9 months ahead of
11 that deadline and prior to conducting any of the necessary discovery relevant to the issues raised
12 in the Motion.

12 Plaintiff is currently waiting on documents to be produced by Defendant responsive to
13 Plaintiff’s document requests that were served over 2 months ago, on October 23, 2017; which
14 are supposedly on their way by mail. At the same time, Plaintiff has produced responsive
15 documents electronically and timely. Plaintiff has also contacted Defendant to ask to set dates
16 for depositions of 3 to 4 key witnesses within the next month that will have knowledge pertaining
17 to the Motion, and asked Defendant to agree to an alternative briefing schedule for the Motion
18 that is in line with the above-requested dates, enabling the parties to first conduct depositions and
19 then file the Opposition and Reply. Defendant has indicated it would be willing to set deposition
20 dates, but has been unable to obtain available dates from their witnesses to date. Defendant has
21 also provided no indication they would be willing to mutually agree to an extended briefing
22 schedule. Accordingly, Plaintiff seeks the instant relief.

22 Finally, Plaintiff has been unable to properly prepare to oppose the Motion due to having
23 an arbitration on December 18 through 22, 2018 and January 4 and 5, 2018; a separate court trial
24 on January 8 and 9, 2018, and having to prepare for both proceedings through the holiday period.
25 Plaintiff would be greatly prejudiced in having to oppose this motion by January 11, 2018 having
26 not had sufficient time to prepare an opposition due to these prior scheduling conflicts.


26 For the foregoing reasons, Plaintiff requests that the Court continue the hearing on
27 Defendant’s Motion to from March 22, 2018 to April 19, 2018, extend Plaintiff’s time to file an
28 Opposition to Defendant’s Motion from January 11, 2018 to March 19, 2018, and to extend

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Defendant's time to file a Reply from January 18, 2018 to March 26, 2018. These extensions will not otherwise impact the schedule of pretrial matters in these proceedings as per the parties' recently filed stipulation to continue the trial date. [Docket No. 62.]

Dated: January 10, 2018

PERETZ & ASSOCIATES

By: 
Yosef Peretz
David Garibaldi
Attorneys for PLAINTIFF
DIANE PIEROTTI

Dated: 1/11/2018

