

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH CASIAS,

Plaintiff,

v.

WAL-MART STORES, INC., et al.

Defendants.

Case No.: 1:10-cv-781

Hon. Robert J. Jonker

Removed from Calhoun County Circuit Court -
Case No. 2010-2067-CZ

JOINT STATUS REPORT

A Rule 16 Scheduling Conference is scheduled for **October 26, 2010 at 4:00 p.m.**, before the Honorable Robert J. Jonker. Appearing for the parties as counsel will be Daniel W. Grow and Daniel S. Korobkin for Plaintiff and Michael P. Palmer for Defendants. In preparation for the Rule 16 conference, the parties have agreed to the following:

- (1) Jurisdiction: Jurisdiction is disputed. Defendants contend the Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332 because Wal-Mart Stores East, L.P. (the only properly joined Defendant) and Plaintiff are citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Plaintiff contends that Michigan Defendant Troy Estill was properly joined and therefore diversity does not exist.
- (2) Jury or Non-Jury: This case is to be tried before a jury.
- (3) Judicial Availability: The parties do not consent to have a United States Magistrate Judge conduct all further proceedings in the case, including trial, and to order the entry of final judgment.
- (4) Geographic Transfer: The parties are advised of the possibility, pursuant to W.D. Mich. Local Civil Rule 3.3.2(a), of a transfer of the action to a judge located in a different city on the basis of the convenience of counsel, the parties, or witnesses. Reassignment of the action shall be at the discretion of the court and shall require the consent of all parties and of both the transferor and transferee judge. A transfer for geographic convenience is not warranted in this case.
- (5) Statement of the Case: This case involves:

- a) Plaintiff's Statement: Plaintiff contends that Defendants violated Michigan's Medical Marihuana Act ("MMMA") and Michigan public policy by terminating his employment for testing positive for marihuana even though he used marihuana for medical purposes in accordance with state law.
 - b) Defendants' Statement: Plaintiff's claims are not cognizable because: (1) the Controlled Substance Act preempts his claims; (2) the Americans with Disabilities Act preempts his claims; (3) MMMA does not provide a private right of action; (4) MMMA does not regulate employers or create a public policy prohibiting employers from terminating qualified patients for medical marihuana use; and (5) any regulation of employers violates the United States and Michigan constitutions. Even if Plaintiff's claims were cognizable, Wal-Mart did not violate MMMA or public policy by terminating Plaintiff's employment.
- (6) Joinder of Parties and Amendment of Pleadings: The parties expect to file all motions for joinder of parties and file all motions to amend the pleadings within **30 days** after the Court rules on the pending Motion to Remand and Motion to Dismiss.
- (7) Disclosures and Exchanges:
- a) Fed. R. Civ. P. 26(a)(1) initial disclosures shall be made within **30 days** after the Court rules on the pending Motion to Remand and Motion to Dismiss.
 - b) The plaintiff expects to be able to furnish the names of plaintiff's expert witness(es) within **90 days** after the Court rules on the pending Motion to Remand and Motion to Dismiss. Defendants expect to be able to furnish the names of their expert witness(es) within **45 days** after Plaintiff discloses his expert witness(es).
 - c) It would be advisable in this case to exchange written expert witness reports as contemplated by Fed.R.Civ.P. 26(a)(2). Reports, if required, should be exchanged according to the following schedule: Plaintiff shall provide such reports within **120 days** after the Court rules on the pending Motion to Remand and Motion to Dismiss. Defendants shall provide their reports within **45 days** after Plaintiff discloses his expert witness(es) and produces their expert reports.
 - d) The parties are unable to agree on voluntary production at this time.
- (8) Discovery: The parties believe that all discovery proceedings can be completed within **180 days** after the Court rules on the pending Motion to Remand and Motion to Dismiss. The parties recommend the following discovery plan:
- a) Discovery topics: The allegations contained in Plaintiff's complaint, Defendants' defenses to Plaintiff's claims, and Plaintiff's alleged damages.
 - b) Limitations: Interrogatories and Requests for Admission shall be limited, respectively, to 25 per party. Depositions will be limited to 10 fact witnesses per party. The time limitations for depositions set forth in Rule 30(d)(1) shall apply.

- c) Protective Order: The parties anticipate the need for a protective order to protect the confidential nature of some information likely to be exchanged in discovery, including personnel records of non-party associates, Defendant's policies and other confidential information, and Plaintiff's medical-related documents and tax records. At this time, the parties believe they can stipulate to an agreed protective order.
- (9) E-discovery: The parties have discussed the production of electronically stored information ("ESI") and suggest that such information be handled as follows:
- a) Disclosure or production of ESI will be limited to data that is reasonably available/accessible to the parties in the ordinary course of business. To the extent that the Federal Rules of Civil Procedure, Rule 26(a)(1) or Rule 34 require the disclosure of documents which are stored electronically, the producing party shall, absent objection and/or assertion of privilege, produce such documents by making a hard paper copy of the documents and the producing party need not initially produce such documents in electronic format. The requesting party may, after receipt of the hard paper copy of electronically stored documents, and for good cause, notify the producing party that it wishes to have the documents produced in a format other than a hard paper copy or to examine the electronic data in the format in which it is stored (the "Subsequent Request"). The requesting and producing parties shall discuss the Subsequent Request and attempt in good faith to resolve any issues between them. In the event that the producing party agrees to produce documents pursuant to the Subsequent Request, the producing party shall be entitled to all reasonable costs it may incur in producing the documents, which costs shall be payable by the requesting party in advance of production. In the event the requesting and producing parties cannot agree as to the production of documents pursuant to a Subsequent Request or, cannot agree as to any term or condition of such production, either party may, by motion, seek the Court's resolution of such dispute.
 - b) The scope of discovery or the format of the production of ESI may be further limited or modified by Court order upon a showing of good cause or undue burden and expense. Further, depending upon the nature of the data produced, a protective order may be appropriate, as the Court may approve.
 - c) Under Rule 26(b)(5)(B), the inadvertent production of any privileged or otherwise protected ESI or documents shall not be deemed a waiver or impairment of any claim of privilege or protection including but not limited to the attorney-client privilege or work product doctrine immunity, provided that the producing party promptly notifies the receiving party of the inadvertent production. Upon notification, the receiving party shall retrieve and return any such material within a reasonable time, and the receiving party's counsel shall not use such information for any purpose until further order of the Court, except Plaintiff may use the description of such information to challenge the claim of privilege. Any analyses, memoranda or notes that were generated based upon such inadvertently produced information shall immediately be treated in conformance with the

protected nature of the information. The producing party must also preserve the information until any dispute regarding the ESI or documents is resolved. In the interests of economy and swift resolution of any dispute, the scope of the discovery and the form ESI is produced may be further limited or modified by the agreement by the parties.

- (10) Motions: The parties acknowledge that W.D. Mich. Local Civil Rule 7.1(d) requires the moving party to ascertain whether the motion will be opposed. All motions shall affirmatively state the efforts of the moving party to comply with the obligation created by Rule 7.1(d).

The following dispositive motions are contemplated by each party:

Plaintiff has filed a Motion to Remand. Defendants have filed a Motion to Dismiss. If the case proceeds beyond Plaintiff's Motion to Remand and Defendants' Motion to Dismiss, motions for summary judgment are likely.

- (11) Alternative Dispute Resolution: In the interest of conserving judicial resources, the parties acknowledge that this Court will require the parties to participate in some form of Alternative Dispute Resolution if the case proceeds beyond Defendants' Motion to Dismiss.

Should the case continue beyond Defendants' Motion to Dismiss, the parties anticipate needing to conduct written discovery and Plaintiff's deposition in order to make alternative dispute resolution most effective. The parties recommend that this case be submitted to the following method(s) of alternative dispute resolution: private facilitative mediation.

- (12) Length of Trial: Counsel estimate trial will last approximately five (5) days, total, allocated as follows: two and a half (2.5) days for Plaintiff's case, two and a half (2.5) days for Defendants' case.
- (13) Prospects of Settlement: The status of settlement negotiations is: To date, the parties have engaged in informal discussions regarding an early resolution of this case and intend to continue those discussions until they reach a conclusion.
- (14) Electronic Document Filing System: Counsel understands that W.D. Local Civil Rule 5.7(a) requires them to file and serve all documents electronically, by means of the Court's CM/ECF system, unless the attorney has been specifically exempted by the Court for cause or a particular document is not eligible for electronic filing under the rule. The Court expects all counsel to abide by the requirements of this rule.

APPROVED BY:

s/with consent of Daniel W. Grow

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