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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARNOLD BETSCHART,)	1:08-cv-0204 OWW GSA
)	
Plaintiff,)	SCHEDULING CONFERENCE ORDER
)	
v.)	Discovery Cut-Off: 6/15/09
)	
GORDON TRUCKING, INCORPORATED,)	Non-Dispositive Motion
)	Filing Deadline: 6/30/09
Defendant.)	Dispositive Motion Filing
)	Deadline: 7/15/09

Settlement Conference Date:
6/30/09 10:00 Ctrm. 10

Pre-Trial Conference
Date: 9/21/09 11:00 Ctrm. 3

Trial Date: 11/3/09 9:00
Ctrm. 3 (JT-12 days)

I. Date of Scheduling Conference.

September 5, 2008.

II. Appearances Of Counsel.

Highman, Highman & Ball by Bruce J. Highman, Esq., appeared
on behalf of Plaintiff.

Hardy Erich Brown & Wilson by David L. Perrault, Esq., and
Aldon L. Bolanos, Esq., appeared on behalf of Defendant.

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1 III. Summary of Pleadings.

2 Plaintiff's Summary

3 1. Plaintiff Arnold Betschart was employed for over 18
4 years for defendant Gordon Trucking, Inc., until he was
5 involuntarily terminated on or about June 6, 2007. He first
6 worked in Pacific, Washington headquarters, and then became
7 director of regional operations in Turlock, California starting
8 February 13, 1995, where he established a terminal, hired the
9 driving and non-driving staff, established a maintenance facility
10 and staffed and ran it, and got the overall business up and
11 running in California. He remained in this position until May
12 31, 2006, when he was involuntarily removed from the position and
13 moved into the position of director of maintenance/operations.
14 His base pay remained the same in the new position, but he lost
15 eligibility for incentive pay. Therefore, it was a demotion.
16 Then on June 6, 2007, he was involuntarily terminated from his
17 employment. Plaintiff had a history of favorable feedback,
18 positive evaluations, pay raises, and bonuses.

19 2. At the time of his termination, plaintiff was 59 years
20 old. When he was demoted, he was replaced by someone in his 30s.
21 When he was terminated, he was replaced by a person also in his
22 30s. Discriminatory ageist remarks were made by Steve Gordon,
23 the Chief Operating Officer of defendant when he announced
24 plaintiff's demotion. Other ageist remarks were directed, as
25 well, at plaintiff by the person who replaced him when he was
26 terminated; and previously, other ageist remarks were also
27 directed at him.

28 3. Plaintiff had had heart surgery and hip replacement

1 surgery, and was disabled at the time of his termination. His
2 wife had, and still has, cancer, and his stepson, who he is
3 raising and who was covered on the defendant's health plan, has
4 cerebral palsy. Defendant's health plan was a plan in which
5 defendant ended picking up most medical costs for its employees
6 and their dependents out of its own pocket; and it had paid
7 substantial health expenses for plaintiff and his family, and
8 anticipated paying substantial additional ones, and defendant had
9 made remarks indicating concern over these expenses it was
10 incurring and would continue to incur for plaintiff and his
11 family.

12 4. Defendant also had made negative remarks about
13 plaintiff's disabilities.

14 5. Plaintiff contends he was demoted and transferred,
15 denied incentive pay in conjunction therewith, and terminated (a)
16 related to his age, in violation of the Age Discrimination in
17 Employment Act, 29 U.S.C. §§ 623 et seq., (b) related to
18 disability, in violation of the Americans with Disabilities Act
19 for violation of 29 U.S.C. § 12112 et seq., (both related to
20 plaintiff's own disabilities and related to the known
21 disabilities of persons [his wife and stepson] with whom the
22 employee (plaintiff) is known to have a relationship or
23 association - see 42 U.S.C. § 12112(b)(4); (c) in violation of
24 the Employment Retirement Income Security Act, and specifically
25 for violation of 29 U.S.C. § 1140, including, without limitation,
26 related to his entitlement to benefits covered by ERISA and his
27 employer's desire to deny him and not pay for these benefits,
28 and/or in retaliation for his having exercised his right to

1 participate in an ERISA-covered health insurance plan, and an
2 expectation of what the benefits would be which he would receive
3 in the future, and/or with the purpose of interfering with the
4 statement of a right to which he had become entitled under an
5 ERISA-covered employee benefits plan, and/or based on his laying
6 claim to and/or seeking to qualify for vested or unvested
7 benefits under an ERISA-covered employee benefit plan.

8 Basically, he was becoming a very costly employee in terms of
9 health benefits (which were paid for directly by the employer -
10 the employer was essentially self-insured), and to a lesser
11 degree, the 401(k) plan of the employer.

12 6. Plaintiff also alleges that in wrongfully transferring
13 and demoting plaintiff, denying him incentive pay, and
14 terminating him, defendant also violated the California Fair
15 Employment and Housing Act's provisions on age discrimination and
16 disability discrimination, as well as engaged in tortious
17 wrongful adverse public actions against public policy.

18 7. Plaintiff seeks past and future economic loss according
19 to proof, damages for emotional distress, humiliation,
20 embarrassment, mental anguish, shame, loss of enjoyment of life,
21 pain, and suffering, and injury to reputation, according to
22 proof, and punitive and exemplary damages according to proof.
23 Plaintiff will also seek equitable relief as may be appropriate,
24 including, without limitation, reinstatement and/or front pay,
25 appropriate seniority, promotions and pay raises, appropriate
26 expungement of his employment records, and removal and correction
27 of any adverse effects of defendant's unlawful conduct.
28 Plaintiff will also seek an award of reasonable attorneys' fees

1 and costs. As to the ADEA claim, plaintiff also seeks an award
2 of an additional amount as and for liquidated damages equal to
3 the economic damages awarded in the matter.

4 Defendant's Summary

5 1. Mr. Betschart began his employment with Gordon Trucking
6 in August, 1988, and thereafter voluntarily resigned on March 15,
7 1994. Thereafter, Gordon Trucking approached Mr. Betschart and
8 re-hired him on February 13, 1995, to operate a new terminal in
9 Modesto/Turlock, California.

10 2. Importantly, most of plaintiff's allegations of
11 discrimination allegedly took place prior to Gordon Trucking re-
12 hiring him! Unfortunately for Mr. Betschart, a storm of personal
13 issues related to him and his wife divorcing, his ailing mother
14 passing away, and subsequent issues with his brother over their
15 mother's estate, and other related matters led Mr. Betschart to
16 lose the initiative, drive and enthusiasm that characterized his
17 earlier employment. He simply lost interest in working. To that
18 end, Mr. Betschart was counseled several times regarding his
19 performance deficiencies as the manager.

20 3. Therefore, for its part, Gordon Trucking, in an effort
21 to accommodate a cherished employee, transferred plaintiff from
22 operations to maintenance, at the same salary and benefits.
23 However, with this transfer, Mr. Betschart continued to show
24 little interest in his duties or his performance. Accordingly,
25 after a series of efforts to encourage his improvement, and with
26 no further recourse, on June 6, 2007, he was terminated for non-
27 performance.

28 4. With respect to Mr. Betschart's specific allegations,

1 Gordon Trucking categorically denies anyone in management made
2 ageist remarks to or about him, and denies any and all
3 allegations about disability discrimination related to his and/or
4 his new family's medical condition (Betschart remarried after he
5 and his first wife divorced). Indeed, Mr. Betschart, his new
6 wife and stepson were treated at all times as any other employee
7 and his/her family relative to employment, evaluations,
8 compensation and benefits. Moreover, and in fact, all of Gordon
9 Trucking's employee medical benefits are administered by a fair,
10 impartial, and independent third party administrator. Thus,
11 Gordon Trucking looks forward to the facts coming to light to
12 refute these meritless claims.

13 IV. Orders Re Amendments To Pleadings.

14 1. The parties do not anticipate amending the pleadings at
15 this time.

16 V. Factual Summary.

17 A. Admitted Facts Which Are Deemed Proven Without Further
18 Proceedings.

19 1. Plaintiff is a citizen of the United States, a
20 resident of the Eastern District of California at all times
21 relevant, from August of 1988, with an interruption from April
22 13, 1994, to February 13, 1995. His employment with the company
23 ended in June of 2007.

24 2. Gordon Trucking, Inc., is a Washington corporation
25 licensed to do business as a commercial trucking firm in the
26 State of California.

27 3. At the time Plaintiff left Defendant's employment,
28 he was director of maintenance operations.

1 4. On May 31, 2006, Plaintiff was reassigned.
2 Plaintiff contends this was a demotion.

3 5. Plaintiff's reassignment involved a change of
4 title from director of regional operations to director of
5 maintenance operations.

6 6. It is anticipated that certain basic facts about
7 Plaintiff and Plaintiff's employment history, including, without
8 limitation, the dates of his employment, his job titles, the
9 dates of changes in his job titles, his pay history, the benefits
10 he was entitled to, what amount of medical expenses the employer
11 paid for Plaintiff as part of the health plan, Plaintiff's date
12 of birth, the date he was transferred, what ratings were written
13 down on his performance valuations, the date of his termination,
14 who replaced Plaintiff when he was transferred and when he was
15 terminated, and who his wife is and his stepson is, will not be
16 contested.

17 B. Contested Facts.

18 1. It is anticipated that other important facts about
19 Plaintiff and Plaintiff's employment history will be contested
20 including, without limitation, (a) whether he was demoted, denied
21 incentive pay, and/or terminated based on his age, and the
22 underlying facts pertaining thereto; (b) whether he was demoted,
23 denied incentive pay, and/or terminated based on his disabilities
24 and/or his association with his wife and stepson pertaining to
25 their disabilities, and the underlying facts pertaining thereto;
26 (c) whether he was demoted, denied incentive pay,
27 discriminatorily treated and/or terminated related to the
28 company's health plan and Plaintiff's benefits, and Plaintiff's

1 use of those benefits, and assumptions made about the cost of
2 Plaintiff's using those benefits in the future, and the
3 underlying facts pertaining thereto; (d) whether discriminatory
4 remarks were made relating to, and/or discriminatory actions were
5 taken against, Plaintiff at various times during his employment,
6 and if so, what were the particulars of those discriminatory
7 remarks and discriminatory actions; (e) facts pertaining to
8 Plaintiff's and his family's medical conditions, medical issues
9 and medical history and history; (f) the reason(s) Plaintiff was
10 transferred/demoted, denied incentive pay, and terminated; (g)
11 whether the ratings on Plaintiff's performance evaluations
12 accurately reflected his performance; (h) what Plaintiff's job
13 performance was like; and (i) whether Plaintiff is entitled to
14 any damages or other relief and, if so, what and in what amount.

15 VI. Legal Issues.

16 A. Uncontested.

17 1. Jurisdiction exists under the ADEA, 29 U.S.C.
18 §§ 623 et seq. and 29 U.S.C. §§ 12112 et seq. There is no
19 dispute that the ADEA applies to age discrimination.

20 2. The Americans with Disabilities Act, 29 U.S.C.
21 § 12112 et seq., applies to claims for disability discrimination
22 such as those brought by Plaintiff.

23 3. The employment Retirement Income Security Act
24 ("ERISA"), 29 U.S.C. § 1140, applies to the ERISA claims
25 Plaintiff has brought.

26 4. There is no dispute that the California Fair
27 Employment & Housing Act ("CFEHA") applies to the state age
28 discrimination claims and disability discrimination claims

1 Plaintiff has brought.

2 5. There is no dispute that the state common law
3 claims of tortious wrongful adverse personnel actions against
4 public policy apply to the claims Plaintiff has brought.

5 6. At this time, without discovery, the parties
6 believe that the substantive law of the State of California
7 provides the rule of decision for supplemental and common law
8 claims.

9 7. Venue is proper under 28 U.S.C. § 1391.

10 B. Contested.

11 1. The following legal issues are disputed: (1)
12 Defendant disputes that it violated the ADEA in this case; (2)
13 Defendant disputes that it violated the ADA in this case; (3)
14 Defendant disputes that it violated ERISA, including without
15 limitation 29 U.S.C. § 1140, in this case; (4) Defendant disputes
16 that it violated the California Fair Employment and Housing Act,
17 including without limitation, its age discrimination and
18 disability discrimination provisions, in this case; (5) Defendant
19 disputes that it committed any tortious adverse personnel action
20 against public policy in this case, including, without
21 limitation, any tortious wrongful discharge against public
22 policy, any tortious wrongful demotion against public policy, and
23 any tortious denial of pay against public policy; (6) Defendant
24 disputes that Plaintiff has sustained any damages of any kind or
25 character and disputes that Plaintiff is entitled to any relief,
26 including receipt of any attorney's fees.

27 VII. Consent to Magistrate Judge Jurisdiction.

28 1. The parties have not consented to transfer the

1 case to the Magistrate Judge for all purposes, including trial.

2 VIII. Corporate Identification Statement.

3 1. Any nongovernmental corporate party to any action in
4 this court shall file a statement identifying all its parent
5 corporations and listing any entity that owns 10% or more of the
6 party's equity securities. A party shall file the statement with
7 its initial pleading filed in this court and shall supplement the
8 statement within a reasonable time of any change in the
9 information.

10 IX. Discovery Plan and Cut-Off Date.

11 1. The parties each intend to serve written discovery on
12 each other. The parties each intend to take approximately 15
13 depositions.

14 2. The parties are ordered to complete all non-expert
15 discovery on or before May 15, 2009.

16 3. The parties are directed to disclose all expert
17 witnesses, in writing, on or before April 15, 2009. Any
18 supplemental or rebuttal expert disclosures will be made on or
19 before May 15, 2009. The parties will comply with the provisions
20 of Federal Rule of Civil Procedure 26(a)(2) regarding their
21 expert designations. Local Rule 16-240(a) notwithstanding, the
22 written designation of experts shall be made pursuant to F. R.
23 Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
24 information required thereunder. Failure to designate experts in
25 compliance with this order may result in the Court excluding the
26 testimony or other evidence offered through such experts that are
27 not disclosed pursuant to this order.

28 4. The parties are ordered to complete all discovery,

1 including experts, on or before June 15, 2009.

2 5. The provisions of F. R. Civ. P. 26(b)(4) shall
3 apply to all discovery relating to experts and their opinions.
4 Experts may be fully prepared to be examined on all subjects and
5 opinions included in the designation. Failure to comply will
6 result in the imposition of sanctions.

7 X. Pre-Trial Motion Schedule.

8 1. All Non-Dispositive Pre-Trial Motions, including any
9 discovery motions, will be filed on or before June 30, 2009, and
10 heard on July 31, 2009, at 9:00 a.m. before Magistrate Judge Gary
11 S. Austin in Courtroom 10.

12 2. In scheduling such motions, the Magistrate
13 Judge may grant applications for an order shortening time
14 pursuant to Local Rule 142(d). However, if counsel does not
15 obtain an order shortening time, the notice of motion must comply
16 with Local Rule 251.

17 3. All Dispositive Pre-Trial Motions are to be
18 filed no later than July 15, 2009, and will be heard on August
19 17, 2009, at 10:00 a.m. before the Honorable Oliver W. Wanger,
20 United States District Judge, in Courtroom 3, 7th Floor. In
21 scheduling such motions, counsel shall comply with Local Rule
22 230.

23 XI. Pre-Trial Conference Date.

24 1. September 21, 2009, at 11:00 a.m. in Courtroom 3, 7th
25 Floor, before the Honorable Oliver W. Wanger, United States
26 District Judge.

27 2. The parties are ordered to file a Joint Pre-
28 Trial Statement pursuant to Local Rule 281(a)(2).

1 3. Counsel's attention is directed to Rules 281
2 and 282 of the Local Rules of Practice for the Eastern District
3 of California, as to the obligations of counsel in preparing for
4 the pre-trial conference. The Court will insist upon strict
5 compliance with those rules.

6 XII. Motions - Hard Copy.

7 1. The parties shall submit one (1) courtesy paper copy to
8 the Court of any motions filed that exceed ten pages and any
9 motions that have exhibits attached. Exhibits shall be marked
10 with protruding numbered or lettered tabs so that the Court can
11 easily identify such exhibits.

12 XIII. Trial Date.

13 1. November 3, 2009, at the hour of 9:00 a.m. in Courtroom
14 3, 7th Floor, before the Honorable Oliver W. Wanger, United
15 States District Judge.

16 2. This is a jury trial.

17 3. Counsels' Estimate Of Trial Time:

18 a. 12 days.

19 4. Counsels' attention is directed to Local Rules
20 of Practice for the Eastern District of California, Rule 285.

21 XIV. Settlement Conference.

22 1. A Settlement Conference is scheduled for June 30, 2009,
23 at 10:00 a.m. in Courtroom 10 before the Honorable Gary S.
24 Austin, United States Magistrate Judge.

25 2. Unless otherwise permitted in advance by the
26 Court, the attorneys who will try the case shall appear at the
27 Settlement Conference with the parties and the person or persons
28 having full authority to negotiate and settle the case on any

1 terms at the conference.

2 3. Permission for a party [not attorney] to attend
3 by telephone may be granted upon request, by letter, with a copy
4 to the other parties, if the party [not attorney] lives and works
5 outside the Eastern District of California, and attendance in
6 person would constitute a hardship. If telephone attendance is
7 allowed, the party must be immediately available throughout the
8 conference until excused regardless of time zone differences.
9 Any other special arrangements desired in cases where settlement
10 authority rests with a governing body, shall also be proposed in
11 advance by letter copied to all other parties.

12 4. Confidential Settlement Conference Statement.
13 At least five (5) days prior to the Settlement Conference the
14 parties shall submit, directly to the Magistrate Judge's
15 chambers, a confidential settlement conference statement. The
16 statement should not be filed with the Clerk of the Court nor
17 served on any other party. Each statement shall be clearly
18 marked "confidential" with the date and time of the Settlement
19 Conference indicated prominently thereon. Counsel are urged to
20 request the return of their statements if settlement is not
21 achieved and if such a request is not made the Court will dispose
22 of the statement.

23 5. The Confidential Settlement Conference
24 Statement shall include the following:

25 a. A brief statement of the facts of the
26 case.

27 b. A brief statement of the claims and
28 defenses, i.e., statutory or other grounds upon which the claims

1 are founded; a forthright evaluation of the parties' likelihood
2 of prevailing on the claims and defenses; and a description of
3 the major issues in dispute.

4 c. A summary of the proceedings to date.

5 d. An estimate of the cost and time to be
6 expended for further discovery, pre-trial and trial.

7 e. The relief sought.

8 f. The parties' position on settlement,
9 including present demands and offers and a history of past
10 settlement discussions, offers and demands.

11 XV. Request For Bifurcation, Appointment Of Special Master,
12 Or Other Techniques To Shorten Trial.

13 1. The parties recognize that ERISA claims are not subject
14 to jury trial. At present Plaintiff does not request any
15 bifurcation. Defendant will seek bifurcation of the ERISA-
16 related cause of action. The matter of bifurcation or other
17 trial shortening methods is deferred for future decision.

18 XVI. Related Matters Pending.

19 1. There are no related matters.

20 XVII. Compliance With Federal Procedure.

21 1. The Court requires compliance with the Federal
22 Rules of Civil Procedure and the Local Rules of Practice for the
23 Eastern District of California. To aid the court in the
24 efficient administration of this case, all counsel are directed
25 to familiarize themselves with the Federal Rules of Civil
26 Procedure and the Local Rules of Practice of the Eastern District
27 of California, and keep abreast of any amendments thereto.

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1 XVIII. Effect Of This Order.

2 1. The foregoing order represents the best
3 estimate of the court and counsel as to the agenda most suitable
4 to bring this case to resolution. The trial date reserved is
5 specifically reserved for this case. If the parties determine at
6 any time that the schedule outlined in this order cannot be met,
7 counsel are ordered to notify the court immediately of that fact
8 so that adjustments may be made, either by stipulation or by
9 subsequent scheduling conference.

10 2. Stipulations extending the deadlines contained
11 herein will not be considered unless they are accompanied by
12 affidavits or declarations, and where appropriate attached
13 exhibits, which establish good cause for granting the relief
14 requested.

15 3. Failure to comply with this order may result in
16 the imposition of sanctions.

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19 IT IS SO ORDERED.

20 Dated: September 5, 2008

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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