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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 SHARONDA BELL,

11 Plaintiff,

12 v.

13 ADDUS HEALTHCARE, INC., a foreign  
14 corporation,

15 Defendant.

Case No. C06-5188RJB

ORDER ON PENDING  
MOTIONS

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17 This matter comes before the court on Defendant's Motion for Appointment of Discovery Master  
18 Under FRCP 53 (Dkt. 41), Plaintiff's Amended Motion to Compel the Deposition of Tess Cannon or in the  
19 Alternative to Deny Defendant's Motion for Summary Judgment (Dkt. 49, replacing Dkt. 45), Plaintiff's  
20 Motion for Order Modifying the Scheduling Order of 17 July 2006 (Dkt. 53), and defendant's Motion and  
21 Argument in Support of Motion for Summary Judgment (Dkt. 30). The court has considered the relevant  
22 documents and the remainder of the file herein.

23 On April 10, 2006, plaintiff Sharonda Bell filed a Complaint for Damages for Violations of  
24 Washington State and Oregon State Wage and Hour Laws and For Permanent Injunctive Relief against  
25 defendant Addus Healthcare, Inc. (Addus). Dkt. 1. The caption also included the words "Complaint -  
26 Class Action," but no class has as yet been certified.

27 On July 14, 2006, the parties filed an Amended Joint Status Report and Discovery Plan  
28 (Fed.R.Civ.P. 26(f)) (Dkt. 16). This document did not fulfill the requirements of a joint status report,

1 which requires the parties to work together to address discovery and other pretrial procedures. The joint  
2 status report submitted by the parties merely set forth adverse positions of the parties on nearly every issue  
3 addressed. On July 17, 2006, counsel appeared telephonically before the undersigned judge to discuss  
4 scheduling and discovery issues. Following the telephone conference, the court issued a scheduling and  
5 discovery order, requiring, among other things, that any motions regarding jurisdiction and standing, such  
6 as those related to the Class Action Fairness Act and diversity jurisdiction, were to be filed in writing no  
7 later than August 4, 2006; that any motions for class certification were to be filed in writing no later than  
8 December 15, 2006; and that “the parties are to file a new discovery plan, limiting discovery to class  
9 certification and jurisdictional issues, in which phase one consists of appropriate disclosure of how  
10 Defendant’s records are kept.” Dkt. 18. The parties have not filed a discovery plan, as directed by the  
11 court. It is not surprising that discovery issues have become contentious.

12 On October 17, 2006, defendant filed a motion for summary judgment, contending that plaintiff  
13 failed to exhaust contractual remedies under the collective bargaining agreement, whether plaintiff is  
14 excluded from coverage under Oregon law, whether defendant violated Washington regulations, and  
15 whether plaintiff should be disqualified as the requested representative of a putative class. Dkt. 30. This  
16 motion may be, in part, an attempt to address jurisdictional and class representative issues in accord with  
17 paragraphs (1) and (8) of the court’s scheduling and discovery order (Dkt. 18).

18 On November 8, 2006, defendant moved for appointment of a discovery master under Fed.R.Civ.P.  
19 53. Dkt. 41. This motion apparently arose out of interrogatories which defendant contends do not comply  
20 with the civil rules and out of a deposition of Tess Cannon, which was terminated abruptly. Appointment  
21 of a discovery master is not appropriate in this situation, which at this point appears to have escalated as a  
22 result of poor discovery planning. The court can and shall manage the discovery in this case, unless and  
23 until it becomes apparent to the court that appointment of a discovery master is warranted. Defendant’s  
24 Motion for Appointment of Discovery Master Under FRCP 53 (Dkt. 41) should be denied.

25 On November 8, 2006, plaintiff filed a motion for an order excluding the declaration of Tess  
26 Cannon or in the alternative compelling the deposition of Tess Cannon. Dkt. 45. By agreement, this  
27 motion was replaced by Plaintiff’s Amended Motion to Compel the Deposition of Tess Cannon or in the  
28 Alternative to Deny Defendant’s Motion for Summary Judgment. Dkt. 49. Plaintiff requests that the court

1 order that Ms. Cannon's deposition be completed on such terms as the court deems just. Defendant  
2 apparently does not object to the completion of Ms. Cannon's deposition, although defendant requests that  
3 a special master be physically present at the deposition. As noted above, a Special Master is not warranted  
4 at this time. The parties shall conduct the deposition in the court's chambers in Tacoma, Washington, at a  
5 time when the undersigned judge is available, and may make such arrangements with the court's  
6 administrative assistant, Julie Lemm. Plaintiff's Amended Motion to Compel the Deposition of Tess  
7 Cannon or in the Alternative to Deny Defendant's Motion for Summary Judgment (Dkt. 49, replacing Dkt.  
8 45) should be granted on the terms stated above.

9 On November 16, 2006, plaintiff filed Plaintiff's Motion for Order Modifying the Scheduling Order  
10 of 17 July 2006. Dkt. 53. Plaintiff requests that the court modify the case schedule sufficiently to allow  
11 plaintiff to complete the deposition of Ms. Cannon and other class certification discovery. Defendant  
12 opposes the request to modify the case schedule. Plaintiff contends that she is unable to respond to  
13 defendant's motion for summary judgment at least until Ms. Cannon's deposition is concluded.

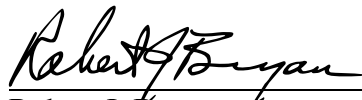
14 As noted above, it appears that the problems the parties are experiencing are attributable to the  
15 parties' inability to collaborate in planning discovery and other pretrial matters. The parties failed to  
16 comply with the court's July 17, 2006 order, in particular, by failing to file a discovery plan that may likely  
17 have prevented the problems the parties are now raising by motion. This case should proceed in an orderly  
18 manner. The parties should file a joint status report, setting forth a detailed discovery plan related to  
19 jurisdiction and class certification issues; and setting forth a proposed schedule for considering motions  
20 addressing jurisdiction and class action certification. Those issues should be resolved before the issues  
21 regarding the merits of the claims are raised by motion. It appears that defendant's motion for summary  
22 judgment is premature and should be stricken. If the parties are unable to arrive at a mutually agreed  
23 proposed schedule for filing motions related to jurisdiction and class certification, and/or if they are unable  
24 to agree to a proposed discovery plan, the parties should notify the court and request a scheduling  
25 conference, to be held in person, with the undersigned judge.

1 Therefore, it is hereby

2 **ORDERED** that Defendant's Motion for Appointment of Discovery Master Under FRCP 53 (Dkt.  
3 41) is **DENIED**. Plaintiff's Amended Motion to Compel the Deposition of Tess Cannon or in the  
4 Alternative to Deny Defendant's Motion for Summary Judgment (Dkt. 49, replacing Dkt. 45) is  
5 **GRANTED** insofar as plaintiff is permitted to complete the deposition of Ms. Tess Cannon on the terms  
6 set forth above. Plaintiff's Motion for Order Modifying the Scheduling Order of 17 July 2006 (Dkt. 53) is  
7 **GRANTED**, and the dates set forth in the court's July 17, 2006 Scheduling and Discovery Order Pursuant  
8 to Telephonic Conference on July 17, 2006 are **STRICKEN**. Not later than December 15, 2006, the  
9 parties are **ORDERED** to file a joint status report that includes a proposed discovery plan and proposed  
10 schedule for filing motions related to jurisdiction and class certification. Defendant's Motion for Summary  
11 Judgment (Dkt. 30) is **STRICKEN**, but defendant is not precluded from renoting the motion or filing an  
12 amended motion for summary judgment at an appropriate time.

13 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any  
14 party appearing *pro se* at said party's last known address.

15 DATED this 1<sup>st</sup> day of December, 2006.

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17 Robert J. Bryan  
18 United States District Judge  
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