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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 09-3067 AHM (AGRx) Date December 7, 2010

Title LEE v. LOS ANGELES UNIFIED SCHOOL DIST. et al.

Present: The Honorable A. HOWARD MATZ, U.S. DISTRICT JUDGE

Stephen Montes

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys **NOT** Present for Plaintiffs:

Attorneys **NOT** Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court has reviewed the parties' submissions in response to the Court's October 22, 2010 Order and rules as follows.

1. The remaining Section 1983 claim was set forth in the First Cause of Action. It alleged discrimination based on disability, race and age, as well as "because of his [plaintiff's] having complained" about such alleged discrimination. The Court's October 13, 2010 grant of partial summary judgment dismissing the FEHA claim found that Plaintiff failed to adduce evidence that Defendants' alleged conduct was the product of a discriminatory motive or animus arising out of or related to Plaintiff's disability, race or age. That finding is now the "law of the case" and therefore precludes Plaintiff from pursuing his Section 1983 claim to the extent that the Section 1983 claim is premised on such discrimination.

2. However, the Section 1983 claim does survive insofar as it is based on the alleged violation of Plaintiff's First Amendment and Due Process rights to protest alleged discrimination without incurring retaliation for doing so. The First Cause of Action does allege such retaliation and Plaintiff has the right to try to prove it at a trial.

3. In any event, Defendants will have to defend the remaining Section 1983 claim in a trial; they are not entitled to file a dispositive motion based on qualified immunity.

4. Both sides have fought over issues and contentions that have dubious, if any, bearing on the Section 1983 claim. Given the current procedural status of this confusingly litigated case, it appears to this Court, for example, that in any trial on the remaining aspect of the Section 1983 claim, what POST allows or requires concerning a new background investigation would be relevant only insofar as it might cast light on

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whether Defendants' alleged conduct was retaliatory - - *i.e.*, whether their claim that they were relying on POST was pretextual.

5. The parties will have to comply scrupulously and fully with the attached amended schedule.

6. Given the following factors, the Court ORDERS the parties to resume their settlement efforts before mediator Caroline Vincent, ASAP. They shall provide her with this Court's October 13, 2010 Order and this Order, because those Orders will likely have a material impact on her ability to enable the parties to come to their senses and settle this case. Otherwise both sides will shoulder the costly, time-consuming, risky and disruptive burdens of complying with the foregoing schedule.

Initials of
Preparer

:



**JUDGE A HOWARD MATZ
AMENDED SCHEDULE OF PRETRIAL DATES**

Matter	Time	Weeks before trial	Present Dates	Requested Dates	Court Order
Trial date (jury) (court) <u>4</u> days Estimated length: _____ days	8:00 a.m.				3/1/11
[Court trial:] File Findings of Fact and Conclusions of Law and Summaries of Direct Testimony		-1			N/A
Final Pretrial Conference; Hearing on Motions in Limine; File Agreed Upon Set of Jury Instructions and Verdict Forms and Joint Statement re Disputed Instructions and Verdict Forms; File Proposed <i>Voir Dire</i> Qs and Agreed-to Statement of Case	11:00 a.m.	-2			2/28/11
Lodge Pretrial Conf. Order File Memo of Contentions of Fact and Law; Exhibit List; Witness List; Status Report re Settlement		-4			2/14/11
Last day for hand-serving Motions in Limine		-6			1/31/11
Last Day to Meet Before Final Pretrial Conference (L.R. 16-2)		8			1/17/11
Last day for hearing motions	10:00 a.m.	8			—
Last day for hand-serving motions and filing (other than Motions in Limine)		12			—
Non-expert Discovery cut-off		-14			—
Expert discovery cut-off		-6			—
Rebuttal Expert Witness Disclosure		-9			—
Opening Expert Witness Disclosure [See F.R.Civ.P. 26(a)(2)]		-13			—
Last day to conduct Settlement Conference					ASAP
Last day to amend pleadings or add parties					—

EXHIBIT A