

1 Anna Y. Park, CA SBN 164242  
 2 Michael Farrell, CA SBN 266553  
 3 Connie K. Liem, TX SBN 791113  
 4 Amrita Mallik, CA SBN 249152  
 5 U.S. EQUAL EMPLOYMENT  
 6 OPPORTUNITY COMMISSION  
 7 255 East Temple Street, Fourth Floor  
 8 Los Angeles, CA 90012  
 9 Telephone: (213) 894-1079  
 10 Facsimile: (213) 894-1301  
 11 E-Mail: lado.legal@eeoc.gov

12 Attorneys for Plaintiff  
 13 U.S. EQUAL EMPLOYMENT  
 14 OPPORTUNITY COMMISSION

15 Fred M. Plevin, CA SBN 126185  
 16 Karin K. Sherr, CA SBN 229423  
 17 PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP  
 18 401 B St., Tenth Floor  
 19 San Diego, CA. 92101  
 20 Telephone: (619) 237-5200  
 21 Facsimile: (619) 615-0700  
 22 E-Mail: fplevin@paulplevin.com

23 Attorneys for Defendant CHAPMAN UNIVERSITY AND THE  
 24 BOARD OF TRUSTEES OF CHAPMAN UNIVERSITY

25 **UNITED STATES DISTRICT COURT**  
 26 **CENTRAL DISTRICT OF CALIFORNIA**  
 27 **SOUTHERN DIVISION**

28 U.S. EQUAL EMPLOYMENT  
 OPPORTUNITY COMMISSION,

Plaintiff,

vs.

CHAPMAN UNIVERSITY and THE  
 BOARD OF TRUSTEES OF  
 CHAPMAN UNIVERSITY, and  
 DOES 1-10, INCLUSIVE,

Defendant(s).

Case No. SACV 10-1419-JST (RNBx)

**JOINT REPORT OF MEETING  
 UNDER RULE 26(f)**

Scheduling Conference:  
 January 31, 2011 at 1:30 PM  
 Courtroom 10-A

Honorable Josephine Staton Tucker

1 TO THE HONORABLE JUDGE OF SAID COURT:

2 The Parties hereby jointly submit their Report of the early meeting of  
3 counsel, as required by FED. R.CIV. P. 26(f), Local Rule 26-1, and this Court's  
4 Order of November 19, 2010 (Doc. 7). An in-person joint meeting was held on  
5 December 14, 2010, and was attended by Connie K. Liem for Plaintiff U.S.  
6 Equal Employment Opportunity Commission ("EEOC"), and Fred M. Plevin and  
7 Karin K. Sherr for Defendants Chapman University and its Board of Trustees.  
8

9 1. Statement of the Case

10 (a) Plaintiff EEOC's Statement

11 The EEOC contends that Defendants discriminated against Charging Party  
12 Stephanie Dellande, Ph.D., based on her race, Black, when she was denied  
13 promotion to a tenured position, Associate Professor, and then discharged in  
14 violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a),  
15 and Title I of the Civil Rights Act of 1991, 42 U.S.C § 1981a ("Title VII"). Dr.  
16 Dellande was treated less favorably than similarly-situated non-Black professors  
17 with respect to tenure and promotion to an Associate Professor position at  
18 Defendants' School of Business and Economics.

19 Defendants admit that before applying for tenure, Dr. Dellande received  
20 positive comments in her annual performance evaluations regarding her job  
21 performance. Dr. Dellande was told she was making progress and on track  
22 toward receiving tenure. At the time Dr. Dellande applied for tenure, she was  
23 the sole Black faculty member in a department of approximately 30. Sometime  
24 during 2006, Dr. Dellande began her application process for tenure and  
25 promotion to Associate Professor. On October 12, 2006, Defendants' Faculty  
26 Review Committee submitted its recommendation to the Provost to deny tenure.  
27 Defendants admit that four external reviewers made recommendations that were  
28 favorable for Dr. Dellande, and that the Faculty Personnel Council

Joint Report of Meeting

1 recommended her for tenure at Chapman University. Defendants admit that, as  
2 with any unsuccessful tenure candidate, when Dr. Dellande's fixed term tenure  
3 track employment contract expired, she was offered a final one-year term  
4 contract. This contract expired during June 2008. On June 28, 2008,  
5 Defendants' Board of Trustees affirmed Dr. Dellande's tenure denial. Having  
6 been denied tenure, Dr. Dellande was discharged shortly thereafter.

7 On behalf of Dr. Dellande, the EEOC seeks economic damages,  
8 compensatory damages, punitive damages, and its taxable costs incurred in  
9 bringing this action. Lastly, the EEOC seeks injunctive and equitable relief as  
10 reflected in its Complaint to ensure Defendants' future compliance with Title  
11 VII.

12 (b) Defendants' Statement

13 This is an employment-related civil rights claim (race discrimination).  
14 The EEOC alleges that Defendants Chapman University ("Chapman") and  
15 Chapman's Board of Trustees discriminated against Stephanie Dellande, Ph.D.  
16 The claim is based on Chapman's decision to deny Dellande's application for  
17 promotion to tenure following a lengthy, multi-step review process in which  
18 Chapman's Chief Academic Officer (the Chancellor) determined that Dellande's  
19 overall record did not warrant promotion to a lifetime appointment.

20 Prior to the tenure review, Dellande was reviewed on an annual basis, and  
21 received some positive and some negative feedback regarding her progress. The  
22 Chancellor's decision on Dellande's application for a promotion to a tenured  
23 position came at the end of a process in which outside reviewers, Dellande's  
24 peers in the School of Business and Economics, that school's Dean, and a  
25 committee of university faculty from other schools provided input and  
26 recommendations regarding Dellande's promotion. Although some participants  
27 in the process favored promotion, Dellande's peers in the School of Business  
28 and Economics and the Dean of that school both recommended that she be

1 denied tenure on the basis of her overall record. There is no evidence that  
2 Dellande's race played any role whatever in any of the evaluations of her  
3 qualifications. Chapman's Chancellor, who was not aware of Dellande's race,  
4 determined based on this record that Dellande's application should be denied.  
5 After Dellande was denied tenure, in accordance with its regular practice (which  
6 is standard in the academia in general), Chapman offered Dellande a terminal,  
7 one-year appointment, after which her employment contract expired.

8  
9 2. Substantive Issues

10 The EEOC contends that the key issues of material fact to be decided  
11 include (a) whether Dr. Dellande was discriminated against when Defendants  
12 denied her application for tenure and discharged her on the basis of race, Black, in  
13 violation of Section 703(a) of Title VII, and (b) whether Chapman University's  
14 Board of Trustees is a proper party-defendant.

15 The Defendants agree that the key liability issue in this case will be  
16 whether the EEOC can meet its burden of establishing that Chapman's  
17 legitimate reason for denying tenure to Dr. Dellande (failure to meet its  
18 standards for tenure) was a pretext for race discrimination. Chapman disputes  
19 that Dellande was "discharged," as it is the common and well-known practice in  
20 academia for a professor who is denied tenure to be given a "terminal year"  
21 appointment.

22 A substantive issue also exists as to whether Chapman's Board of  
23 Trustees is a proper defendant in this case, as it is simply the board of directors  
24 of the defendant employer, and not a separate entity.

25 Defendants have also raised an affirmative defense based on the EEOC's  
26 failure to comply with its statutory obligations to engage in a good faith effort  
27 to conciliate, which is prerequisite to filing suit.

1           3. Damages

2           The EEOC seeks compensatory, economic, and punitive damages in the  
3 combined maximum amount permitted by federal statute on behalf of Dr. Dellande.  
4 Some of the information needed to accurately calculate lost wages and back-pay  
5 are currently in Defendants' sole possession.

6  
7           4. Insurance

8           Chapman University is covered by an insurance policy issued by United  
9 Educators Risk Retention Group, which has accepted the defense of this case  
10 subject to a reservation of rights.

11  
12           5. Motions

13           The Parties do not anticipate filing any motions to add parties, amend its  
14 pleadings, or transfer venue.

15  
16           6. Manual for Complex Litigation

17           The Parties do not anticipate utilizing the Manual for Complex Litigation.

18  
19           7. Status of Discovery

20           Defendants intend to propound written discovery requests during  
21 December 2010. The Parties intend to exchange their Rule 26(a) Initial  
22 Disclosures by January 7, 2011.

23  
24           8. Discovery Plan

25           Among other things, the EEOC intends to (1) propound written  
26 discovery requests relating to Defendants' affirmative defenses, the Board of  
27 Trustees' control and involvement with Dr. Dellande's employment,  
28 Defendants' legitimate non-discriminatory reasons for denying Dr. Dellande

1 tenure and discharging her, the qualifications of others outside the protected  
2 class who were more favorably treated, Defendants' equal employment and  
3 anti-discrimination policies, Defendants' training and implementation of its  
4 EEO policies, and Defendants' liability for compensatory and punitive  
5 damages, and injunctive relief-remedies; (2) take the oral depositions of all the  
6 alleged discriminating officials such as university administrative officials and  
7 faculty members, other individuals who were more favorably treated, and the  
8 four external reviewers who recommended that Dr. Dellande receive tenure;  
9 and (3) designate expert witnesses in the academic field of marketing and the  
10 qualifications for receiving tenure for such field.

11       Among other things, Defendants intend to (1) propound written discovery  
12 requests relating to explore the factual basis for plaintiff's claim, Defendants'  
13 affirmative defenses and the economic and non-economic damages of Dellande;  
14 (2) take the oral depositions of Dellande, EEOC employees as necessary to  
15 explore Defendants' affirmative defenses, participants in Dellande's tenure  
16 review as necessary to secure or preserve their testimony; and participants in  
17 other tenure reviews to the extent necessary in light of plaintiff's contentions  
18 regarding other reviews; and (3) designate expert witnesses as warranted on  
19 various topics, to include economic damages, psychological damages, tenure,  
20 demographics in academia, and experts responsive to experts designated by  
21 plaintiff.

22  
23       Expert Witnesses: The final day to submit expert reports and expert  
24 disclosures is November 30, 2011. The final day to designate and submit an  
25 rebuttal expert's report is December 30, 2011.

26  
27       Electronically-Stored Information: To the extent that discoverable  
28 information is electronically stored, the Parties shall produce such information

1 in either its native format or an accessible, manipulable format such as Microsoft  
2 Excel, .tif format, or Adobe Acrobat format (OCR readable and .pdf file format).

3  
4 Claims of Privilege: The Parties do not anticipate any issues regarding  
5 claims of privilege.

6  
7 Limitations on Discovery: All written discovery shall be conducted in  
8 accordance with the FEDERAL RULES OF CIVIL PROCEDURE and LOCAL RULES.  
9 The Parties further agree that (1) each party will bear its own costs for copying  
10 documents produced under FED. R. CIV. P. 34 and in response to any subpoena;  
11 (2) depositions will be taken in accordance with FED. R. CIV. P. 30; (3) that each  
12 party can propound a maximum of thirty (30) written interrogatories; (4) to act  
13 reasonably in attempting to informally resolve discovery issues that may arise;  
14 (5) that discovery pleadings, including discovery requests, responses, and  
15 documents be served by both regular mail and electronic service; and (6) to the  
16 extent possible, documents produced in response to production requests shall be  
17 served in Adobe Acrobat (OCR readable and .pdf file format) because the  
18 Parties anticipate voluminous document production.

19 The Parties disagree as to the number of oral depositions each side can  
20 take. Plaintiff EEOC believes that the maximum number of oral depositions  
21 should be set at twenty-five (25) for each side. However, Defendants believe  
22 that the maximum number of oral depositions should be fifteen (15) for each  
23 side. Once the Court sets a maximum number of depositions, the Parties reserve  
24 the right to seek leave of court to exceed the number of oral depositions should  
25 the need arise.

26  
27 9. Discovery Cut-Off

28 The Parties agree that discovery should be conducted in two phases with

1 a deadline for fact (non-expert) discovery and a subsequent deadline for expert  
2 discovery. All fact (non-expert) discovery must be completed by November 30,  
3 2011. All expert discovery must be completed by January 31, 2012.

#### 4 5 10. Dispositive Motions and Schedule

6 In order to narrow the issues for trial, the EEOC anticipates filing a  
7 partial dispositive motion on Defendants' affirmative defenses such as failure to  
8 exhaust administrative remedies, laches, failure to fulfill conditions precedent,  
9 failure to mitigate, no punitive damages, and Defendants' reservation of  
10 additional affirmative defenses.

11 Defendants anticipate filing a Rule 12 and/or Rule 56 motion on behalf of  
12 the Board of Trustees because it is not a proper defendant, and a Rule 56  
13 motion seeking summary judgment due to the absence of any material facts  
14 supporting an inference of race discrimination or in the alternative, partial  
15 summary on Plaintiff's claims for punitive damages.

16 The Parties agree that dispositive motions shall be filed and noticed for  
17 hearing by January 31, 2012.

#### 18 19 11. Settlement

20 The EEOC contends that it engaged in conciliation efforts as required by  
21 statute, prior to filing suit in this matter. The EEOC contends that it is  
22 prohibited by statute from publicly disclosing what occurred during the  
23 conciliation period, but it agrees that the Parties discussed generally the  
24 possibility of settlement and the types of relief the EEOC is seeking.

25 Defendant Chapman agrees that settlement demands and offers were  
26 exchanged prior to filing of suit, but contends that the EEOC failed to engage in  
27 conciliation as required by statute, and has asserted an affirmative defense on  
28 this basis.



1 Pursuant to L.R. 16-15, the Parties select to participate in Settlement  
2 Procedure No. 3, a non-judicial dispute resolution proceeding.

3  
4 12. Trial estimate

5 The trial of this matter will be by jury. The Parties anticipate that the trial  
6 of this matter will take approximately six to eight (6-8) court days. The EEOC  
7 anticipates calling 15 witnesses. Defendants anticipate calling fewer than 15  
8 witnesses.

9  
10 13. Trial counsel

11 EEOC attorneys Michael J. Farrell, Connie K. Liem, and Amrita Mallik will  
12 try this case for Plaintiff. Defendants' counsel Fred M. Plevin and Karin K. Sherr  
13 will try this case for Defendants.

14  
15 14. Independent Expert or Master

16 The appointment of a master under Rule 53 is not necessary.

17  
18 15. Other Issues

19 The EEOC may seek a protective order to preclude the discovery and use of  
20 of Dr. Dellande's medical records, prior personnel records, and subsequent  
21 personnel records not considered during her tenure review process. Should Dr.  
22 Dellande's medical records be discoverable, the EEOC may further seek a  
23 stipulated protective order to protect the confidentiality of Dr. Dellande's medical  
24 records and to strictly limit its use to this litigation.

25 Defendants will seek a protective order to protect the confidentiality of (1)  
26 any third-party tenure files and personnel files determined to be discoverable, and  
27 (2) information within documents to be produced that fall under the protections of  
28 the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).

1 The Parties intend to engage in further meet and confer efforts regarding these  
2 discovery issues.

3 Lastly, the Parties anticipate the necessity of a *Daubert* hearing should the  
4 case proceed to trial.

5  
6  
7  
8 Respectfully Submitted,

9  
10  
11 PAUL, PLEVIN, SULLIVAN  
12 & CONNAUGHTON

13 Dated: January 6, 2011

14 By: s/ Fred. M. Plevin  
15 Fred M. Plevin  
16 Karin K. Sherr

17 Attorney for Defendants Chapman  
18 University and its Board of Trustees

19 U.S. EQUAL EMPLOYMENT  
20 OPPORTUNITY COMMISSION

21  
22 Dated: January 6, 2011

23 By: s/ Connie K. Liem  
24 Connie K. Liem  
25 Amrita Mallik

26 Attorneys for Plaintiff EEOC  
27  
28

