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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID PAUL DAVENPORT,
Plaintiff,
v.
BOARD OF TRUSTEES OF THE STATE
CENTER COMMUNITY COLLEGE
DISTRICT,
Defendant.

1:07-cv-00494-OWW-SMS
ORDER RE: REQUEST FOR
SUPPLEMENTAL BRIEFING

I. INTRODUCTION.

The present dispute involves allegations of unlawful retaliation by Plaintiff David Paul Davenport ("Davenport") against his former employer, Defendant State Center Community College District (the "District"). Pending before the Court is Plaintiff's motion for reconsideration of the Court's Memorandum Decision granting the District's motion for summary judgment.

On August 23, 2010, the California Supreme Court decided *Murray v. Alaska Airlines, Inc.*, 50 Cal.4th 860, 237 P.3d 565, 114 Cal. Rptr. 3d 241 (2010), a case involving allegations of unlawful termination and retaliation by an airline employee against his

1 former employer. Plaintiff filed his lawsuit in California state
2 court and the airline subsequently removed on the basis of
3 diversity jurisdiction. The district court granted summary
4 judgment to the airline based on collateral estoppel. Plaintiff
5 then appealed the ruling to the Ninth Circuit, 522 F.3d 920, which
6 certified a question to the California Supreme Court on the issue
7 of whether "adverse administrative findings may be given collateral
8 estoppel effect in a subsequent court suit if the complainant
9 against whom estoppel is being sought forfeited his right to such
10 a hearing, resulting in the agency's findings becoming a final,
11 nonappealable order by operation of law." The California Supreme
12 Court held that such administrative proceedings have preclusive
13 effect, stating: "We conclude the Secretary's factual findings on
14 the issue of causation, embodied in a final nonappealable order,
15 should, under California law, be afforded preclusive effect in this
16 subsequent court action between the same parties."

17 Here, if the California Supreme Court's decision in *Murray v.*
18 *Alaska Airlines, Inc.* applies, then Plaintiff is precluded from
19 advancing his Title VII claim against the District. The parties
20 have not briefed the issue of res judicata and/or collaterally
21 estoppel specifically, nor have they analyzed the two seminal
22 California "estoppel" cases, *Murray v. Alaska Airlines, Inc.* and
23 *Takahashi v. Board of Education*, 202 Cal.App.3d 1464 (1988).
24 Without additional briefing on these issues, Plaintiff's motion for
25 reconsideration cannot be decided. Supplemental briefing is
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1 requested on the following issues:¹

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3 1) Do *Murray v. Alaska Airlines, Inc.* and *Takahashi v. Board*
4 *of Education* control the facts of this case? Specifically, in
5 light of *Murray* and given that Plaintiff did not raise the issue of
6 retaliation at his administrative hearing, is Plaintiff's
7 retaliation claim barred under the doctrine of res judicata?

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9 Plaintiff David Paul Davenport may before 5:00 p.m. on October
10 6, 2010, submit supplemental briefing on these questions. Any
11 written opposition is due October 15, 2010.

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13 IT IS SO ORDERED.

14 Dated: September 22, 2010 /s/ Oliver W. Wanger
15 UNITED STATES DISTRICT JUDGE
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27 ¹ The delineated questions are not exhaustive. The parties
28 are free to address any line of argument that supports their
positions.