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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	1:08-cv-1469 AWI SMS
)	
Plaintiff,)	ORDER FOR ADDITIONAL
)	BRIEFING TO BE FILED BY
v.)	4:00 P.M. JULY 13, 2010
)	
TIMELESS INVESTMENTS, INC. dba)	
EZ TRIP GOLDEN STATE)	
CONVENIENCE AND AUTO/TRUCK)	
PLAZA, and DOES 1-5, inclusive,)	
)	
Defendant.)	

Currently pending before the Court is Defendant’s motion for summary judgment, which is set for hearing on July 26, 2010.¹ In Defendant’s motion, Defendant argues in part that Plaintiff failed to engage in good faith conciliation efforts as required by 29 U.S.C. § 626(d). See Court’s Docket Doc. No. 31- at p.11. Defendant requests that the Court dismiss the case and award attorney’s fees for Plaintiff’s alleged failure to properly conciliate. See *id.*

Prior to filing suit under the ADEA, the EEOC must attempt conciliation with the employer. 29 U.S.C. § 626(d); *EEOC v. Pan American World Airways, Inc.*, 897 F.2d 1499, 1505 n.5 (9th Cir. 1990); see also *EEOC v. Bruno's Restaurant*, 13 F.3d 285, 288 (9th Cir. 1992).

¹Plaintiff also has a motion for summary judgment set for hearing on July 26, 2010. However, this order concerns an argument made in Defendant’s motion.

1 Some courts have approved the dismissal of the case and the award of attorney's fees against the
2 EEOC for a failure to engage in a good faith conciliation. E.g. EEOC v. Asplundh Tree Expert
3 Co., 340 F.3d 1256, 1261 (11th Cir. 2003). However, it has also been held that courts have the
4 authority to stay judicial proceedings in order for the EEOC to make further conciliation efforts.
5 E.g. Brennan v. Ace Hardware Corp., 495 F.2d 368, 376 (8th Cir. 1974). The Court believes that
6 additional briefing on the issue of whether the Court should stay the proceedings for further
7 conciliation efforts (if the Court later finds that the EEOC did not conciliate in good faith)²
8 would be beneficial.

9
10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. On or by 4:00 p.m. July 13, 2010, the parties shall each file a brief on the issue of
12 whether the Court should stay the proceedings for further conciliation efforts if the Court
13 later finds that the EEOC did not conciliate in good faith; and
- 14 2. All other dates and deadlines remain unchanged.

15
16 IT IS SO ORDERED.

17 Dated: July 3, 2010

18 
19 _____
20 CHIEF UNITED STATES DISTRICT JUDGE

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26 _____
27 ²The Court emphasizes that it has not determined that the EEOC breached the duty to conduct a good faith
28 conciliation. The Court merely wishes to hear the parties' respective positions on the possibility of a stay for further
conciliation proceedings.