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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALLEN LUTZ,

Plaintiff,

v.

DELANO UNION SCHOOL DISTRICT,
RONALD GARCIA, J OSEPH HUNTER,
LINDA ENRIQUEZ, and DOES 1
through CC, inclusive,

Defendants.

) 1:08-cv-1787 OWW DLB
)
) SCHEDULING CONFERENCE ORDER
)
) Discovery Cut-Off: 8/15/11
)
) Non-Dispositive Motion
) Filing Deadline: 8/31/11
)
) Non-Dispositive Motion
) Hearing Date: 10/7/11 9:00
) Ctrm. 9
)
) Dispositive Motion Filing
) Deadline: 9/30/11
)
) Dispositive Motion Hearing
) Date: 10/31/11 10:00 Ctrm.
) 3
)
) Settlement Conference Date:
) 8/23/11 10:00 Ctrm. 9
)
) Pre-Trial Conference Date:
) 12/5/11 11:00 Ctrm. 3
)
) Trial Date: 1/18/12 9:00
) Ctrm. 3 (JT-4 days)

- I. Date of Scheduling Conference.
September 29, 2010.
- II. Appearances Of Counsel.
William A. Romaine, Esq., appeared on behalf of Plaintiff.

1 Dooley, Herr, Peltzer & Richardson by Ron Statler, Esq.,
2 appeared on behalf of Defendants.

3 III. Summary of Pleadings.

4 A. Plaintiff's Contentions.

5 1. Plaintiff Alan Lutz has filed this action alleging
6 that Defendants, acting on their own and out of the scope and
7 purpose of their relationship, made statements to Delano Union
8 Elementary School District with the intent that such statements
9 would cause harm to Plaintiff's employment relationship with
10 Delano Union Elementary School District. The statements were
11 made by these individuals, purporting to act under California
12 Education Code, to the effect that Plaintiff Alan Lutz violated
13 the terms and conditions of his classified employment with Delano
14 Unified School District by speaking out in public against Delano
15 Unified School District's announced policy to treat students who
16 were citizens of Mexico, by permitting favorable treatment of
17 students who were citizens of Mexico concerning their ability to
18 be absent from class and not suffer any adverse consequences,
19 while imposing adverse consequences upon students who were United
20 States citizens for absences from school over periods
21 considerably shorter than the periods of absence of the Mexican
22 citizen students who suffered no adverse consequences. In this
23 regard, Alan Lutz contends that he spoke about the foregoing
24 described terms of disparate treatment to Defendant Linda
25 Enriquez, who was then and there a principal of an elementary
26 school within the Delano Union School District and she became
27 enraged, enlisted the aid of Defendants Ronald Garcia and Joseph
28 Hunter, who were then and there executive personnel of Delano

1 Union Elementary School District.

2 2. Plaintiff contends that his remarks were protected
3 political speech on a matter of great public concern, to wit:
4 disparate treatment of students on the basis of their ancestry or
5 citizenship. Plaintiff alleges that in retaliation for making
6 his speech, Defendants Enriquez, Garcia, and Hunter used their
7 administrative and executive positions in the Delano Union
8 Elementary School District to influence the Delano Union
9 Elementary School District Governing Board to impose adverse
10 employment discipline upon Plaintiff, to wit: suspension of his
11 employment without pay for 30 days. Plaintiff contends that this
12 retaliatory action was done under color of state law, to prevent
13 him from, or to retaliate against him for speaking out about
14 matters of great public importance in violation of the
15 protections secured to him by Amendment I of the United States
16 Constitution.

17 3. Plaintiff Lutz alleges that the suspension caused
18 him loss of financial remuneration and that the incident and the
19 ongoing animosity it generated further caused him to suffer such
20 embarrassment, humiliation, and emotional distress that
21 precipitated in him a desire to retire earlier than he otherwise
22 would have done, resulting in a substantial loss of income and
23 benefits to him.

24 B. Defendants' Contentions.

25 1. Plaintiff Lutz's comments were threatening and
26 intimidating and made in a threatening and intimidating manner;
27 were done in a manner that violated the good order and
28 administration of Plaintiff's employer [a school district]; his

1 comments were upsetting and/or frightening to others who were in
2 the school-site office while he made them; Plaintiff abused his
3 position as an employee of Defendant Delano School District to
4 gain access to the school site and school officials in order to
5 interject himself into a parent meeting regarding a student when
6 he was not a parent of that student. Essentially, Plaintiff
7 scared the office, which was full of women of smaller size, by
8 yelling, screaming, and taking on a physically intimidating
9 stance - in an elementary school office.

10 2. On or about the date alleged in the Complaint,
11 Defendant Linda Enriquez was having a meeting with the mother of
12 a student at Del Vista Elementary School. This was Plaintiff
13 Lutz's daughter-in-law, and the student was his grandchild.
14 Plaintiff Lutz became aware of the meeting while he was at work
15 (Plaintiff did not work at the school-site).

16 3. Plaintiff entered the school office and shouted
17 "where is the god-damn principal?" and began screaming for
18 Defendant Enriquez to make herself available. His screams
19 continued with a string of profanities, including profane racial
20 pejoratives. He went into Defendant Enriquez's office and
21 started screaming at her, at one point getting so close to her
22 that she was afraid to stand up for fear of him considering it a
23 physical challenge. Defendant Enriquez asked to end the meeting,
24 but Plaintiff Lutz refused - until a white male entered the
25 school office and Plaintiff Lutz was asked to leave. He did so,
26 but remained in front of the school in his pick-up truck. A
27 police report was lodged regarding the incident.

28 4. Defendant Enriquez reported Plaintiff's conduct to

1 Defendants Hunter and Garcia. Defendants Hunter and Garcia began
2 an investigation into Plaintiff's conduct while on the job.
3 Plaintiff, a school district employee, was found to have breached
4 the disciplinary requirements of district employees by
5 discourteous treatment of the public, students, and other
6 employees, and for engaging in conduct of such a nature that it
7 brings discredit to the employing district.

8 5. Defendants contend that Plaintiff's speech was not
9 political speech on an important public issue protected by the
10 First Amendment, but rather was an aggressive, violent, racist
11 diatribe intended to intimidate and strike fear into the hearts
12 of people, many of whom were part of the class of persons against
13 whom he railed, who were just trying to run a school. This was
14 done on campus, in the workplace, and in violation of the terms
15 and conditions of Plaintiff's employment.

16 IV. Orders Re Amendments To Pleadings.

17 1. The parties do not anticipate amending the pleadings at
18 this time.

19 V. Factual Summary.

20 A. Admitted Facts Which Are Deemed Proven Without Further
21 Proceedings.

22 1. Plaintiff Alan Lutz was a permanent, classified
23 employee of Delano Union Elementary School District at all times
24 material to the allegations set forth in the First Amended
25 Complaint.

26 2. Plaintiff Lutz spoke to Linda Enriquez after his
27 grandson was disciplined.

28 3. Defendant Linda Enriquez believed that Plaintiff

1 Lutz's comments were made in a hostile and offensive manner.

2 4. Defendant Linda Enriquez reported her concerns
3 about Plaintiff Lutz's comments to Defendants Ronald Garcia and
4 Joseph Hunter.

5 5. Plaintiff Alan Lutz has subsequently retired from
6 his employment with Delano Union Elementary School District and
7 is no longer employed there.

8 B. Contested Facts.

9 1. Whether the comments made by Plaintiff Lutz were
10 made in a "hostile and offensive" manner.

11 2. Whether the comments made by Plaintiff Lutz
12 concerned a matter of great public importance.

13 3. Whether Delano Unified School District engaged in
14 any retaliatory actions against Plaintiff.

15 4. Whether the retirement of Plaintiff Lutz from his
16 employment with Delano Unified School District was a direct and
17 proximate consequence of any retaliatory actions on the part of
18 Defendants.

19 5. Whether Defendants' actions with respect to
20 Plaintiff Lutz's employment suspension were done in retaliation
21 for his exercise of free speech rights protected by Amendment I
22 of the United States Constitution.

23 6. Whether Plaintiff's conduct interrupted or
24 otherwise hindered Defendant's administration of the school
25 functions and environment.

26 7. Whether Plaintiff was entitled to continued
27 employment with Delano Union Elementary School District, except
28 for cause, at all times material to the allegations set forth in

1 the First Amended Complaint.

2 8. Whether Plaintiff's employment with Delano Union
3 Elementary School District was governed by and subject to a
4 collective bargaining agreement, pursuant to the provisions of
5 the California Educational Employee Relations Act (California
6 Government Code § 3540, et seq.).

7 9. Whether Plaintiff Alan Lutz spoke to Defendant
8 Linda Enriquez regarding his concern about the Delano Union
9 Elementary School District policy allowing students who were
10 citizens of Mexico or whose ancestral background was Mexican to
11 make up, without penalty, any work missed during their absences
12 from the school when they were out of the United States with
13 their parents, or if Plaintiff's speech concerned some other
14 matter.

15 10. Whether, at Plaintiff Lutz's discretion, he could
16 have elected an alternative fifteen day suspension if he enrolled
17 in an anger management program and whether Plaintiff Lutz elected
18 a thirty day suspension instead of so enrolling.

19 11. In response to Plaintiff's conduct, Defendants
20 Ronald Garcia and Joseph Hunter responded to Defendant Linda
21 Enriquez's concerns by initiating and prosecuting a process
22 whereby Plaintiff Alan Lutz received an unpaid thirty day
23 suspension.

24 VI. Legal Issues.

25 A. Uncontested.

26 1. Jurisdiction exists under 28 U.S.C. § 1331.

27 2. Venue is proper under 28 U.S.C. § 1391.

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1 B. Contested.

2 1. Whether the comments made by Plaintiff Lutz were
3 protected by Amendment I of the United States Constitution.

4 2. Whether Plaintiff Lutz has waived rights afforded
5 under his collective bargaining agreement, if any applies, by his
6 failure to file a timely unfair labor practices claim, or similar
7 claim as set forth in any applicable collective bargaining
8 agreement.

9 3. Whether, assuming any comments made by Plaintiff
10 Lutz are protected by Amendment I of the United States
11 Constitution, such protections are subject to limitations by: the
12 terms and conditions of Plaintiff Lutz's employment; the venue in
13 which such comments were made; or by the United States
14 Constitution, statute, common or case law, equity, or other
15 defense.

16 VII. Consent to Magistrate Judge Jurisdiction.

17 1. The parties have not consented to transfer the
18 case to the Magistrate Judge for all purposes, including trial.

19 VIII. Corporate Identification Statement.

20 1. Any nongovernmental corporate party to any action in
21 this court shall file a statement identifying all its parent
22 corporations and listing any entity that owns 10% or more of the
23 party's equity securities. A party shall file the statement with
24 its initial pleading filed in this court and shall supplement the
25 statement within a reasonable time of any change in the
26 information.

27 IX. Discovery Plan and Cut-Off Date.

28 1. The parties are ordered to complete all discovery on or

1 before August 15, 2011.

2 2. The parties are directed to disclose all expert
3 witnesses, in writing, on or before June 15, 2011. Any rebuttal
4 or supplemental expert disclosures will be made on or before July
5 15, 2011. The parties will comply with the provisions of Federal
6 Rule of Civil Procedure 26(a)(2) regarding their expert
7 designations. Local Rule 16-240(a) notwithstanding, the written
8 designation of experts shall be made pursuant to F. R. Civ. P.
9 Rule 26(a)(2), (A) and (B) and shall include all information
10 required thereunder. Failure to designate experts in compliance
11 with this order may result in the Court excluding the testimony
12 or other evidence offered through such experts that are not
13 disclosed pursuant to this order.

14 3. The provisions of F. R. Civ. P. 26(b)(4) shall
15 apply to all discovery relating to experts and their opinions.
16 Experts may be fully prepared to be examined on all subjects and
17 opinions included in the designation. Failure to comply will
18 result in the imposition of sanctions.

19 X. Pre-Trial Motion Schedule.

20 1. All Non-Dispositive Pre-Trial Motions, including any
21 discovery motions, will be filed on or before August 31, 2011,
22 and heard on October 7, 2011, at 9:00 a.m. before Magistrate
23 Judge Dennis L. Beck in Courtroom 9.

24 2. In scheduling such motions, the Magistrate
25 Judge may grant applications for an order shortening time
26 pursuant to Local Rule 142(d). However, if counsel does not
27 obtain an order shortening time, the notice of motion must comply
28 with Local Rule 251.

1 3. All Dispositive Pre-Trial Motions are to be
2 filed no later than September 30, 2011, and will be heard on
3 October 31, 2011, at 10:00 a.m. before the Honorable Oliver W.
4 Wanger, United States District Judge, in Courtroom 3, 7th Floor.
5 In scheduling such motions, counsel shall comply with Local Rule
6 230.

7 XI. Pre-Trial Conference Date.

8 1. December 5, 2011, at 11:00 a.m. in Courtroom 3, 7th
9 Floor, before the Honorable Oliver W. Wanger, United States
10 District Judge.

11 2. The parties are ordered to file a Joint Pre-
12 Trial Statement pursuant to Local Rule 281(a)(2).

13 3. Counsel's attention is directed to Rules 281
14 and 282 of the Local Rules of Practice for the Eastern District
15 of California, as to the obligations of counsel in preparing for
16 the pre-trial conference. The Court will insist upon strict
17 compliance with those rules.

18 XII. Motions - Hard Copy.

19 1. The parties shall submit one (1) courtesy paper copy to
20 the Court of any motions filed. Exhibits shall be marked with
21 protruding numbered or lettered tabs so that the Court can easily
22 identify such exhibits.

23 XIII. Trial Date.

24 1. January 18, 2012, at the hour of 9:00 a.m. in Courtroom
25 3, 7th Floor, before the Honorable Oliver W. Wanger, United
26 States District Judge.

27 2. This is a jury trial.

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1 3. Counsels' Estimate Of Trial Time:

2 a. Four days.

3 4. Counsels' attention is directed to Local Rules
4 of Practice for the Eastern District of California, Rule 285.
5 XIV. Settlement Conference.

6 1. A Settlement Conference is scheduled for August 23,
7 2011, at 10:00 a.m. in Courtroom 9 before the Honorable Dennis L.
8 Beck, United States Magistrate Judge.

9 2. Unless otherwise permitted in advance by the
10 Court, the attorneys who will try the case shall appear at the
11 Settlement Conference with the parties and the person or persons
12 having full authority to negotiate and settle the case on any
13 terms at the conference.

14 3. Permission for a party [not attorney] to attend
15 by telephone may be granted upon request, by letter, with a copy
16 to the other parties, if the party [not attorney] lives and works
17 outside the Eastern District of California, and attendance in
18 person would constitute a hardship. If telephone attendance is
19 allowed, the party must be immediately available throughout the
20 conference until excused regardless of time zone differences.
21 Any other special arrangements desired in cases where settlement
22 authority rests with a governing body, shall also be proposed in
23 advance by letter copied to all other parties.

24 4. Confidential Settlement Conference Statement.
25 At least five (5) days prior to the Settlement Conference the
26 parties shall submit, directly to the Magistrate Judge's
27 chambers, a confidential settlement conference statement. The
28 statement should not be filed with the Clerk of the Court nor

1 served on any other party. Each statement shall be clearly
2 marked "confidential" with the date and time of the Settlement
3 Conference indicated prominently thereon. Counsel are urged to
4 request the return of their statements if settlement is not
5 achieved and if such a request is not made the Court will dispose
6 of the statement.

7 5. The Confidential Settlement Conference
8 Statement shall include the following:

9 a. A brief statement of the facts of the
10 case.

11 b. A brief statement of the claims and
12 defenses, i.e., statutory or other grounds upon which the claims
13 are founded; a forthright evaluation of the parties' likelihood
14 of prevailing on the claims and defenses; and a description of
15 the major issues in dispute.

16 c. A summary of the proceedings to date.

17 d. An estimate of the cost and time to be
18 expended for further discovery, pre-trial and trial.

19 e. The relief sought.

20 f. The parties' position on settlement,
21 including present demands and offers and a history of past
22 settlement discussions, offers and demands.

23 XV. Request For Bifurcation, Appointment Of Special Master,
24 Or Other Techniques To Shorten Trial.

25 1. The parties agree that the trial should be bifurcated.
26 The issue of liability will be tried first and damages will be
27 tried in a second phase, before the same jury.

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1 XVI. Related Matters Pending.

2 1. There are no related matters.

3 XVII. Compliance With Federal Procedure.

4 1. The Court requires compliance with the Federal
5 Rules of Civil Procedure and the Local Rules of Practice for the
6 Eastern District of California. To aid the court in the
7 efficient administration of this case, all counsel are directed
8 to familiarize themselves with the Federal Rules of Civil
9 Procedure and the Local Rules of Practice of the Eastern District
10 of California, and keep abreast of any amendments thereto.

11 XVIII. Effect Of This Order.

12 1. The foregoing order represents the best
13 estimate of the court and counsel as to the agenda most suitable
14 to bring this case to resolution. The trial date reserved is
15 specifically reserved for this case. If the parties determine at
16 any time that the schedule outlined in this order cannot be met,
17 counsel are ordered to notify the court immediately of that fact
18 so that adjustments may be made, either by stipulation or by
19 subsequent scheduling conference.

20 2. Stipulations extending the deadlines contained
21 herein will not be considered unless they are accompanied by
22 affidavits or declarations, and where appropriate attached
23 exhibits, which establish good cause for granting the relief
24 requested.

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1 3. Failure to comply with this order may result in
2 the imposition of sanctions.

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4 IT IS SO ORDERED.

5 Dated: September 29, 2010

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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