

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

POROTESANO FAAPOULI,)	1:09-cv-0907 OWW SMS
)	
Plaintiff,)	SCHEDULING CONFERENCE ORDER
)	
v.)	Discovery Cut-Off: 3/16/10
)	
COUNTY OF FRESNO,)	Non-Dispositive Motion
)	Filing Deadline: 4/1/10
Defendant.)	
)	Dispositive Motion Filing
)	Deadline: 4/16/10

Settlement Conference Date:
5/5/10 10:00 Ctrm. 7

Pre-Trial Conference Date:
6/14/10 11:00 Ctrm. 3

Trial Date: 7/13/10 9:00
Ctrm. 3 (JT-5 days)

I. Date of Scheduling Conference.

September 16, 2009.

II. Appearances Of Counsel.

John P. Buchko, Esq., appeared on behalf of Plaintiff.

William F. Mar, Jr., Esq., appeared on behalf of Defendant.

III. Summary of Pleadings.

1. This is an action under the Uniformed Services
Employment and Re-employment Rights Act, 38 U.S.C. § 4301, et

1 seq. ("USERRA"). Plaintiff Porotesano Faapouli contends that the
2 Defendant, Fresno County, willfully violated USERRA by failing to
3 promptly re-employ him when he returned from active military duty
4 and by failing to place him in a position of equivalent
5 seniority, status, and pay to the position he held before his
6 military service. As relief, Plaintiff seeks re-employment in a
7 position of equivalent seniority, status, and pay to the position
8 he held before his military service, with an appropriate
9 accommodation for his disability, if necessary; back wages and
10 benefits from the time he first sought re-employment with
11 Defendant less mitigation; prejudgment interest; and liquidated
12 damages.

13 2. Defendant County of Fresno contends that Plaintiff
14 returned from active duty with a medical condition that prevented
15 him from performing an essential function of the position he had
16 held, and that in following Plaintiff's desire to return to that
17 position, allowed him time to recover and his doctor opportunity
18 to clear him to perform that function. When it appeared unlikely
19 that his doctor would clear him, and after trying to get guidance
20 and assistance from the Department of Labor, the County promptly
21 re-employed him in a position which was the nearest approximation
22 in terms of seniority, status, and pay, to the position he would
23 have held had his employment been uninterrupted. The County
24 prays that Plaintiff be denied relief and that he take nothing by
25 this action.

26 IV. Orders Re Amendments To Pleadings.

27 1. The parties do not anticipate amending the pleadings at
28 this time.

1 V. Factual Summary.

2 A. Admitted Facts Which Are Deemed Proven Without Further
3 Proceedings.

4 1. Plaintiff is a citizen of the United States and
5 was employed by the County of Fresno commencing in April 1999.

6 2. By June 2004, Plaintiff was a Senior Juvenile
7 Correctional Officer ("Senior JCO") in Defendant's Probation
8 Office.

9 3. As a member of the U.S. Navy Reserve, Plaintiff
10 was called to active duty on June 14, 2004.

11 4. Plaintiff informed County Personnel Analyst Nancy
12 Aragon of his activation to active duty.

13 5. While on active duty Plaintiff suffered a serious
14 injury that required several surgeries and an extended period of
15 recuperation.

16 6. Plaintiff County notified County Personnel Officer
17 Tina Young that his deployment was being extended because of his
18 injuries and recuperation.

19 7. Plaintiff was released from active duty in
20 September 2007, and on September 21, 2007, met with Defendant to
21 discuss re-employment.

22 8. He presented a form from the Navy entitled
23 "Findings of the Physical Evaluation Board Proceedings," which
24 found him to be presently physically disabled for military
25 service for reasons stated in the report.

26 9. Defendant did not re-employ Plaintiff on September
27 21, 2007.

28 10. Defendant informed Plaintiff that he needed to

1 submit a County ADA/FEHA Accommodation Information form completed
2 by his doctor regarding his physical limitations.

3 11. Plaintiff signed a Fresno County Request for
4 Unpaid Leave of Absence covering the period between September 17,
5 2007 and December 17, 2007.

6 12. Plaintiff submitted the Accommodation Information
7 form to Defendant in December 2007.

8 13. Plaintiff attempted to meet with Defendant to
9 discuss his re-employment, but Defendant did not meet with
10 Plaintiff due to holiday schedules and the need to consult with
11 risk management until February 12, 2008.

12 14. On that day, Probation Department Personnel
13 Manager Vicki Passmore told Plaintiff that it appeared he was no
14 longer able to perform the Senior JCO duties because of his
15 restrictions, and suggested his doctor complete another
16 Accommodation Information form.

17 15. The parties met again on March 6, 2008, at which
18 time Passmore offered Plaintiff a Probation Technician I
19 position, which Plaintiff rejected.

20 16. During this meeting, Aragon told Plaintiff that he
21 could apply for disability retirement to offset the difference in
22 pay.

23 17. Passmore offered the Probation Tech I job again on
24 May 15, 2008, and Plaintiff again rejected the offer.

25 18. Defendant suggested Plaintiff might be qualified
26 for a Defense Investigator I position, but Plaintiff was required
27 to competitively interview for the job and was not selected.

28 19. At a May 30, 2008, meeting, Defendant asked

1 Plaintiff to sign another Request for Unpaid Leave of Absence,
2 which Plaintiff refused to do.

3 20. Defendant also suggested Plaintiff might be
4 qualified for a Job Specialist I position.

5 21. Plaintiff was required to competitively interview
6 for the Job Specialist I job and he was selected for the opening.

7 22. Plaintiff began working as a Job Specialist I on
8 June 30, 2008.

9 23. The Job Specialist I position paid \$21.53 per
10 hour. At the time, the Senior JCO position paid \$28.09 per hour.

11 B. Contested Facts.

12 1. Whether Defendant promptly re-employed Plaintiff.

13 2. Whether Defendant re-employed Plaintiff in the
14 appropriate position when it re-employed him as a Job Specialist
15 I.

16 3. Whether Defendant's actions were willful.

17 4. Whether in September 2007, Plaintiff himself
18 requested additional unpaid medical leave to recuperate from his
19 active duty injuries.

20 5. Whether Plaintiff failed to mitigate his damages.

21 VI. Legal Issues.

22 A. Uncontested.

23 1. Jurisdiction exists under 28 U.S.C. § 1331 and
24 USERRA is applicable federal law.

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

26 B. Contested.

27 1. All remaining legal issues are contested.

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1 VII. Consent to Magistrate Judge Jurisdiction.

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

4 VIII. Corporate Identification Statement.

5 1. Any nongovernmental corporate party to any action in
6 this court shall file a statement identifying all its parent
7 corporations and listing any entity that owns 10% or more of the
8 party's equity securities. A party shall file the statement with
9 its initial pleading filed in this court and shall supplement the
10 statement within a reasonable time of any change in the
11 information.

12 IX. Discovery Plan and Cut-Off Date.

13 1. The parties have made their initial disclosures.

14 2. The parties are ordered to complete all discovery on or
15 before March 16, 2010.

16 3. The parties are directed to disclose all expert
17 witnesses, in writing, on or before January 8, 2010. Any
18 rebuttal or supplemental expert disclosures will be made on or
19 before February 8, 2010. The parties will comply with the
20 provisions of Federal Rule of Civil Procedure 26(a)(2) regarding
21 their expert designations. Local Rule 16-240(a) notwithstanding,
22 the written designation of experts shall be made pursuant to F.
23 R. Civ. P. Rule 26(a)(2), (A) and (B) and shall include all
24 information required thereunder. Failure to designate experts in
25 compliance with this order may result in the Court excluding the
26 testimony or other evidence offered through such experts that are
27 not disclosed pursuant to this order.

28 4. The provisions of F. R. Civ. P. 26(b)(4) shall

1 apply to all discovery relating to experts and their opinions.
2 Experts may be fully prepared to be examined on all subjects and
3 opinions included in the designation. Failure to comply will
4 result in the imposition of sanctions.

5 X. Pre-Trial Motion Schedule.

6 1. All Non-Dispositive Pre-Trial Motions, including any
7 discovery motions, will be filed on or before April 1, 2010, and
8 heard on May 7, 2010, at 9:00 a.m. before Magistrate Judge Sandra
9 M. Snyder in Courtroom 7.

10 2. In scheduling such motions, the Magistrate
11 Judge may grant applications for an order shortening time
12 pursuant to Local Rule 142(d). However, if counsel does not
13 obtain an order shortening time, the notice of motion must comply
14 with Local Rule 251.

15 3. All Dispositive Pre-Trial Motions are to be
16 filed no later than April 16, 2010, and will be heard on May 17,
17 2010, at 10:00 a.m. before the Honorable Oliver W. Wanger, United
18 States District Judge, in Courtroom 3, 7th Floor. In scheduling
19 such motions, counsel shall comply with Local Rule 230.

20 XI. Pre-Trial Conference Date.

21 1. June 14, 2010, at 11:00 a.m. in Courtroom 3, 7th Floor,
22 before the Honorable Oliver W. Wanger, United States District
23 Judge.

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

26 3. Counsel's attention is directed to Rules 281
27 and 282 of the Local Rules of Practice for the Eastern District
28 of California, as to the obligations of counsel in preparing for

1 the pre-trial conference. The Court will insist upon strict
2 compliance with those rules.

3 XII. Motions - Hard Copy.

4 1. The parties shall submit one (1) courtesy paper copy to
5 the Court of any motions filed that exceed ten pages and any
6 motions that have exhibits attached. Exhibits shall be marked
7 with protruding numbered or lettered tabs so that the Court can
8 easily identify such exhibits.

9 XIII. Trial Date.

10 1. July 13, 2010, at the hour of 9:00 a.m. in Courtroom 3,
11 7th Floor, before the Honorable Oliver W. Wanger, United States
12 District Judge.

13 2. This is a jury trial.

14 3. Counsels' Estimate Of Trial Time:

15 a. 5 days.

16 4. Counsels' attention is directed to Local Rules
17 of Practice for the Eastern District of California, Rule 285.

18 XIV. Settlement Conference.

19 1. A Settlement Conference is scheduled for May 5, 2010,
20 at 10:00 a.m. in Courtroom 7 before the Honorable Sandra M.
21 Snyder, United States Magistrate Judge.

22 2. Unless otherwise permitted in advance by the
23 Court, the attorneys who will try the case shall appear at the
24 Settlement Conference with the parties and the person or persons
25 having full authority to negotiate and settle the case on any
26 terms at the conference.

27 3. Permission for a party [not attorney] to attend
28 by telephone may be granted upon request, by letter, with a copy

1 to the other parties, if the party [not attorney] lives and works
2 outside the Eastern District of California, and attendance in
3 person would constitute a hardship. If telephone attendance is
4 allowed, the party must be immediately available throughout the
5 conference until excused regardless of time zone differences.
6 Any other special arrangements desired in cases where settlement
7 authority rests with a governing body, shall also be proposed in
8 advance by letter copied to all other parties.

9 4. Confidential Settlement Conference Statement.

10 At least five (5) days prior to the Settlement Conference the
11 parties shall submit, directly to the Magistrate Judge's
12 chambers, a confidential settlement conference statement. The
13 statement should not be filed with the Clerk of the Court nor
14 served on any other party. Each statement shall be clearly
15 marked "confidential" with the date and time of the Settlement
16 Conference indicated prominently thereon. Counsel are urged to
17 request the return of their statements if settlement is not
18 achieved and if such a request is not made the Court will dispose
19 of the statement.

20 5. The Confidential Settlement Conference
21 Statement shall include the following:

22 a. A brief statement of the facts of the
23 case.

24 b. A brief statement of the claims and
25 defenses, i.e., statutory or other grounds upon which the claims
26 are founded; a forthright evaluation of the parties' likelihood
27 of prevailing on the claims and defenses; and a description of
28 the major issues in dispute.

1 c. A summary of the proceedings to date.

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

4 e. The relief sought.

5 f. The parties' position on settlement,
6 including present demands and offers and a history of past
7 settlement discussions, offers and demands.

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

10 1. None.

11 XVI. Related Matters Pending.

12 1. There are no related matters.

13 XVII. Compliance With Federal Procedure.

14 1. The Court requires compliance with the Federal
15 Rules of Civil Procedure and the Local Rules of Practice for the
16 Eastern District of California. To aid the court in the
17 efficient administration of this case, all counsel are directed
18 to familiarize themselves with the Federal Rules of Civil
19 Procedure and the Local Rules of Practice of the Eastern District
20 of California, and keep abreast of any amendments thereto.

21 XVIII. Effect Of This Order.

22 1. The foregoing order represents the best
23 estimate of the court and counsel as to the agenda most suitable
24 to bring this case to resolution. The trial date reserved is
25 specifically reserved for this case. If the parties determine at
26 any time that the schedule outlined in this order cannot be met,
27 counsel are ordered to notify the court immediately of that fact
28 so that adjustments may be made, either by stipulation or by

1 subsequent scheduling conference.

2 2. Stipulations extending the deadlines contained
3 herein will not be considered unless they are accompanied by
4 affidavits or declarations, and where appropriate attached
5 exhibits, which establish good cause for granting the relief
6 requested.

7 3. Failure to comply with this order may result in
8 the imposition of sanctions.

9
10 IT IS SO ORDERED.

11 Dated: September 16, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE