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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALVETT FOBBS, et al.,

Plaintiff(s),

No. C 09-2723 PJH

v.

ORDERNEW HAVEN UNIFIED SCHOOL
DISTRICT, et al.,Defendant(s).
_____ /

Defendant New Haven Unified School District's ("NHUSD") motion for judgment on the pleadings, defendant Union City and its Police Department's (collectively "the City") motion to dismiss, and plaintiffs' motion for leave to file a second amended complaint ("SAC"), were before the court for hearing on January 27, 2010. The court's ruling on the record is summarized as follows.

1. NHUSD's motion for judgment on the pleadings is DENIED. However, given its assertion of Eleventh Amendment immunity, and plaintiff's concession that such immunity applies, the claims asserted against it in the first amended complaint ("FAC") are dismissed. The first cause of action under § 1983 is DISMISSED WITH PREJUDICE. The third through seventh causes of action under state statutory and common law are DISMISSED WITHOUT PREJUDICE.
2. The City's motion to dismiss the FAC is DENIED as is the City's claim of qualified immunity. To the extent that such immunity is available to the City in the absence of individual actors, it may be revisited on summary judgment.
3. Plaintiffs' motion for leave to file a second amended complaint is GRANTED.

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Plaintiffs shall immediately file as a stand alone document the revised SAC appended to counsel's declaration.

4. The February 4, 2010 case management conference is continued to March 4, 2010 at 2:00 p.m. The parties shall meet and confer about the matters required to be addressed by the joint case management statement and also about whether NHUSD wishes to waive its Eleventh Amendment immunity so that all claims can be brought in one action in this court. This subject shall be included in the joint case management statement. Additionally, should the parties desire proceed on all claims in this forum, they may simply stipulate to the filing of a third amended complaint

IT IS SO ORDERED.

Dated: January 27, 2010



PHYLLIS J. HAMILTON
United States District Judge