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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEIL SILVER,
Plaintiff,
v.
PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY,
Defendant.

Case No. 14-cv-00652-PJH

**ORDER RE DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

Re: Dkt. No. 67

Before the court is defendant's second motion for summary judgment. Having reviewed the parties papers and evaluated the parties' positions regarding the Ninth Circuit's memorandum disposition, the court has determined that the Ninth Circuit's decision forecloses the issues raised in defendant's motion.

On March 31, 2016, this court granted defendant's first motion for summary judgment holding that the "retroactivity issue [was] dispositive" and declining to reach the issues of consent, use of an ATDS, and willfulness. See generally Dkt. 52. Though the district court did not address the latter three issues, plaintiff's subsequent appeal raised and fully briefed those issues as well as the retroactivity issue. On December 13, 2017, the Ninth Circuit reversed this court on the retroactivity issue and also "conclude[d] that disputed issues of material fact preclude summary judgment on each of the alternative grounds presented." Dkt. 60 at 4. Defendant's second motion for summary judgment does not raise any new factual issues that were not before the Ninth Circuit. Additionally, the court is not persuaded that the change in the law applicable in the D.C. Circuit is sufficient to justify ignoring the explicit language of the Ninth Circuit's memorandum

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disposition in this case. Accordingly, defendant's motion is TERMINATED.

The parties shall meet and confer and submit a stipulation and proposed order setting a briefing schedule for plaintiff's motion for class certification.

IT IS SO ORDERED.

Dated: June 6, 2018



PHYLLIS J. HAMILTON
United States District Judge