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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

GABRIEL H.T. LAU,
Plaintiff,

vs.

DEPARTMENT OF EDUCATION for the
GOVERNMENT OF GUAM,
Defendant.

CIVIL CASE NO. 10-00035

ORDER
re Application for Order to Show Cause

This matter is before the court on an Application for an Order to Show Cause (the “Application”), filed by the Plaintiff Gabriel H.T. Lau.¹ See ECF No. 93. The Application has been fully briefed, and the court does not believe that a hearing on the matter is necessary. Accordingly, the court issues the following Order denying the Application.

BACKGROUND

The Plaintiff was employed by the Defendant, Department of Education (“DOE”) of the Government of Guam, on or about August 12, 2008, and was subsequently terminated on November 25, 2008. Third Am. Compl. at ¶¶9 and 18, ECF No. 54.

¹ The Plaintiff is proceeding in this matter *pro se*, although he was previously represented by two separate counsel. Daniel Berman represented the Plaintiff from the filing of the Amended Complaint to the entry of the Stipulated Judgment. Thereafter, Joseph Razzano represented the Plaintiff from the filing of the Application to the court’s approval of his withdrawal following a breakdown in communications between counsel and his client. The court gave the Plaintiff an opportunity to retain a new attorney, but to date no new counsel has entered his appearance for the Plaintiff.

1 On December 30, 2010, the Plaintiff initiated this action against the Guam Department of
2 Education (“DOE”). *See* Compl.,² ECF No. 1. The parties ultimately entered into a Stipulation
3 for Settlement. *See* Stipulation to Judgment, Ex. A, ECF No. 86. Therein, the parties agreed, *inter*
4 *alia*, that DOE would place the Plaintiff on the eligibility list for DOE positions and that DOE
5 would not base any future hiring decisions relating to the Plaintiff’s application for future
6 employment on any prior terminations of the Plaintiff or on any of the Plaintiff’s past performance.
7 *Id.* at 6.

8 On September 24, 2013, the court dismissed the action and directed the Clerk of Court to
9 enter judgment consistent with the terms of the parties’ Stipulation for Settlement. *See* Order, ECF
10 No. 87. Judgment was thereafter entered that same date. *See* ECF No. 88.

11 On March 31, 2015, the Plaintiff filed the instant Application. *See* ECF No. 93. Therein,
12 the Plaintiff asserted that on February 21, 2014, he interviewed with the principal of J.P. Torres
13 Alternative School, and the principal recommended him for a position that same day.³ Lau Decl.
14 at ¶2, ECF No. 95. The Plaintiff claimed that on February 25, 2014, he was informed that his
15 “employment package was sent to [the] DOE Superintendent . . . for signature and approval, and
16 that such approval had occurred.”⁴ *Id.* at ¶3. On April 2, 2014, however, DOE Personnel
17 Administrator Antonette Muna Santos wrote to the Plaintiff to inform him that he had not been
18 selected for the math teacher position at J.P. Torres Alternative School. *See* Razzano Decl., Ex. C,
19

20 ² Eventually, a Third Amended Complaint was filed which asserted three causes of action:
21 (1) a violation of the Americans with Disabilities Act, (2) a violation of Title VII of the Civil
22 Rights Act, and (3) negligent and/or intentional infliction of emotional distress. *See* Third Am.
23 Compl., ECF No. 54.

24 ³ According to DOE, the interview actually occurred on February 28, 2014. *See* Santos
25 Decl. at ¶6, ECF No. 103.

26 ⁴ This date also varies slightly under DOE’s version of the events. DOE asserts that on
27 March 4, 2014, the Plaintiff “was informed that his selection for the [teaching] position was
28 contingent on him obtaining security clearance and on a review of the Suitability Determination
forma that he filled out as part of his employment application.” Santos Decl. at ¶7, ECF No. 103.
Plaintiff was also made aware that “the Superintendent . . . would make the final decision on
whether Mr. Lay would be selected for the position.” *Id.*

1 ECF No. 94. Accordingly, the Plaintiff filed the instant Application requesting an order that DOE,
2 through its Superintendent and the Personnel Administrator, appear and show cause why DOE
3 should not be compelled to fulfill its obligation under the Stipulation for Settlement.

4 On June 15, 2015, DOE filed an Opposition to the Application.⁵ See ECF No. 100.

5 On November 24, 2015, the Plaintiff filed a Reply Brief to DOE's Opposition. See ECF
6 No. 120.

7 DISCUSSION

8 A. Legal Standard

9 A district court has the inherent power to enforce a complete settlement agreement entered
10 into while the litigation is pending before it. *In re City of Equities Anaheim, Ltd.*, 22 F.3d 954, 957
11 (9th Cir. 1995); *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987). "Enforcement of a settlement
12 agreement . . . is more than just a continuation or renewal of the dismissed suit, and hence requires
13 its own basis for jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378
14 (1994). A district court lacks jurisdiction to enforce a settlement agreement following a dismissal
15 of the action unless the district judge either: (1) expressly in the dismissal order, retains jurisdiction
16 over the settlement agreement; or (2) incorporates the terms of the settlement agreement in the
17 dismissal order. *Id.* at 381.

18 In this case, the Order dismissing this action specially stated that judgment would be entered
19 "consistent with the terms of the parties' Stipulation for Settlement." Order, ECF No. 87. The
20 Stipulation for Settlement provided that this court "shall have jurisdiction to enforce the terms and
21 conditions in this Agreement even after the dismissal of the present action and subsequent Judgment
22 based on the terms and conditions set forth in this Agreement." Stipulation for Settlement at ¶N,
23 Ex. A to Stipulation to Judgment, ECF No. 86. Accordingly, the court retains jurisdiction to
24 enforce the terms fo the Settlement Agreement.

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27 ⁵ DOE's Opposition was untimely filed, however, in the interest of adjudicating matters
28 on their merits, the court excuses the belated filing and grants DOE'S motion for leave to file its
response to the Application after the deadline permitted under the Local Rules.

1 B. Analysis

2 The Application asserts that DOE violated certain provisions of the Stipulation for
3 Settlement wherein DOE agreed to the following:

4 DOE shall place Plaintiff on the eligibility list for DOE positions forthwith
upon the signature of all parties and counsel to this Agreement.

5 DOE shall not base any future hiring decisions relating to Plaintiff's
6 application for future employment with DOE on any prior terminations of Plaintiff
between the date of his initial hire through his termination on or about
November 25, 2008.

7 DOE shall not base any future hiring decisions relating to Plaintiff's
8 application for future employment on the basis of his past performance with
9 GPSS/DOE and/or any prior complaints about Plaintiff, between the date of his
initial hire with GPSS/DOE through the date of his termination on or about
November 25, 2008, up to and through the present.

10 Stipulation for Settlement at p.6, Ex. A to Stipulation to Judgment, ECF No. 86.

11 The Plaintiff contends that DOE is using his termination of November 2008 as the single
12 reason for barring him from future employment, which is contrary to the express language of the
13 Stipulation for Settlement.

14 DOE denies that it breached the Stipulation for Settlement. According to DOE, Plaintiff
15 was not selected for the teaching position because he intentionally provided false information on
16 the Suitability Determination form which is part of the application package. According to the
17 Declaration of DOE Personnel Services Administrator Antoneette Muna Santos, the Plaintiff's
18 Suitability Determination form "indicated that he was never discharged from employment for any
19 reason." Santos Decl. at ¶8, ECF No. 103, and Ex. 3 thereto. A review of the Plaintiff's personnel
20 file by DOE's Personnel Division, however, revealed that he had previously been terminated.
21 Santos Decl. at ¶8, ECF No. 103. Ms. Santos then sent the Plaintiff a letter dated on April 2, 2014,
22 stating:

23 Regretfully, this is to inform you of your non-selection based on DOE
24 Personnel Rule and Regulations that require the Superintendent to rescind an offer
25 of employment and/or reject an applicant who intentionally provides false
26 statements, deception, or fraud in the application process. Specifically, you
indicated on the Suitability Determination Form in item #1 that you have never been
discharged (fired) from employment for any reason (Attached). DOE records clearly
reflect that you were terminated from employment with the Department of
Education on November 26, 2008.

27 Your action to intentionally provide a false statement, deception, or fraud in
28 the application process has resulted in the rescinding an offer of employment and/or
your non-selection. **Please be clear that termination from previous employment**

1 **with the DOE was specifically not the basis for your non-selection.**

2 Santos Decl. at ¶9, ECF No. 103, and Ex. 4 thereto (emphasis added).

3 DOE contends that the Plaintiff perpetuated his lie in a letter dated April 9, 2014, which he
4 sent in response to Ms. Santos's April 2, 2014 letter. In his letter, the Plaintiff maintained his
5 "indication on the Suitability Determination [f]orm . . . that [he had] never been discharged from
6 employment for any reason was not a false statement, or fraud in the application process." *Id.*
7 at ¶10, ECF No. 103, and Ex. 5 thereto. The Plaintiff's letter further claimed that he had "no
8 intention whatsoever to provide a false statement, deception or fraud in the application process"
9 since his "discharged [sic] from employment had not yet been concluded by law under the civil case
10 # CV 10-00035." *Id.*

11 Based on the above facts, the court concludes that DOE did not breach the Stipulation for
12 Settlement. Although the Plaintiff insists DOE declined to hire him because of his prior termination
13 of November 2008, the evidence presented reveals that the Plaintiff was not selected for the position
14 because the Plaintiff provided false information on the Suitability Determination form. The form
15 specifically asked whether the Plaintiff had been "discharged (fired) from employment for any
16 reason" within the past seven years. *See* Suitability Determination, Ex. 3 to Santos Decl., ECF No.
17 103. The Plaintiff marked the "No" box, which was clearly false since he had previously been
18 terminated from DOE in November 2008. The Plaintiff's Application confirms that the Plaintiff
19 was aware of the termination: "the termination was detailed in the complaint, detailed in discovery,
20 and was acknowledged in the settlement agreement." Application at 4, ECF No. 93. Despite such
21 knowledge, Plaintiff knowingly lied on the Suitability Determination form and continued to lie in
22 his April 9, 2014 letter to Ms. Santos. The court finds that the Plaintiff's termination was not the
23 basis for his non-selection for the position. Rather, Plaintiff's untruthfulness in the employment
24 application process was the only reason DOE rejected him for the teaching position. Accordingly,
25 the court determines that there was no breach of the parties' Stipulation for Settlement.

26 CONCLUSION

27 Having found that DOE did not violate the Stipulation for Settlement, the court must deny
28 the Plaintiff's Application. Nothing in this Order precludes the Plaintiff from re-applying for other

1 positions with DOE. In fact, DOE encouraged the Plaintiff to re-apply for other positions for which
2 he may qualify. *See Santos Decl.* at ¶¶11-12 and Exs. 6 and 7 thereto. The Plaintiff must just
3 ensure that all information provided in any future employment application and related forms are
4 truthful.



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6 /s/ Frances M. Tydingco-Gatewood
7 Chief Judge
8 Dated: Mar 31, 2016
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