

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 18-cv-02514-WJM-SKC

YOUSSEF MOUDDEN,

Plaintiff,

v.

THE UNIVERSITY OF COLORADO BOULDER, through
its Board, THE REGENTS OF THE UNIVERSITY OF
COLORADO, a body corporate,
PHILIP DISTEFANO, in his official capacity,
JEFFREY FORBES, in his official capacity,
JOHN CASSANO, in his official and individual capacities,
CORA RANDALL, in her official and individual capacities, and
MELISSA NIGRO, in her official capacity,

Defendants.

~~[PROPOSED]~~ SCHEDULING ORDER

**1. DATE OF CONFERENCE
AND APPEARANCES OF COUNSEL AND PRO SE PARTIES**

The Scheduling Conference in the above-captioned matter took place on Tuesday, January 8, 2019, at 10:30 am in Courtroom C-204 in the Byron G. Rodgers United States Courthouse, 1929 Stout Street, Denver, Colorado. Plaintiff, Youssef Moudden appeared *pro se*, 1225 Linden Ave., Apt. 3, Boulder, Colorado 80304, Phone (720) 290-8272. All Defendants were represented by Donald A. Kaade, Office of University Counsel — Litigation, 1800 Grant St., Denver, Colorado 80203, Phone (303) 860-5691.

2. STATEMENT OF JURISDICTION

The Parties agree that jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 1983, and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. By this agreement, none of the Defendants waive the right to challenge subject matter jurisdiction based on any immunities they may have under the law.

3. STATEMENT OF CLAIMS AND DEFENSES

a. Plaintiff(s):

Defendants engaged in blatant racial discrimination practices against Plaintiff. When Plaintiff resisted their conduct he was met with ridicule and humiliation. Defendants then conspired to subject Plaintiff to a hostile work environment that culminated in him losing his employment.

Plaintiff worked at the University of Colorado, Boulder as a research associate since June 2007 until his employment ended in December 2016. He attempted repeatedly to obtain teaching positions within the same University without success. While he was deliberately excluded from all open teaching vacancies, other candidates have always been notified of all vacancies and invited to apply. Plaintiff used a different identity named “Jason McLeif” to inquire about teaching vacancies and to his astonishment, his new identity has received a far better treatment.

Plaintiff's attempts at addressing the blatant racial practices against him were met with ridicule, humiliation and a hostile work environment. Defendants subsequently used a total of 9 different pretexts to explain why Plaintiff was excluded from the same teaching position while other candidates were considered.

All of Plaintiff's claims are backed with evidence.

b. Defendant(s):

In June 2007, the University hired Plaintiff as a Research Associate in the Department of Aerospace Engineering Sciences. When grant funding for the position ran out, Plaintiff requested that the University terminate his position so he could apply for unemployment. Based on this request, the University terminated Plaintiff's Research Associate position in February 2016.

In July 2016, a different University department — the Department of Atmospheric and Oceanic Sciences (ATOC) — hired Plaintiff as a part-time, contract lecturer to teach the Fall 2016 section of an introductory-level course. ATOC hires such part-time lecturers on an as-needed basis when core-faculty are unavailable to teach a course. Plaintiff's compensation for the semester was \$7,000.

Over the course of the Fall 2016 semester, Defendants received (1) complaints from students about Plaintiff's class and (2) a complaint from a student regarding an inappropriate and uncomfortable interaction during which Plaintiff (a) asked about the student's dating relationships; (b) asked whether she had any tattoos; (c) invited her to watch a movie with him; and (d) grabbed her hand and arm. Given these complaints and the number of other qualified individuals interested in serving as contract lecturers, although Plaintiff expressed interest in serving as an ATOC lecturer the following Spring 2017 semester, Defendants decided not to re-hire Plaintiff.

Regarding Plaintiff's Title VII claim ("First Claim for Relief") and Plaintiff's Colorado Antidiscrimination Act (CADA) claim ("Second Claim for Relief"), Plaintiff failed to exhaust his administrative remedies. Further, Defendants had legitimate, non-discriminatory reasons for not hiring or rehiring Plaintiff as a contract lecturer in the ATOC department.

With respect to Plaintiff's § 1983 equal protection claim ("Third Claim for Relief"), all of Plaintiff's failure-to-hire allegations are time-barred, except his allegation that Defendants failed to re-hire him as a contract lecturer for the Spring 2017 semester. And with respect to the Spring 2017 semester, Plaintiff has failed to allege facts supporting an inference that Defendants failed to re-hire him because of his race and/or national origin. Rather, Defendants decided not to re-hire Plaintiff as a contract lecturer because of his performance and student complaints. Further, Plaintiff's claims against Defendants Cassano and Randall in their individual capacities are barred by the doctrine of qualified immunity.

Lastly, Plaintiff's breach of contract ("Fourth Claim for Relief") and CADA claims are barred by the University's 11th Amendment immunity. And to the extent Plaintiff had any contractual relationship with the University, such contract was with the Board of Regents, not Defendants DiStefano, Cassano, Randall, Forbes, or Nigro.

4. UNDISPUTED FACTS

1. At this time, the Parties cannot agree on any undisputed facts.

5. COMPUTATION OF DAMAGES

Back pay for lost wages and benefits until the trial date: \$394,624

Noneconomic damages (emotional suffering and humiliation): \$300,000

Punitive damages: \$ 500,000

Plaintiff also seeks to recover compensatory damages, including but not limited to those for emotional suffering, liquidated damages, punitive and exemplary damages as allowed by law, injunctive and declaratory relief, pre-judgment and post-judgment interest at the highest lawful

rate, court and other fees and costs as available by law, and any such further relief allowable by law or as justice requires.

6. REPORT OF PRECONFERENCE DISCOVERY AND MEETING UNDER FED. R. CIV. P. 26(f)

a. Date of Rule 26(f) meeting:

The Parties held a Rule 26(f) meeting on December 17, 2018.

b. Names of each participant and party he/she represented.

Plaintiff participated on behalf of himself, *pro se*. Donald A. Kaade participated on behalf of all Defendants.

c. Statement as to when Rule 26(a)(1) disclosures were made or will be made.

The Parties will make their initial disclosures no later than January 25, 2019.

d. Proposed changes, if any, in timing or requirement of disclosures under Fed. R. Civ. P. 26(a)(1).

Pursuant to the Hon. William J. Martinez's "Initial Discovery Protocols in Certain Employment Cases," the Parties shall make their initial disclosures within 30 days after Defendants submit a responsive pleading or motion. Plaintiff filed an Amended Complaint on December 11, 2018, and Defendants filed a motion to dismiss the same on December 26, 2018.

e. Statement concerning any agreements to conduct informal discovery:

The Parties have not reached any agreements to conduct informal discovery.

f. Statement concerning any other agreements or procedures to reduce discovery and other litigation costs, including the use of a unified exhibit numbering system.

The Parties have agreed to use a unified exhibit numbering system.

- g. Statement as to whether the parties anticipate that their claims or defenses will involve extensive electronically stored information, or that a substantial amount of disclosure or discovery will involve information or records maintained in electronic form.

Plaintiff anticipates his claims will involve extensive electronically stored information or records and a substantial amount of disclosure or discovery will involve information or records maintained in electronic form by the Defendants. In addition, Plaintiff has some information in electronic form. The parties will cooperate to determine the most efficient way to exchange such documents.

Defendants do not anticipate that this case will involve extensive electronically stored information.

- i. *Steps the parties have taken or will take to preserve electronically stored information:*

Each party has taken steps to preserve ESI that may be relevant to this litigation. The Parties agree to preserve and to not destroy or modify ESI and all metadata that can reasonably be anticipated to be relevant to this litigation.

- ii. *Steps the parties have taken or will take to facilitate discovery of electronically stored information:*

The Parties will produce electronic documents as searchable PDF or TIFF images. Upon request, for specific documents, the Parties will produce the documents in their native form along with associated metadata. The Parties do not waive any right to request that ESI be provided in a different format at a later date, and the producing party shall comply with all reasonable requests to do so.

- iii. *Steps the parties have taken to limit the associated discovery*

costs and delay:

The Parties will be guided by the Sedona Principles regarding discovery of ESI. The Parties agree to confer with each other in order to facilitate the discovery of ESI in the most efficient and effective way possible. The Parties agree that all documents will be produced in a searchable PDF or TIFF format. When a party desires that a document be produced with its metadata, the requesting party shall specifically identify that document and the relevant metadata sought, so that the document can be produced with the metadata intact.

iv. Steps the parties have taken to avoid discovery disputes relating to electronic discovery:

The Parties agree to act in good faith to facilitate the discovery of all relevant, properly requested, non-privileged, and properly discoverable ESI.

v. Steps the parties have taken to address claims of privilege or of protection as trial-preparation materials after production of computer-generated records:

The Parties will maintain relevant ESI that is withheld due to privilege or the work product doctrine through trial and any appeals. All such documents withheld shall be noted on a privilege log. The Parties agree that there shall not be any waiver of the attorney-client privilege, attorney work product, or any other privilege should there be an inadvertent disclosure of privileged information contained in ESI produced in response to a discovery request, as provided by Fed. R. Civ. P. 26. The Parties are taking reasonable steps to protect against inadvertent disclosure of materials protected by the work product doctrine and attorney-client privilege (“Protected Materials”). Any party that discovers that it has sent or received Protected Materials

shall immediately notify the opposing party so that appropriate steps to return or destroy the Protected Materials may be taken. By operation of the Parties' agreement and Court Order, the parties are specifically afforded the protections of Fed. R. Evid. 502(d) and (e).

- h. Statement summarizing the parties' discussions regarding the possibilities for promptly settling or resolving the case.

The Parties have discussed the possibility of promptly settling or resolving this case. At this point, the Parties do not think it is likely that this case will reach an early settlement or resolution through alternate dispute resolution. The Parties will report the result of any similar future meeting to the magistrate judge within 14 days of such a meeting.

7. CONSENT

All Parties have not consented to the exercise of jurisdiction of a magistrate judge.

8. DISCOVERY LIMITATIONS

- a. Modifications which any party proposes to the presumptive numbers of depositions or interrogatories contained in the Federal Rules.

~~Plaintiff proposes expanding the number of depositions to 12 per side (5 named defendants plus 7 others). Plaintiff's position is that 7 depositions in addition to the 5 named defendants is not an excessive number.~~

~~Defendants propose limiting the number of depositions to 7 per side (5 named defendants plus 2 others). Defendants' position is that Plaintiff's request for 12 depositions is not proportional to the needs of this case, given that Plaintiff's compensation as a part-time, contract lecturer was \$7,000 per semester.~~ THE PARTIES ARE LIMITED TO 8 DEPOSITIONS PER SIDE.

- b. Limitations which any party proposes on the length of depositions.

The Parties agree to the standard limitation of 7 hours for any deposition without leave of the court, as described in Fed. R. Civ. P. 30(d). 4 HOURS FOR NON-PARTIES.

- c. Limitations which any party proposes on the number of requests for production and/or requests for admission.

The Parties agree to the following limits on requests for production and requests for admission: 25 requests for production and 25 requests for admission.

- d. Other Planning or Discovery Orders

~~The Parties plan to submit a proposed protective order~~ to address any confidential information that may be produced in this matter including student information and employment information of Plaintiff and Defendants. THE PARTIES SHALL SUBMIT THE PROPOSED PROTECTIVE ORDER BY JANUARY 18, 2019.

9. CASE PLAN AND SCHEDULE

- a. Deadline for Joinder of Parties and Amendment of Pleadings: Friday, February 22, 2019.
- b. Discovery Cut-off: July 8, 2019.
- c. Dispositive Motion Deadline: August 7, 2019.
- d. Expert Witness Disclosure
 - 1. The parties shall identify anticipated fields of expert testimony, if any.
 - i. Plaintiff anticipates retaining an expert regarding his economic damages, and an expert regarding his noneconomic damages.
 - ii. Defendants: Defendants will only call rebuttal experts if needed.
 - 2. Limitations which the parties propose on the use or number of expert witnesses.

The Parties propose a limitation of two (2) experts per side.

3. The parties shall designate all experts and provide opposing counsel and any pro se parties with all information specified in Fed. R. Civ. P. 26(a)(2) on or before May 1, 2019. This includes disclosure of information applicable to “Witnesses Who Must Provide A Written Report” under Rule 26(a)(2)(B) and information applicable to “Witnesses Who Do Not Provide a Written Report” under Rule 26(a)(2)(C).

4. The parties shall designate all rebuttal experts and provide opposing counsel and any pro se party with all information specified in Fed. R. Civ. P. 26(a)(2) on or before May 31, 2019. This includes disclosure of information applicable to “Witnesses Who Must Provide A Written Report” under Rule 26(a)(2)(B) and information applicable to “Witnesses Who Do Not Provide a Written Report” under Rule 26(a)(2)(C).

Notwithstanding the provisions of Fed. R. Civ. P. 26(a)(2)(B), no exception to the requirements of the Rule will be allowed by stipulation unless the stipulation is in writing and approved by the court. In addition to the requirements set forth in Rule 26(a)(2)(B)(I)-(vi), the expert’s written report also must identify the principles and methods on which the expert relied in support of his/her opinions and describe how the expert applied those principles and methods reliably to the facts of the case relevant to the opinions set forth in the written report.

- e. Identification of Persons to Be Deposed:
 1. Plaintiff plans on deposing:
 1. Cora E. Randall (7 hours)
 2. Giuliana E. Turi (7 hours)

3. Jason English (7 hours)
4. Jeffrey M. Forbes (7 hours)
5. John Cassano (7 hours)
6. Melissa A. Nigro (7 hours)
7. Tashana J. Taylor (7 hours)
8. Elizabeth Cassano (7 hours)
9. Garland L. Farmer (7 hours)
10. Garrett P. Rue (7 hours)
11. Derek P. Brown (7 hours)
12. Philip P. DiStefano (7 hours)

2. Defendants
 - i. Plaintiff, Youssef Moudden (7 hours)
 - ii. Any experts Plaintiff retains
 - iii. Other witnesses identified in discovery

- f. Deadline for Interrogatories: Friday, May 24, 2019
- g. Deadline for Requests for Production of Documents and/or Admissions: Friday, May 24, 2019

10. DATES FOR FURTHER CONFERENCES

- a. Status conferences will be held in this case at the following dates and times:

JOINT STATUS REPORT DUE 4/15/19_____.

- b. A final pretrial conference will be held in this case on OCTOBER 7, 2019 at o'clock 10:00 a.m. A Final Pretrial Order shall be prepared by the parties and submitted to the court no later than seven (7) days before the final pretrial conference.

11. OTHER SCHEDULING MATTERS

- a. The Parties have not been able to agree on the number of depositions. Plaintiff proposes expanding the number of depositions to 12 per side. Defendants propose limiting the number of depositions to 7 per side.
- b. Plaintiff anticipates a 6-day jury trial. Defendants anticipate a 5-day jury trial.

- c. None of the pretrial proceedings would be more efficiently or economically conducted in the District Court's facilities at 212 N. Wahsatch Street, Colorado Springs, Colorado 80903-3476; Wayne Aspinall U.S. Courthouse/Federal Building, 402 Rood Avenue, Grand Junction, Colorado 81501-2520; or the U.S. Courthouse/Federal Building, 103 Sheppard Drive, Durango, Colorado 81303-3439.

12. NOTICE TO COUNSEL AND PRO SE PARTIES

The parties filing motions for extension of time or continuances must comply with D.C.COLO.LCivR 6.1(c) by submitting proof that a copy of the motion has been served upon the moving attorney's client, all attorneys of record, and all *pro se* parties.

Counsel will be expected to be familiar and to comply with the Pretrial and Trial Procedures or Practice Standards established by the judicial officer presiding over the trial of this case.

With respect to discovery disputes, parties must comply with D.C.COLO.LCivR 7.1(a).

Counsel and unrepresented parties are reminded that any change of contact information must be reported and filed with the Court pursuant to the applicable local rule.

13. AMENDMENTS TO SCHEDULING ORDER

This Scheduling Order may be altered or amended only upon a showing of good cause.

DATED at Denver, Colorado, this 8th day of January, 2019.

BY THE COURT:

s/ S. Kato Crews
United States Magistrate Judge

APPROVED:

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