

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

No.	2:19-cv-01702-ODW (JCx)	Date	April 26, 2022
Title	<i>S.W. v. Board of Education for Los Angeles Unified School District et al.</i>		

Present: The Honorable	Otis D. Wright, II, United States District Judge
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Sheila English	Not reported	N/A
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Deputy Clerk	Court Reporter / Recorder	Tape No.
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Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
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Not present	Not present
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Proceedings (In Chambers):

Order DISMISSING Case for Lack of Prosecution

In July 2021, over eight months ago, the Court continued trial of this matter to May 24, 2022. (Min. Order, ECF No. 46.) In that Minute Order, the Court noted that the parties had failed for the second time to comply with the Court’s orders regarding timely filing of pretrial documents. The Court indicated in a bold paragraph at the end of the Minute Order that “the pretrial documents identified above must be filed no later than April 25, 2022. Failure to timely comply with this Order may result in dismissal of this action, without further warning, for lack of prosecution and failure to comply with Court orders.” (*Id.* at 2.) This was not the first such warning the Court had provided the parties. (*See* Order Cont. Dates, ECF No. 45.)

On April 25, 2022, the day the pretrial documents were due, Plaintiff filed two documents with the Court. The first is a stipulation to continue the trial and pretrial deadlines. (Stip., ECF No. 47.) The second is a statement regarding the status of settlement negotiations. (Statement, ECF No. 48.)

Today is April 26, 2022. As of today’s date, the Court has not granted the parties’ stipulation. Accordingly, whether or not the Court would grant the parties’ stipulation, pretrial documents are once again due, and the parties have, for the third time now, failed to file their pretrial documents by the deadline ordered by the Court. Pursuant to the Court’s prior warning, this is grounds for dismissal of the action.

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Moreover, taken together, the stipulation and the settlement statement do not provide a sufficient explanation for the parties’ third failure to file pretrial documents. The Stipulation indicates that the parties were unable to prepare their pretrial documents due to:

Plaintiff’s counsel being engaged in a two-week jury trial (began on April 18, 2022 and recently settled on the third-day of trial) and Ninth Circuit Opening Brief on April 12, 2021, and beginning a criminal trial in Los Angeles Superior Court on April 26, 2022. Additionally, Defense counsel has been engaged in due process hearings before the Office of Administrative Hearings.

(Stip. ¶ 1.) The parties proceed to ask for sixty more days to conduct “such depositions”—although it is entirely unclear to which depositions this refers. (Stip. ¶ 2.) The parties then refer to “unprecedented external factors” preventing trial preparation, though it is unclear to what this refers, other than counsels’ own seemingly ordinary obligations as practicing attorneys. (Stip. ¶ 4.)

The settlement statement simply indicates that the parties participated in an unsuccessful mediation on July 9, 2020 (almost two years ago), followed by generalized assertions, devoid of further dates or details, suggesting that Defendants are considering a recent settlement demand. (Statement ¶¶ 1–2.)

These statements do not constitute good cause why the parties remain unprepared for trial after having been provided several months to conduct depositions and prepare their pretrial documents, after having already twice missed the deadline to do so and having been informed by the Court that a third failure would result in dismissal. Most attorneys work on multiple matters at a time, and if due to his or her caseload an attorney is unable to find any time at all over the course of eight or more months to work on settling a case, it is reasonable to question whether that attorney is able to diligently litigate the matter. Model Rules of Prof’l Conduct r. 1.3 (Am. Bar Ass’n 1983).

Federal courts try cases; federal courts are not holding pens that preserve complaints while parties take multiple years to reach a settlement of straightforward actions such as this, where only a single-student, single-incident set of claims is at issue. The incident in question

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took place almost five years ago, and the evidence and testimony only continue to grow stale as the parties delay resolution of this controversy. (*See* Compl. ¶ 16, ECF No. 1.)

For all these reasons, the Court finds no justification for the failure to file pretrial documents and dismisses the case on that ground. For these same reasons, the Court would, in the alternative, deny the stipulation to continue the trial on its merits, and reach the same conclusion regarding dismissal.

Thus, pursuant to the Court’s clear directive in its July 6, 2021 Minute Order, along with the Scheduling and Case Management Order providing that “[i]f counsel fail to file the required Pre-Trial documents . . . and such failure is not otherwise satisfactorily explained to the Court . . . the cause shall stand dismissed for failure to prosecute if such failure occurs on the part of the plaintiff,” (Scheduling & Case Management Order 22–23, ECF No. 39), the Court hereby **DISMISSES** this case. The trial and all pretrial dates and deadlines are **VACATED**. The Clerk of the Court shall close the case.

IT IS SO ORDERED.

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