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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LAWRENCE MARINO, an individual

Plaintiff,

vs.

AKAL SECURITY, INC., a New Mexico Corporation conducting business as a foreign corporation in California;
JAMES MOSIER, an individual;
LARRY HOMHENICK, an individual;
DOES 1-50, inclusive,

Defendants.

CASE NO. CV07 – 3931 VBF (CWx)

[Assigned to Honorable District Judge Valerie Baker Fairbank
[Courtroom – 9]

DEFENDANT’S FINDINGS OF FACTS AND CONCLUSIONS OF LAW

TO THE HONORABLE COURT, TO PLAINTIFF, AND HIS COUNSEL OF RECORD:

Defendant Akal Security, Inc. (hereinafter referred to as “AKAL”), hereby submits the following Findings of Facts and Conclusions of Law.

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1 I.

2 **FINDINGS OF FACTS**

3 1. AKAL is a contractor of the United States Marshals Service
4 (“USMS”).

5 2. AKAL and the United States Marshals Service (“USMS”) entered into
6 a contract whereby AKAL provides security services within the Ninth Circuit
7 (“Ninth Judicial Circuit contract”).

8 3. Plaintiff Lawrence Marino (hereinafter “Mr. Marino”) was hired by
9 AKAL in about 2000, as a Court Security Officer (“CSO”) for the United States
10 District Court, Central District of California.

11 4. Mr. Marino was assigned to work at the federal courthouse located at
12 312 Spring Street, in downtown Los Angeles.

13 5. AKAL required Marino to meet certain CSO Performance Standards
14 as outlined in the current contract between the USMS and AKAL.

15 6. Marino was employed pursuant to the Collective Bargaining
16 Agreement (“CBA”) between AKAL and the Court Security Officers Union –
17 Central District of California (“CSOU-CDC”) (hereinafter the “Union”).

18 7. Between about June 2002 through 2005, Mr. Marino allegedly wrote
19 letters to various members of Congress and government entities, including the FBI,
20 in which he accused AKAL and its owners of criminal activity and misconduct.

21 8. During Marino’s employment with AKAL, the United States
22 Department of the Army (“the Army”), ordered Marino to report to active duty in
23 May 2005.

24 9. At the time he was ordered to report to active duty in 2005, Marino’s
25 work shift was Tuesday through Saturday, commencing at 5:30 a.m., with days off
26 on Sundays and Mondays.

27 10. In about May 2005, AKAL placed Marino on a military leave of
28 absence.

11. On or about October 2, 2005, Marino notified James Mosier, AKAL’s

1 Site Supervisor, of his intent to return to work on November 7, 2005.

2 12. On or about October 12, 2005, AKAL notified Marino that he would
3 be permitted to resume to work under the same work schedule that he had prior to
4 his military leave of absence.

5 13. In November 2005, Marino returned to work after his six-month
6 military leave of absence: Marino retained his seniority and resumed his duties
7 under the position he held prior to his military leave of absence.

8 14. On or about November 15, 2005, CSO Dennis Noble and CSO James
9 Timms observed Marino in the down room of the Spring Street federal courthouse
10 drinking a beverage from what appeared to be a beer bottle labeled *Coors*.

11 15. On November 16, 2005, Lead CSO Mark Del Mar wrote a memo to
12 Site Supervisor Jim Mosier informing him of the CSOs' observations.

13 16. The USMS instructed AKAL to investigate the allegations against
14 Marino and AKAL immediately launched an investigation.

15 17. On November 18, 2005, Mr. Mosier met with Marino to interview
16 him about the incident. Initially, Marino refused to cooperate with the
17 investigation and at one point Marino stood up from a chair, walked to Mosier's
18 desk, slammed both fists down on the desk, put his face within a few inches of
19 Mosier's face and shouted "I am not going to say a thing to you without my
20 attorney present, now you do what you have to do."

21 18. AKAL learned through its investigation that the Coors beverage
22 consumed by Mr. Marino on November 15, 2005 contained a small amount of
23 alcohol and is only sold to persons over the age of 21 due to its alcohol content.

24 19. AKAL's investigation disclosed that Retired Chief Deputy Robert
25 Masaitis and Mr. Mosier had previously counseled Mr. Marino about drinking such
26 non-alcoholic beverages because they contain alcohol, smell like beer and may be
27 prohibited in the federal courthouse.

28 20. Based on the results of AKAL's investigation, AKAL recommended
to the USMS that Marino be suspended for 30-days and given a final written

1 warning.

2 21. The USMS did not agree with AKAL's recommended course of
3 action because Marino had been counseled for the same offense on a previous
4 occasion and had violated multiple rules and regulations.

5 22. On or about December 20, 2005, the USMS ordered AKAL to
6 "permanent[ly] remove" Marino from the contract because of Marino's "lack of
7 professional conduct" and multiple violations of CSO Standards of Conduct.

8 23. As a USMS contractor, AKAL was legally required to comply with
9 the USMS's mandate.

10 24. The CBA, applicable to Marino's employment, required that AKAL
11 terminate any CSO who was removed from the contract by the government or
12 whose credentials were revoked by the USMS. Specifically, section 6.1(A) of the
13 CBA reads: "[a]fter completion of the probationary period, as specified in section
14 2.5, no Employee shall be dismissed or suspended without just cause. Just cause
15 shall include any action or order of removal of an employee from working under
16 the contract by the U.S. Government, or revocation of required CSO credentials by
17 the USMS under the removal of Contractor employee provision in Section H-3 of
18 Contract DJMS-05-D-002, or its successor, between the US Marshals Service, US
19 Attorney's Office, members of the Judiciary and other and Akal Security, Inc.

20 25. On or about December 21, 2005, in accordance with the dictates of the
21 CBA, AKAL terminated Marino's employment with AKAL.

22 II.

23 CONCLUSIONS OF LAW

24 1. Defendant is entitled to judgment as a matter of law to Plaintiff's first
25 claim for retaliation and wrongful termination for whistle-blowing in violation of
26 Cal. Lab. §1102.5 as Plaintiff has been unable to establish a *prima facie* case of
27 retaliation, i.e., that Plaintiff (1) engaged in a protected activity, (2) was thereafter
28 subjected to an adverse employment action by AKAL, and (3) there was a causal
link between the protected activity and the adverse employment action. *Patten v.*

1 *Grant Joint Union High School Dist.*, 134 Cal.App.4th 1378, 1384 (2005). *Patten*,
2 *supra*, 134 Cal.App.4th at 1387; *citing Yanowitz v. L'oreal USA, Inc.*, 36 Cal.4th
3 1028, 1036 (2005). Also, Plaintiff cannot establish the required causal connection
4 between any of his alleged protected activities and his purported adverse
5 employment actions. *Morgan v. Regents of the Univ. of Calif.*, 88 Cal.4th 52, 69-70
6 (2000). Even if Plaintiff could establish a *prima facie* case of retaliation, the
7 findings of facts establish that AKAL terminated Plaintiff's employment for a
8 legitimate, non-retaliatory reason.

9 6. Defendant is entitled to judgment as a matter of law to Plaintiff's
10 second claim for retaliation and wrongful termination in violation of public policy
11 because it is entirely premised on Plaintiff's flawed statutory claim under Cal. Lab.
12 §1102.5. *See e.g. Hanson v. Lucky Stores, Inc.*, 74 Cal. App. 4th 215, 229 .
13 (1999); *DeHorney v. Bank of America National Trust & Savings Ass'n*, 879 F. 2d
14 459, 465 (9th Cir. 1989); *Jenkins v. MCI Telecommunications Corp.*, 973 F. Supp.
15 1133, 1137 (C.D. Cal. 1997).

16 7. Defendant is entitled to judgment as a matter of law to Plaintiff's third
17 claim for wrongful termination in violation of public policy because it is entirely
18 premised on Plaintiff's flawed fourth claim alleging a violation of USERRA. *See*
19 *DeHorney v. Bank of America National Trust & Savings Ass'n*, 879 F. 2d 459, 465
20 (9th Cir. 1989); *Jenkins v. MCI Telecommunications Corp.*, 973 F. Supp. 1133,
21 1137 (C.D. Cal. 1997).

22 8. Defendant is entitled to judgment as a matter of law to Plaintiff's
23 fourth claim for wrongful termination in violation of USERRA because the
24 findings of facts establish that Plaintiff's termination was not motivated by
25 Plaintiff's military service. *Leisek v. Brightwood Corp.*, 278 F.3d 895, 898 (9th
26 Cir. 2001).

27 9. Defendant is entitled to judgment as a matter of law to Plaintiff's fifth
28 claim for breach of contract as Plaintiff abandoned that claim prior to trial (*see*
Plaintiff's Pretrial Conference Order, filed January 16, 2009, document 93), and

1 Plaintiff presented no argument or evidence to support that claim at trial.

2 10. Defendant is entitled to judgment as a matter of law to Plaintiff's sixth
3 claim for breach of the Collective Bargaining Agreement because the findings of
4 fact establish no breach of the Collective Bargaining Agreement by Defendant
5 Akal.

6 11. Defendant is entitled to judgment as a matter of law to Plaintiff's
7 seventh claim for relief for breach of the implied covenant of good faith and fair
8 dealing because there the findings of fact establish no evidence in support of the
9 elements of this claim. See CACI 2423.

10
11 DATED: February 4, 2009

GORDON & REES LLP

12
13 By: _____

14 JOSHUA B. WAGNER
15 Attorney for Defendant
16 AKAL SECURITY, INC.

17 IT IS SO ORDERED BY THE COURT.
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20 DATED: February 10, 2009

Valerie Baker Fairbank

21 Honorable Valerie Baker Fairbank
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