

1 Cir. 2006). The law is clearly settled that a public employee is entitled to First
2 Amendment protection if, *inter alia*, the employee speaks as a private citizen – that is,
3 outside the course and scope of employment. *Garcetti v. Ceballos*, 547 U.S. 410, 418
4 (2006). The law is, also, clearly settled that a public employee is not entitled to First
5 Amendment protection if her speech was made within the course and scope of
6 employment. *Garcetti*, 547 U.S. at 418.

7 Accordingly, qualified immunity shields Defendants, here, from liability if
8 Plaintiff’s speech to Officer Durfee was within the course and scope of her
9 employment. *See Garcetti*, 547 U.S. at 418. Even in the light most favorable to
10 Plaintiff and drawing all reasonable inferences in her favor, there was insufficient
11 evidence to support a finding that Plaintiff spoke as a public citizen and not within the
12 course and scope of her government employment. *See Hagen v. City of Eugene*, 736
13 F.3d 1251, 1257-1260 (9th Cir. 2013). Consequently, Defendants are entitled to
14 qualified immunity as to Plaintiff’s speech to Officer Durfee. *See Garcetti*, 547 U.S.
15 at 418.

16 Moreover, Plaintiff failed to introduce sufficient evidence to establish an element
17 of her claim of First Amendment retaliation – that she spoke as a private citizen –
18 further entitling Defendants to a judgment as a matter of law. *See Eng v. Cooley*, 552
19 F.3d 1062, 1071 (9th Cir. 2009).

20 The Court previously determined that Defendants were entitled to qualified
21 immunity for their decision to consider Plaintiff’s File Notes to support, in whole or
22 in part, their decision to terminate Plaintiff. Thus, Plaintiff lacks a viable basis to
23 support her First Amendment retaliation claim.

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25 Accordingly,

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27 **It is Ordered** that Defendants’ motion for judgment as a matter of law be, and
28 hereby is, **Granted**.

