

1 J. AL LATHAM, JR. (SB# 071605)
 2 allatham@paulhastings.com
 3 PAUL, HASTINGS, JANOFSKY & WALKER LLP
 4 515 South Flower Street
 5 Twenty-Fifth Floor
 6 Los Angeles, CA 90071-2228
 7 Telephone: (213) 683-6000
 8 Facsimile: (213) 627-0705

9 Attorneys for Defendants
 10 PACIFIC BELL TELEPHONE COMPANY, INC.,
 11 SHANE SPENCER, and ALAN BROWN

12 UNITED STATES DISTRICT COURT
 13 EASTERN DISTRICT OF CALIFORNIA

14 BLAKE SMITH,
 15 Plaintiff,

16 vs.

17 PACIFIC BELL TELEPHONE COMPANY,
 18 INC., AT&T COMMUNICATIONS OF
 19 CALIFORNIA, INC., SBC TELECOM, INC.,
 20 COMMUNICATIONS WORKERS OF
 21 AMERICA LOCAL 9333 UNION, AFL-CIO,
 22 COMMUNICATIONS WORKERS OF
 23 AMERICA DISTRICT 9 UNION AFL-CIO,
 24 SHANE SPENCER, an individual, ALAN
 25 BROWN, an individual and DOES 1-100,

26 Defendants.

CASE NO. 1:06-CV-01756-OWW-DLB

**ORDER GRANTING MOTION FOR
 SUMMARY JUDGMENT BY
 DEFENDANTS PACIFIC BELL
 TELEPHONE COMPANY, SHANE
 SPENCER, AND ALAN BROWN**

Judge: Honorable Oliver W. Wanger

(Submitted pursuant to Memorandum Decision
 entered August 12, 2009)

1 The Motion for Summary Judgment by Defendants Pacific Bell Telephone
2 Company, Shane Spencer, and Alan Brown came on for hearing on September 29, 2008, before
3 this Court, the Honorable Oliver W. Wanger presiding. Defendants Pacific Bell Telephone
4 Company, Shane Spencer, and Alan Brown appeared through their counsel, J. Al Latham, Jr. of
5 Paul, Hastings, Janofsky & Walker LLP. Plaintiff appeared through his counsel, Justin Thomas
6 Allen, Esq.

7
8 The Court, having read and considered all papers properly before the Court, and the
9 oral arguments presented, hereby ORDERS that the Motion for Summary Judgment by Defendants
10 Pacific Bell Telephone Company, Shane Spencer, and Alan Brown is GRANTED in its entirety,
11 for the following reasons:

12
13 1. Summary judgment is GRANTED as to Plaintiff's Third Cause of Action
14 for breach of contract because Plaintiff cannot maintain this cause of action unless he can establish
15 that the Union Defendants breached their duty of fair representation. The Court having separately
16 granted the Union Defendants' Motion for Summary Judgment on Plaintiff's Fifth Cause of Action
17 for breach of the duty of fair representation, Plaintiff cannot meet this burden as a matter of law.

18
19 2. Summary judgment is GRANTED as to Plaintiff's Sixth Cause of Action
20 for defamation by slander and "blacklisting" because Plaintiff cannot establish that the statements
21 allegedly made by Defendants Brown and Spencer were made with actual malice, as is necessary
22 to defeat the common interest privilege to which the statements were subject under Cal. Civ. Code
23 § 47(c). Plaintiff failed to create a triable issue of fact as to whether the disputed statements were
24 made with actual malice or that they were in any way related to a prospective employer.

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Court’s further reasoning and its rulings on Defendants’ motions to strike and the parties’ objections are set out in the two Memorandum Decisions regarding Defendants’ Summary Judgment Motions, entered August 12, 2009, and incorporated by this reference.

IT IS SO ORDERED.

DATED: August 20, 2009

 /s/ OLIVER W WANGER
The Honorable Oliver W. Wanger
United States District Court Judge