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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN D. JOHNSON,)	2:09-cv-01930-GEB-EFB
)	
Plaintiff,)	
)	
v.)	<u>ORDER GRANTING DEFENDANT'S</u>
)	<u>MOTION FOR SUMMARY JUDGMENT</u>
)	<u>ON PLAINTIFF'S FEDERAL</u>
FULTON-EL CAMINO RECREATION &)	<u>CLAIMS, AND REMANDING</u>
PARKS DISTRICT,)	<u>PLAINTIFF'S STATE CLAIMS*</u>
)	
Defendant.)	
_____)	

Plaintiff Steven Johnson ("Johnson") moves for summary judgment on his claims alleged under the Fourteenth Amendment of the United States Constitution, and under California's Public Safety Officers Procedural Bill of Rights Act ("POBRA"), which is prescribed in California Government Code section 3300, et seq. Defendant Fulton-El Camino Recreation and Parks District ("Fulton-El Camino") also moves for summary judgment on the same claims, and also on Johnson's claims

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 alleged under the Fifth Amendment of the United States Constitution, and
2 under California Labor Code section 1102.5.

3 I. Legal Standard

4 A party seeking summary judgment bears the initial burden of
5 demonstrating the absence of a genuine issue of material fact for trial.
6 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If this burden is
7 satisfied, "the non-moving party must set forth, by affidavit or as
8 otherwise provided in [Federal] Rule [of Civil Procedure] 56, specific
9 facts showing that there is a genuine issue for trial." T.W. Elec.
10 Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th
11 Cir. 1987) (internal quotations marks omitted) (emphasis omitted). This
12 requires that the non-moving party "come forward with facts, and not
13 allegations, [that] controvert the moving party's case." Town House,
14 Inc. v. Paulino, 381 F.2d 811, 814 (9th Cir. 1967). All reasonable
15 inferences that can be drawn from the evidence "must be drawn in favor
16 of the non-moving party." Bryan v. McPherson, 608 F.3d 614, 619 (9th
17 Cir. 2010). When deciding cross-motions for summary judgment, each
18 motion is evaluated on its own merits, "taking care in each instance to
19 draw all reasonable inferences against the party whose motion is under
20 consideration." B.F. Goodrich Co. v. U.S. Filter Corp., 245 F.3d 587,
21 592 (6th Cir. 2001).

22 When the defendant is the moving party and is seeking summary
23 judgment on one or more of the plaintiff's claims, the defendant:

24 [H]as both the initial burden of production and the
25 ultimate burden of persuasion on [the motion]. In
26 order to carry its burden of production, the
27 [defendant] must either produce evidence negating
28 an essential element of the [plaintiff's claim] or
show that the [plaintiff] does not have enough
evidence of an essential element to carry its
ultimate burden of persuasion at trial.

1 Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d
2 1099, 1102 (9th Cir. 2000) (internal citations omitted).

3 Further, the Eastern District's Local Rule 260(b) prescribes:

4 Any party opposing a motion for summary judgment or
5 summary adjudication [must] reproduce the itemized
6 facts in the [moving party's] Statement of
7 Undisputed Facts and admit those facts that are
8 undisputed and deny those that are disputed,
9 including with each denial a citation to the
particular portions of any pleading, affidavit,
deposition, interrogatory answer, admission, or
other document relied upon in support of that
denial.

10 E.D. Cal. R. 260(b). If the nonmovant does not "specifically . . .
11 [controvert duly supported] facts identified in the [movant's] statement
12 of undisputed facts," the nonmovant "is deemed to have admitted the
13 validity of the facts contained in the [movant's] statement." Beard v.
14 Banks, 548 U.S. 521, 527 (2006) (finding that a party opposing summary
15 judgment who "fail[s] [to] specifically challenge the facts identified
16 in the [moving party's] statement of undisputed facts . . . is deemed to
17 have admitted the validity of [those] facts"). "Because a district court
18 has no independent duty 'to scour the record in search of a genuine
19 issue of triable fact,' and may 'rely on the nonmoving party to identify
20 with reasonable particularity the evidence that precludes summary
21 judgment,' . . . the district court . . . [is] under no obligation to
22 undertake a cumbersome review of the record on the [nonmoving party's]
23 behalf." Simmons v. Navajo Cnty., Arizona, 609 F.3d 1011, 1017 (9th Cir.
24 2010) (quoting Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)).

25 **II. Uncontroverted Evidence**

26 Fulton-El Camino "is an independent special recreation and
27 park district" located "within the County of Sacramento" that was
28 "established . . . to provide land and recreation opportunities for the

1 growing suburbs of Sacramento County." (Separate Statement of Undisputed
2 Facts by Pl. in Supp. of Mots. for Summ. J./Summ. Adjudication ("Pl.'s
3 SUF") ¶¶ 1-3.) "As of August 17, 2007, [Johnson] was employed as a part
4 time Ranger by Fulton-El Camino." Id. ¶ 15. On May 22, 2008, Johnson
5 "was summoned by [Shane] Diller[,] [Fulton-El Camino's Chief Ranger,] to
6 the break room of the North Central Sheriff's Station in Sacramento,
7 [California]." Id. ¶ 27. "When [Johnson] arrived at the break room,
8 present at the meeting were Chief Diller, [Superintendent Michael]
9 Grace, [Johnson], and Sacramento [C]ounty Sheriff's Sergeant Kobychasi
10 ([]first name unknown)." Id. ¶ 28. At the meeting, Chief Diller handed
11 Johnson the following letter:

12 During a recent review of minimum hours work [sic],
13 it has been discovered that you have failed to
14 respond to requests for available hours to work
15 since January 1, 2008. These queries were sent to
16 you via Fulton El-Camino Recreation and Park
 District email in which you have an account. As you
 know, ALL Park Ranger Peace Officers with the
 Fulton El-Camino Police must maintain a minimum of
 20 hours worked each month.

17 Your lack of response to schedule requests via
18 email and non-communicative status with this agency
19 has placed us in the unfortunate situation of
 releasing you from employment with the district.

20 I thank you for your dedicated service. Good luck
21 in your future endeavors. Please return all
22 department issued equipment to Include
 Identification Cards, Badges, and all weapons, to
 include lethal and non-lethal [sic].

23 Thank you

24 s/ Shane G. Diller
25 Shane G. Diller
 Chief Ranger
 Fulton El Camino Recreation and Parks District

26 s/ Roy Imai
27 Roy Imai
 General Manager
 Fulton El Camino Recreation and Parks District
28

1 Id. ¶¶ 26, 29. After receiving this letter, Johnson “asked when [a]
2 hearing was to take place. In response, [Johnson] was told by Chief
3 Diller that [Johnson] was not entitled to a hearing.” Id. ¶ 31.

4 “It remains [Johnson’s] desire and hope to gain employment in
5 the future as a law enforcement peace officer.” Id. ¶ 42. Roy Imai
6 (“Imai”), General Manager of Fulton-El Camino, “stated that, if a law
7 enforcement hiring agency were to call [] Imai in the future and ask why
8 [Johnson] was terminated, they would be told that [Johnson] had
9 abandoned his job.” Id. ¶ 39. Further, Imai, stated “that there was no
10 policy in place at Fulton-El Camino to inform any hiring agency,
11 inquiring about [Johnson’s] termination, anything other than that
12 [Johnson] had abandoned his job.” Id. ¶ 40.

13 **III. Discussion**

14 Fulton-El Camino argues its motion should be granted on
15 Johnson’s Fifth and Fourteenth Amendment claims since these claims are
16 alleged directly under the United States Constitution, instead of under
17 42 U.S.C. § 1983. “[A] litigant complaining of a violation of a
18 constitutional right must utilize 42 U.S.C. § 1983[,]” since a litigant
19 “has no cause of action directly under the United States Constitution.”
20 Azul-Pacifico, Inc. v. City of Los Angeles, 973 F.2d 704, 705 (9th Cir.
21 1992). However, “the liberal rules of notice pleading under the Federal
22 Rules of Civil Procedure only require a plaintiff to plead the facts
23 underlying [a] § 1983 claim, not the statute itself.” Cabrera v. Martin,
24 973 F.2d 735, 745 (9th Cir. 1992). Johnson sufficiently pled the facts
25 underlying his § 1983 claims; therefore, this portion of Fulton-El
26 Camino’s motion is denied.

27 Fulton-El Camino also argues it is entitled to summary
28 judgment on Johnson’s Fifth Amendment claim since “the Fifth Amendment’s

1 guarantee of due process is applicable only to actions of the federal
2 government." (Mem. of P. & A. in Supp. of Fulton-El Camino's Mot. for
3 Summ. J./Summ. Adjudication 6:28-7:1.) Johnson's Fifth Amendment claim
4 "is plainly foreclosed by the Constitution[, since] the Fifth
5 Amendment's due process clause only applies to the federal government."
6 Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008). Therefore, this
7 portion of Fulton-El Camino's motion is granted.

8 Johnson and Fulton-El Camino each seek summary judgment on
9 Johnson's Fourteenth Amendment claim, in which he alleges that Fulton-El
10 Camino "violated [his Fourteenth Amendment] rights . . . by terminating
11 [him] without affording him the minimal due process to which he was
12 entitled." (Compl. ¶ 13.) "Procedural due process imposes constraints on
13 governmental decisions which deprive individuals of 'liberty' or
14 'property' interests within the meaning of the Due Process Clause of the
15 . . . Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332
16 (1976). "A . . . procedural due process [claim] . . . has three
17 elements: (1) a liberty or property interest protected by the
18 constitution; (2) a deprivation of the interest by the government; [and]
19 (3) lack of process." Portman v. Cnty. of Santa Clara, 995 F.2d 898, 904
20 (9th Cir. 1993).

21 Johnson concedes he does not have a property interest
22 protected by the Fourteenth Amendment, but argues Fulton-El Camino
23 impinged his protected liberty interest by terminating him for "job
24 abandonment" without providing him with a post-termination hearing.
25 (Mem. of P. & A. in Supp. of Pl.'s Mots. for Summ. J./Summ. Adjudication
26 ("Pl.'s Mot.") 16:13.) Johnson contends the charge of "job abandonment"
27 is sufficiently serious to implicate a liberty interest under the
28 Fourteenth Amendment. Fulton-El Camino rejoins since Johnson abandoned

1 his position as a ranger with Fulton-El Camino, he was not terminated;
2 and that even if Johnson was terminated, Johnson has not shown he had a
3 liberty interest protected by the Fourteenth Amendment.

4 “The liberty interest protected by the due process clause
5 ‘encompasses an individual’s freedom to work and earn a living.’”
6 Portman, 995 F.2d at 907 (9th Cir. 1993) (quoting Bollow v. Fed. Reserve
7 Bank of San Francisco, 650 F.2d 1093, 1100 (9th Cir. 1981)). “[W]hen
8 the government dismisses an individual for reasons that might seriously
9 damage his standing in the community, he is entitled to notice and a
10 hearing to clear his name.” Id. “To implicate constitutional liberty
11 interests, however, the reasons for dismissal must be sufficiently
12 serious to ‘stigmatize’ or otherwise burden the individual so that he is
13 not able to take advantage of other employment opportunities.” Id.
14 “‘Charges that carry the stigma of moral turpitude’ such as dishonesty
15 or immorality ‘may implicate a liberty interest, but charges of
16 incompetence or inability to get along with others do not.’” Id.
17 (quoting Wheaton v. Webb-Petett, 931 F.2d 613, 617 (9th Cir. 1991)).
18 “But a label which would prevent an individual from practicing his
19 chosen profession at all may have consequences so severe that liberty
20 would be infringed. Such a formulation raises the possibility that in
21 some cases due process rights will turn on a definition of the scope of
22 a particular profession.” Stretten v. Wadsworth Veterans Hosp., 537 F.2d
23 361, 366 n.13 (9th Cir. 1976). Moreover, to infringe upon a
24 constitutionally protected liberty interest, “there [must be] some
25 public disclosure of the [stigmatizing] charge.” Brady v. Gebbie, 859
26 F.2d 1543, 1552 (9th Cir. 1988).

27 Even assuming arguendo that Fulton-El Camino terminated
28 Johnson’s employment based on Fulton-El Camino’s assertion that Johnson

1 abandoned his job, Johnson has not shown that this reason for his
2 termination is serious enough to implicate a protected liberty interest.
3 Additionally, the record does not contain evidence from which it could
4 reasonably be inferred that Johnson cannot find work in his chosen
5 profession because of his dismissal.

6 Further, Johnson has not produced evidence from which a
7 reasonable inference could be drawn that Fulton-El Camino's reason for
8 firing him has been publicly disclosed. Johnson argues "the evidence
9 shows that the [Sacramento County] Sheriff's Dept. was told of [his]
10 termination much to [his] embarrassment . . . at the time of the
11 termination." (Pl.'s Mot. 16:21-23.) However, Johnson has not supported
12 this argument with evidence, and "mere argument does not establish a
13 genuine issue of material fact to defeat summary judgment." MAI Sys.
14 Corp. v. Peak Computer, Inc., 991 F.2d 511, 518 (9th Cir. 1993).
15 Although the record reveals Sacramento County Sheriff Sergeant Kobychasi
16 was in the break room during the meeting when Johnson was given the
17 termination letter, this evidence demonstrates only that the Sacramento
18 County Sheriff's Department knew that Johnson was terminated. However,
19 this evidence does not show that the reason for the termination was
20 publicly disclosed to the Sacramento County Sheriff's Department.

21 Therefore, Fulton-El Camino's motion for summary judgment on
22 Johnson's § 1983 claim for violation of the Fourteenth Amendment is
23 granted, and Johnson's motion for summary judgment on the same claim is
24 denied.

25 Since the federal claims have been resolved, only Johnson's
26 state claims remain. A district court may decline exercising
27 supplemental jurisdiction over state claims when "the district court has
28 dismissed all claims over which it has original jurisdiction." 28 U.S.C.

1 § 1367(c)(3). "While discretion to decline . . . supplemental
2 jurisdiction over state law claims is triggered by the presence of one
3 of the conditions in § 1367(c), it is informed by the . . . values of
4 economy, convenience, fairness and comity" delineated by the Supreme
5 Court in United Mine Workers of America v. Gibbs, 383 U.S. 715, 726
6 (1996). Acri v. Varian Assocs., Inc., 114 F.3d 999, 1001 (9th Cir.
7 1997).

8 The judicial economy factor does not weigh in favor of
9 continuing to exercise supplemental jurisdiction over the remaining
10 state claims since significant time has not been invested analyzing
11 those claims. Cf. Otto v. Heckler, 802 F.2d 337, 338 (9th Cir. 1986)
12 ("The district court, of course, has the discretion to determine whether
13 its investment of judicial energy justifies retention of jurisdiction or
14 if it should more properly dismiss the claims without prejudice.")
15 (internal citation omitted). Nor do the comity and fairness factors
16 weigh in favor of exercising supplemental jurisdiction since "[n]eedless
17 decisions of state law should be avoided both as a matter of comity and
18 to promote justice between the parties, by procuring for them a
19 surer-footed reading of applicable law." Gibbs, 383 U.S. at 726; see
20 also Acri, 114 F.3d at 1001 ("The Supreme Court has stated, and we have
21 often repeated, that 'in the usual case in which all federal-law claims
22 are eliminated before trial, the balance of factors . . . will point
23 toward declining to exercise jurisdiction over the remaining state-law
24 claims."). Therefore, Johnson's state claims will be remanded to the
25 Superior Court of California in the County of Sacramento from which they
26 were removed.

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1 **IV. Conclusion**

2 For the stated reasons, Plaintiff's state claims are remanded
3 to the Superior Court of California in the County of Sacramento, and the
4 Clerk of the federal court shall enter judgment in favor of Defendant on
5 Plaintiff's federal claims.

6 Dated: March 9, 2011

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GARLAND E. BURRELL, JR.
United States District Judge

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