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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEFFREY PHILLIPS)	Case No. 2:09-CV-01933 JAM-EFB
)	
Plaintiff,)	
)	
v.)	ORDER DENYING DEFENDANT'S
)	MOTION FOR FEES AND COSTS
FULTON-EL CAMINO RECREATION &)	
PARKS DISTRICT and DOES 1 to 50,)	
)	
Defendants.)	

This matter comes before the Court on Defendant Fulton-El Camino Recreation & Parks District's ("Defendant") Motion for Fees and Costs (Doc. #43). Plaintiff Jeffrey Phillips ("Plaintiff") opposes the motion.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff alleged that he was improperly notified of his separation from Defendant as a volunteer part-time Ranger. Plaintiff filed suit against Defendant in the California Superior

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 1, 2011.

1 Court for Sacramento County alleging two causes of action:
2 (1) violation of Plaintiff's Fifth and Fourteenth Amendment rights;
3 and (2) violation of the Public Safety Officers Procedural Bill of
4 Rights Act, California Government Code Section 3300, et seq.
5 ("POBRA"). Defendant removed the action to this Court and filed a
6 Motion for Summary Judgment/Summary Adjudication. The Court held a
7 hearing on Defendant's Summary Judgment Motion on March 23, 2011.
8 After considering the briefs and oral arguments, the Court granted
9 Summary Judgment in favor of the Defendant on both causes of
10 action. Defendant filed this motion requesting \$9,179.61 in costs
11 and \$47,608.50 in fees. Since Plaintiff intended to file a Motion
12 to Alter/Amend Judgment per Rule 59(E) FRCP (Doc. #45), the Court
13 delayed deciding the instant motion until it disposed of the Motion
14 to Alter/Amend Judgment. The Court denied Plaintiff's Motion to
15 Amend/Alter the Judgment (Doc. #52).

17 II. OPINION

18 A. Legal Standard

19 1. Attorneys' Fees and Costs

20 Defendant seeks fees and costs under 42 U.S.C. § 1988(b)
21 and California Government Code § 3309.5(d)(2). A prevailing
22 defendant is entitled to attorney fees under 42 U.S.C. § 1988
23 "only when the plaintiff's claims are unfounded, frivolous,
24 meritless or vexatious." Christiansburg Garment Co. v. Equal
25 Employment Opportunity Commission, 434 U.S. 412, 421 (1978)
26 (internal citations omitted). An unfounded, frivolous,
27 meritless, or vexatious lawsuit is one where "the result appears
28 obvious or the arguments are wholly without merit." Galen v.

1 County of Los Angeles, 477 F.3d 652, 666 (9th Cir. 2007).

2 Similarly, Government Code section 3309.5(d)(2) allows a court
3 to award sanctions by way of reasonable expenses, including
4 attorneys' fees, if the court finds that the action was in "bad
5 faith or frivolous."

6 B. Claims for Relief

7 Defendant argues that as the prevailing party, it is entitled
8 to reasonable attorneys' fees and costs because Plaintiff's action
9 was frivolous and conducted in bad faith. Defendant argues there
10 was no basis in law for Plaintiff's Fifth Amendment, Fourteenth
11 Amendment, or POBRA claims. Defendant also characterizes
12 Plaintiff's decision to file this action and his behavior during
13 the litigation as acting in bad faith. Defendant alleges the
14 lawsuit was brought to harass and annoy Defendant; the Complaint
15 pled violation of the Fifth Amendment, despite the fact no
16 interaction with the federal government was alleged; Plaintiff
17 repeatedly refused to provide documents during discovery; and he
18 rejected settlement offers.

19 Plaintiff concedes that Defendant is the prevailing party and
20 that its attorney fee rates are reasonable. Plaintiff argues that
21 his action was not frivolous because at the time of his separation
22 of employment, Plaintiff believed he was a tenured employee and he
23 characterizes his Fourteenth Amendment job abandonment claim as a
24 watershed legal issue. Plaintiff asks the Court not to consider
25 its conduct during discovery as evidence of the frivolity of the
26 lawsuit.

1 1. Frivolousness

2 As discussed supra, a defendant may only collect fees if the
3 plaintiff's claims are "groundless, without foundation, frivolous,
4 or unreasonable." Karam v. City of Burbank, 352 F.3d 1188, 1195
5 (9th Cir. 2003) (internal citations omitted). The "inability to
6 defeat summary judgment does not mean that [Plaintiff's] claims
7 were groundless at the outset. Id. at 1196.

8 The Court's decision granting Defendant's motion for
9 summary judgment reflects its view that Plaintiff's claims had
10 little legal support. However, the Court does not believe that
11 this case was so frivolous that it should award attorneys fees
12 to Defendant. Plaintiff's Complaint alleged violations of the
13 Fifth Amendment, Fourteenth Amendment, and POBRA. While not a
14 watershed legal issue, Plaintiff made a weak, yet plausible
15 argument that his separation from his volunteer position created
16 a badge of infamy, violating a protectable property interest.
17 Plaintiff's POBRA claim also was not completely lacking in
18 merit. While Plaintiff was unsuccessful in persuading this
19 Court to extend POBRA's protections to volunteers, Plaintiff was
20 able to cite to some authority in support of his arguments on
21 this claim. Even though Plaintiff lost at the summary judgment
22 stage and on his motion to alter/amend, Defendant and the Court
23 must "resist the understandable temptation to engage in *post hoc*
24 reasoning by concluding that, because a plaintiff did not
25 ultimately prevail, his action must have been unreasonable or
26 without foundation." Christiansburg, 434 U.S. at 421-22.
27 Accordingly, the Court finds that Plaintiff's claims were not
28 groundless, frivolous or unreasonable.

