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

EDITH STONE,	)	
	)	2:09-cv-2139-GEB-GGH
Plaintiff,	)	
	)	
v.	)	<b><u>TENTATIVE RULING GRANTING</u></b>
	)	<b><u>DEFENDANT JUDGMENT ON THE</u></b>
TAMMIE SCHEID,	)	<b><u>PLEADINGS</u></b>
	)	
Defendant.*	)	
_____	)	

The following tentative ruling will become the order of this Court if a timely response to this tentative ruling is not filed. Any response shall be filed within seven (7) days of the date on which this tentative ruling is filed.

Defendant Tammie Scheid moves for summary judgment under Federal Rule of Civil Procedure ("Rule") 56. (ECF No. 20.) Plaintiff has not opposed the motion.

Scheid's arguments in her motion for summary judgment include an attack on Plaintiff's pleadings and indicate she is entitled to judgment on the pleadings under Rule 12(c). Since the motion reveals Scheid is entitled to judgment on the pleadings, the Court *sua sponte* tentatively grants Scheid judgment on the pleadings.

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\* The caption has been amended according to the Order filed April 11, 2010, which dismissed Defendants Matthew Cate, Glenda Pressly, and Nancy Hanley.

1 **I. Legal Standard**

2 "A district court may sua sponte . . . grant[] judgment on the  
3 pleadings." Lyman v. Loan Correspondents, Inc., No. SACV  
4 06-01174-CJC (ANx), 2009 WL 3757398, at \*1 (C.D. Cal. Nov. 6, 2009); see  
5 Bryson v. Brand Insulations, Inc., 621 F.2d 556, 559 (3d Cir. 1980)  
6 ("[F]or a court to grant judgment on the pleadings, sua sponte, is not  
7 error. The district court may on its own initiative enter an order  
8 dismissing the action provided that the complaint affords a sufficient  
9 basis for the court's action."); Flora v. Home Fed. Sav. & Loan Ass'n,  
10 685 F.2d 209, 211-12 (7th Cir. 1982) (affirming the district court's sua  
11 sponte granting of judgment on the pleadings). "The court must give  
12 notice of its sua sponte intention to [grant judgment on the pleadings]  
13 and afford plaintiff[] 'an opportunity to at least submit a written  
14 memorandum in opposition to such motion.'" Lyman, 2009 WL 3757398, at \*1  
15 (quoting Wong v. Bell, 642 F.2d 359, 361-62 (9th Cir. 1981)).

16 "Judgment on the pleadings is properly granted when there is  
17 no issue of material fact in dispute, and the moving party is entitled  
18 to judgment as a matter of law." Fleming v. Pickard, 581 F.3d 922, 925  
19 (9th Cir. 2009). When deciding a Rule 12(c) motion for judgment on the  
20 pleadings, "all factual allegations in the complaint [are accepted] as  
21 true and construe[d] . . . in the light most favorable to the non-moving  
22 party." Id. "However, conclusory allegations and unwarranted inferences  
23 are insufficient to defeat a motion for judgment on the pleadings."  
24 Butler v. Resurgence Financial, LLC, 521 F. Supp. 2d 1093, 1095 (C.D.  
25 Cal. 2007). "The principal difference between motions filed pursuant to  
26 Rule 12(b) and Rule 12(c) is the time of filing[;] . . . the motions are  
27 functionally identical . . . ." Dworkin v. Hustler Magazine Inc., 867  
28 F.2d 1188, 1192 (9th Cir. 1989).

1 **II. Claims and Allegations**

2 Plaintiff alleges the following claims in her Complaint  
3 against Scheid: conspiracy, procedural due process, and substantive due  
4 process. (Compl. ¶¶ 18-19, 23-28.) Plaintiff alleges she was hired as a  
5 substitute teacher at N.A. Chaderjian Youth Correctional Facility on  
6 October 5, 2005. *Id.* ¶ 6. She also alleges as a substitute teacher she  
7 was required to possess a teaching credential issued by the California  
8 Commission on Teacher Credentialing. *Id.* Plaintiff alleges that on  
9 August 28, 2007, she was notified she would be terminated effective  
10 September 12, 2007 because her teaching credential was expiring. *Id.* ¶  
11 7. Plaintiff alleges her teaching credential was subsequently renewed,  
12 before the date of her termination. *Id.* ¶ 8. Plaintiff further alleges  
13 that "Defendants Hanley and Scheid . . . agreed to withhold information  
14 from [her] concerning the expedited process by which she could obtain  
15 renewal of her teaching credential[.]" *Id.* ¶ 9. Defendant Hanley was  
16 dismissed from this action when her Rule 12(b)(6) dismissal motion was  
17 granted. (ECF No. 13.)

18 **III. Discussion**

19 **A. Conspiracy under 42 U.S.C. § 1985**

20 Scheid argues Plaintiff's conspiracy claim alleged under 42  
21 U.S.C. § 1985 "must fail because no facts support her allegations that  
22 Scheid and Hanley entered into any agreement whatsoever, let alone a  
23 racially-motivated agreement to withhold information from [Plaintiff] or  
24 to mislead [her]." (Mot. for Summ. J. ("Mot.") 16:14-16.) Plaintiff  
25 alleges "Defendants Hanley and Scheid intentionally violated 42 [U.S.C.]  
26 § 1985(3) by entering into an agreement between themselves . . . to  
27 withhold beneficial information from her because of her race or color."  
28 (Compl. ¶ 19.) "A claim under [§ 1985] must allege facts to support the

1 allegation that defendants conspired together. A mere allegation of  
2 conspiracy without factual specificity is insufficient.” Karim-Panahi v.  
3 Los Angeles Police Dept., 839 F.2d 621, 626 (9th Cir. 1988). Plaintiff’s  
4 Complaint contains only conclusory allegations of a conspiracy,  
5 unsupported by any factual allegations of an agreement. Therefore,  
6 Scheid is granted judgment on the pleadings on this claim.

### 7 **B. Procedural Due Process**

8 Scheid argues she prevails on Plaintiff’s procedural due  
9 process claim because “there is no constitutional right to notification  
10 of an expedited process for credential renewal[.]” (Mot. 14:23-24.)  
11 Plaintiff alleges Scheid violated her procedural due process rights “by  
12 withholding from [her] the process which was due, that is, information  
13 concerning the expedited processing of her application for renewal of  
14 her teaching credential or the availability of an exemption[.]” (Compl.  
15 ¶ 24.) “[T]he Fourteenth Amendment does not require a remedy when there  
16 has been no deprivation of a protected interest.” Davidson v. Cannon,  
17 474 U.S. 344, 348 (1986) (internal quotation marks omitted). Plaintiff  
18 does not allege facts showing that Scheid had a duty to inform Plaintiff  
19 of a method for expediting her application or the availability of an  
20 exception. Therefore, Plaintiff has not demonstrated that she has been  
21 deprived of an interest protected by the Fourteenth Amendment.  
22 Accordingly, Scheid is granted judgment on the pleadings on this claim.

### 23 **C. Substantive Due Process Claims**

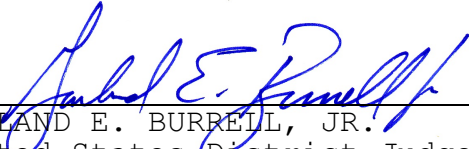
24 Scheid also argues Plaintiff’s substantive due process claims  
25 “must fail because she does not have a fundamental property or liberty  
26 interest in her employment.” (Mot. 12:26-27.) Plaintiff alleges that  
27 Scheid subjected her to “a deprivation of substantive due process of law  
28 in violation of the due process and equal protection of law clauses of

1 the Fourteenth Amendment by depriving [Plaintiff] of her employment for  
2 reasons of her race or color in violation of 42 [U.S.C.] § 1983[.]”  
3 (Compl. ¶ 26.) Plaintiff further alleges that Scheid subjected her to “a  
4 deprivation of substantive due process of law in violation of the due  
5 process of law clause of the Fourteenth Amendment by depriving  
6 [Plaintiff] of her employment for arbitrary and capricious reasons in  
7 violation of 42 [U.S.C.] § 1983.” Id. ¶ 28. These conclusory allegations  
8 constitute “formulaic recitation[s] of the elements of a cause of  
9 action” which are insufficient to state a claim for violation of  
10 Plaintiff’s substantive due process rights. Ashcroft v. Iqbal, --- U.S.  
11 ----, 129 S. Ct. 1937, 1949 (2009). Therefore, Scheid is granted  
12 judgment on the pleadings on these claims.

13 **IV. Conclusion**

14 For the stated reasons, Defendant Scheid is granted judgment  
15 on the pleadings on all of Plaintiff’s claims. Judgment shall be entered  
16 in favor of Defendant if no response is filed within seven (7) days of  
17 the date on which this tentative ruling is filed.

18 Dated: March 21, 2011

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21 \_\_\_\_\_  
GARLAND E. BURRELL, JR.  
United States District Judge