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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID J. SHOEMAKER,	)	Case No. 2:10-CV-01625 JAM-KJN
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ORDER GRANTING COUNTY OF
THE COUNTY OF GLENN; THE GLENN	)	GLENN'S MOTION TO DISMISS
COUNTY BOARD OF SUPERVISORS;	)	
DOES 1 through 100, inclusive,	)	
	)	
Defendants.	)	

This matter comes before the Court on Defendant County of Glenn's ("County") Motion to Dismiss (Doc. 8). County asks the Court to dismiss the Complaint (Doc. 1) filed by Plaintiff David J. Shoemaker ("Plaintiff"). Plaintiff opposes the motion.<sup>1</sup>

I. FACTUAL AND PROCEDURAL BACKGROUND

On May 3, 2005, Plaintiff signed the Employment Agreement For the Position of Glenn County Administrative Officer (Plaintiff Exhibit A). Plaintiff alleges that he was to remain in the

<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for November 3, 2010.

1 "exclusive employ" of the Glenn County Board of Supervisors  
2 ("Board"), until January 1, 2007. Plaintiff alleges that an  
3 amendment to the Employment Agreement extended Plaintiff's  
4 employment to January 1, 2011 (Plaintiff Exhibit B).

5 The Complaint alleges that on August 18, 2009, County notified  
6 Plaintiff that the employment extension was "invalid" and that  
7 Plaintiff's employment would end on January 1, 2010, one year prior  
8 to the contractual expiration date.

9 Plaintiff alleges that he was deprived of one year's salary of  
10 \$115,424.40 plus other expenses, costs, and fees.

11 Plaintiff alleges that he was given no notice of any charges  
12 against him, nor given the opportunity to present any evidence  
13 regarding his competency to perform the duties required by his  
14 employment contract.

15 Plaintiff brings this action under 42 U.S.C. § 1983 alleging  
16 that because the County and the Board breached the Employment  
17 Agreement, they deprived him of his property without due process in  
18 violation of the Fourteenth Amendment.

19  
20 II. OPINION

21 A. Legal Standard

22 1. Motion to Dismiss

23 A party may move to dismiss an action for failure to state a  
24 claim upon which relief can be granted pursuant to Federal Rule of  
25 Civil Procedure section 12(b)(6). In considering a motion to  
26 dismiss, the court must accept the allegations in the complaint as  
27 true and draw all reasonable inferences in favor of the plaintiff.  
28 Scheuer v. Rhodes, 416 U.S. 232, 236 (1975), overruled on other

1 grounds by Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405  
2 U.S. 319, 322 (1972). Assertions that are mere "legal  
3 conclusions," however, are not entitled to the assumption of truth.  
4 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009), citing Bell  
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). To survive a  
6 motion to dismiss, a plaintiff needs to plead "enough facts to  
7 state a claim to relief that is plausible on its face." Twombly,  
8 550 U.S. at 570. Dismissal is appropriate where the plaintiff  
9 fails to state a claim supportable by a cognizable legal theory.  
10 Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th  
11 Cir. 1990).

12       Upon granting a motion to dismiss for failure to state a  
13 claim, the court has discretion to allow leave to amend the  
14 complaint pursuant to Federal Rule of Civil Procedure section  
15 15(a). "Dismissal with prejudice and without leave to amend is not  
16 appropriate unless it is clear . . . that the complaint could not  
17 be saved by amendment." Eminence Capital, L.L.C. v. Aspeon, Inc.,  
18 316 F.3d 1048, 1052 (9th Cir. 2003).

## 19           2.   Section 1983

20       Plaintiff's claims against Defendant are brought under 42  
21 U.S.C. § 1983. To prevail in a § 1983 civil action against state  
22 actors for the deprivation of rights, privileges, or immunities  
23 secured by the Constitution and laws, a plaintiff must show that

24           (1) acts by the defendants (2) under color of state  
25 law (3) deprived him of federal rights, privileges or  
26 immunities and (4) caused him damage. Section 1983 is  
27 not itself a source of substantive rights, but merely  
28 provides a method for vindicating federal rights  
elsewhere conferred. Accordingly, the conduct  
complained of must have deprived the plaintiff of some  
right, privilege or immunity protected by the  
Constitution or laws of the United States."

1 Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th Cir.  
2 2005) (internal citations omitted).

3 B. Claims for Relief

4 County asks the Court to review Plaintiff's employment  
5 contract, which was attached to the Complaint, to find that  
6 Plaintiff was an "at will" employee whose termination was proper  
7 and who therefore was not unconstitutionally deprived of a property  
8 interest. Plaintiff argues that the contract is unclear and  
9 ambiguous and should be interpreted against the party who caused  
10 the uncertainty to exist. He further argues that 42 U.S.C. § 1983  
11 applies to contracts and that he is entitled to due process when  
12 being deprived of his property interest.

13 1. Review of the Employment Agreement

14 Generally, a district court may not consider any material  
15 beyond the pleadings when ruling on a Rule 12(b)(6) motion. Hal  
16 Roach Studios, Inc. v. Richard Finer & Co., Inc., 896 F.2d 1542,  
17 1555 n. 19 (9th Cir. 1990). However, "material which is properly  
18 submitted as part of the complaint may be considered." Id.  
19 Accordingly, the Court has reviewed Plaintiff's Exhibit A and  
20 Plaintiff's Exhibit B.

21 "Resolution of contractual claims on a motion to dismiss is  
22 proper if the terms of the contract are unambiguous." Bedrosian v.  
23 Tenet Healthcare Corp., 2000 WL 206633, at \*1 (9th Cir. 2000);  
24 citing Rennie & Laughlin, Inc. v. Chrysler Corp., 242 F.2d 208,  
25 209-12 (9th Cir. 1957).

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1 The Court has carefully considered both exhibits and found  
2 that Plaintiff is clearly an at will employee who can be terminated  
3 without cause as long as he is given 120 days notice as evidenced  
4 by the following contract provisions:

- 5 • Section 2B: "Nothing in this Agreement shall  
6 prevent, limit, or otherwise interfere with the  
7 right of the Board of Supervisors to terminate the  
8 services of David J. Shoemaker *at any time*, subject  
9 only to the provision set forth in Section 3 of this  
10 Agreement." (Emphasis added).
- 11 • Section 3A: "The County Administrative Officer  
12 serves *at the will* of the Board of Supervisors."  
13 (Emphasis added).
- 14 • Section 3A.2, under the heading "Non-Renewal of  
15 Contract or Termination Without Cause": "If the  
16 Board of Supervisors determines *at any time not to*  
17 *renew or continue* David J. Shoemaker's contract, the  
18 Board of Supervisors will give David J. Shoemaker  
19 *120 days notice*." (Emphasis added).

20 The Court finds that the contract is unambiguous that  
21 Plaintiff is an at will employee. Though the Board extended  
22 Plaintiff's contract to January 2011, that extension does not alter  
23 Plaintiff's at will status.

24 Aside from the broad claim that the Agreement is unclear,  
25 Plaintiff does not point to any inconsistencies or ambiguities in  
26 the Employment Agreement.<sup>2</sup>

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27 <sup>2</sup> Plaintiff also argues because the County entered into his  
28 employment contract after passing Ordinance 1172, which limits the  
term of the County Administrative Officer to three years, the

1           2.    Constitutionally Protected Property Interest

2           Plaintiff, as an at will employee, has no constitutionally  
3 protected property interest in continued employment. "A public  
4 employee serving at the pleasure of the appointing authority . . .  
5 [can be] subject to removal without judicially cognizable good  
6 cause." Bogacki v. Board of Supervisors, 5 Cal.3d 771, 783 (Cal.  
7 1971); see also Board of Regents v. Roth, 408 U.S. 564 (1972)  
8 (holding that an assistant professor at a state university had no  
9 property interest protected by the Fourteenth Amendment that was  
10 sufficient to require university authorities to give him a hearing  
11 when they declined to renew his contract of employment).  
12 Accordingly, Plaintiff fails to state a claim based on 42 U.S.C.  
13 § 1983 because he has not been deprived of a constitutional right.

14           3.    Termination Procedure

15           County did not breach the Employment Agreement because it  
16 followed proper termination procedures. The Complaint avers that  
17 County gave Plaintiff notice on August 18, 2009 that he would be  
18 terminated on January 1, 2010. Thus, Plaintiff received more than  
19 120 days notice of his impending termination and the County  
20 properly ended his employment.

21    ///  
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25 ordinance's time limit is waived because the County approved an  
26 extension to Plaintiff's contract, which Plaintiff himself  
27 introduced. This argument is without merit. The ordinance does  
28 not change Plaintiff's status as an at will employee and based on  
the facts in this case, Plaintiff is now trying to take advantage  
of his own error in proposing an extension to his term of office  
that was not authorized by the County Code that created his own  
office.

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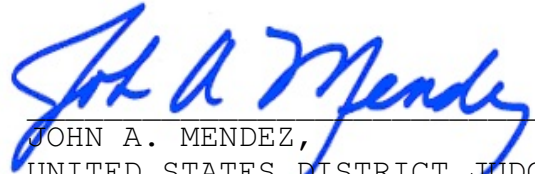
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III. ORDER

For the reasons set forth above,  
County's Motion to Dismiss is GRANTED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: November 22, 2010

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE