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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JUAN ESPINOZA,  
Plaintiff,  
  
v.  
  
CITY OF TRACY, R. LEON  
CHURCHILL, and DOES 1 through  
40 inclusive,  
  
Defendants.

CIV. NO. 2:15-751 WBS KJN  
ORDER RE: MOTION TO DISMISS

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On November 15, 2016, the court dismissed plaintiff's complaint with leave to amend. (Docket No. 32.) On December 5, 2016, plaintiff filed a First Amended Complaint ("FAC"), reasserting the original claims under 42 U.S.C. § 1983 with modifications in response to the courts November 15, 2016 Order, and adding two new claims for conspiring to violate plaintiff's constitutional rights in violation of 42 U.S.C. § 1985, and for infringing upon plaintiff's right to make and enforce contracts in violation of 42 U.S.C. § 1981. (FAC ¶¶ 49-50, 56-57, 61-62,

1 65-66.) Defendants now move to dismiss plaintiff's FAC. (Defs.'  
2 Mot.)

3 On plaintiff's section 1983 causes of action, the court  
4 finds that the FAC now alleges sufficient facts to survive a  
5 motion to dismiss under Rule 12(b)(6). With regard to the two  
6 new causes of action, Section 1985 prohibits two or more persons  
7 from conspiring to deprive any person or class of persons of  
8 certain civil rights. 42 U.S.C. § 1985. A plaintiff must allege  
9 that the defendants were motivated by racial animus. See Sever  
10 v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992)  
11 (requiring racial animus in section 1985(3) actions); Sanchez v.  
12 City of Santa Ana, 936 F.2d 1027, 1039 (9th Cir. 1990) (requiring  
13 racial animus in section 1985(2) actions).

14 While the FAC alleges that defendants were the  
15 conspirators, it is devoid of any factual allegations suggesting  
16 there was an agreement among defendants to violate plaintiff's  
17 constitutional rights. Plaintiff's conspiracy allegations  
18 without factual specificity are insufficient. See Olsen, 363  
19 F.3d at 929 (holding that allegations concerning the existence of  
20 a conspiracy to violate a federal right must be supported by  
21 specific facts). Likewise, there are no factual allegations that  
22 support the conclusion that defendants were motivated by  
23 invidious class-based animus. Accordingly, the court must  
24 dismiss plaintiff's section 1985 claim.

25 Section 1981 states, in relevant part, "[a]ll persons  
26 within the jurisdiction of the United States shall have the same  
27 right in every State and Territory to make and enforce  
28 contracts." 42 U.S.C. § 1981(a). "To state a claim under §

1 1981, a plaintiff must identify an impaired 'contractual  
2 relation,' by showing that the intentional racial discrimination  
3 prevented the creation of a contractual relationship or impaired  
4 an existing contractual relationship." Jackson, 2012 WL 5337076,  
5 at \*3 (quoting Boyd v. Feather River Cmty. Coll. Dist., Civ. No.  
6 11-0231 JAM EFB, 2011 WL 5024547, at \*4 (E.D. Cal. Oct. 20,  
7 2011)).

8 In California, "public employment is not held by  
9 contract but by statute . . . ." Miller v. California, 18 Cal.  
10 3d 808, 813 (1977). Therefore, "insofar as the duration of such  
11 employment is concerned, no employee has a vested contractual  
12 right to continue in employment beyond the time or contrary to  
13 the terms and conditions fixed by law." Id.; see, e.g., Fallay  
14 v. San Francisco City & County, No. C 08-2261 CRB, 2016 WL  
15 888901, at \*3 (N.D. Cal. Mar. 8, 2016) (finding a city employee  
16 could not bring a section 1981 claim because the terms and  
17 conditions of employment was determined by California statute).

18 Plaintiff alleges that he "and Tracy entered a relevant  
19 employment contract at the beginning of Plaintiff's employment  
20 with [the department], which was found in the MOU and related  
21 materials."<sup>1</sup> (FAC ¶ 65.) However, plaintiff allegedly "was  
22 classified as a peace officer under Penal Code section 830.1"  
23 with rights codified in the PBRA. (Id. ¶ 3.) As a public  
24 employee, plaintiff is not entitled to section 1981 protection  
25 because his employment is governed by statute. See Woodson v.

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26  
27 <sup>1</sup> The court need not accept plaintiff's legal conclusion  
28 that his employment relationship was contractual. See Papasan v.  
Allain, 478 U.S. 265, 286 (1986) ("[W]e are not bound to accept  
as true a legal conclusion couched as a factual allegation.").

1 California, Civ. No. 2:15-01206 MCE CKD, 2016 WL 6568668, at \*6-7  
2 (E.D. Cal. Nov. 4, 2016) (holding California Department of  
3 Corrections employee could not sue under section 1981); Zimmerman  
4 v. City & County of San Francisco, No. C 93-4045 MJJ, 2000 WL  
5 1071830, at \*10 (N.D. Cal. July 27, 2000) (holding city employee  
6 could not sue under section 1981); see also Hittle v. City of  
7 Stockton, Civ. No. 2:12-00766 TLN KJN, 2016 WL 1267703, at \*7  
8 (E.D. Cal. Mar. 31, 2016) (finding a city-employed police officer  
9 was a public employee and thus could not bring a breach of  
10 contract claim against the city). The FAC identifies no other  
11 contractual relationship that defendants allegedly infringed  
12 upon.

13 Because plaintiff fails to allege a contractual  
14 relationship that defendants impaired, the court must also grant  
15 defendants' motion to dismiss plaintiff's section 1981 cause of  
16 action.

17 IT IS THEREFORE ORDERED that defendants' motion to  
18 dismiss plaintiff's first and second causes of action under 42  
19 U.S.C. § 1983 be, and the same hereby are, DENIED.

20 IT IS FURTHER ORDERED that defendants' motion to  
21 dismiss plaintiff's third and fourth causes of action under 42  
22 U.S.C. §§ 1981 and 1985 be, and the same hereby are, GRANTED.

23 Plaintiff has twenty days from the date this Order is  
24 signed to file a second amended complaint, if he can do so  
25 consistent with this Order.

26 Dated: February 9, 2017



27 **WILLIAM B. SHUBB**  
28 **UNITED STATES DISTRICT JUDGE**