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

THOMAS HAUSCHILD,  
Plaintiff,

No. C 15-01556 WHA

v.

CITY OF RICHMOND AND  
CHRISTOPHER MAGNUS,  
Defendants.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND  
GRANTING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**INTRODUCTION**

In this wrongful-termination action brought by a police officer under the California Public Safety Officers Bill of Rights, his motion for partial summary judgment is **DENIED** and defendants' motion for summary judgment is **GRANTED IN PART**.

**STATEMENT**

The undisputed facts are as follows. Plaintiff Thomas Hauschild began working as a police officer for defendant City of Richmond in 2005. Plaintiff, who is Asian, served as a detective, a member of the SWAT team, and as a firearms instructor.<sup>1</sup> Between 2006 and 2012, plaintiff's former spouse, who also worked for the City of Richmond, made several domestic abuse complaints against plaintiff. In response, plaintiff notified the City of these complaints (Hauschild Decl ¶ 3). The Police Department investigated one of these incidents, an incident

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<sup>1</sup> Plaintiff is of Japanese and Caucasian descent (Hauschild Dep. at 76).

1 that took place at a 2007 Christmas party, and concluded that the complaint was unfounded  
2 (Poore Decl., Exh. B).

3 On September 23, 2012, plaintiff and his wife fought. Both suffered physical injuries to  
4 their faces and bodies (Hauschild Decl. ¶ 4; Poore Decl., Exh. A). The City initiated an internal  
5 affairs investigation of plaintiff covering past abuse incidents occurring between 2006 and  
6 2012. Investigators questioned plaintiff about them. The investigation concluded on September  
7 18, 2013 (almost one year after the fight). The investigator, Sergeant Albert Walle, made the  
8 following four findings: (1) plaintiff was the “primary aggressor” in the September 2012  
9 domestic violence incident; (2) plaintiff placed a condom on his wife’s door the day after the  
10 incident; (3) plaintiff illegally purchased eight firearms and stored them in his workspace; and  
11 (4) plaintiff made false statements to a supervisor during the investigation (Poore Decl., Exh.  
12 A).

13 On September 24, 2013, plaintiff received a *Skelly* hearing notice regarding the  
14 termination of his employment. Defendant Police Chief Christopher Magnus became the  
15 hearing officer (*id.* at ¶ 6; Dickerson Decl., Exh. E). After the hearing, Magnus recommended  
16 termination of plaintiff. Magnus’ recommendation stated that each of the charges, standing  
17 alone, warranted dismissal. Moreover, his conclusion stated (Dickerson Decl., Exh. E at 3):

18 the evidence collected regarding the September 23, 2012 incident, six years of domestic  
19 abuse of [plaintiff’s wife] leading up to this incident, and Officer Hauschild’s  
20 defacement of [plaintiff’s wife’s] property after the incident, conclusively proved that  
21 Officer Hauschild was the primary aggressor on September 23, 2012, and battered  
22 [plaintiff’s wife] in a jealous rage after finding text messages from another officer on  
23 her mobile phone.

24 The recommendation also stated that the evidence showed plaintiff to be the primary aggressor  
25 during the September 2012 incident, “even without any consideration of the prior allegations of  
26 domestic abuse” (*id.* at 7). The Richmond City Manager, Bill Lindsay, reviewed the Skelly  
27 recommendations from Magnus, and made his own determination to terminate Officer  
28 Hauschild. The City then terminated plaintiff’s employment. (Lindsay Decl., Exh. B)

The parties disagree about the following facts. Plaintiff submits a declaration that  
Magnus “began inappropriately touching” plaintiff’s body on one occasion in 2009 and that  
plaintiff later reported the incident to his supervisor, Lieutenant Arnold Threets (Hauschild

1 Decl. ¶ 8). Defendants submit declarations that no sexual advance ever took place and that  
2 plaintiff also never reported any incident to Threets (Magnus Decl. ¶¶ 6–7; Threets Decl. ¶¶ 3).

3 Plaintiff submits testimony that Magnus has made discriminatory remarks towards  
4 African-Americans and Latinos. Lieutenant Arnold Threets, former supervisor to plaintiff,  
5 testified that, on a first-hand basis, he heard Magnus refer to African-American officers as  
6 “jigaboos,” and say “dance, jigaboo, dance” when referring to an African-American (Threets  
7 Dep. at 71–81). He also heard Magnus refer to Latinos as “Joses” (*ibid.*) and say that, “If  
8 you’re going to try to take me out, you better succeed, because a wounded animal is more  
9 dangerous than a dead one” (*id.* at 78–79). He also heard Magnus say, “I’m more comfortable  
10 around people who look like, act like, and talk like me, so I might as well just be a racist” (*id.* at  
11 79–81). Another officer heard Magnus say that the Juneteenth holiday was a holiday for  
12 shooting people (Gagan Dep. at 58–60). Plaintiff also submits testimony that Magnus  
13 demanded that he lie in connection with an investigation into a racial discrimination complaint  
14 in 2011 (Hauschild Decl. ¶ 10). In a declaration, Magnus denies ever asking plaintiff to make  
15 an untrue statement (Magnus Decl. ¶ 12).

16 Plaintiff filed his first amended complaint in May of 2015, alleging six separate claims  
17 related to the termination of his employment: (1) violation of the First, Fifth, and  
18 Fourteenth Amendments under Section 1983; (2) discrimination in violation of Fair  
19 Employment and Housing Act (FEHA); (3) retaliation in violation of FEHA; (4) harassment in  
20 violation of FEHA; (5) violation of the California Constitution; and (6) violation of the Public  
21 Safety Officers Procedural Bill of Rights (POBR). Plaintiff later dropped claim four  
22 (harassment) and claim five (violation of the California Constitution). A prior order denied  
23 defendants’ motion for partial summary judgment, concluding that a reasonable trier of fact  
24 could conclude that defendants violated POBR’s one-year statute of limitations (Dkt. 50).

25 Plaintiff filed for partial summary judgment as to his POBR claim and Section 1983 due  
26 process claim. Defendants filed for summary judgment on all claims.

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1 ANALYSIS

2 1. MOTION FOR SUMMARY JUDGMENT.

3 Summary judgment is proper where the pleadings, discovery, and affidavits show that  
4 there is “no genuine issue as to any material fact and that the moving party is entitled to  
5 judgment as a matter of law.” Rule 56(c). Material facts are those which may affect the  
6 outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

7 A. POBR Claim.

8 The California Public Safety Officers Procedural Bill of Rights provides that “no  
9 punitive action . . . shall be undertaken for any act, omission, or other allegation of misconduct  
10 if the investigation of the allegation is not completed within one year of the public agency’s  
11 discovery.” Cal. Govt. Code Section 3304(d)(1). Section 3304(d)(2)(A) tolls the one-year  
12 statute of limitations during the pendency of a criminal investigation. The California Supreme  
13 Court has held that the purpose of this statute is “to ensure that an officer will not be faced with  
14 the uncertainty of a lingering investigation, but will know within one year of the agency’s  
15 discovery of the officer’s act or omission that it may be necessary for the officer to respond in  
16 the event he or she wishes to defend against possible discipline.” *Mays v. City of Los Angeles*,  
17 43 Cal. 4th 313, 322 (2008).

18 During the investigative interview of plaintiff, internal affairs investigator Walle asked  
19 numerous questions about incidents that occurred well beyond the one-year statute of  
20 limitations. These included inquiries into domestic incidents which occurred in 2007, 2009,  
21 2010, and 2011 (Wilkinson Decl., Exh. A at 29–48). Moreover, defendant Magnus’  
22 recommendation following the *Skelly* hearing made several references to these previous  
23 incidents. Specifically, Magnus’ memorandum stated that, among other things, plaintiff’s “six  
24 years of domestic abuse of [plaintiff’s wife] . . . conclusively proved that Officer Hauschild was  
25 the primary aggressor on September 23, 2012” (Dickerson Decl., Exh. E at 3). Magnus also  
26 considered that plaintiff “was able to provide detailed accounts” regarding the incident on  
27 September 23, 2012 and other domestic violence incidents dating back several years (*ibid*).  
28

1 Defendants argue that all evidence points to the conclusion that the punitive action  
2 against plaintiff arose solely from the incident on September 23, 2012. Defendants contend that  
3 the above quoted passages from the Magnus memorandum were contained in the “Summary of  
4 Charges” section and were not mentioned in the “Discussion” section, which supposedly  
5 contained the analysis and recommendation. Specifically, defendants point out that in the  
6 “Discussion” section, Magnus stated (*id.* at 7):

7 The evidence collected during the investigation supports the investigator’s  
8 finding that Officer Hauschild was the primary aggressor during the incident on  
9 September 23, 2012, even without any consideration of the prior allegations of  
10 domestic abuse by [plaintiff’s wife] against Officer Hauschild.

11 Moreover, in discussing the four separate charges — the domestic violence incident, the  
12 placement of the condom on the door handle, the unregistered firearms, and lying to  
13 investigators — Magnus determined that each of these charges, standing alone, warranted  
14 termination of employment.

15 Thus, defendants argue, because the discussion of the “six years of domestic abuse” only  
16 appeared in the “Summary of Charges” section and because Magnus explicitly stated that the  
17 incident on September 23, 2012, had been sufficient (in and of itself) without consideration of  
18 prior incidents, no issue of material fact exists as to whether defendants took punitive action  
19 based on old misconduct.

20 Defendants’ assertion, that the old conduct played no role in the termination decision,  
21 may very well be true. That, however, must be determined by the trier of fact. A reasonable  
22 trier of fact could find that based on the several references to past events in the Magnus  
23 memorandum, and based on the questions regarding old incidents raised in the investigatory  
24 interview, that the City actually gave weight to these old events in making its termination  
25 decision. While Magnus stated that the evidence showed plaintiff was the primary aggressor  
26 even *without* any consideration of the prior allegations of domestic abuse, the recurring  
27 reference to those events throughout the process raises an inference, even if remote, that  
28 plaintiff’s past came back to haunt him. From the fact that a substantial portion of the  
investigation focused on plaintiff’s conduct from 2006–2011, along with the fact that Magnus’  
memorandum discussed the prior instances multiple times, a reasonable trier of fact could find

1 that defendants' punitive actions were based on conduct that occurred beyond POBR's one-year  
2 statute of limitations.

3 With its motion, defendants submit new declarations in an attempt to show that the  
4 termination was not based on acts outside the one-year statute of limitations. In a declaration,  
5 Magnus avers that he believes plaintiff was the primary aggressor on September 23, 2012  
6 regardless of any prior allegations of domestic abuse (Magnus Decl. ¶ 18). In a declaration, the  
7 City Manager Lindsay states that he did not base any part of his termination decision upon the  
8 statement that there had been a long-standing history of domestic abuse (Lindsay Decl. ¶ 8.)  
9 These after-the-fact statements do not cure the underlying issue.

10 At the hearing on June 23, defendants' counsel asserted that plaintiff himself had  
11 requested that the investigator examine the prior incidents to show a pattern of lying and  
12 aggression on the part of his former spouse. That is, counsel said plaintiff himself invited an  
13 examination into the forbidden time zone. Counsel, however, could not point to a particular  
14 document that showed plaintiff had made this request. After the hearing, defendants submitted  
15 an email from plaintiff's counsel in an attempt to show plaintiff had made this request. The  
16 email attached a letter from plaintiff's counsel to the District Attorney outlining the former  
17 spouse's history of aggressive conduct. The email did not expressly invite the department to  
18 investigate incidents older than a year. This will have to remain a point of contention for trial.

19 This order, like the prior order, concludes that a reasonable trier of fact could find (and  
20 could refuse to find) that defendants took punitive action against plaintiff for events occurring  
21 earlier than the POBR's one-year statute of limitations. Defendants' motion for summary  
22 judgment as to plaintiff's POBR claim is **DENIED**.

23 If we were writing on a clean slate, the Court would be inclined to hold that, under the  
24 POBR, events older than one year may be considered solely for the purposes of the credibility  
25 of the officer (as well as the complaining witness), but that no officer may be punished or  
26 disciplined for alleged misconduct older than one year. For example, the first time an officer  
27 gives an explanation it may seem plausible but as the same scenario recurs year after year, the  
28 same explanation may sour. Thus, in this case, it would have been permissible for the

1 reviewing officer to limit the consideration of older events solely to credibility of the officer in  
2 question so long as he was punished for nothing more than events within the one-year period.  
3 Unfortunately, there is no definitive case law on this point — at least counsel have failed to  
4 supply any. More than that, on the particular facts of this case, the memorandum mentioned  
5 events outside the one-year period in such a way as to allow a trier of fact to reasonably  
6 conclude that defendant was punished for older events and that the older events were not limited  
7 to credibility. Of course, a trier of fact could very reasonably conclude the plaintiff was *not*  
8 punished for anything older than one year, and in fact that may be the best reading of the  
9 memorandum. Nevertheless, it is not the only reasonable reading, and the trier of fact will have  
10 to decide.

11 This order concludes that summary judgment for the plaintiff is also inappropriate. In  
12 his memorandum, Magnus stated that he had determined that each of these charges, standing  
13 alone, warranted termination of employment. Moreover, the memorandum concluded that the  
14 evidence showed plaintiff was the primary aggressor even *without* any consideration of the prior  
15 allegations of domestic abuse. A reasonable trier of fact could conclude that defendants’  
16 termination of plaintiff was *not* based on acts outside the one-year limitations. Plaintiff’s  
17 motion for summary judgment as to his POBR claim is **DENIED**.

18 **B. FEHA Claims.**

19 **(1) FEHA Discrimination Claim.**

20 Under FEHA, an employer may not, because of a person’s race, discharge the person  
21 from employment or discriminate against the person in compensation or in terms, conditions, or  
22 privileges of employment. Cal. Gov’t Code § 12940(a). To evaluate whether a party has  
23 proven discrimination in violation of FEHA, California courts use the burden-shifting test  
24 established by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).  
25 *Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 354 (2000).

26 The test requires a plaintiff to first establish a prima facie case of discrimination by  
27 “offering evidence that give[s] rise to an inference of unlawful discrimination.” *E.E.O.C. v.*  
28 *Boeing Co.*, 577 F.3d 1044, 1049 (9th Cir. 2009). If a plaintiff has established a prima facie

1 discrimination claim, the burden shifts to the defendant to articulate a legitimate  
2 nondiscriminatory reason for the adverse employment action. If the defendant articulates such a  
3 reason, a plaintiff may defeat summary judgment by offering direct or circumstantial evidence  
4 that a discriminatory reason more likely motivated the employer to take the adverse  
5 employment action or that the employer’s proffered explanation is unworthy of credence and a  
6 pretext for discrimination. *Surrell v. California Water Serv. Co.*, 518 F.3d 1097, 1106 (9th Cir.  
7 2008).

8 In his opposition to defendants’ motion for summary judgment, plaintiff asserts an  
9 entirely new theory of discrimination. Plaintiff argues that his former spouse committed the  
10 same alleged conduct as plaintiff — she engaged in battery and destruction of plaintiff’s  
11 property and admitted to lying regarding a 2007 incident — but the City did not discipline her.  
12 Plaintiff contends this demonstrates the City engaged in gender discrimination against him.<sup>2</sup>

13 Plaintiff’s new theory of discrimination is not reflected in the First Amended Complaint.  
14 A plaintiff may not raise new theories for the first time on summary judgment this late in  
15 litigation. *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 969 (9th Cir. 2006). This order  
16 finds that plaintiff failed to provide defendants with adequate notice of these allegations.  
17 Plaintiff’s new theory will be disregarded.

18 What remains is plaintiff’s theory that he was fired because of his race. Plaintiff  
19 presents evidence that Magnus made deeply offensive comments regarding African-Americans  
20 and Latinos. Plaintiff submits testimony that Magnus stated he preferred to work with officers  
21 who looked like him (Threets Dep., pp. 71, 79–81). In addition, plaintiff submits evidence that,  
22 unlike plaintiff, the non-Asian officers who illegally transferred firearms to plaintiff were not  
23 terminated from their employment due to the illegal transfers.

24 Assuming for the sake of argument that plaintiff met his initial burden to show a prima  
25 facie case of discrimination, defendants submit more than enough evidence to meet their burden  
26 under *McDonnell Douglas* to show a legitimate basis for the employment decision. The City  
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28 <sup>2</sup> Plaintiff’s complaint includes a generic reference to gender discrimination but provides no factual  
allegations to support a claim for gender discrimination.



1 determined that plaintiff had battered his former spouse, placed a condom on her door, and then  
2 lied to investigators about it (Dickerson Decl., Exh. E). A “substantial showing” by plaintiff is  
3 required at the pretext stage. *Decker v. Barrick Goldstrike Mines, Inc.*, No. 14-15051, 2016 WL  
4 1128176, at \*1 (9th Cir. Mar. 23, 2016). Plaintiff fails to make a “substantial showing” that his  
5 termination was a pretext. A reasonable trier of fact could not conclude that plaintiff was  
6 terminated for discriminatory reasons.

7 (2) ***FEHA Retaliation Claim.***

8 Our court of appeals has stated that to establish a prima facie case of FEHA retaliation, a  
9 plaintiff must demonstrate: (1) a protected activity; (2) an adverse employment action; and (3)  
10 a causal link between the protected activity and the adverse employment action. *Cornwell v.*  
11 *Electra Cent. Credit Union*, 439 F.3d 1018, 1034–35 (9th Cir. 2006).

12 If a plaintiff has established a prima facie retaliation claim, the burden shifts to the  
13 defendant to articulate a legitimate nondiscriminatory reason for the adverse employment  
14 action. If the defendant articulates such a reason, a plaintiff may defeat summary judgment by  
15 offering direct or circumstantial evidence that a discriminatory reason more likely motivated the  
16 employer to take the adverse employment action or that the employer’s proffered explanation is  
17 unworthy of credence and a pretext for discrimination. *Surrell v. California Water Serv. Co.*,  
18 518 F.3d 1097, 1106 (9th Cir. 2008).

19 In his opposition to defendants’ motion for summary judgment, plaintiff asserts a new  
20 theory of retaliation. Plaintiff alleges that he repeatedly complained that his former spouse was  
21 creating a hostile work environment. Plaintiff’s new theory of discrimination is not asserted in  
22 the First Amended Complaint. A plaintiff may not raise new theories for the first time on  
23 summary judgment this late in litigation. *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963,  
24 969 (9th Cir. 2006). As such, the complaint did not put defendants on notice about the evidence  
25 it would need to defend against plaintiff’s new allegations. This order finds that plaintiff failed  
26 to provide defendants with adequate notice of these allegations. Plaintiff’s new theories will  
27 therefore be disregarded.

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1           What remains is plaintiff’s assertion that he was fired in retaliation for allegedly making  
2 complaints about sexual harassment by Magnus and for allegedly refusing to lie in the course of  
3 an investigation. In a declaration, plaintiff states that, after Magnus allegedly made a sexual  
4 advance, plaintiff reported the incident to his supervisor, Threets (Hauschild Decl. ¶ 8).  
5 Defendants submit testimony from Threets that plaintiff never reported any such incident to him  
6 (Threets Decl. ¶¶ 3). Plaintiff’s evidence that he was asked to lie in the course of an  
7 investigation but refused to do so is similarly thin. He submits only his own declaration.

8           Assuming for the sake of argument that plaintiff met his initial burden to show a prima  
9 facie case of discrimination, defendants submit more than enough evidence to meet their burden  
10 under *McDonnell Douglas* to show a legitimate basis for the employment decision. The City  
11 determined that plaintiff had battered his former spouse, placed a condom on her door, and then  
12 lied to investigators about it (Dickerson Decl., Exh. E).

13           A “substantial showing” by plaintiff is required at the pretext stage. *Decker v. Barrick*  
14 *Goldstrike Mines, Inc.*, No. 14-15051, 2016 WL 1128176, at \*1 (9th Cir. Mar. 23, 2016).  
15 Plaintiff fails to submit a “substantial showing” that his termination was a pretext. A reasonable  
16 trier of fact could not conclude that plaintiff was terminated in retaliation for alleged complaints  
17 he made about an alleged sexual advance.

18           **C. Section 1983 Claims.**

19           **(1) Due Process Claims.**

20           In December of 2013, plaintiff opted to submit his appeal of his dismissal to binding  
21 arbitration and concurrently waived his right to a Personnel Board hearing (Dkt. 20, Ex. A).  
22 Plaintiff also previously dismissed his due process claims under the California Constitution.

23           Plaintiff contends that he is *not* asserting a “due process claim involving the adequacy of  
24 the pre- or post-termination remedies in this case, or his liberty interest.” Rather, he contends  
25 that he has a property interest in the “existing state law rule or understandings [including] the  
26 procedural protections contained in POBR, including the one-year limitations period.”

27           This order declines to hold that plaintiff has a property interest in the one-year statute of  
28 limitations. To be sure, plaintiff had a property interest in his employment. Here, however,

1 plaintiff waived his rights to post-termination proceedings by opting to submit his appeal of his  
2 dismissal to binding arbitration and concurrently waiving his right to a Personnel Board  
3 hearing. Plaintiff thereby waived his ability to bring a due process claim based on the  
4 termination of his employment. *Ramirez v. Cty. of Marin*, 578 F. App'x 673, 676 (9th Cir.  
5 2014) (plaintiff cannot complain about defect in pre-termination hearing when the plaintiff did  
6 not take advantage of the available post-termination process). Plaintiff's back-door effort to  
7 evade the preclusive effect of his waiver is unconvincing. Plaintiff's motion for summary  
8 judgment as to his due process claim is **DENIED**. Defendants' motion for summary judgment as  
9 to plaintiff's due process claim is **GRANTED**.

10 (2) *First Amendment Retaliation Claim.*

11 As an initial matter, it should be noted that plaintiff asserts entirely new theories to  
12 support his First Amendment retaliation claim in his opposition to defendants' motion for  
13 summary judgment. Plaintiff asserts that his First Amendment claim is supported by complaints  
14 he made "about the criminal misconduct of his former spouse" and his "refusal to lie during the  
15 course of a racial discrimination complaint" (Opp. at 24).

16 Plaintiff's new theory of retaliation is not reflected in the First Amended Complaint.<sup>3</sup> A  
17 plaintiff may not raise new theories for the first time on summary judgment. *Pickern v. Pier 1*  
18 *Imports (U.S.), Inc.*, 457 F.3d 963, 969 (9th Cir. 2006). As such, the complaint did not put  
19 defendants on notice about the evidence they would need to defend against plaintiff's new  
20 allegations. This order finds that plaintiff failed to provide defendants with adequate notice of  
21 these allegations. Plaintiff's new theories will be disregarded.

22 What remains under the First Amendment retaliation claim is plaintiff's assertion that he  
23 was fired in retaliation for making complaints about alleged sexual harassment by Chief  
24 Magnus and for refusing to lie in the course of an investigation.

25 A First Amendment retaliation claim involves a five-step analysis: (1) whether the  
26 plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen

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<sup>3</sup> Defendants also assert that plaintiff's responses to interrogatories also did not reflect these new  
allegations (Reply at 3).

1 or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating  
2 factor in the adverse employment action; (4) whether the state had an adequate justification for  
3 treating the employee differently from other members of the general public; and (5) whether the  
4 state would have taken the adverse employment action even absent the protected speech.

5 Plaintiff's evidence of protected speech is thin. In a declaration, he avers that he made a  
6 complaint to his supervisor, Threats, about an alleged sexual advance by Magnus. The  
7 supervisor remembers no such thing. Plaintiff further avers that Magnus demanded he lie in  
8 connection with an investigation and that plaintiff refused to do so. These statements are  
9 uncorroborated by any other evidence.

10 Nonetheless, assuming arguendo that plaintiff complained to Threats, and that he  
11 refused to lie during an investigation, the City would have taken the same employment action  
12 regardless — and reasonably so.

13 For the reasons described above, defendants make a substantial showing that the City had a  
14 legitimate basis for the employment decision. A reasonable trier of fact could not conclude that  
15 plaintiff was terminated in retaliation for a complaint he made about an alleged sexual advance  
16 or for his alleged refusal to lie.

17 (3) *Monell Claim.*

18 Plaintiff has presented no evidence that the City of Richmond maintains a custom,  
19 policy, or practice of retaliating against employees who make complaints of public concern. As  
20 such, defendants' motion for summary judgment is **GRANTED**.

21 **2. JUDICIAL NOTICE.**

22 Defendants ask the Court to take judicial notice of a judgment in a 2006 lawsuit against  
23 Magnus and the City of Richmond in the Superior Court of Contra Costa. Defendants contend  
24 that all of the alleged derogatory statements by Magnus relate back to this 2006 lawsuit brought  
25 by African-American officers, including Lieutenant Threats. This order declines to take judicial  
26 notice of the judgment because it is impossible to know if the lawsuit arose from the same  
27 statements alleged here.


28 **CONCLUSION**

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For the foregoing reasons, plaintiff’s motion for summary judgment as to his POBR and due process claim is **DENIED**. Defendants’ motion for summary judgment is **GRANTED IN PART**: defendants’ motion for summary judgment as to plaintiff’s POBR claim is **DENIED**; defendants’ motion for summary judgment as to plaintiff’s FEHA claims for discrimination is **GRANTED**; defendants’ motion for summary judgment as to plaintiff’s FEHA claims for retaliation is **GRANTED**; defendants’ motion for summary judgment as to plaintiff’s due process claim is **GRANTED**; defendants’ motion for summary judgment as to plaintiff’s First Amendment retaliation claim is **GRANTED**; and defendants’ motion for summary judgment as to plaintiff’s *Monell* claim is **GRANTED**. Plaintiff’s remaining claim is his claim for violation of POBR.

**IT IS SO ORDERED.**

Dated: June 24, 2016.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE