

United States District Court  
For the Northern District of California

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E-FILED on 10/27/2008

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DARRIN SMOLINSKI ,  
Plaintiff,  
v.  
CITY OF PACIFIC GROVE, PACIFIC  
GROVE POLICE DEPARTMENT, SCOTT  
MILLER,  
Defendants.

No. C-08-01809 RMW  
  
ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS  
  
[Re Docket No. 22]

Plaintiff Darrin Smolinski ("Smolinski") sued defendants City of Pacific Grove ("City"), Pacific Grove Police Department ("Department") and Scott Miller ("Miller") for alleged intimidation based on his sexual orientation and committed in retaliation for his exercise of a Constitutional right. Defendants moved to dismiss Smolinski's sixth, seventh, eighth and tenth claims alleging that Miller interfered with his prospective economic advantage with the Department and threatened to investigate Smolinski in retaliation for exercising a Constitutional right in violation of California Civil Code §§ 51.7 and 52.1. The court has read the moving and responding papers and considered the arguments of counsel.

As explained at court, the defendants' motion to dismiss plaintiff's sixth claim is DENIED with respect to defendant Miller for the time period following his employment with the police

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CEA

1 department. The court GRANTS defendants' motion to dismiss plaintiff's seventh claim since no  
2 negligent interference has been pleaded. The court GRANTS defendants' motion to dismiss  
3 plaintiff's eighth claim regarding violations of Code §§ 51.7 and 52.1 with leave to amend. Plaintiff  
4 has twenty (20) days from the date of this order to amend their complaint as to allegations regarding  
5 Miller's alleged violation of California Civil Code § 51.7. The parties have agreed to dismiss the  
6 plaintiff's tenth claim and to strike the punitive damages allegation against the City and the  
7 Department

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DATED: 10/22/2008



RONALD M. WHYTE  
United States District Judge

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8 Counsel are responsible for distributing copies of this document to co-counsel that have not  
9 registered for e-filing under the court's CM/ECF program.

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11 **Dated:** 10/27/2008

TSF  
**Chambers of Judge Whyte**

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