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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JARED J. BAILEY ET AL.,

Plaintiff,

v.

OLYMPIA UNION GOSPEL MISSION;
OLYMPIA UNION GOSPEL MISSION
BOARD OF DIRECTORS; LOREN
STEFFEN; MINDY CRUMP,

Defendants.

CASE NO. 3:23-cv-05337

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

1. INTRODUCTION

This is an employment action. Plaintiff Jared Bailey alleges that Defendants Olympia Union Gospel Mission (OUGM), OUGM's Board of Directors, Loren Steffen, and Mindy Crump violated the False Claims Act, 42 U.S.C §§ 1981 & 1983, and Title VII of the Civil Rights Act of 1964. This matter comes before the Court on Defendants' motion for summary judgment. Dkt. No. 25. Defendants move for summary judgment on all of Bailey's claims. For the reasons explained below, the Court GRANTS Defendants' motion for summary judgment.

2. BACKGROUND

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2 In February 2021, OUGM, an evangelical Christian rescue mission serving
3 Olympia, Washington, hired Bailey as a security guard. Dkt. No. 26 ¶ 3. In June
4 2021, OUGM’s executive director, Steffen, claims he began receiving complaints
5 that Bailey was espousing spiritual beliefs during his shifts to staff, volunteers, and
6 clients, that were contrary to OUGM’s core beliefs and Statement of Faith. *Id.* ¶¶ 5,
7 7.

8 On January 1, 2022, Steffen received a report that Bailey was involved in a
9 physical altercation with an OUGM patron. *Id.* ¶ 12. As part of an investigation into
10 the incident, Steffen reviewed OUGM’s security camera footage and concluded that
11 Bailey used an unjustified level of force against the patron. *Id.* ¶¶ 12-15. On
12 January 20, 2022, OUGM terminated Bailey’s employment for his “unjustified use
13 of force on a Mission guest on January 1, 2022, at approximately 7:36 a.m.” Dkt. No.
14 26-5 at 2.

15 Bailey then filed a discrimination charge with the Equal Employment
16 Opportunity Commission (EEOC), alleging “retaliation, national origin, race and
17 religion” discrimination. Dkt. No. 26-6 at 2-3. OUGM responded to the charge,
18 denying that it had engaged in unlawful discrimination. Dkt. No. 26-7 at 2-6.

3. DISCUSSION

3.1 Legal standard.

20
21 “[S]ummary judgment is appropriate when there is no genuine dispute as to
22 any material fact and the movant is entitled to judgment as a matter of law.”
23

1 *Frlekin v. Apple, Inc.*, 979 F.3d 639, 643 (9th Cir. 2020) (internal citation omitted). A
2 dispute is “genuine” if “a reasonable jury could return a verdict for the nonmoving
3 party” and a fact is material if it “might affect the outcome of the suit under the
4 governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When
5 considering a summary judgment motion, courts must view the evidence “in the
6 light most favorable to the non-moving party.” *Barnes v. Chase Home Fin., LLC*,
7 934 F.3d 901, 906 (9th Cir. 2019) (internal citation omitted). “[S]ummary judgment
8 should be granted where the nonmoving party fails to offer evidence from which a
9 reasonable jury could return a verdict in its favor.” *Triton Energy Corp. v. Square D*
10 *Co.*, 68 F.3d 1216, 1221 (9th Cir. 1995). Summary judgment should also be granted
11 where there is a “complete failure of proof concerning an essential element of the
12 non-moving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

13 **3.2 Bailey’s False Claims Act claim fails as a matter of law.**

14 Bailey argues OUGM violated the False Claims Act (FCA) by falsely claiming
15 to the EEOC that it “fired [Bailey] for criminally assaulting an OUGM guest” when
16 Bailey “has never been convicted of assaulting [sic].” Dkt. No. 28 at 2. In response,
17 OUGM contends that Bailey fails to state a claim because he does not allege, much
18 less prove, OUGM made a false claim within the meaning of the FCA and obtained
19 money from the government as a result. The Court agrees.

20 The FCA imposes civil liability on “any person” who “knowingly present[s], or
21 caus[es] to be presented, a false or fraudulent claim for payment or approval” to the
22 government or to certain third parties acting on the government’s behalf. *Cochise*
23

1 *Consultancy, Inc. v. United States ex rel. Hunt*, 139 S. Ct. 1507, 1510 (2019)
2 (internal quotations and citation omitted). “The FCA allows private individuals,
3 referred to as ‘relators,’ to bring suit on the Government’s behalf against entities
4 that have violated the Act’s prohibitions.” *U.S. ex rel. Mateski v. Raytheon Co.*, 816
5 F.3d 565, 569 (9th Cir. 2016) (citing 31 U.S.C. § 3730(b)(1)). “[A] successful False
6 Claims Act claim requires: ‘(1) a false statement or fraudulent course of conduct, (2)
7 made with scienter, (3) that was material, causing (4) the government to pay out
8 money or forfeit moneys due.’” *United States ex rel. Rose v. Stephens Inst.*, 909 F.3d
9 1012, 1017 (9th Cir. 2018) (quoting *United States ex rel. Hendow v. Univ. of*
10 *Phoenix*, 461 F.3d 1166 (9th Cir. 2006)).

11 Bailey’s FCA claim fails for at least two reasons. First, Bailey may not
12 proceed pro se on his FCA claim. “Because *qui tam* relators are not prosecuting only
13 their ‘own case’ but also representing the United States and binding it to any
14 adverse judgment the relators may obtain,” they may *not* “proceed pro se in FCA
15 actions.” *Stoner v. Santa Clara Cnty. Off. of Educ.*, 502 F.3d 1116, 1126-27 (9th Cir.
16 2007). Second, Bailey has neither alleged nor demonstrated that OUGM’s allegedly
17 false statement to the EEOC caused the government to pay out or forfeit any
18 moneys due.

19 Accordingly, Bailey’s FCA claim is DISMISSED.

20 **3.3 OUGM is entitled to summary judgment on Bailey’s intentional**
21 **discrimination claims.**

22 Bailey alleges OUGM violated Title VII and Section 1981 by discriminating
23 against him because of his religion and race. He offers no direct evidence of religious

1 or racial discrimination by OUGM, so the Court turns to the time-tested *McDonnell*
2 *Douglas* burden shifting framework to evaluate his claims at the summary
3 judgment stage. *See Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103-07 (9th Cir.
4 2008) (applying same legal principles to Title VII and Section 1981 racial
5 discrimination claims, including the *McDonnell Douglas* burden-shifting
6 framework); *Bodett v. CoxCom, Inc.*, 366 F.3d 736, 743 (9th Cir. 2004) (applying
7 *McDonnell Douglas* burden-shifting framework to Title VII religious discrimination
8 claim); *see also Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S. Ct.
9 1009, 1019 (2020) (the *McDonnell Douglas* framework is a tool for assessing claims
10 at the summary judgment stage).

11 There are three steps under the *McDonnell Douglas* framework: First, the
12 employee must establish a prima facie case of discrimination. *McDonnell Douglas*
13 *Corp. v. Green*, 411 U.S. 792, 802 (1973). If the employee establishes a prima facie
14 case, the burden shifts to the employer to articulate a legitimate, nondiscriminatory
15 reason for the challenged action. *Id.* Finally, if the employer carries its burden, the
16 employee must show that the “reason is pretextual either directly by persuading the
17 court that a discriminatory reason more likely motivated the employer or indirectly
18 by showing that the employer’s proffered explanation is unworthy of credence.”
19 *Chuang v. Univ. of Cal. Davis, Bd. Of Trs.*, 225 F.3d 1115, 1123–24 (9th Cir. 2000)
20 (internal quotation marks omitted).

21 Taking the facts in the light most favorable to the non-moving party, the
22 Court finds that Bailey has established a prima facie case of discrimination by
23 showing that (1) he is African American and follows “Orthodox Christianity,” (2) he

1 was qualified to work as a security guard at OUGM, (3) he was placed on
2 administrative leave and fired, and (4) that he was treated less favorably than
3 others outside his protected class. *See Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089
4 (9th Cir. 2008) (describing elements of prima facie case under *McDonnell Douglas*
5 framework); *see also* Dkt. No. 26-6 at 2-3. OUGM argues otherwise, contending that
6 Bailey has not put forth sufficient evidence to demonstrate a question of fact, but in
7 an employment discrimination dispute, a plaintiff generally needs to “produce very
8 little evidence in order to overcome an employer’s motion for summary judgment.”
9 *Chuang*, 225 F.3d at 1124. And only “minimal” proof is required on summary
10 judgment to establish a prima facie case, not even rising to the level of a
11 preponderance of the evidence. *Dominguez-Curry v. Nev. Transp. Dep’t*, 424 F.3d
12 1027, 1037 (9th Cir. 2005).

13 Likewise, the Court finds that OUGM has provided, in the form of its
14 termination letter and sworn declarations, evidence that it fired Bailey for getting
15 into a physical altercation with a guest.

16 So Bailey’s discrimination claims turn on whether OUGM’s stated reason for
17 firing him was in fact a pretext for discrimination. Bailey suggests that OUGM’s
18 explanation for firing him was false because OUGM wrongly identified the man
19 Bailey was fighting with in the security camera footage. But “courts only require
20 that an employer honestly believed its reason for its actions, even if its reason is
21 foolish or trivial or even baseless.” *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d
22 1054, 1063 (9th Cir. 2002) (internal quotations omitted). Bailey has provided no
23

1 evidence indicating that OUGM's proffered explanation was false and that its actual
2 motivation was racial or religious animus toward him.

3 Because Bailey cannot show that triable issues exist regarding pretext,
4 summary dismissal of his Title VII and Section 1981 race discrimination claims is
5 warranted.

6 **3.4 Bailey cannot maintain a Section 1983 claim against OUGM.**

7 OUGM moves for summary judgment on Bailey's Section 1983 because he
8 has failed to allege state action. To state a claim under Section 1983, Bailey must
9 show (1) that a right secured by the Constitution or federal law was violated, and
10 (2) that the alleged violation was committed by a person acting under the color of
11 State law. *West v. Atkins*, 487 U.S. 42, 48 (1988). "[T]he under-color-of-state-law
12 element of § 1983 excludes from its reach 'merely private conduct, no matter how
13 discriminatory or wrongful[.]'" *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50
14 (1999) (internal citation omitted). The Court starts with the "presumption that
15 private conduct does not constitute governmental action." *Sutton v. Providence St.*
16 *Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). But "action taken by private
17 individuals may be 'under color of state law' where there is 'significant' state
18 involvement in the action." *Howerton v. Gabica*, 708 F.2d 380, 382 (9th Cir. 1983)
19 (internal citations omitted).

20 Here, Bailey fails to allege, much less generate a question of fact, about
21 whether OUGM was acting under color of state law or that there was significant
22 state involvement here. This is fatal to his Section 1983 claim. Accordingly, the
23

1 Court GRANTS OUGM's motion for summary judgment on Bailey's Section 1983
2 claim.

3 **4. CONCLUSION**

4 In sum the Court GRANTS Defendants' motion for summary judgment on all
5 claims. Dkt. No. 25.

6 Dated this 19th day of April, 2024.

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8 _____
9 Jamal N. Whitehead
10 United States District Judge