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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

David Gomez,
Plaintiff,
v.
International Longshore and
Warehouse Union et al.,
Defendants.

2:19-cv-09837-VAP-JCx

**Order GRANTING Defendants’
Motion for Summary Judgment
(Dkt. 24)**

United States District Court
Central District of California

Before the Court is Defendants International Longshore and Warehouse Union, International Longshore and Warehouse Union, Local 13, and Pacific Maritime Association’s (“PAC”) (collectively, “Defendants”) Joint Motion for Summary Judgment. (Dkt. 24).

After considering all the papers filed in support of, and in opposition to, the Motion, the Court deems this matter appropriate for resolution without a hearing pursuant to Local Rule 7-15. The Court GRANTS the Motion.

I. BACKGROUND

This action arises out of a dispute over Plaintiff David Gomez’s (“Plaintiff” or “Gomez”) deregistration as a Los Angeles-Long Beach longshore worker. (See *generally* First Amended Complaint (“FAC”), Dkt. 1-

1 5). Specifically, Plaintiff claims that Defendants wrongfully deregistered him
2 as a longshoreman for failing to provide an excused absence from the
3 industry even though Defendants knew Plaintiff was incarcerated. (*Id.*, at 3).

4
5 In October 2019, Gomez filed the instant lawsuit against Defendants
6 in the California Superior Court for the County of Los Angeles alleging
7 claims for: (1) Breach of Contract; (2) Violation of Plaintiff's Civil Rights; (3)
8 Denial of Due Process; (4) Discrimination and Denial of Ability to Work as a
9 Longshoreman; (5) Declaratory Relief; and (6) Injunctive Relief. (See FAC).

10
11 On November 15, 2019, Defendants removed the case to this Court
12 on the basis of federal question jurisdiction. (Dkt. 1). According to
13 Defendants, state claims brought to enforce collective bargaining
14 agreements are preempted under Section 301 of the Labor Management
15 Relations Act, 29 U.S.C section 185, which states “[s]uits for violation of
16 contracts between an employer and a labor organization representing
17 employees in an industry affecting commerce ... may be brought in any
18 district court of the United States having jurisdiction of the parties, without
19 respect to the amount in controversy or without regard to the citizenship of
20 the parties.” 29 U.S.C. § 185(a). (See Dkt. 1, at 3-5).

21
22 On September 24, 2020, Defendants filed a Joint Motion for Summary
23 Judgment. (Dkt. 24). Plaintiff opposed the Motion on October 30, 2020
24 (Dkt. 28), and Defendants replied on November 16, 2020 (Dkt. 45).

1
2 **II. FACTS**

3 Both Plaintiff and Defendants filed statements of undisputed facts.
4 (Dkt. 24-2; Dkt. 33). In addition, Plaintiff filed a statement of genuine
5 disputes and additional facts. (Dkt. 43).
6

7 To the extent certain facts or contentions are not mentioned in this
8 Order, the Court has not found it necessary to consider them in reaching its
9 decision. In addition to considering the evidentiary objections raised by the
10 parties, the Court has reviewed independently the admissibility of the
11 evidence that both parties submitted and has not considered evidence that
12 is irrelevant or inadmissible. At the summary judgment stage, a district court
13 should “focus on the admissibility of the [evidence’s] contents” and not the
14 form in which the evidence is presented—it is sufficient that a party will be
15 able to produce evidence in its admissible form at trial. See *Fraser v.*
16 *Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003); *Block v. City of Los Angeles*,
17 253 F.3d 410, 418–19 (9th Cir. 2001).
18

19 Moreover, “objections to evidence on the ground that it is irrelevant,
20 speculative, and/or argumentative, or that it constitutes an improper legal
21 conclusion are all duplicative of the summary judgment standard itself” and
22 thus need not be considered on a motion for summary judgment. *Burch v.*
23 *Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1120 (E.D. Cal. 2006).
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1 **A. Undisputed Facts**

2 Plaintiff's registration privileges as a longshoreman are governed by a
3 collective bargaining agreement between International Longshore and
4 Warehouse Union, International Longshore and Warehouse Union Local 13,
5 and Pacific Maritime Association (the, "Agreement") (Dkt. 43, at 3, ¶ 3). The
6 crux of the parties' dispute is whether Plaintiff was de-registered in
7 accordance with the Agreement's terms.
8

9 In October 2016, Plaintiff was convicted of defrauding his welfare plan
10 (the "Plan"). (Dkt. 24-2, at 8, ¶ 30). Plaintiff was ordered to pay \$201,000 in
11 restitution and sentenced to 41 months in prison. (*Id.*, at 8, ¶ 31). During
12 Plaintiff's incarceration, two union-management labor relations committees
13 deregistered him, *i.e.*, permanently revoked his employment as a
14 longshoreman at the West Coast ports. (*Id.*, at 8-9, ¶¶ 32, 34). Plaintiff was
15 first deregistered on April 14, 2017 for being absent from the industry for 30
16 days or longer without an approved leave of absence. (*Id.*, at 8, ¶¶ 32). On
17 November 7, 2017, Plaintiff was also deregistered for his "admitted
18 egregious abuse of" the Plan in connected with his conviction. (*Id.*, at 9, ¶¶
19 34).
20

21 Plaintiff served 24 months of his sentence before being released in
22 October 2018. (*Id.*, at 8, ¶ 31). Plaintiff became aware of his deregistration
23 while he was in prison, and at the latest by his release in October 2018.
24 (*Id.*, at 10, ¶¶ 41-42). Plaintiff discussed his options for suing Defendants in
25 January 2019. (*Id.*, at 11, ¶ 50).
26

1 In April 2019, Plaintiff filed for Chapter 7 bankruptcy. (*Id.*, at 11, ¶ 48).
2 Plaintiff did not disclose his potential claims against Defendants related to
3 his deregistration in the bankruptcy proceedings. (*Id.*, at 11, ¶¶ 51-52). The
4 bankruptcy was discharged in July 2019—three months before Plaintiff filed
5 the instant lawsuit. (*Id.*, at 12, ¶ 55).

7 III. LEGAL STANDARD

8 A motion for summary judgment shall be granted when there is no
9 genuine issue as to any material fact and the moving party is entitled to
10 judgment as a matter of law. Fed. R. Civ. P. 56(a); *Anderson v. Liberty*
11 *Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

12
13 Generally, the burden is on the moving party to demonstrate that it is
14 entitled to summary judgment. *Margolis v. Ryan*, 140 F.3d 850, 852 (9th Cir.
15 1998). “The moving party may produce evidence negating an essential
16 element of the nonmoving party’s case, or . . . show that the nonmoving
17 party does not have enough evidence of an essential element of its claim or
18 defense to carry its ultimate burden of persuasion at trial.” *Nissan Fire &*
19 *Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1106 (9th Cir. 2000)
20 (*reconciling Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970) and *Celotex*
21 *Corp. v. Catrett*, 477 U.S. 317 (1986)). The nonmoving party must then “do
22 more than simply show that there is some metaphysical doubt as to the
23 material facts” but must show specific facts which raise a genuine issue for
24 trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
25 (1986). A genuine issue of material fact will exist “if the evidence is such
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1 that a reasonable jury could return a verdict for the non-moving party.”
2 *Anderson*, 477 U.S. at 248.

3
4 In ruling on a motion for summary judgment, a court construes the
5 evidence in the light most favorable to the non-moving party. *Barlow v.*
6 *Ground*, 943 F.2d 1132, 1135 (9th Cir. 1991). “[T]he judge’s function is not []
7 to weigh the evidence and determine the truth of the matter but to determine
8 whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249.

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10 **IV. DISCUSSION**

11 Defendants argue that summary judgment in this case is proper for
12 four reasons: (1) Gomez’s claims are barred by the statute of limitations; (2)
13 Gomez is judicially estopped from bringing his claims because he failed to
14 disclose them in his bankruptcy proceedings; (3) Gomez’s deregistration
15 was allowed under the Agreement because he failed to work at least one
16 shift in a 30-day period, and there are no exceptions for being incarcerated
17 (let alone being incarcerated for defrauding his welfare plan), and the
18 Agreement provides Gomez no right to appear before an LRC before his
19 deregistration; and (4) the remaining claims depend on the breach of
20 contract claim and therefore they also fail. (Dkt. 24-1).

21
22 As a threshold matter, Plaintiff fails to address any of Defendants’
23 arguments substantively or otherwise in his Opposition. Critically, Plaintiff
24 fails to address why his entire action is not barred by the statute of
25 limitations. Defendants argue, and the Court agrees, that Gomez’s Breach
26 of Contract claim is time barred. See 29 U.S.C. §160(b); *De/Costello v.*

1 *Teamsters*, 462 U.S. 151, 165 (1983); *Kaufman v. Pacific Maritime Assn.*,
2 No. C-12-5051 EMC, 2013 WL 1560300, at *1, 3 (N.D. Cal. April 12, 2013);
3 *Audette v. International Longshoremen's and Warehousemen's Union*, 195
4 F.3d 1107 (1999) (affirming dismissal on summary judgment of longshore
5 workers' breach of contract and discrimination claims that were preempted
6 by Section 301 and barred by the LMRA's six month statute of limitations).
7 Gomez admits that he became aware of his deregistration and potential
8 deregistration claims while in prison, and at the latest upon his release in
9 October 2018. Gomez further admits to conferring with an attorney about
10 his potential claims in January 2019. Gomez's belated filing of this action is
11 fatal to his breach of contract claim and he fails to address this argument at
12 all in his Opposition let alone create a genuine dispute as to the time he
13 became aware of his claims against Defendants.¹
14

15 Accordingly, the Court finds that Defendants have met their burden of
16 showing there are no genuine issues of material fact and that Plaintiff's
17 Breach of Contract claim fails as a matter of law. As Gomez's remaining
18 causes of action depend on the success of his Breach of Contract claim, the
19 Court GRANTS summary judgment in Defendants' favor on Gomez's
20 remaining claims as well.
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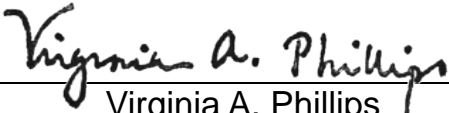
25 ¹ Not only does Gomez fail to address this argument, but the Court notes
26 that Gomez fails to address any of Defendants' arguments raised in the Mo-
tion.

V. CONCLUSION

The Court therefore GRANTS Defendants' Motion for Summary Judgment.

IT IS SO ORDERED.

Dated: 11/30/20



Virginia A. Phillips
United States District Judge

United States District Court
Central District of California

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