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THOMAS PORTEE, Plaintiff - Appellant, v. SPRINT/UNITED MANAGEMENT COMPANY, a corporation, Defendant - Appellee.

No. 06-56274

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

272 Fed. Appx. 637; 2008 U.S. App. LEXIS 7841

**March 6, 2008, Argued and Submitted, Pasadena, California
April 7, 2008, Filed**

NOTICE: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: **[**1]**

Appeal from the United States District Court for the Central District of California. D.C. No. CV-05-04722-RSWL. Ronald S.W. Lew, District Judge, Presiding.

DISPOSITION: AFFIRMED.

COUNSEL: For THOMAS PORTEE, Plaintiff - Appellant: Robert Hampton Rogers, Esq., Attorney, SULLIVAN, WORKMAN & DEE, Los Angeles, CA.

For SPRINT/UNITED MANAGEMENT COMPANY, a corporation, Defendant - Appellee: George S. Duesdieker, Esq., Attorney, SPRINT LAW DEPARTMENT, San Mateo, CA; Paul W. Sweeney, Jr., Esq., Attorney, Jennifer L. Wayne, Esq., Attorney, KIRKPATRICK & LOCKHART PRESTON GATES ELLIS, LLP, Los Angeles, CA.

JUDGES: Before: SCHROEDER, WARDLAW and TALLMAN, Circuit Judges.

OPINION

[*637] MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by *9th Cir. R. 36-3*.

Before: SCHROEDER, WARDLAW and TALLMAN, Circuit Judges.

This is an appeal from a grant of summary judgment for the defendant, Sprint **[*638]** United Management Company, in a diversity civil rights action claiming racial discrimination in violation of the California Fair Employment and Housing Act ("FEHA") in connection with the termination of the plaintiff, Thomas Portee. There was evidence that Sprint's store manager wanted to terminate Portee's employment **[**2]** after Portee's angry dispute with a customer. There was no evidence that the reason the manager gave to Michelle Dugas in the Human Resources department, who was responsible for making the termination decision, was a pretext for racial discrimination, nor was there any evidence that the termination was in any way motivated by racial animus. *See Noyes v. Kelly Servs.*, 488 F.3d 1163, 1170 (9th

Cir. 2007); *Guz v. Bechtel Nat'l, Inc.*, 24 Cal. 4th 317, 100 Cal. Rptr. 2d 352, 8 P.3d 1089, 1113 (Cal. 2000) (explaining that California courts look to federal precedent when applying FEHA).

Plaintiff was an at-will employee terminated for violation of company policies against physical restraint of customers. California has never recognized a public policy in favor of permitting such activity. The termination was not in violation of public policy under California law as defined by its Supreme Court. *See City of Moorpark v. Superior Court*, 18 Cal. 4th 1143, 77 Cal. Rptr. 2d 445, 959 P.2d 752, 762 (Cal. 1998).

Plaintiff's conduct, and not the lack of a security guard, was the proximate cause of the termination. The negligence claim is without merit.

AFFIRMED.