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

EDWARD E. HARRIS,)
)
 Plaintiff,)
)
 v.)
)
 BARBARA DILLMAN, individually;)
 TIMOTHY PAPPAS, individually and)
 as Deputy District Attorney in)
 the Office of the Siskiyou)
 County District Attorney; PETER)
 F. KNOLL and KIRK ANDRUS, both)
 individually, and as District)
 Attorneys for the County of)
 Siskiyou,)
)
 Defendants.*)

2:08-cv-0098-GEB-CMK

ORDER GRANTING EACH
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT ON
PLAINTIFF'S FEDERAL CLAIM AND
DECLINING TO EXERCISE
SUPPLEMENTAL JURISDICTION
OVER PLAINTIFF'S REMAINING
STATE LAW CLAIM**

Defendants Timothy Pappas, Peter Knoll and Kirk Andrus
(collectively, the "District Attorney Defendants") moved for summary
judgment on Plaintiff's remaining claims alleged in his third amended
complaint. (Docket No. 59.) These Defendants also moved in the

* The caption has been amended to reflect the dismissal of the
County of Siskiyou. (Docket No. 48.)

** The motions are deemed suitable for decision without oral
argument. E.D. Cal. R. 230(g).

1 alternative for summary adjudication under Federal Rule of Civil
2 Procedure 56(b). The District Attorney Defendants' motion was
3 scheduled to be heard on April 19, 2010. Plaintiff filed an untimely
4 opposition in which he requested an order "vacating [the] hearing
5 date" and "extending the discovery cutoff" date under Federal Rule of
6 Civil Procedure 56(f).¹ (Pl.'s Memo. of P. & A. in Supp. of Mot. for
7 Order Denying Defs.' Summ. J. Mot. 7.) Defendant Barbara Dillmann
8 separately moved for summary judgment after the District Attorney
9 Defendants filed their motion.² (Docket No. 68.) Plaintiff did not
10 file an opposition to Dillmann's motion.

11 For the reasons stated below, Plaintiff's request for a
12 continuance under Federal Rule of Civil Procedure 56(f) will be denied
13 and each Defendant's summary judgment motion on Plaintiff's federal
14 claim will be granted. However, the portion of each motion seeking
15 summary judgment on Plaintiff's state claim will not be decided
16 because the Court declines to continue exercising supplemental
17 jurisdiction over that claim and it will be dismissed without
18 prejudice under 28 U.S.C. § 1367(c)(3).

19 **I. PLAINTIFF'S RULE 56(F) REQUEST**

20 Plaintiff argues the District Attorney Defendants' motion
21 should be denied, or alternatively, that the hearing date should be
22

23
24 ¹ Plaintiff did not file his opposition requesting relief under
25 Rule 56(f) until April 12, 2010, only seven days prior to the previously
26 scheduled April 19, 2010 hearing date. Under the Eastern District's
27 Local Rule 230(c), any opposition "to the granting of [a] motion shall
be in writing and *shall be filed and served not less than fourteen (14)*
days preceding the noticed . . . hearing date." E.D. Cal. R. 230(c)
(emphasis added).

28 ² Defendant Dillmann argues her name has been misspelled in
Plaintiff's complaint.

1 vacated and the discovery cutoff date extended under Federal Rule of
2 Civil Procedure 56(f) ("Rule 56(f)"). Plaintiff contends if his
3 continuance request is granted, he will "complete depositions of
4 defendants Dillman[n,] . . . Pappas, Knoll and Andrus" and "will also
5 take the deposition of Captain John Villani of the Siskiyou Count[y]
6 Sheriff's office." (Pl.'s Memo. of P. & A. in Supp. of Mot. for Order
7 Denying Defs.' Mot. for Summ. J. 2:3-9.) Plaintiff argues relief
8 under Rule 56(f) is warranted because counsel for the District
9 Attorney Defendants "interfer[ed] with plaintiff in setting
10 depositions and securing discoverable documents" (Id. 2:10-
11 12.) Plaintiff also argues his Rule 56(f) request should be granted
12 because at Gina Villani's April 1, 2010 deposition, it was "revealed
13 that [Gina's father,] Captain John Villani of the Siskiyou County
14 Sheriff's Department[,] was a critical link between Pappas and Andrus
15 and Dillmann." (Id. 3:24-26.) Plaintiff contends that "Captain
16 Villani must also be deposed." (Id. 4:6-7.)

17 Plaintiff's argument that he needs more discovery to oppose
18 the motion disregards the discovery completion date in the scheduling
19 order. The Rule 16 scheduling order issued in this case prescribes
20 that the parties were to "complete" discovery by April 2, 2010,
21 seventeen days prior to the scheduled April 19, 2010 hearing date for
22 the District Attorney Defendants' summary judgment motion. The
23 scheduling order explains: "In this context, 'completed' means that
24 all discovery shall have been conducted so that all depositions have
25 been taken and any disputes relative to discovery shall have been
26 resolved by appropriate orders, if necessary, and, where discovery has
27 been ordered, the order has been complied with or, alternatively, the
28 time allowed for such compliance shall have expired." (Docket No. 29

1 at 2.) Since Plaintiff's Rule 56(f) request seeks additional
2 discovery after the passing of the discovery completion date,
3 amendment of the Rule 16 scheduling order is a prerequisite to
4 granting Plaintiff's Rule 56(f) request. See In re Imperial Credit
5 Indus., Inc. Secs. Lit., 252 F. Supp. 2d 1005, 1017 (C.D. Cal. 2003)
6 (stating that "[t]o grant Plaintiffs' Rule 56(f) request would . . .
7 require the Court to extend the discovery cut-off in this action and
8 thus modify the scheduling order").

9 Under Rule 16(b), "[t]he district court may modify the
10 pretrial schedule if it cannot reasonably be met despite the diligence
11 of the party seeking the extension." Johnson v. Mammoth Recreations,
12 Inc., 975 F.2d 604, 608 (9th Cir. 1992). Since Rule 16(b)'s good
13 cause standard focuses on the diligence of the party seeking
14 amendment, "[i]f th[e] party was not diligent, the inquiry should end"
15 and the request for modification of the scheduling order denied. Id.

16 Therefore, before deciding whether to consider the merits of
17 Plaintiff's Rule 56(f) motion, the issue is reached whether Plaintiff
18 has satisfied his burden of showing that "good cause" justifies
19 amending the discovery completion date prescribed in the Rule 16
20 scheduling order. A district court is authorized to decline
21 considering a Rule 56(f) request, in the situation faced here, where
22 Plaintiff "should have [first] sought an extension of the discovery
23 cutoff date . . . but did not do so." Saavedra v. Murphy Oil U.S.A.,
24 Inc., 930 F.2d 1104, 1107 (5th Cir. 1991)).

25 Plaintiff has not adequately explained why he did not
26 complete the discovery he now seeks before the discovery completion
27 date. Although Plaintiff argues that the District Attorney
28 Defendants' counsel obstructed Plaintiff's discovery efforts,

1 Plaintiff fails to explain why he did not timely litigate this
2 referenced discovery dispute before the Magistrate Judge as required
3 by the scheduling order and the Eastern District's Local Rule
4 302(c)(1). The district court is not required to consider a discovery
5 matter which Plaintiff "failed to [timely] prosecute . . . before the
6 magistrate judge as required by E.D. Cal. Local Rule [302(c)] and the
7 court's [scheduling] order." Freeman v. Allstate Life Ins. Co., 253
8 F.3d 533, 537 (9th Cir. 2001). Plaintiff, therefore, has not shown
9 that good cause justifies amending the discovery completion provision
10 in the scheduling order.

11 Moreover, even if the merits of Plaintiff's Rule 56(f)
12 request were decided, Plaintiff has not demonstrated he is entitled to
13 relief under Rule 56(f). Rule 56(f) provides that "[i]f a party
14 opposing [summary judgment] . . . shows by affidavit that, for
15 specified reasons, it cannot present facts essential to justify its
16 opposition, the court may: (1) deny the motion; (2) order a
17 continuance to enable affidavits to be obtained, depositions to be
18 taken, or other discovery to be undertaken; or (3) issue any other
19 just order." Fed. R. Civ. P. 56(f). Therefore, to receive relief
20 under Rule 56(f), the moving party "must show (1) that [he] ha[s] set
21 forth in affidavit form the specific facts that [he] hope[s] to elicit
22 from further discovery, (2) that the facts sought exist, and (3) that
23 these sought-after facts are 'essential' to resist the summary
24 judgment motion." State of Cal. ex. rel. Cal. Dep't of Toxic
25 Substances Control v. Campbell, 138 F.3d 772, 779 (9th Cir. 1991).

26 Plaintiff has neither identified "the specific facts [he]
27 hopes to elicit from further discovery", nor how the "sought-after
28 facts are essential to resist the summary judgment motion" or

1 demonstrated that such facts "exist." Id. The transcript from Gina
2 Villani's deposition provided by Plaintiff does not suggest that John
3 Villani, if deposed, would provide evidence establishing a conspiracy
4 among the Defendants. Nor has Plaintiff explained why the other
5 discovery he seeks is essential to his opposition to the summary
6 judgment motion.

7 For the stated reasons, Plaintiff's request for an extension
8 of the discovery completion date and for relief under Rule 56(f) is
9 denied.

10 II. LEGAL STANDARD ON SUMMARY JUDGMENT

11 A party seeking summary judgment bears the initial burden of
12 demonstrating the absence of a genuine issue of material fact for
13 trial. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If this
14 burden is satisfied, "the non-moving party must set forth, by
15 affidavit or as otherwise provided in [Federal] Rule [of Civil
16 Procedure] 56, specific facts showing that there is a genuine issue
17 for trial." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors
18 Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (quotations and citation
19 omitted) (emphasis in original). This requires that the non-moving
20 party "come forward with facts, and not allegations, [that] controvert
21 the moving party's case." Town House, Inc. v. Paulino, 381 F.2d 811,
22 814 (9th Cir. 1967) (citation omitted). All reasonable inferences
23 that can be drawn from the facts provided "must be drawn in favor of
24 the non-moving party." Bryan v. McPherson, 590 F.3d 767, 772 (9th
25 Cir. 2009).

26 The Eastern District's Local Rule 260(b) further requires
27 that "[a]ny party opposing a motion for summary judgment . . . [must]
28 reproduce the itemized facts in the [moving party's] Statement of

1 Undisputed Facts and admit those facts that are undisputed and deny
2 those that are disputed, including with each denial a citation to the
3 particular portions of any pleading, affidavit, deposition,
4 interrogatory answer, admission, or other document relied upon in
5 support of that denial." E.D. Cal. R. 260(b). "If the moving party's
6 statement of facts are not controverted in this manner, the Court may
7 assume the facts as claimed by the moving party are admitted to exist
8 without controversy." Farrakhan v. Gregoire, 590 F.3d 989, 1002 (9th
9 Cir. 2010) (quoting Beard v. Banks, 548 U.S. 521, 527 (2006)) (finding
10 that a party opposing summary judgment who "fail[s] [to] specifically
11 challenge the facts identified in the [moving party's] statement of
12 undisputed facts . . . is deemed to have admitted the validity of
13 [those] facts . . .").

14 **III. STATEMENT OF UNCONTROVERTED FACTS**

15 Plaintiff Edward Harris was the principal of Weed High
16 School in the Siskiyou Union High School District from 1999 through
17 2001. (Dillmann Statement of Undisputed Facts ("SUF") ¶ 3.) In July
18 2001, the Big Springs Union Elementary School District hired Plaintiff
19 as its district superintendent and principal of the Big Springs
20 Elementary School. (Id. ¶ 9.)

21 Defendant Peter Knoll was the District Attorney for Siskiyou
22 County from January 1991 until December 30, 2004, when he retired.
23 (District Attorney Defs.' SUF ¶¶ 1-2.) Defendant Timothy Pappas was
24 the Assistant District Attorney for Siskiyou County from December 1,
25 1999 until November 1, 2004. (Id. ¶ 22.) Defendant Kirk Andrus was
26 appointed Siskiyou County District Attorney on April 11, 2005. (Id.
27 ¶¶ 10-11.) Defendant Barbara Dillmann served as the superintendent of
28

1 the Siskiyou County Office of Education from January 1999 until
2 January 2007. (Dillmann SUF ¶ 1.)

3 On July 31, 2001, the Siskiyou County District Attorney's
4 Office filed a misdemeanor complaint against Plaintiff in connection
5 with allegations made by Gina Villani that Plaintiff had sent her
6 "sexually charged" emails while she was employed by the Big Springs
7 Elementary School. (Id. ¶ 18.) Subsequently, on April 9, 2002, the
8 Siskiyou County District Attorney's Office filed a felony complaint
9 against Plaintiff, which added a "while collar" charge to the
10 allegations in the misdemeanor complaint. (Id. SUF ¶ 19.) This
11 felony complaint superseded the misdemeanor complaint. (Pappas Decl.
12 ¶ 32.) Defendant Assistant District Attorney Pappas declares his
13 "prosecution of the criminal felony complaint against [Plaintiff]
14 . . . was based solely on the investigative reports provided to [him]
15 by the District Attorney investigators assigned to the case." (Pappas
16 Decl. ¶ 35.) However, Defendant District Attorney Knoll decided to
17 "dismiss the criminal action [against Plaintiff] because of a civil
18 compromise [Plaintiff] . . . had entered into with the Big Springs
19 Union Elementary School District." (Knoll Decl. ¶ 29.)

20 Subsequently, the Willow Creek Elementary School District
21 hired Plaintiff in September 2002 to be the district superintendent
22 and principal of the Willow Creek Elementary School. (Dillmann SUF ¶
23 28.) Thereafter, in February 2003, after an investigation into
24 allegations of misconduct, the California Commission on Teacher
25 Credentialing recommended that Plaintiff's educational credentials be
26 revoked. (Dillmann SUF ¶ 29.) On January 30, 2004, the California
27 Commission on Teaching Credentialing filed an "amended accusation"
28 against Plaintiff, alleging that Plaintiff was unfit to be an educator

1 because he had "engaged in immoral conduct, . . . unprofessional
2 conduct, has committed acts involving moral turpitude, and has
3 demonstrated evident unfitness for service" (Kelley Decl. Ex.
4 E.)

5 In May 2004, Plaintiff entered into a consent determination
6 with the California Commission on Teacher Credentialing. (Dillmann
7 SUF ¶ 31.) Under the consent determination, Plaintiff's educational
8 credentials were suspended effective July 1, 2005, and Plaintiff was
9 precluded from seeking renewal at any time prior to July 1, 2007.

10 (Id.) The consent determination further provided that if Plaintiff
11 sought reinstatement of his credentials after July 1, 2007, all of the
12 allegations alleged against him would be deemed true. (Id.)

13 Thereafter, in June 2004, Plaintiff and the Willow Creek Elementary
14 School District entered into a new employment contract and Plaintiff's
15 title was changed from Superintendent to Chief Administrative Officer.
16 (Dillmann SUF ¶ 32.)

17 Defendant Dillmann, however, was "concerned [that]
18 [Plaintiff] could not occupy the position of Chief Administrative
19 Officer for the Willow Creek School District following the suspension
20 of his credentials." (Id. SUF ¶ 33.) On November 18, 2004, Dillmann
21 filed a writ of mandate against the Willow Creek School District,
22 challenging Harris' employment. (Id. ¶ 34.) Harris and the Willow
23 Creek School District then filed cross-complaints against Dillmann,
24 alleging a claim of interference with contractual relations. (Id. ¶
25 35.) This litigation, however, was resolved when Harris, Dillmann and
26 the Governing Board of the Willow Creek School District entered into a
27 settlement and release agreement in March 2006. (Id. SUF ¶ 42.)
28

1 Plaintiff subsequently resigned from his position with the Willow
2 Creek School District. (Id. ¶ 77.)

3 Defendant Dillmann met with the Siskiyou County Grand Jury
4 Education Committee on October 2, 2005, at their request and answered
5 their questions. (Id. ¶¶ 39-40.) In June 2006, the Siskiyou County
6 Grand Jury issued a report, in which it found that Willow Creek
7 Elementary School submitted false attendance information for the 2004
8 to 2005 school year. (Id. SUF ¶ 36.) The Grand Jury requested that
9 then District Attorney Defendant Andrus review the falsification of
10 attendance records with a criminal grand jury to see if criminal
11 prosecution was warranted. (District Attorney Defs.' SUF ¶¶ 141,
12 143.) Andrus responded to the Grand Jury in writing on November 9,
13 2006, concluding that "prosecution was not warranted and the District
14 Attorney's Office would do nothing further." (Id. ¶¶ 146, 155.)

15 In 2007, Susan Pritchett, the Director of the Siskiyou-Modoc
16 Regional Department of Child Support Services, was looking to employ a
17 Child Support Specialist. (Id. ¶¶ 167-68.) Plaintiff applied for the
18 position and was interviewed by Pritchett. (Id. ¶¶ 170-71.) On
19 November 21, 2007, Robert Dunn, the Chief Investigator in the District
20 Attorney's Office, performed a "simple employment background check" on
21 Plaintiff at the request of the Siskiyou Modoc Regional Department of
22 Child Support Services. (Id. ¶ 174.) Pritchett then contacted Andrus
23 and requested that he perform a more formal background check. (Id. ¶
24 176.) Andrus sent an email to Pritchett advising her that the
25 District Attorney's Office would decline to perform any further
26 background investigation on Plaintiff. (Id. ¶ 178.) Upon receiving
27 Andrus' email, Pritchett forwarded it to Ann Waite. (Id. ¶ 181.)
28 Based upon information received from Ann Waite, Pritchett decided not

1 to hire Plaintiff. (Id. ¶ 183.) Pritchett sent Plaintiff a letter
2 dated December 12, 2007, informing him of her decision not to hire
3 him. (Id. ¶ 188.)

4 IV. DISCUSSION

5 **A. Plaintiff's First Claim Alleged Under the First Amendment and 42** 6 **U.S.C. § 1983**

7 The District Attorney Defendants argue they are entitled to
8 summary judgment on Plaintiff's federal claim, in which Plaintiff
9 alleges Defendants conspired to retaliate against him for speaking on
10 matters of public concern. These Defendants argue there is no
11 evidence of a conspiracy and, absent proof of a conspiracy, the
12 statute of limitations bars this claim. Defendant Dillmann also
13 argues she is entitled to summary judgment on this claim since
14 Plaintiff has not demonstrated a conspiracy or that Dillmann
15 "engaged in any act to stifle Plaintiff's protected speech."
16 (Dillmann Mot. for Summ. J. 15:1-2.)

17 Plaintiff alleges in this claim that he "publicly announced
18 his intention to run against Dillman[n] for the office of
19 Superintendent in the . . . 2002 election" and that he "publicly
20 expressed his opposition to Dillman[n]'s consortium." (Third Amended
21 Compl. ("TAC") ¶ 14.) Plaintiff further alleges that through this
22 activity, he "was exercising the right to free expression on a matter
23 of public concern under the First Amendment to the United States
24 Constitution." (Id. ¶ 40.) Plaintiff also alleges that "Dillman[n]
25 met with Knoll and Pappas . . . before the 2002 election" and Knoll
26 and Pappas "committed to Dillman[n] [that] they would use the Siskiyou
27 County District Attorney's office to silence [his] opposition to
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1 Dillman[n]'s consortium and thwart his election campaign." (Id. ¶
2 15.)

3 Plaintiff also alleges that "Defendants Pappas, Knoll,
4 Andrus and Dillman[n] all acted collectively and individually . . .
5 and in a . . . secret conspiracy with one another to . . . punish
6 plaintiff for exercising his right to free speech in opposing the
7 Dillman[n] consortium proposal and to discourage plaintiff from
8 running for election" against Dillmann. (Id. ¶ 41.) Plaintiff
9 alleges that "the Dillman[n] civil complaint, . . . Andrus['] . . .
10 cooperation in the frivolous Grand Jury complaint of 2006 . . . and
11 Andrus' deliberate interference with plaintiff's prospective
12 employment in December 2007 were all products of the agreement to
13 interfere with plaintiff's rights under the First and Fourteenth
14 Amendments."³ (Id. ¶ 42.) Plaintiff's federal claim is premised on
15 allegations that Defendants violated his First Amendment rights by
16 conspiring to retaliate against him for his public opposition to
17 Dillmann's educational consortium and for his decision to run against
18 Dillmann in an election.

19 "A civil conspiracy is a combination of two or more persons
20 who, by some concerted action, intend to accomplish some unlawful
21 objective for the purpose of harming another which results in damage."
22 Gilbrook v. City of Westminster, 177 F.3d 839, 856 (9th Cir. 1999)
23 (quoting Vieux v. East Bay Reg'l Park Dist., 906 F.2d 1330, 1343 (9th
24 Cir. 1990)). "To prove a civil conspiracy, the plaintiff must show

25 _____
26 ³ Plaintiff also alleges Defendants "all collaborated in a
27 continuous course of conduct specifically intended to deny plaintiff due
28 process and equal protection of the laws." (TAC ¶ 42.) These
conclusory allegations, however, are insufficient to state either a
constitutional due process or equal protection claim and are therefore
dismissed.

1 that the conspiring parties reached a unity of purpose or a common
2 design and understanding, or a meeting of the minds in an unlawful
3 arrangement. To be liable, each participant in the conspiracy need
4 not know the exact details of the plan, but each participant must at
5 least share the common objective of the conspiracy.” Id. (quotations
6 and citations omitted).

7 Defendants Knoll, Pappas, Andrus and Dillmann have each
8 provided a declaration that rebuts Plaintiff’s allegations of the
9 existence of a conspiracy. Defendants, therefore, have shifted the
10 burden to Plaintiff to come forward with admissible evidence from
11 which the existence of a conspiracy could reasonably be inferred.
12 Plaintiff, however, has presented no evidence from which it can
13 reasonably be inferred that there was a conspiracy among the
14 Defendants to retaliate against him for any protected First Amendment
15 activity. Therefore, each Defendant’s motion for summary judgment on
16 this claim is GRANTED.

17 **B. Supplemental Jurisdiction Over Plaintiff’s Remaining State Law**
18 **Claim**

19 Since only Plaintiff’s state claim for interference with
20 prospective advantage remains, the Court may consider whether to
21 continue exercising supplemental jurisdiction over this claim. See
22 Acri v. Varian Assocs., Inc., 114 F.3d 999, 1000 (9th Cir. 1997) (en
23 banc) (suggesting that a district court may, but need not, sua sponte
24 decide whether to continue exercising supplemental jurisdiction under
25 28 U.S.C. § 1367(c) (3) after all federal law claims have been
26 resolved).

27 Under 28 U.S.C. § 1367(c) (3), a district court “may decline
28 to exercise supplemental jurisdiction over a [state law] claim” when

1 "all claims over which it has original jurisdiction" have been
2 dismissed. "While discretion to decline to exercise supplemental
3 jurisdiction over state law claims is triggered by the presence of one
4 of the conditions in § 1367(c), it is informed by the . . . values of
5 economy, convenience, fairness, and comity." Acri, 114 F.3d at 1001
6 (quotations omitted). "In the usual case in which all federal-law
7 claims are eliminated before trial, the balance of [the] factors to be
8 considered . . . point toward declining to exercise jurisdiction over
9 the remaining state-law claims." United Mine Workers of Am. v. Gibbs,
10 383 U.S. 715, 726 (1966). "Further, primary responsibility for
11 developing and applying state law rests with the state courts."
12 Curiel v. Barclays Capital Real Estate Inc., No. S-09-3074 FCD/KJM,
13 2010 WL 729499, at *1 (E.D. Cal. Mar. 2, 2010); see also Gibbs, 282
14 U.S. at 726 (stating that "[n]eedless decisions of state law should be
15 avoided").

16 Although this case is scheduled for trial on November 9,
17 2010, an earlier filed case is scheduled for trial at the same time,
18 and that case will proceed to trial before this case. In light of the
19 court's congested trial calendar, it is unclear when this case could
20 be tried. Moreover, "[t]here is no prevailing reason for this court
21 to maintain jurisdiction to preserve judicial economy." Meza v.
22 Matrix Serv., No. CIV. 2:09-3106 WBS JFM, 2010 WL 366623, at *4 (E.D.
23 Cal. Jan. 26, 2010); see also Otto v. Heckler, 802 F.2d 337, 338 (9th
24 Cir. Cir. 1986) (stating that "[t]he district court, of course, has
25 the discretion to determine whether its investment of judicial energy
26 justifies retention of jurisdiction").


27 Therefore, the Court declines to continue exercising
28 supplemental jurisdiction over Plaintiff's remaining state claim, and

1 that claim will be dismissed without prejudice under 28 U.S.C. §
2 1367(c)(3).

3 **V. CONCLUSION**

4 For the reasons stated above, each Defendant's motion for
5 summary judgment on Plaintiff's federal claim is GRANTED and
6 Plaintiff's remaining state claim is dismissed without prejudice under
7 28 U.S.C. § 1367(c)(3).

8 Dated: September 2, 2010

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12 GARLAND E. BURRELL, JR.
13 United States District Judge
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