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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARTURO PACHECO,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>ROBERT ESTRELLA, A.C. Transit - Division 3 - Richmond Facility, Transportation Supt. 201 21st St., Richmond, CA 94801,</p> <p style="text-align: center;">Defendant - Appellee.</p>

No. 09-15931

D.C. No. 3:07-cv-04415-MEJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding**

Submitted May 25, 2010***

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Arturo Pacheco appeals pro se from the district court's order denying his motion for summary judgment and its sua sponte summary judgment for the

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

** Pursuant to 28 U.S.C. § 636(c)(1), the parties consented to proceed before a magistrate judge.

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defendant on Pacheco's claim that defendant discriminated against him on the basis of his race and national origin by refusing to return him to his position as a bus driver following his return from medical leave. We have jurisdiction under 28 U.S.C. § 1291. We review de novo summary judgment, *Leever v. Carson City*, 360 F.3d 1014, 1017 (9th Cir. 2004), and we affirm.

The district court properly denied Pacheco's motion for summary judgment because Pacheco presented no evidence establishing a prima facie case of discrimination, and defendant presented uncontroverted evidence that the motive for his decision was nondiscriminatory. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 148 (2000) (“[A]n employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred.”).

Contrary to Pacheco's contention, the district court properly granted summary judgment for defendant sua sponte because Pacheco “had a full and fair opportunity to ventilate the issues involved in the matter.” *Gospel Missions of Am. v. City of Los Angeles*, 328 F.3d 548, 553 (9th Cir. 2003) (citation and internal quotation marks omitted).

Pacheco's remaining contentions are unpersuasive.

AFFIRMED.