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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEONARD L. PERALTA, Plaintiff - Appellant, v. CITY AND COUNTY OF SAN FRANCISCO; MUNICIPAL TRANSPORTATION AGENCY, Defendants - Appellees.	No. 10-15654 D.C. No. 3:08-cv-05435-SI MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Susan Illston, District Judge, Presiding

Submitted April 14, 2011**
San Francisco, California

Before: GOODWIN and N.R. SMITH, Circuit Judges, and BLOCK, District Judge.***

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Frederic Block, Senior United States District Judge for the Eastern District of New York, sitting by designation.

1. Peralta has failed to make out a prima facie case of discrimination under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 1981 ("§ 1981"), and the Fair Employment and Housing Act ("FEHA"), because he has "presented no facts to indicate that others outside of his protected class were treated more favorably." *Foss v. Thompson*, 242 F.3d 1131, 1134 (9th Cir. 2001).

2. Peralta has failed to make out a prima facie case of retaliation under the same statutes because his complaint to Senior Operating Manager George Louie about Britt's "unprofessional" conduct was not a protected activity—it did not protest an unlawful employment practice. *See* 42 U.S.C. § 2000e-2(a) (defining "unlawful employment practice" as discriminating against an employee or taking action adversely affecting an employee's status "because of such individual's race, color, religion, sex, or national origin.").

3. Peralta's harassment claim under the FEHA fails because he has not provided evidence that the complained-about conduct by his supervisor was "on the basis of [his] race or national origin." *Aguilar v. Avis Rent A Car Sys., Inc.*, 21 Cal.4th 121, 129 (1999).

4. Peralta's discrimination claim under article I, section 8 of California's constitution fails because he was not "terminated, constructively discharged, or

threatened with termination." *Strother v. S. Cal. Permanente Med. Grp.*, 79 F.3d 859, 872 (9th Cir. 1996).

5. The district court did not abuse its discretion in rejecting Peralta's objections to four of the documents attached to appellees' lawyer's affidavit in support of their motion for summary judgment because there is "evidence sufficient to support a finding that the matter in question is what its proponent claims." *Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th Cir. 2002) (citing Fed. R. Evid. 901(a)).

For the foregoing reasons, the judgment of the district court is

AFFIRMED.