

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 28 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RIGOBERTO CARDENAS, Jr.,

Plaintiff - Appellant,

v.

UNITED PARCEL SERVICE, INC., an
Ohio corporation,

Defendant - Appellee.

No. 12-55555

D.C. No. 2:10-cv-06132-ODW-
CW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, II, District Judge, Presiding

Argued and Submitted January 10, 2014
Pasadena, California

Before: W. FLETCHER, M. SMITH, and WATFORD, Circuit Judges.

Plaintiff Rigoberto Cardenas, Jr. appeals the district court's grant of summary judgment in favor of defendant United Parcel Service, Inc. ("UPS") on his federal retaliatory termination and state-law wrongful discharge claims. The district court based its grant of summary judgment on two grounds: (1) plaintiff's

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

claims were preempted by the National Labor Relations Act, and (2) even if they were not preempted, plaintiff failed to make out a prima facie case on either claim sufficient to survive summary judgment. We affirm.

“[W]e may affirm the district court’s ruling on the merits ‘on any ground supported by the record.’” *Heinemann v. Satterberg*, 731 F.3d 914, 918 (9th Cir. 2013) (quoting *Van Asdale v. Int’l Game Tech.*, 577 F.3d 989, 994 (9th Cir. 2009) (internal quotation marks omitted)). We agree with the district court’s conclusion that plaintiff failed to make out a prima facie case of retaliatory discrimination under federal law or wrongful termination under state law. We therefore need not reach the question of preemption, and express no views as to the district court’s conclusions on that issue.

AFFIRMED.