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**United States District Court
Central District of California**

THOMAS H. WAGNER,
Plaintiff,

v.
SOUTHERN CALIFORNIA EDISON
COMPANY et al.,
Defendants.

Case No. 2:16-cv-06259-ODW (PLA)

**ORDER GRANTING DEFENDANTS’
MOTION FOR PARTIAL SUMMARY
JUDGMENT [137]**

I. INTRODUCTION

Plaintiff, Thomas H. Wagner, brings this action against Defendants, Southern California Edison Company and Edison International, for various claims related to Defendants’ termination of Plaintiff’s employment. Defendants move for partial summary judgment on Plaintiff’s first claim for violation of whistleblower protection under the Sarbanes-Oxley Act (18 U.S.C. § 1514A). (Mot. for Partial Summ. J. (“MPSJ”) 1–2, ECF No. 137.) For the following reasons, the Court **GRANTS** Defendants’ Motion for Partial Summary Judgment.¹

¹ After considering the papers filed in connection with this Motion, the Court deemed this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

1 **II. FACTUAL BACKGROUND²**

2 Defendant Southern California Edison Company (“SCE”) employed Plaintiff
3 for seventeen years, the last ten years as a planner in SCE’s Santa Barbara service
4 center. (MPSJ 2; *see also* Pl.’s Statement of Additional Material Facts (“PSAMF”) 1,
5 ECF No. 142.)

6 On December 10, 2014, Plaintiff received a Letter of Reprimand from his
7 supervisor, Alicia Pillado, for failing to follow another supervisor’s instructions
8 regarding work order corrections. (Defs.’ Statement of Uncontroverted Facts
9 (“DSUF”) 6, ECF No. 137-1; Decl. of Reginald Roberts (“Roberts Decl.”) ¶ 6, ECF
10 No. 137-2.) The Letter of Reprimand warned Plaintiff “that any further misconduct of
11 this nature; will result in further disciplinary action, up to and including termination.”
12 (Roberts Decl. Ex. 5.)

13 In early 2014, a major cable failure had occurred at the Modoc Substation that
14 required repairs. (PSAMF 17.) Plaintiff worked on the creation and design of the
15 repair at the Modoc Substation. (PSAMF 22, 23.) Plaintiff’s design had to be
16 approved by a supervisor, Michael Diaz. (PSAMF 22.) On January 27, 2015, Ms.
17 Pillado sent Plaintiff an e-mail reminding him that he had not submitted the work
18 order for Mr. Diaz’s approval, and that Plaintiff needed to do so. (DSUF 8.) The
19 same email informed Plaintiff that submitting the work order for approval was a
20 “SOX” (Sarbanes-Oxley) requirement. (Roberts Decl. Ex. 6.) Plaintiff responded two
21 days later that he would submit the work order in person for Mr. Diaz’s review and
22 approval. (*Id.*)

23 On April 29, 2015, Ms. Pillado met with Plaintiff as part of her review of
24 deficiencies and noncompliance with SCE’s accounting controls. (DSUF 9.) Ms.

25 _____
26 ² The Court does not rely on most of the evidence under objection and thus many objections are
27 moot. *See Smith v. Cty. of Humbolt*, 240 F. Supp. 2d 1109, 1115–16 (N.D. Cal. 2003). To the extent
28 that any other evidence is relied on in this Order without discussion of the objection, the relevant
objections are overruled. *See Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1118, 1122
(E.D. Cal. 2006) (concluding that “the court will proceed [only] with any necessary rulings on
defendants’ evidentiary objections”).

1 Pillado informed Plaintiff that, among other things, his failure to obtain work order
2 approvals, specifically the Modoc Substation work orders, could result in Sarbanes-
3 Oxley violations. (DSUF 10; PSAMF 31.) The very next day, on April 30, 2015,
4 Plaintiff filed an internal complaint to SCE’s Ethics Helpline and an SCE attorney,
5 alleging that Ms. Pillado had engaged in Sarbanes-Oxley violations. (DSUF 11.)

6 On May 1, 2015, Ms. Pillado placed Plaintiff on temporary disciplinary
7 suspension for failure to follow work order processes despite directives to make
8 corrections. (DSUF 12.) On May 2, 2015, Plaintiff filed a Whistleblower Retaliation
9 Report with the California Public Utilities Commission stating that he believed Ms.
10 Pillado engaged in Sarbanes-Oxley violations. (PSAMF 45.) On May 14, 2015,
11 Plaintiff filed an online complaint against Ms. Pillado with the Occupational Safety
12 and Health Administration (“OSHA”). (Decl. of Thomas H. Wagner (“Wagner
13 Decl.”) Ex. 16, ECF No. 144.) Ms. Pillado was unaware of Plaintiff’s complaints
14 against her until May 22, 2015. (Wagner Decl. Ex. 18, at 2.)

15 On May 18, 2015, Plaintiff received a job reinstatement letter regarding his
16 reinstatement from a 10-day unpaid disciplinary suspension. (Roberts Decl. Ex. 7.)
17 The letter informed Plaintiff that this was a “Last Chance” agreement as it related to
18 his employment with SCE. (*Id.* at 1.) The letter warned Plaintiff that the “failure to
19 adhere to these expectations will result in termination of your employment.” (*Id.*
20 at 2.) Plaintiff refused to sign the acknowledgement of receipt of the letter, but
21 another employee acknowledged that Plaintiff was present and that SCE
22 communicated to Plaintiff its expectations of him. (*Id.*)

23 Two weeks after Plaintiff’s reinstatement, he submitted a timesheet for
24 overtime hours purportedly worked during the period of May 29, 2015, to May 31,
25 2015. (Roberts Decl. Ex. 8 (“Timesheet Investigation Report”).) Plaintiff’s
26 immediate supervisor, Mr. Diaz, suspected that Plaintiff was falsifying his timesheets
27 because Plaintiff’s vehicle report showed that he was at home during the time he was
28 purportedly working. (*Id.*; Wagner Decl. Ex. 4.) On June 2, 2015, Mr. Diaz contacted

1 SCE’s Ethics Office to report the potential time card fraud, and the Ethics Office
2 initiated an investigation. (*See Timesheet Investigation Report 1.*)

3 On June 10, 2015, SCE’s Manager of Employee Relations, Rebecca Nieto,
4 emailed Plaintiff about information she received that Plaintiff had violated his last
5 chance agreement. (Roberts Decl. Ex. 9; DSUF 16.) Specifically, Plaintiff made
6 denigrating remarks about his supervisor, Mr. Diaz, to a customer and in a separate
7 incident, made negative comments about a co-worker to a third party. (Roberts Decl.
8 Ex. 9; DSUF 16.) As a result, on June 17, 2015, SCE placed Plaintiff on
9 administrative leave pending the outcome of the timesheet investigation and the
10 accusations by Ms. Nieto. (DSUF 17.) While on administrative leave, on June 30,
11 2015, Plaintiff filed a Sarbanes-Oxley Retaliation Report with the Securities and
12 Exchange Commission (“SEC”). (PSAMF 47.)

13 On August 1, 2015, the Ethics Office completed its investigation and found that
14 Plaintiff submitted timesheets for work he did not perform. (DSUF 18.) The Ethics
15 Office also investigated Plaintiff’s claim that Mr. Diaz harassed Plaintiff and found
16 that there was no evidence to support Plaintiff’s claim. (Timesheet Investigation
17 Report 1.) On August 22, 2015, SCE’s Regional Manager, Gary Shockley, notified
18 Plaintiff via telephone that his employment was terminated. (DSUF 19.)

19 III. LEGAL STANDARD

20 A court “shall grant summary judgment if the movant shows that there is no
21 genuine dispute as to any material fact and the movant is entitled to judgment as a
22 matter of law.” Fed. R. Civ. P. 56(a). Courts must view the facts and draw reasonable
23 inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550
24 U.S. 372, 378 (2007). A disputed fact is “material” where the resolution of that fact
25 might affect the outcome of the suit under the governing law, and the dispute is
26 “genuine” where “the evidence is such that a reasonable jury could return a verdict for
27 the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
28 Conclusory or speculative testimony in affidavits is insufficient to raise genuine issues

1 of fact and defeat summary judgment. *Thornhill Publ'g Co. v. GTE Corp.*, 594 F.2d
2 730, 738 (9th Cir. 1979). Moreover, though the Court may not weigh conflicting
3 evidence or make credibility determinations, there must be more than a mere scintilla
4 of contradictory evidence to survive summary judgment. *Addisu v. Fred Meyer, Inc.*,
5 198 F.3d 1130, 1134 (9th Cir. 2000).

6 Once the moving party satisfies its burden, the nonmoving party cannot simply
7 rest on the pleadings or argue that any disagreement or “metaphysical doubt” about a
8 material issue of fact precludes summary judgment. *See Celotex Corp. v. Catrett*, 477
9 U.S. 317, 322–23 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475
10 U.S. 574, 586 (1986); *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics,*
11 *Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). Nor will uncorroborated allegations and
12 “self-serving testimony” create a genuine issue of material fact. *Villiarimo v. Aloha*
13 *Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). The court should grant
14 summary judgment against a party who fails to demonstrate facts sufficient to
15 establish an element essential to his case when that party will ultimately bear the
16 burden of proof at trial. *See Celotex*, 477 U.S. at 322.

17 Pursuant to the Local Rules, parties moving for summary judgment must file a
18 proposed “Statement of Uncontroverted Facts and Conclusions of Law” that should
19 set out “the material facts as to which the moving party contends there is no genuine
20 dispute.” C.D. Cal. L.R. 56-1. A party opposing the motion must file a “Statement of
21 Genuine Disputes” setting forth all material facts as to which it contends there exists a
22 genuine dispute. C.D. Cal. L.R. 56-2. “[T]he Court may assume that the material
23 facts as claimed and adequately supported by the moving party are admitted to exist
24 without controversy except to the extent that such material facts are (a) included in the
25 ‘Statement of Genuine Disputes’ and (b) controverted by declaration or other written
26 evidence filed in opposition to the motion.” C.D. Cal. L.R. 56-3.

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1 IV. DISCUSSION

2 A. Sarbanes-Oxley Retaliation

3 18 U.S.C. § 1514A(a)(1) “prohibits employers of publicly-traded companies
4 from ‘discriminat[ing] against an employee in the terms and conditions of
5 employment’ for ‘provid[ing] information . . . regarding any conduct which the
6 employee reasonably believes constitutes a violation of section 1341 [mail fraud],
7 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation
8 of the Securities and Exchange Commission, or any provision of Federal law relating
9 to fraud against shareholders.” *Van Asdale v. Int’l Game Tech.*, 577 F. 3d 989, 996
10 (9th Cir. 2009) (alterations in original).

11 Claims under § 1514A(a)(1) are subject to a burden-shifting framework. *Id.*
12 “[A] plaintiff is first required to make out a prima facie case of retaliatory
13 discrimination; if the plaintiff meets this burden, the employer assumes the burden of
14 demonstrating by clear and convincing evidence that it would have taken the same
15 adverse employment action in the absence of the plaintiff’s protected activity.” *Id.*

16 To set forth a prima facie case for a Sarbanes-Oxley retaliation claim, a plaintiff
17 must show: (1) “[t]he employee engaged in a protected activity or conduct”; (2) “[t]he
18 named person knew or suspected, actually or constructively, that the employee
19 engaged in the protected activity”; (3) “[t]he employee suffered an unfavorable
20 personnel action”; and (4) “[t]he circumstances were sufficient to raise the inference
21 that the protected activity was a contributing factor in the unfavorable action.” *Id.*
22 (quoting 29 C.F.R. § 1980.104(b)(1)(i)–(iv)).

23 Regarding the first element, to constitute protected activity, a plaintiff must
24 have “(1) a subjective belief that the conduct being reported violated a listed law, and
25 (2) this belief must be objectively reasonable.” *Id.* at 1000.

26 Here, Plaintiff has failed to present evidence sufficient to show that (1) he had a
27 subjective belief that Ms. Pillado was violating Sarbanes-Oxley; and (2) the belief was
28 objectively reasonable.

1 **1. Plaintiff did not have a subjective belief.**

2 Plaintiff fails to provide sufficient evidence that he had a subjective belief that
3 Ms. Pillado was engaged in a violation of Sarbanes-Oxley. Instead, Defendants have
4 provided sufficient evidence establishing Plaintiff's lack of subjective belief.
5 Specifically, in Plaintiff's deposition, Plaintiff admitted that he was not aware of any
6 Sarbanes-Oxley type problem until Ms. Pillado called him into a meeting on April 29,
7 2015, and informed Plaintiff that his failure to obtain work order approvals for the
8 Modoc Substation project could result in a Sarbanes-Oxley violation. (Decl. of David
9 S. Secrest ("Secrest Decl.") Ex. 1 ("Wagner Dep."), at 265:3-15, ECF No. 143;
10 DSUF 10.) Plaintiff filed a Sarbanes-Oxley complaint against Ms. Pillado only
11 "because she was blaming [him] for a SOX violation." (Wagner Dep. 266:1-3.) In
12 Plaintiff's complaint to the SEC, he wrote that he filed a Sarbanes-Oxley retaliation
13 claim only after an adverse action was taken against him and that he "did not know
14 that the accounting issues were in fact violations." (Wagner Decl. Ex. 17, at 1.) Thus,
15 Plaintiff's actions and deposition testimony established that he filed his complaints not
16 because he had any subjective belief that Ms. Pillado committed a Sarbanes-Oxley
17 violation, but instead because she had informed him that his own failures may
18 constitute a violation if not remedied. (See Wagner Dep. at 267:5-10.) Plaintiff made
19 claims against Ms. Pillado only in retaliation for her accusations.

20 Moreover, Plaintiff's Opposition also fails to address how he had a subjective
21 belief that Ms. Pillado committed a Sarbanes-Oxley violation. Plaintiff's Opposition
22 on this issue is a one sentence, conclusory statement that "Plaintiff has presented
23 ample evidence of his objectively reasonable belief of Ms. Pillado's attempt, or actual,
24 violation of SCE internal accounting controls." (First Am. Opp'n to MPSJ
25 ("Opp'n") 21, ECF No. 147-1.) This bare assertion is insufficient to overcome a
26 motion for summary judgment. Contrary to Plaintiff's conclusory statement, Plaintiff
27 has presented no evidence to support his prima facie case that he had a subjective
28 belief that Ms. Pillado was engaged in a Sarbanes-Oxley violation.

1 **2. Plaintiff’s belief was not objectively reasonable.**

2 Even if Plaintiff presented evidence sufficient to support a subjective belief that
3 Ms. Pillado violated Sarbanes-Oxley, he fails to establish that such a belief was
4 objectively reasonable. To satisfy the objectively reasonable standard, “the
5 complaining employee’s theory of [shareholder] fraud must at least approximate the
6 basic elements of a claim of securities fraud.” *Van Asdale*, 577 F. 3d at 1001.
7 Specifically, the employee needed to believe that the actions “approximated the
8 elements of securities fraud: material misrepresentation or omission, scienter, a
9 connection with the purchase or sale of a security, reliance, economic loss, and loss
10 causation.” *Rocheleau v. Microsemi Corp., Inc.*, 680 F. App’x 533, 536 (9th Cir.
11 2017) (internal quotation marks omitted).

12 None of Plaintiff’s allegations come close to the elements of securities fraud.
13 As set forth above, Plaintiff made claims against Ms. Pillado only after he was
14 accused that his actions, if unchecked, could result in Sarbanes-Oxley violations.
15 What is more, the complaints Plaintiff made against Ms. Pillado fail to even approach
16 the elements of securities fraud. Plaintiff must do more than simply throw out the
17 phrase “Sarbanes-Oxley” to make a claim of a violation. Here, Plaintiff has not made
18 claims or provided any evidence that Ms. Pillado’s alleged conduct, converting an
19 emergency project into a capital work order, involved any of the elements of securities
20 fraud: no material misrepresentation or omission, no scienter, no connection with the
21 purchase or sale of a security, no reliance, no economic loss, and no loss causation.
22 Thus, Plaintiff has not provided any evidence that his belief was objectively
23 reasonable.

24 Accordingly, Plaintiff has not set forth sufficient evidence to support a prima
25 facie case that he engaged in protected activity or conduct. As Plaintiff cannot meet
26 the first element of a claim for whistleblower protection under the Sarbanes-Oxley
27 Act, partial summary judgment on this issue is proper.

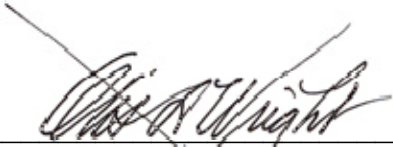
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V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' Motion for Partial Summary Judgment. (ECF No. 137.)

IT IS SO ORDERED.

April 18, 2019



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE