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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ERIC A. WALTERSCHEID, Plaintiff and Appellant, v. CITY OF EL MONTE, Defendant and Respondent.	B270664 (Los Angeles County Super. Ct. No. BC495445)

APPEAL from a judgment of the Superior Court of Los Angeles County, Maureen Duffy-Lewis, Judge. Affirmed.

McNicholas & McNicholas, Matthew S. McNicholas, Justin D. Nussen; Esner, Chang & Boyer, Holly N. Boyer, and Shea S. Murphy for Plaintiff and Appellant.

Doumanian & Associates, Nancy P. Doumanian, and Ankineh Zadoorian for Defendant and Respondent.

INTRODUCTION

Appellant Eric A. Walterscheid sued his employer, respondent City of El Monte, for retaliation in violation of Labor Code section 1102.5.[1] A jury rendered a verdict in favor of respondent, finding that appellant did not engage in protected activity (whistleblowing or refusing to participate in an illegal activity). Appellant now appeals, contending that (1) the trial court erred in denying his motion for summary adjudication, (2) the court erred in denying his motion for judgment notwithstanding the verdict (JNOV), and (3) the court erred in

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[1] Section 1102.5, subdivision (b) of the Labor Code provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

Section 1102.5, subdivision (c) of the Labor Code provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

denying his motion for a new trial. For the reasons set forth below, we find no reversible error. Accordingly, we affirm.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. *Arbitrator's Findings and Award*

Appellant was a police officer with the City of El Monte Police Department (hereinafter the Department) for over 21 years when he received a notice of termination, dated October 25, 2011. Subsequently, pursuant to a collectively bargained agreement, the parties submitted the dispute to arbitration. During the arbitration, appellant claimed he was terminated as part of a conspiracy to undermine the El Monte Police Officers' Association (EMPOA). Specifically, he argued that respondent targeted him and three other members of the EMPOA board in "retaliation" for their involvement in the investigation of Titan Group (Titan), whose executives, including John Leung, had "suspicious ties to key City officials." The arrest of Leung led to the city losing state funding, and appellant argued that it was the city manager who was at the "center of the conspiracy to retaliate against board members."

Respondent argued that appellant was terminated for (1) making disparaging statements about the Department and its members in a letter to the district attorney, (2) insubordination, (3) inappropriate and improper conduct during interviews of victims of sexual abuse, (4) use of improper investigation tactics, and (5) improper retention of sexually explicit photographs and videos of a 15-year-old victim. Respondent denied that appellant's termination related to the Titan investigation, noting that appellant "remains the only EMPD employee who was part of the investigation to be terminated."

The arbitrator determined that the evidence was insufficient to show respondent conspired to terminate appellant and other EMPOA board members. He further found that respondent did not have reasonable cause to terminate appellant. The arbitrator found that appellant's letter to the district attorney did not contain disparaging statements about his superior, but constituted an expression of strong disagreement. With respect to appellant's alleged failure to follow a superior's instruction, the arbitrator found no insubordination, because the superior did not put appellant on notice that failure to comply would be considered insubordination and grounds for termination. With respect to appellant's allegedly inappropriate interview conduct, the evidence indicated that the instant case was the first time complaints were made about appellant's interview conduct, and the arbitrator determined it was not reasonable to terminate appellant for his first offense. As to appellant's allegedly improper investigation tactics, the arbitrator determined that respondent could not discipline appellant because it had failed to advise him that his conduct was subject to discipline, in violation of appellant's rights under the Public Safety Officers Procedural Bill of Rights Act (POBRA). Finally, with respect to appellant's allegedly improper retention of sexually explicit materials, the arbitrator found the conduct might violate department rules, but was not a terminable offense, as no evidence suggested that appellant retained the materials for illicit purposes. Additionally, the arbitrator determined that respondent's failure to produce to appellant and his counsel all of the explicit materials until the arbitration violated appellant's due process and POBRA rights, and thus precluded discipline. The arbitrator ordered appellant reinstated and "made whole

with full back pay, all benefits and seniority." Because the arbitrator found appellant was willfully targeted for termination, interest was awarded on the backpay.

B. *Appellant's Complaint and Respondent's Answer*

Notwithstanding the outcome of the arbitration and appellant's reinstatement with backpay, in November 2012, he filed a complaint against respondent, alleging a single cause of action for retaliation in violation of Labor Code section 1102.5. The first amended complaint (FAC) -- the operative complaint -- alleged that appellant suffered adverse employment actions, including unwarranted reprimands, suspensions and eventual termination in October 2011, as a result of engaging in protected activities. The protected activities included reporting corruption and misconduct within the City of El Monte and the El Monte Police Department. Appellant sought compensation for physical, mental, and emotional pain and suffering, as well as loss of wages and benefits.

On February 18, 2014, respondent filed an answer, generally denying the allegations of the FAC. Respondent also asserted numerous affirmative defenses, including, among others, that it had legitimate, nonpretextual reasons to engage in the alleged adverse employment actions (affirmative defenses Nos. 11 & 23).

C. A*ppellant's Motion for Summary Adjudication*

On June 11, 2014, appellant filed a motion for summary adjudication of respondent's affirmative defenses that it had legitimate, nonretaliatory reasons for terminating appellant's employment. He argued that because the arbitrator had determined that the charges in the October 2011 notice of termination did not constitute reasonable cause for termination,

respondent was collaterally estopped from asserting that those charges were legitimate, nonretaliatory reasons for its conduct.

Respondent opposed the motion, arguing that collateral estoppel did not apply because the arbitration determined only that there was no reasonable cause for termination, not that there was no nonretaliatory reason for its conduct. Respondent further argued that summary adjudication of its affirmative defenses was inappropriate because it would constitute adjudication of "piecemeal" or "fragmented" portions of the single cause of action for retaliation.

On September 25, 2014, the trial court denied appellant's motion for summary adjudication of respondent's affirmative defenses. The court concluded that "the issue of legitimate reason would not be dispositive -- there is still the issue of damages -- and therefore not the proper subject of a motion for summary adjudication."

D. *Appellant's Motions in Limine*

The parties filed numerous motions in limine. In appellant's motion-in-limine Nos. 1 and 2, he sought to preclude respondent from presenting any evidence or argument that it had legitimate, nonretaliatory reasons for terminating appellant's employment. Appellant again argued that respondent was collaterally estopped from asserting that the charges stated in his notice of termination constituted legitimate, nonretaliatory reasons for termination. Respondent opposed the motions, arguing that it was not estopped because the arbitration did not resolve a retaliation claim.

On May 5, 2015, the trial court granted appellant's motion-in-limine Nos. 1 and 2. However, the court permitted respondent to present evidence that: (1) appellant was terminated, (2) a

hearing was held regarding his termination, and (3) appellant was reinstated. The court also noted that respondent could attack appellant's credibility, damage figures, and whether he engaged in protected activities.

Shortly before trial, the court revisited its rulings. The court reiterated that respondent could not argue that it had legitimate, nonretaliatory reasons for terminating appellant, but that in defending against the charge of retaliation, respondent could argue that it had followed a "good-faith" procedure in making charges against and terminating appellant. The court noted that appellant could refute respondent's assertion of good faith.

E. *Trial*

During opening statement, appellant's counsel argued that the instant case involved a wrongful termination resulting from appellant's reporting of suspected unlawful activity -- uncovered during the Titan investigation -- to his own department, the FBI, and the district attorney. Appellant's counsel informed the jury that appellant fought his termination and an arbitrator had determined that he "was not discharged for reasonable cause." Noting that the arbitrator had reinstated appellant to his former position with full backpay, all benefits and seniority, counsel argued that the instant case was filed to recover "other" damages, such the impact of the termination on how appellant "feels about himself and his career."[2]

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[2] The jury was asked to determine appellant's past and future economic and noneconomic damages resulting from the termination. At trial, appellant testified about the financial and emotional impact of the termination on his life. For example, appellant testified he could not afford to buy a Christmas tree

until he was reinstated. In attacking appellant's financial claims, respondent elicited testimony from appellant that he was never at risk of losing his home, never missed making any of his $3,900 monthly mortgage payments, and never fell behind on credit card payments. Appellant also admitted never going to any doctor, therapist, or counselor to talk about his termination. (See also *Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 902-903 [plaintiff alleging a whistleblower retaliation claim precluded from bringing claims for infliction of emotional distress under workers' compensation exclusive remedy rule].)

Appellant, who was 58 years old at the time of trial, testified that before he was terminated, he had planned to work until age 65. Following the experience, he testified he "probably" would work only two or three more years. Appellant said his base pay was $100,800 annually, but in some years he made $220,000 to $250,000 by working overtime. Appellant admitted that after being reinstated and receiving a check for $277,286.45, he spoke with a human resources officer to ensure he had received all salary and benefits due. He never asked for overtime wages. Appellant also admitted he had previously been disciplined for violating the Department's overtime policies. As a result of appellant's overtime violations, he was required to seek permission before working overtime and to submit overtime slips in a timely manner.

Appellant produced an expert who opined that appellant suffered $230,815 in lost past earnings. The expert explained that this calculation was based on overtime wages appellant might have earned from the time he was placed on administrative leave until he was reinstated. The expert also presented three scenarios showing appellant's expected loss of future earnings if he were to retire before age 65, at ages 59, 60, and 61. The loss of future earnings (consisting of base and overtime pay) ranged from $405,141 to $687,700. The expert confirmed that if appellant retired at age 65, he would suffer no future lost earnings.

In her opening statement, respondent's counsel argued that appellant's termination resulted from the public safety concerns of two El Monte Police Chiefs -- Chief Armstrong and his successor, Chief Schuster. Respondent's counsel explained that a random audit resulted in an investigation of appellant's cases by an outside investigator. That investigation resulted in "nine different reasons" to terminate appellant. These reasons, stated on the notice of intent to terminate, included appellant's work on eight sex crime cases and his possession of "177 sensitive photographs and 10 video clips" improperly stored on his work computer. Counsel acknowledged that appellant had contested his termination and had been reinstated. She argued that the instant retaliation claim was a theory that "came up" after appellant had been fired. She asserted that the evidence did not support the retaliation claim, noting that although the investigation of appellant began under Chief Armstrong, the final decision to fire him was made by Chief Schuster, who was not involved in the Titan investigation. Counsel further argued the evidence would show that appellant never reported any unlawful activity to anyone. She asserted the evidence would show that appellant "didn't do anything other than tag along when he was asked" by Detective Glick, who was the lead detective on the Titan investigation.

On direct examination, appellant testified that after he became a senior detective in 2005, his caseload consisted primarily of felony child abuse and sex crimes. In April 2009, he was assigned to assist Detectives Glick and George in their investigation of Leung and Titan. As part of the Titan investigation, Glick and appellant met with a confidential informant. The informant told them that city officials were

conspiring with Leung in financial crimes, such as fraud and kickbacks. Appellant testified that he and Glick met with the FBI on several occasions to report on their investigation of Titan and to ask for the FBI's help to "determine if there were any federal crimes involved." He also testified that after the Titan investigation was completed, the three detectives (appellant, Glick and George) prepared an investigative report, which was sent to their commanding officer. In August 2009, Chief Armstrong had the investigative report sent to the Los Angeles County District Attorney's Office. Appellant testified he subsequently briefed the district attorney about the Titan investigation.

In June 2009, a month after the investigative report was completed, Leung was arrested. Glick, appellant and other officers also executed a search warrant on Leung's place of business. While they were conducting the search, El Monte Police Chief Armstrong arrived on the scene, which appellant testified was unusual. Chief Armstrong told Detective Glick that a city attorney had requested a set of binders in Leung's office. Appellant testified that after those binders were located, they were not released to Chief Armstrong.

On cross-examination, appellant acknowledged he could not remember what statements he made to the FBI about the Titan investigation. He stated that he met with the FBI on three occasions, including once after he was placed on administrative leave. During that third visit, he never complained to the FBI that he was being retaliated against -- e.g., by being placed on administrative leave -- as result of the Titan investigation. He also stated that on this occasion, he waited "outside" while Detective Glick was interviewed by the FBI and an assistant

United States attorney (AUSA). Appellant admitted that he never complained to anyone outside the Department about police management. He was unaware of any violations of law resulting from Chief Armstrong's presence at the search, and he never accused Chief Armstrong of violating any laws when he spoke with the FBI. He also admitted that when he met with the district attorney's office, he never reported any violation of law by any member of the Department.

Glick testified that he and appellant provided information to the FBI on several occasions about the investigation of Leung and Titan. Glick also testified that after the case files were transferred to the Los Angeles District Attorney's Office, he and appellant met with and briefed the district attorney about the case. He acknowledged that he alone signed off on the investigation report concerning Titan. Glick also testified about the search of Leung's business. He stated that he informed his superior, Lieutenant Fetner, before executing the search. After the search was completed, Chief Armstrong arrived and spoke with Fetner and Glick, telling them that "he needed certain files that were in the building that we had just [searched]." Glick was not comfortable with the chief's request.

On cross-examination, Glick testified he was the lead detective on the Titan investigation. During the time of the Titan investigation, Glick was president of the police union and appellant was a board member. Glick stated that he and appellant met with the FBI regarding the investigation "two to five times." Before the first few meetings, he never informed his superiors that he was meeting with the FBI. Glick stated he eventually informed Chief Armstrong before he had a meeting with the FBI, but he could not recall when he did so. Glick did

not recall meeting with the FBI after appellant had been placed on administrative leave.

Following appellant's presentation of evidence, respondent's counsel moved for nonsuit. Counsel argued there was no evidence that appellant engaged in protected activity or that his termination was causally related to any protected activity. The court summarily denied the motion.

William Fetner testified that in June 2009, he was a lieutenant in charge of the detective bureau. Fetner participated in the Titan investigation and the subsequent search of Leung's place of business. Fetner testified that during the search, Chief Armstrong requested that if certain binders were found during the search, they should be recovered. Fetner testified that the Chief never requested that any item be excluded from the search. Fetner also testified that in his 30-plus years of experience, he had seen police chiefs show up at crimes scenes and searches.

Chief Armstrong testified that neither appellant nor Glick ever told him they had discovered any criminal acts committed by a city official or Department employee in connection with the Titan investigation. Chief Armstrong never came across any report documenting a conversation between the detectives and the confidential informant. With respect to his presence at the search of Leung's business, Chief Armstrong explained that he went to the scene to find out why Leung, a prominent developer for the city, was being arrested. Chief Armstrong was concerned about the search because Glick was president of the police union, appellant was vice-president of the union, and the police union had previously voiced concerns about Leung in connection with the city's redevelopment funds and budget. Chief Armstrong told Glick that there was a binder that might be important to the city,

but "[i]t didn't matter if that binder fell [within] the purview of the search warrant, and [that if] we felt it appropriate to take it, take it. If not, don't. This is completely up to the investigators."

Chief Armstrong testified that the process leading to appellant's temination began with calls from the County of Los Angeles, asking why El Monte police officers working on child abuse cases were not entering case information into the Electronic Suspected Child Abuse Reporting System (ESCARS). ESCARS was designed to consolidate all reports of suspected child abuse from various law enforcement agencies throughout the County of Los Angeles. In response to the calls, Chief Armstrong ordered an audit of all case files that should have been inputted into ESCARS. The audit disclosed possible misconduct involving appellant and another detective. As a result, Chief Armstrong authorized an internal affairs (IA) investigation into nine child abuse cases appellant had handled.

During this time period, in June 2010, appellant made comments to the press that his caseload of child abuse cases had greatly increased, requiring him to have to "triage" the cases, i.e., not give each case the same amount of time and resources. Chief Armstrong was concerned, because triaging could lead to "very vulnerable children" being "reabused." Either Chief Armstrong or Assistant Chief Steve Schuster spoke with appellant about his comments to the press, to ensure that "if there were ongoing cases of child abuse and they weren't getting the consideration and time that they deserved, we needed to know what cases those [were]." Chief Armstrong testified that he already was concerned that some detectives were not doing their jobs properly. An audit had revealed that while some had made many arrests (as many as 125) over a yearlong period, others had made none. Appellant

had made about seven arrests during that period. In October or November 2010, Chief Armstrong had a plaque placed in the detective bureau to remind the officers that the "detectives literally hold the pursuit of justice for the victims in their hands."

On November 2, 2010, Chief Armstrong placed appellant on administrative leave based on the results of the IA investigation and the chief's review of audio and video recordings of interviews appellant had conducted with witnesses in the nine child abuse cases. Shortly thereafter, Chief Armstrong decided to terminate appellant's employment. He testified that his decision to issue the notice of intent to terminate was based on (1) appellant's handling of "nine specific cases," (2) the chief's review of appellant's recorded witness interviews, and (3) the photographs and videotapes found on appellant's work computer.[3]

Chief Schuster testified that he became the police chief after Chief Armstrong retired. He was aware that just before retiring, Chief Armstrong had issued appellant a notice of intent to terminate. Chief Schuster issued appellant a notice of termination, which listed as grounds for termination the same nine cases and the photographs and videos referenced in the prior notice of intent to terminate. In deciding to terminate appellant's employment, Chief Schuster also reviewed the IA investigative

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[3] Lieutenant Eric Stanley, who conducted the IA investigation of appellant, had testified that the search of appellant's locker and work computer was necessitated by information uncovered during the investigation.

report and relevant memos, audio and video recordings, and photographs.[4]

F. *Jury Instructions and Verdict*

The jury was instructed on consideration of evidence and witness credibility. The jurors were instructed not to let bias, prejudice or public opinion influence their decision. They also were instructed that attorney statements and arguments were not evidence. On witness credibility, the jurors were specifically instructed that "if you decide a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said." With respect to evidence admitted for a limited purpose, the jury was instructed: "You may consider that evidence only for the limited purpose that I described, and not for any other purpose." The jury was further instructed: "You have heard evidence concerning past discipline of Eric Walterscheid. Such evidence may not be considered as a legitimate basis or reason for his termination by the City of El Monte. You may only consider it, if at all, for damages if you find damages appropriate."

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[4] Neither Chief Armstrong nor Chief Schuster testified that they fired appellant because he was a "public safety" problem. However, in closing statement, respondent's counsel argued that it was "public safety" concerns that "started the audits" and "led to the investigation of the plaintiff -- and ultimately, his termination." Counsel explained that ESCARS was "a way to make sure that victims [of child abuse] aren't revictimized. So once they're in the database as an abuse victim, other agencies can call and get information on witnesses or victims or other important information." Appellant's counsel did not object to either statement.

The jury was provided a special verdict form containing 11 questions that tracked CACI No. 4603 on the essential factual elements of a retaliation claim under Labor Code section 1102.5. The first three questions were:

> "1. Did the City of El Monte believe that Eric Walterscheid had disclosed or might disclose to a [responsible person or public agency] legal violations that he learned from the Titan investigation and/or other claimed illegal activity? [¶] . . .
>
> "2. Did Eric Walterscheid provide information to a public body that was conducting an investigation, hearing or inquiry? [¶] . . .
>
> "3. Did Eric Walterscheid refuse to participate in illegal activity?"

During closing arguments, both plaintiff's and defense counsel told the jury that the first two questions related to information learned from the Titan investigation, and the third question related to Chief Armstrong's instruction about a set of binders seized during the search of Leung's business. Respondent's counsel urged the jury to vote "No" on all three questions, arguing that although the evidence may have shown that Detective Glick engaged in protected activity, it did not show that appellant engaged in such activity.

In the course of deliberations, a Juror Legaspi sent a note to the court complaining that he felt "pressured" to reach a quick verdict. While the court was discussing the note with both parties, the jury informed the court that it had reached a verdict. Notwithstanding that a verdict had been reached and over respondent's counsel's objection that any misconduct was nonprejudicial, the court decided to reinstruct the jury on the

deliberation process. In explaining her decision, the judge stated, "No one is telling them [the jurors] they can or cannot have a verdict." The judge recalled the jury, reinstructed the jurors with the general instruction on deliberations, and sent them back to the jury room. Appellant's counsel did not object to the court's actions. Indeed, counsel stated that the court "acted reasonably in attempting to . . . cure" potential juror misconduct.

Shortly thereafter, the jury rendered a defense verdict by a 10-2 vote. The jurors were polled on their vote. On the first two questions (whistleblowing), 10 jurors voted "No" and jurors Wolf and Legaspi voted "Yes." On the third question (refusal to participate in illegal activity), 10 jurors voted "No" and jurors Wolf and Alvarez voted "Yes." In total, three jurors found appellant had engaged in some form of protected activity.[5]

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[5] The jurors were instructed that if they answered "No" to the first three questions, they were not to answer the remaining questions. Those questions were: "(4) Did Eric Walterscheid have reasonable cause to believe that the information disclosed a violation of a state or federal statute, or a violation or noncompliance with local, state, federal rule or regulation[?] [¶] . . . (5) Did Eric Walterscheid have reasonable cause to believe that the information provided to the public body disclosed a violation of a state or federal statute, or a violation or noncompliance with a local, state, federal rule or regulation[?] [¶] . . . (6) Did Eric Walterscheid[ ] believe his participation in claimed illegal activity would result in violation of a state or federal statute, or a violation or noncompliance with local, state, federal rule or regulation[?] [¶] . . . (7) Did the City of El Monte discharge Eric Walterscheid and/or subject [him] to other adverse employment action[?] [¶] . . . (8) Was Eric Walterscheid's disclosure of information or refusal to participate in claimed illegal activity a contributing factor in the City of El Monte's

G. *Appellant's JNOV Motion*

Following the jury's verdict, on December 30, 2015, appellant filed a motion for judgment notwithstanding the verdict (JNOV). In the motion, appellant argued he was entitled to judgment as a matter of law on his single cause of action, as (1) the trial court had necessarily found he had made a prima facie case of retaliation when it denied respondent's motion for nonsuit, and (2) respondent was precluded from rebutting the presumption of retaliation by presenting evidence of a legitimate, nonretaliatory reasons for termination. Appellant also argued that his trial testimony, which was corroborated by Detective Glick, conclusively established that he had disclosed information of potential illegal activity to the FBI, the district attorney's office, and his commanding officers.

Respondent opposed the JNOV motion, arguing that the jury's verdict was supported by substantial evidence. It argued that because appellant's credibility was undermined at trial, the jury reasonably could and did reject his testimony that he engaged in protected activity. As to appellant's argument that he was entitled to judgment as a matter of law because he established a prima facie case, that argument was premised on the burden-shifting approach for discrimination claims, which respondent argued did not apply to the instant case.

On February 3, 2016, the trial court denied appellant's JNOV motion. It determined that the "evidence was sufficient to

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decision to discharge [him] or subject [him] to other adverse employment action[?] [¶] . . . (9) Was Eric Walterscheid harmed[?] [¶] . . . (10) Was the City of El Monte's conduct a substantial factor in causing Eric Walterscheid's harm[?] [¶] . . . (11) What are Eric Walterscheid's damages?"

justify the verdict." As to the denial of respondent's motion for nonsuit, the court ruled that a court's determination that sufficient evidence exists to prove plaintiff's case "does not mean that the jury will believe that evidence."

H. *Appellant's Motion for a New Trial*

On January 8, 2016, appellant moved for a new trial based on (1) an incorrect evidentiary ruling, (2) attorney misconduct, and (3) juror misconduct. As to the incorrect evidentiary ruling, appellant argued the trial court prevented him from making his case when it precluded Detective Glick from testifying about what appellant actually said to the FBI, sustaining respondent's hearsay objection.

Appellant also argued he was entitled to a new trial based on attorney misconduct. He asserted that although the trial court modified its rulings on appellant's motions-in-limine Nos. 1 and 2 to permit respondent's counsel to assert that respondent had a "good faith" reason for terminating appellant, counsel contravened the court's rulings in her opening statement and at trial. Appellant argued that respondent's counsel committed misconduct when she stated that appellant was fired for "nine different reasons," all involving "public safety." As to misconduct during the trial, appellant identified four instances where counsel asked and/or a witness testified about reasons for appellant's termination. A particularly egregious instance was Chief Armstrong's testimony that after reviewing recordings of appellant's interviews of sex abuse victims, he had placed appellant on administrative leave and issued a notice of termination because "I couldn't allow [appellant] to continue to revictimize victims of sex abuse." Appellant noted that in each

instance, the trial court had sustained objections and stricken the challenged question or testimony.

Finally, with respect to juror misconduct, appellant argued that affidavits submitted by appellant's counsel after trial of Jurors Wolf and Delgado established that the jury had disregarded the court's instructions and rendered a verdict not based on the evidence presented at trial. According to the affidavits, the jury was biased against appellant, after consideration of inadmissible evidence (e.g., that appellant had "porn" on his work computer and had "abus[ed] children of child abuse"). Wolf stated that after voting 11 to 1 not to award damages to appellant based on those reasons, the jurors agreed to make that vote their votes on the first three questions so they could be done. Wolf also stated that during deliberations, a juror from El Monte said, "'I'm not going to vote against El Monte. That will raise my taxes. . . .'" Both Wolf and Delgado also stated that after Legaspi complained about being pressured to reach a quick verdict and after the jury was reinstructed and sent back to the jury room, several jurors did not want to continue deliberations. These jurors said they "already voted" and wanted to stick with those votes.

Respondent opposed the motion for a new trial. It argued that appellant had not shown juror misconduct because the juror affidavits were inadmissible. Respondent also argued there was no attorney misconduct, asserting that defense counsel complied with the trial court's evidentiary rulings. Additionally, respondent noted that the jury was instructed that the arguments of the attorneys were not evidence. Finally, respondent argued that the trial court properly precluded plaintiff's counsel from eliciting testimony from Detective Glick

about appellant's statements to the FBI. Additionally, any error was harmless. Glick was called as a witness out of order, in the middle of appellant's testimony. In ruling on the hearsay objection, the trial court expressly stated that appellant was free to testify about his own statements to the FBI and that Glick could be recalled to corroborate appellant's testimony. Moreover, Glick already had testified that appellant provided information to the FBI.

The trial court denied appellant's motion for a new trial. It found "no evidence to support any of the plaintiff's claims." It further determined that the jury verdict was supported by the evidence and was not contrary to law.

A judgment on the jury's special verdict was entered February 3, 2016. Appellant timely appealed.

DISCUSSION

A. *Appellant's Motion for Summary Adjudication*

Prior to trial, appellant sought summary adjudication of respondent's affirmative defenses that it had legitimate, nonretaliatory reasons for terminating his employment. The trial court denied the motion. On appeal, appellant contends the ruling was erroneous because respondent was collaterally estopped from arguing it had nonretaliatory reasons for terminating him.

Findings made during a labor arbitration may be given preclusive effect in subsequent litigation. (See *Kelly v. Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1339-1341 [union arbitration held preclusive against union members asserting similar issues in subsequent suit against employer].) "A prior determination by a tribunal will be given collateral estoppel

effect when (1) the issue is identical to that decided in a former proceeding; (2) the issue was actually litigated and (3) necessarily decided; (4) the doctrine is asserted against a party to the former action or one who was in privity with such a party; and (5) the former decision is final and was made on the merits." (*Id*. at p. 1339, citing *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341, fn. 3.) Here, the arbitrator determined that the reasons respondent asserted in support of its decision to terminate appellant were not legally sufficient. Appellant contends that determination precludes respondent for asserting that those same reasons constituted nonretaliatory reasons for appellant's termination. We disagree.

Here, respondent attributed appellant's termination to his misconduct during victim interviews and his violations of department policies. The arbitrator did not find that appellant engaged in no misconduct or policy violations. Rather, the arbitrator determined that neither the misconduct nor the policy violations were sufficiently grave to warrant termination. That determination did not preclude respondent from attempting to refute the claim of retaliatory termination by demonstrating it acted in good faith in ordering appellant's termination. Stated differently, a finding that a termination was based on legally insufficient reasons is not a determination that the firing was retaliatory. (See, e.g., *Guz v. Bechtel National Inc.* (2000) 24 Cal.4th 317, 358 [to rebut employee's prima facie case of age discrimination, "if nondiscriminatory, [employer's] true reasons need not necessarily have been wise or correct"]; *Nakai v. Friendship House Assn. of American Indians, Inc.* (2017) 15 Cal.App.5th 32, 39 [to avoid summary judgment on discrimination claim, employee cannot simply show "'the

employer's decision was wrong, mistaken, or unwise'"]; *McCoy v. WGN Continental Broadcasting Co.* (7th Cir. 1992) 957 F.2d 368, 373-374 [in age discrimination case, summary judgment properly granted for employer based on employer's "honest belief in its asserted rationale" -- financial and performance concerns -- for the employment action, "[e]ven if WGN was wrong in thinking it could save or make money firing McCoy"]; see also *St. Mary's Honor Center v. Hicks* (1993) 509 U.S. 502, 524 [in racial discrimination claim, "[t]hat the employer's proffered reason [for adverse employment action] is unpersuasive . . . does not necessarily establish that the plaintiff's proffered reason of race is correct"]; cf. *People v. Williams* (1997) 16 Cal.4th 153, 188-189 ["genuine 'mistake' is a race-neutral reason" for exercising a peremptory challenge].)

Thus, while appellant was free to -- and did -- argue that the arbitrator's finding that respondent's reasons for terminating appellant were legally insufficient was evidence that its actual motive was retaliation, respondent was entitled to counter that argument with evidence that the given reasons -- though legally insufficient -- were genuine, and not a pretext for a retaliatory firing. We discern no error in the trial court's decision to allow respondent to refute appellant's claim of retaliation with evidence that its decision to terminate him was made in good faith. Notably, the jury was made aware from the commencement of trial that respondent's proffered reasons for terminating appellant had been rejected by the arbitrator as legally insufficient, and that he had been reinstated. It could not have misconstrued respondent's attempt to demonstrate its reasons were nonretaliatory as a post-hoc effort to overturn the arbitrator's decision.

In any event, any error in denying the motion for summary adjudication was harmless. (See Cal. Const., art. VI, § 13 ["No judgment shall be set aside, or new trial granted, in any cause, . . . for any error as to any matter of pleading . . . , unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice"].) The jury determined that appellant failed to prove an essential factual element of his retaliation claim; it found he did not engage in protected activity. In light of that jury finding -- examined in greater detail below -- respondent's reasons for its initial decision were immaterial.

B. *Appellant's JNOV Motion*

Appellant contends he was entitled to judgment as a matter of law on his retaliation claim, and that the trial court erred in denying his JNOV motion. We conclude the trial court properly denied the motion.

Appellant's contention that he was entitled to judgment as a matter of law is premised on application of the burden-shifting approach set forth in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802 (*McDonnell Douglas*). Under that approach, the plaintiff employee has the initial burden of establishing a prima facie case of retaliation. Once the plaintiff meets this burden, the burden shifts to the defendant employer to rebut the presumption of retaliation by producing evidence of a legitimate, nonretaliatory reason for the termination. If the defendant meets its burden, the burden shifts back to the plaintiff to establish that the defendant's reason was false and a pretext for retaliation. (See *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 52, 67-69.) The first two stages of the *McDonnell Douglas* test are questions of law for the court to determine.

(*Caldwell v. Paramount Unified School Dist*. (1995) 41 Cal.App.4th 189, 201.) Here, appellant argues that the trial court necessarily determined that he had made his prima facie case when it denied respondent's motion for nonsuit; thereafter respondent was collaterally estopped from challenging the presumption of retaliation, and appellant was thus entitled to judgment as a matter of law. We disagree.

The *McDonnell Douglas* burden-shifting approach is applicable to "pretrial or prejudment motion proceedings seeking to test the adequacy of the parties' competing claims." (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1118 (*Muzquiz*).) That framework is not relevant when the matter proceeds to trial. (*Ibid*.; see also *Begnal v. Canfield & Associates, Inc*. (2000) 78 Cal.App.4th 66, 73 ["The question whether the plaintiff established a prima facie case, is not properly before this court, because the case proceeded to a jury verdict."]; *U.S. Postal Service Bd. of Governors v. Aikens* (1983) 460 U.S. 711, 713-714 [where case was fully tried on the merits, it is unnecessary for the parties and the Court of Appeals to address question whether plaintiff made out a prima facie case].)

Likewise, the trial court's denial of respondent's motion for nonsuit was not a determination that appellant had proven a prima facie case of retaliation under *McDonell Douglas*. Rather, a motion for nonsuit "has the effect of a demurrer to the evidence: It concedes the truth of the facts proved and contends that those facts are not sufficient as a matter of law to sustain the plaintiff's case." (*Alpert v. Villa Romano Homeowners Assn*. (2000) 81 Cal.App.4th 1320, 1328.) In denying the motion for nonsuit, the court found there was evidence which, if believed by the jury, was sufficient to prove respondent retaliated against appellant for his

protected activity. However, as the court correctly noted, the fact that there is evidence to prove a plaintiff's case does not compel the jury to believe that evidence.

The question on appeal from the denial of appellant's JNOV motion, therefore, "is nothing more or less than whether the evidence presented actually supports the decision the [jury] rendered on the factual issue before it." (*Muzquiz*, *supra*, 79 Cal.App.4th at p. 1120.) As to this question, our task is simply to review the record to determine whether there was substantial evidence to support the jury's finding. (*Ibid*.) In reviewing the record for substantial evidence, we must resolve all conflicts in favor of the verdict, and indulge all reasonable and legitimate inferences in order to uphold the verdict. (*Ibid*.)

The first question asked the jury to determine whether "the City of El Monte believe[d] that Eric A. Walterscheid had disclosed or might disclose to a [responsible person or public agency] legal violations that he learned from the Titan investigation and/or other claimed illegal activity." Chief Armstrong testified that neither appellant nor Glick informed him that they had discovered any illegal activity on the part of city officials or Department personnel. Nor did Chief Armstrong see any report detailing the confidential informant's statements. Although Chief Armstrong acknowledged seeing the investigative report, it was Glick who signed it. Additionally, respondent's theory was that appellant just tagged along with Detective Glick. Supporting this theory was appellant's inability to recall any statements he allegedly made to the FBI about the Titan investigation. Moreover, during at least one meeting with the FBI, only Glick participated. On this record, a jury could reasonably find that although respondent might have believed

that Glick disclosed or might disclose information learned from the Titan investigation, respondent did not believe that appellant disclosed or might disclose such information.

In the second question, the jury was asked to determine whether appellant "provide[d] information to a public body that was conducting an investigation, hearing or inquiry." No evidence suggests that either the FBI or the Los Angeles District Attorney's Office "was conducting an investigation, hearing or inquiry" into Leung or Titan when appellant met with them to brief them about the Titan investigation. To the extent the FBI might have started an investigation or inquiry into the matter by the time of the third meeting, appellant admitted that he did not attend that meeting; only Glick was interviewed by an AUSA. The only entity then conducting an investigation of Leung and Titan was the Department. However, as we previously noted, substantial evidence supported a finding that it was Glick who authored the investigative report. In sum, substantial evidence supported the jury's determination that appellant did not provide information to a public body that was conducting an investigation, hearing or inquiry.

In the third question, the jury was asked to determine whether appellant "refuse[d] to participate in illegal activity." Appellant admitted never complaining to the FBI or anyone else that Chief Armstrong's presence at the search of Leung's place of business or the chief's instructions about the binders were illegal. Chief Armstrong and Fetner testified that the officers were not told to exclude the binders from the search. On this record, a jury reasonably could find no illegal activity, and thus, no refusal

to participate in illegal activity. In sum, there was substantial evidence to support the jury's findings.[6]

C. *Appellant's Motion for a New Trial*

Appellant contends he is entitled to a new trial due to the prejudicial impact of (1) juror misconduct, (2) attorney misconduct, and (3) the trial court's evidentiary rulings.

1. *Juror Misconduct*

a. *Standard of Review*

When a party seeks a new trial based upon jury misconduct, a court must undertake a three-step inquiry. First, the court must determine whether the affidavits supporting the motion are admissible under Evidence Code section 1150.[7] (*Barboni v. Tuomi* (2012) 210 Cal.App.4th 340, 345 (*Barboni*).) Second, the court must determine whether the admissible facts establish misconduct. The moving party bears the burden of establishing misconduct, and on review, we accept the trial

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[6] Our conclusion also disposes of any claim that appellant was entitled to a new trial because there was insufficient evidence to support the jury's verdict. (See Code Civ. Proc., § 657 [new trial may be granted based on "[i]nsufficiency of the evidence to justify the verdict."].)

[7] Evidence Code section 1150 provides that "any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly." However, "[n]o evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined." (Evid. Code, § 1150.)

court's credibility determinations and factual findings if supported by substantial evidence. (*Ibid*.) Finally, assuming misconduct, the court must determine whether the misconduct was prejudicial. (*Barboni*, at p. 345.) Where misconduct has been shown, there is a presumption of prejudice. (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 417 (*Hasson*).) "However, the presumption is not conclusive; it may be rebutted by an affirmative evidentiary showing that prejudice does not exist or by a reviewing court's examination of the entire record to determine whether there is a reasonable probability of actual harm to the complaining party resulting from the misconduct. [Citations.] Some of the factors to be considered when determining whether the presumption is rebutted are the strength of the evidence that misconduct occurred, the nature and seriousness of the misconduct, and the probability that actual prejudice may have ensued." (*Ibid*.)

b. *Analysis*

Appellant contends the juror affidavits of Wolf and Delgado establish juror misconduct. According to the affidavit of Juror Wolf, at the beginning of deliberations, Juror Brunton suggested a vote to determine "who is on the plaintiff side and who is on the defense side." The jurors voted, with five in favor of plaintiff and seven in favor of the defendant. The jurors then deliberated for a lengthy period of time on question No. 1 when Juror Brunton commented, "that's why I suggested to take that initial vote." Wolf responded that "if we are going to vote like that, we might as well just vote on whether we want to give Plaintiff damages." The foreperson then suggested taking a secret vote to see "who wants to give Walterscheid damages." He "told the [other] jurors that we should vote to see if we want to give someone like this,

someone who is abusing children of child abuse, [*sic*] money." The jurors then participated in a secret ballot vote, and the vote was 11 to 1 not to award damages to appellant. Wolf stated that after the secret ballot, "the jurors discussed and agreed to make the 11 to 1 vote the vote as to the first three questions so that we could be done." Wolf recounted that the jurors continued deliberations, Legaspi wrote a note to the judge complaining he was rushed, the judge then reinstructed the jurors, and subsequently, the jurors discussed the first three questions before some jurors stated that they wanted to stick with their original votes.

The affidavit of Juror Delgado presented a substantially similar account of the jury deliberations. After the initial 5-7 vote, the jurors discussed "whether anyone wanted to give damages to a person like Walterscheid." During this discussion, the foreperson suggested taking a secret vote to "see who wants to award damages to Walterscheid." He stated, "'Why don't we take a vote as to, do we want to award money to someone like this? Someone that had porn on his computer and is a public safety problem.'" Delgado stated that after the secret ballot, "the jurors discussed making the 11 to 1 vote the vote as to the first three questions so that we could be done. The jurors stated: 'Let's make that our vote. Let's focus that into the three no's on questions 1, 2, and 3, and that will be our vote.'" Delgado also stated that after Legaspi complained and the trial court "re-admonished" the jurors, they deliberated on the first three questions. When the foreperson asked if anyone wanted to change their votes, many jurors stated that they wanted to stick with their original votes.

Under Evidence Code section 1150, the statements in the juror affidavits about Juror Brunton's suggestion to take an initial vote on each juror's respective opinion of who would prevail, the taking of the vote, and the 5-7 result were admissible, as those statements concerned overt acts, statements, or conduct. However, taking an initial vote is not misconduct. (See *Vomaska v. City of San Diego* (1997) 55 Cal.App.4th 905, 910 [no juror misconduct where jury took and adopted initial 10-2 vote on first question on special verdict form as final vote].)

Similarly, Juror Wolf's and the foreperson's suggestion of a secret ballot vote on whether to award damages to appellant, the taking of the vote and the 11-1 result were admissible, as they were overt acts, statements, or conduct. For the same reasons stated above, taking a vote on damages (question No. 11 on the special verdict form) is not misconduct.

Appellant contends that in deciding not to award damages, the jurors considered inadmissible evidence. According to Juror Wolf, the foreperson characterized appellant as someone who had "abus[ed] children of child abuse." According to Juror Delgado, the foreperson described appellant as "[s]omeone that had porn on his computer and is a public safety problem." Although the foreperson's statements were admissible, they did not demonstrate improper reliance on inadmissible evidence. Rather, the foreperson's statements reflected reliance on admissible evidence, specifically, the evidence tending to show respondent's good-faith reasons for terminating appellant's employment. As we concluded above, respondent was entitled to argue that its genuine belief that appellant was not properly discharging his duties as a detective investigating child sex abuse cases negated any inference of a retaliatory motive in the police chiefs' decisions

to terminate his employment. The jury was entitled to consider such evidence. The jurors heard testimony, including testimony from appellant himself, that appellant primarily investigated child abuse and sex crimes. They also heard testimony that an audit of child abuse cases had disclosed possible misconduct on the part of appellant. Both Chief Armstrong and Chief Schuster testified that they had reviewed audio and video recordings of appellant's witness interviews in nine child abuse cases. Their review of those recordings led them to decide to terminate appellant's employment. The jury foreperson's characterization of appellant as someone who had "abus[ed] children of child abuse" was therefore based on admissible evidence that appellant's conduct toward sex abuse victims during the interviews was considered inappropriate.

With respect to describing appellant as someone who had "porn on his computer," based on our review of the appellate record, no attorney or trial witness described the videos and photos found on appellant's computer as "porn" or pornographic. However, appellant worked on child abuse and sex crime cases. Lieutenant Stanley testified that he had uncovered information during the investigation into appellant's handling of child abuse cases that necessitated a search of appellant's work computer. The search resulted in the discovery of videos and photographs. The possession of those materials was sufficiently problematic to both Chief Armstrong and Chief Schuster that they decided to fire appellant. On this record, there is no showing that the description of those videos and photos as "porn" was based on inadmissible evidence.

With respect to the description of appellant as a "public safety problem," the jurors heard that the ESCARS system was

designed to serve as a central repository for reports of suspected child abuse throughout the County of Los Angeles. The jury also heard that El Monte police officers were not inputting information into ESCARS. It was reasonable to infer that the failure to update ESCARS could result in child abuse victims not receiving timely help from other agencies. In addition, the jurors heard from Chief Armstrong that appellant had admitted not handling child abuse cases with what the Chief believed was the "consideration and time that they deserved." On this record, no showing was made that characterizing appellant as presenting a "public safety" problem due to his work performance was based on inadmissible evidence.

In any event, any misconduct in the jurors' determination not to award damages was nonprejudicial. The jurors rendered a verdict on the issue of protected activity; they never reached a verdict on damages. (Cf. *Shanks v. Department of Transportation* (2017) 9 Cal.App.5th 543, 557 [in civil case, improper discharge of a single juror prejudicial only on issue where jury decided by nine-to-three vote, not on those issues decided by a unanimous or eleven-to-one vote].)[8]

Jurors Delgado and Wolf both stated that the jurors discussed and agreed on making the 11-1 vote on damages the

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[8] For similar reasons, we reject appellant's contention that the jurors' consideration of evidence concerning the reasons for appellant's termination during other parts of deliberations constituted misconduct. Respondent was entitled to and did argue those reasons, and the jurors were not precluded from considering them. Moreover, as such evidence was not relevant to the issue of protected activity, any misconduct in considering the evidence was not prejudicial.

vote as to the first three questions. These statements were admissible and show juror misconduct. However, a review of the entire record rebuts any presumption of prejudice. The jurors continued to deliberate after these discussions, and the actual verdict -- 10-2 on each of the three questions, with three jurors voting in favor of appellant -- demonstrates that in fact, no agreement resulted in tailoring the 11-1 vote on damages to the vote on the first three questions.

Appellant also argues that the relatively short nature of the deliberations and Juror Legaspi's note to the court complaining of feeling pressured to render a verdict demonstrate "widespread juror misconduct." We disagree. The brevity of deliberations does not demonstrate juror misconduct. (See *Vomaska v. City of San Diego*, *supra*, 55 Cal.App.4th at p. 910 [no juror misconduct where verdict rendered after 10 to 15 minutes of deliberations].) Moreover, even were we to find misconduct, the record rebuts any presumption of prejudice. After the court read Legaspi's note, it recalled the jurors and reinstructed them. After further deliberations, the jury rendered a verdict, and Legaspi voted in favor of appellant on question Nos. 1 and 2. On this record, any misconduct in pressuring jurors to render a verdict either was corrected by the trial court's admonishment or was nonprejudicial, as Legaspi's votes on question Nos. 1 and 2 were not adverse to appellant.[9]

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[9] Additionally, the juror affidavits are arguably inadmissible on this issue. (See *Bandana Trading Co., Inc. v. Quality Infusion Care, Inc*. (2008) 164 Cal.App.4th 1440, 1446 [juror declaration that "jurors failed to vote on some issues, were discouraged from asking questions, and were rushed into deciding on a verdict"

Appellant argues that the jury did not continue to truly deliberate after the trial court's admonishment, noting that some jurors had told Wolf and Delgado that they had already voted and wanted to keep those votes. These comments do not establish juror misconduct. The court's admonishment sought to ameliorate any pressure to reach a verdict; it did not require a juror who already had reached a verdict after considering all admissible evidence to continue deliberating.

Finally, appellant argues that a female juror's comment during deliberations that she would not vote against respondent because she lived in El Monte and did not want her taxes raised established prejudicial misconduct. We disagree. No evidence suggested that the juror voted against appellant on all three questions. Moreover, there was no prejudice because without that juror's vote, the defense still had 9 votes in its favor. (See *Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 321-322 [in civil cases, presumption of prejudice resulting from juror misconduct rebutted where remaining jurors were sufficiently numerous to render a proper and fair verdict].) In sum, appellant has failed to prove he was entitled to a new trial based on juror misconduct.

2. *Attorney Misconduct*

Appellant also claims he is entitled to a new trial based on attorney misconduct. Specifically, he contends that defense counsel contravened the trial court's rulings during opening statement by referring to reasons for his termination and repeatedly attempting to introduce such evidence during trial.

"properly disregarded" as inadmissible evidence of "the jurors' mental processes and reasoning"].)

However, the trial court denied appellant's motion for a new trial based on attorney misconduct, implicitly finding no violation of its rulings. Additionally, as we concluded previously, respondent was entitled to present evidence that it fired appellant based on its good-faith belief that his performance was deficient, and not in retaliation for any protected conduct. In short, appellant has not shown attorney misconduct.[10]

3. *Trial Court's Evidentiary Rulings*

Finally, appellant contends he is entitled to a new trial because the trial court's evidentiary rulings precluded him from fully presenting his case. Specifically, appellant argues that (1) the trial court erred in precluding Detective Glick from testifying about precisely what appellant said to the FBI; and (2) the court erred in precluding appellant from testifying further about the information provided by the confidential informant. We disagree.

Although the trial court precluded Detective Glick from testifying about exactly what appellant said to the FBI, Glick did testify generally that he and appellant disclosed the information

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[10] Under the same section of his appellate brief dealing with attorney misconduct, appellant also contends the trial court improperly permitted defense counsel to go into his violations of overtime policy in "excruciating detail." As appellant does not provide a basis for his contention that the trial court's ruling was improper or incorrect, his claim of error is forfeited. Even were we to consider it, we would find no reversible error. Evidence of appellant's overtime violations was relevant to his damages claim, which consisted primarily of overtime wages as a result of the arbitration award in his favor. Moreover, in light of the jury's findings that appellant did not engage in protected activity, any error in admitting such evidence was harmless.

learned from the Titan investigation to the FBI. The court also stated that appellant could testify to his own statements to the FBI during his direct examination, and Glick could be recalled to corroborate appellant's testimony. Appellant testified about his alleged disclosure to the FBI, and elected not to recall Glick. Thus, appellant cannot show he was prejudiced by the court's ruling limiting Glick's initial direct testimony.

Likewise, we find no error in the trial court's ruling limiting appellant's testimony relating to the confidential informant. Appellant testified that the confidential informant had told him and Glick that city officials were complicit with Leung in financial crimes. When plaintiff's counsel asked for further details about the alleged financial crimes, the court called for a sidebar. At sidebar, respondent's counsel objected to further inquiry, as it was undisputed that neither Leung nor any city official had ever been charged with any crime related to the Titan investigation. The court then ruled that there would be no "further questions in this area," determining that "[w]e've heard enough of criminal behavior sufficient to show" that if appellant disclosed the information to the FBI, it would be protected activity. The trial court did not abuse its discretion in excluding further testimony, as such evidence was cumulative of appellant's prior testimony. In sum, appellant was permitted to present his case, and the trial court's evidentiary rulings did not prejudicially impact him.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.