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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JASON GILLIS, Plaintiff and Appellant, v. WARNER BROS. HOME ENTERTAINMENT INC., Defendant and Respondent.	B231922 (Los Angeles County Super. Ct. No. BC429905)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rita J. Miller, Judge. Affirmed.

Law Offices of Victor L. George, Victor L. George and Wayne C. Smith for Plaintiff and Appellant.

Manatt, Phelps & Phillips, Esra Acikalin Hudson, Joanna S. McCallum and Joanna H. Sattler for Defendant and Respondent.

INTRODUCTION

Plaintiff Jason Gillis appeals from a summary judgment in favor of defendant Warner Bros. Home Entertainment Inc. (Warner Bros.) in his action for retaliation in violation of public policy. He contends triable issues of material fact exist, and the trial court erred in denying him a continuance to complete discovery. We affirm.

FACTS

A. *Plaintiff's Employment by Warner Bros.*

In August 1999, plaintiff was hired by Warner Home Video (WHV) as an analyst in the Credit and Customer Operations Department (CCO). The CCO manages WHV's receivables from the sale of home videos to large retail outlets. When he was hired, plaintiff signed a document acknowledging that he was an at-will employee.

Plaintiff was promoted several times and ultimately was promoted to director in the CCO in 2006. Plaintiff and another director, Donald Mouck (Mouck), reported to CCO's executive director, Darryl Banks, who reported to CCO's vice president, Rohit Patel (Patel). When Darryl Banks was transferred in February 2007, plaintiff and Mouck reported directly to Patel while a search was undertaken for a new executive director. Patel hired a new executive director in July 2007, Robert Lahr (Lahr), and plaintiff and Mouck then reported to Lahr.

As a director, plaintiff received increases in his annual salary and bonuses every year, approved by Patel. These continued through 2009.

B. *Warner Bros. Contracts with High Radius*

In 2006, WHV hired High Radius, a software development company, to develop an automated system to enable CCO to improve efficiency and decrease errors. To enable High Radius to tailor the system to WHV's needs, Patel provided High Radius

access to CCO's personnel, customer websites and accounts. High Radius signed a nondisclosure agreement prior to being given access, and Patel informed plaintiff of High Radius's agreement with WHV and nondisclosure agreement.

In 2007, CCO began implementing an enterprise resource planning system, called SAP, which would integrate all of its supply chain processes into a single automated system. High Radius had dispute management software, Dispute Resolution Accelerator, that was compatible with SAP. Patel recommended that WHV contract with High Radius to acquire the software.

After conducting a competition analysis and evaluating the software, Warner Bros. Procurement Group concluded that High Radius's software was unique and unavailable from other providers due to its compatibility with SAP and its features which met WHV's requirements. The procurement group also concluded that even though High Radius was a relatively new company, the risk to Warner Bros. would be relatively low because the cost of the software was a very small portion of the amount Warner Bros. was spending on improvements to its global supply chain functions. The procurement group approved hiring High Radius to provide the software.

Warner Bros. and High Radius executed a Master Software License Agreement and an Independent Contractor Services Agreement in mid-2007. Both contained confidentiality and nondisclosure agreements.

C. *Plaintiff's Complaints to Human Resources*

In the spring and summer of 2007, plaintiff began complaining to WHV's Human Resources (HR) department about Patel. He complained that Patel was causing morale problems by setting unrealistic deadlines, imposing an excessive workload, giving conflicting directives, and blaming subordinates for his own mistakes.

In April 2007, plaintiff met with Shelly Hance (Hance), Manager of Human Relations, about Patel. One of the concerns he expressed to her was that CCO staff was being used to start up High Radius.

On June 28, 2007, plaintiff and Patel attended a meeting with Enrique Carvajal (Carvajal), Vice President of Human Resources, regarding the issues plaintiff had raised with Human Resources. Plaintiff sent an email to HR on June 29, and it was forwarded to Patel. Patel was disappointed about his team's lack of communication with him. Plaintiff was dismayed to learn that his email had been forwarded to Patel.[1]

Patel met with plaintiff on July 10, 2007. Patel said he wanted to go over an email plaintiff had sent to HR, point by point, to show plaintiff how he could have saved his career at WHV. Patel was very angry that he had been given a three-page write-up of issues he needed to work on.

After the meeting, Patel took actions which plaintiff interpreted as being retaliatory. These included not providing training he had promised to plaintiff, imposing short deadlines for work and requiring plaintiff to do work which plaintiff considered to be unnecessary and a waste of time.

Late on September 21, 2007, Patel sent an email to Carvajal and Tony Rodriguez indicating that plaintiff and Mouck had met with Lahr after Patel left work for the evening. Patel wrote that Lahr said "that he informed [plaintiff and Mouck] of the vision [Patel had] for the department and asked if they were on board. [Lahr] said [plaintiff] was; but did not comment on [Mouck]. I am going to use [Lahr] as a filter to manage my requests in a timely manner. [Lahr] is doing his best to handle the situation; but I can not [*sic*] run a department that has staff on it that does not support the long term vision.

"I was also informed that [plaintiff] did go to HR again, but I am unaware of the circumstances. At our meeting several months ago, we asked that the directors come to me should they have any issues with me first. This I thought would be courteous to the head of the department; but what do I know? If his visit to HR was related to me, then there is no trust with [plaintiff] and it is beyond repair. I need to send a message that if

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[1] Before this meeting, Patel had told plaintiff that he would be considered for the vacant executive director position in CCO, but plaintiff was never interviewed for the position.

they are not on board, then they should not be part of the department. I will require your assistance as I will not tolerate this type of behavior an[y] longer. [¶] [Lahr] and I have worked with other key managers and they are on board with the vision and any resistance from the Directors will set the department back many years."

Tony Rodriguez responded that he supported Patel's position and was "ready to help HR make the right moves to get the CCO team all rowing in the same direction. Don't let this get you down, we just need to get over this challenge so you and [Lahr] can focus on the positives and leverage your good players to make the right contributions." Rodriguez said he would "make best efforts to join [Patel and Carvajal] to begin next steps."

After this, Patel took actions which plaintiff again considered to be retaliatory. Patel stopped holding business council meetings; plaintiff acknowledged, however, that no one told him why business council meetings had been canceled. When plaintiff and Mouck made recommendations to hire certain candidates, Patel did not follow those recommendations and "hired a candidate on his own without consulting [them]." Patel removed plaintiff from the Community of Practice membership without giving plaintiff advance notice.

D. ***Plaintiff's Complaints to Employee Relations and Legal Department***

Plaintiff also voiced concerns about High Radius to the Employee Relations department and members of the corporate legal department. He was concerned that Patel hired High Radius to develop a tool for addressing returns; plaintiff believed this was a bad business decision because CCO already had an effective tool for that. He also complained that High Radius founder Sashi Narahari used WHV resources to form the company after a meeting with members of CCO to outline CCO's dispute resolution processes. Plaintiff also expressed his belief that High Radius was sharing WHV's processes with other companies. Plaintiff believed that WHV could "potentially lose a competitive advantage that [it] currently hold[s] over other companies" if High Radius

sold software that it created as a result of its relationship with WHV to WHV's competitors.

Plaintiff told Employee Relations and members of the legal department that he believed Sashi Narahari had a brother, Sreedhar Narahari, who worked for Warner Bros. He also told them that Patel and Sashi Narahari were friends. According to plaintiff, during a CCO management meeting, Patel said that he "should have Sashi throw a party for CCO instead of taking my kickback." Based on this comment, plaintiff complained to Employee Relations and members of the legal department that Patel had a kickback agreement with High Radius.

Plaintiff complained that when he discussed with Patel the possibility of using another company as an alternative to High Radius, Patel agreed on condition that Sreedhar Narahari sit in on the meeting as a "mole." Plaintiff also complained that when WHV paid for Patel to attend credit industry conferences, Patel spoke about High Radius.

In written documents he submitted to Employee Relations and the legal department in early 2008, plaintiff wrote that he felt he was "required to come forward with the information that [he] passed along [about High Radius] due to [his] signing Warner Bros. Standards of Business Conduct, and Warner Bros. Conflict of Interest documents." On February 21, he was notified that his "concerns regarding HighRadius [*sic*] have been forwarded to Leigh Chapman (Chapman), Senior Vice President, Chief Employment Counsel & Deputy General Counsel."

On July 21, 2008, plaintiff sent an email to Chapman, with a cc to Stephanie McNutt (McNutt), Vice President and Senior Employment Counsel. Plaintiff thanked Chapman and McNutt "for looking into the High Radius situation, which appeared to violate company policy . . . ." He stated that he appreciated the fact Chapman told him that he "did exactly what you would hope employees would do in these situations with regard to company compliance issues." After reviewing Chapman's findings that he had a reason to come forward based on what appeared to be suspicious activity, but that there was nothing inappropriate in the relationship between Patel and Warner Bros., and Sashi Narahari and High Radius, plaintiff stated: "I would like to follow up briefly to make

sure that I fully understood Warner Bros. position on a couple of issues, and primarily to confirm that I have fully met any obligation that I have to Warner Bros. with regard to Warner Bros. compliance policies, such as, Conflicts of Interest, Ethical Business Practices Agreement, Standards of Business Conduct, Protecting Confidential Information, or any other policy to which I am accountable. . . ." He summarized his concerns as follows: (1) "Have I fully met my obligation to the company on this matter?" (2) "Confirmation that sharing CCO process flows with Sashi in Jan. 2006 was to be found in line with Company policy?" (3) "Confirmation that pitching High Radius processes developed by WHV to competitors is OK per Company policy." He also sought clarification on whether it was appropriate for Patel to provide Sashi Narahari with CCO process flows prior to the formation of High Radius, and whether it was appropriate for Patel to pitch High Radius to Warner Bros. competitors.

McNutt responded to plaintiff on July 31 that Warner Bros. "did a comprehensive and thorough investigation and [is] satisfied that the issues you raised have been resolved." McNutt reminded plaintiff that she told him "that while there was an element of truth to some of the allegations, not all of them were true and we also did not find any misconduct, injury or damage to the Company." The investigation found nothing inappropriate in "the sharing of CCO process flows with High Radius." Rather, "it was necessary for this to occur in order for High Radius to identify information gaps and to design the functionality for us that we needed. When [Patel] was first dealing with Mr. Narahari, his company was formed under a different name. At the time the contracts were signed, the name had changed to High Radius.

"With respect to 'pitching' High Radius to competitors, we advised you that it is fairly common in most businesses when one company has found a vendor who supplies a superior product or service to recommend that vendor to his or her counterparts at other companies. We found that this is what [Patel] may occasionally have done which is not prohibited by any Company policy." McNutt reiterated that she appreciated his bringing his concerns to her attention and providing the opportunity to investigate them, but the

investigation found no unlawful conduct or violation of company policy. She also reassured him that he had fulfilled his obligations to Warner Bros.

E. *Plaintiff's Termination*

In 2008, Patel began introducing a "process improvement" function in CCO. This function examined systematic, repetitive issues in processes and identified solutions to remedy these issues.

Patel recommended that WHV hire Claudia Daniel (Daniel), an auditor and Warner Bros. employee involved in the implementation of the SAP program, to lead the process improvement function in CCO. Daniel began working as the Director – Process Improvement in October 2008. Some of plaintiff's responsibilities were transferred to Daniel.

At this same time, Warner Bros. was working on an Alternative Sourcing Program (ASP), in which Warner Bros. retained outside consultants from CapGemini, a global provider of technology, consulting and outsourcing services. As part of the ASP process, a team of Human Resources staff, counsel from the legal department, and CapGemini consultants, with input from Patel, Lahr and Daniel, conducted a functional analysis to determine whether certain CCO functions could be outsourced to CapGemini.

The functional analysis involved analyzing the overall purpose of CCO and each of its functions—as opposed to each position in CCO—to determine which body of work could be effectively outsourced. The body of work that could be outsourced was characterized in terms of full-time equivalent positions, i.e., if it took 40 hours to perform a function or group of functions, then one full-time equivalent position could be outsourced.

The ASP team then calculated the number of full-time equivalent employees that could be retained to perform functions that would not be outsourced and tried, using organizational charts, to redesign the structure of the CCO. As part of the redesigning process, the team evaluated both supervisory and lower level positions.

Prior to the redesign, CCO had 35 lower level employees who reported to five supervisors. Those five supervisors reported to the two directors, plaintiff and Mouck, who reported to the executive director, Lahr. As part of the redesign, the ASP team determined that it was unnecessary to have a layer of management between the supervisors and the executive director, and the director positions could be eliminated.

Using the redesigned organizational structure, the ASP team made the determination as to which employees would perform the retained functions. The ASP team eliminated 18 CCO positions, including plaintiff's.[2] Lahr and Daniel recommended that plaintiff be terminated, and Patel concurred.[3]

On January 22, 2009, Lahr and Human Resources representative Maria Huntsberry informed plaintiff that his position had been eliminated. When plaintiff arrived for work the following Monday, he and two other CCO employees were locked out of the building.

At a meeting for all CCO employees on January 27, Senior Officer David Hettlar (Hettlar) said that no customer-facing jobs would be affected by outsourcing. Plaintiff asked why his job was affected, since it was 100 percent customer-facing. Hettlar said his situation was different, and it would be better to address it offline. In fact, none of plaintiff's job functions were outsourced.

Plaintiff was terminated as of March 27, 2009. Within the next week, plaintiff learned a new Director of Credit position had been created in CCO. Plaintiff did not apply for the position.

Karen Kerns, a former CCO manager, was promoted to the position of Director of Credit and Collections in CCO. Hettlar and Patel never discussed offering the job to

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[2] In addition to the CCO positions, hundreds of positions in other departments of Warner Bros. were eliminated.

[3] According to plaintiff, about this time Lahr told him that he was happy with plaintiff's performance, he saw plaintiff as his successor, and only 17 low level personnel in CCO would be affected by outsourcing.

plaintiff. Patel could not recall whether plaintiff was considered for the position, and he could not think of any reason why plaintiff would not be suitable to fill the position.

At a much later date, there were talks about elevating another manager, Laura Bermudez, to a director position. Bermudez had attended some ASP meetings because she was knowledgeable about the SAP workflow.

F. *Sarbanes-Oxley Act*

Warner Bros. is a publicly traded stock company. Documents are prepared in CCO "relating to the Sarbanes-Oxley Act ("SOX") that relate to various processes in the CCO." Operational reports are prepared "related to the various processes performed in the CCO Dept." on a daily and weekly basis and reviewed monthly.

The operational reports are reviewed by Patel, auditors, and others in Warner Bros. The auditors check to make sure the invoicing and pricing of credits are correct and that customer master information is accurate.

DISCUSSION

A. *Standard of Review*

Summary judgment properly is granted if there is no question of material fact and the issues raised by the pleadings may be decided as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) To secure summary judgment, a moving defendant may show that one or more elements of the cause of action cannot be established or that there is a complete defense to the cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, *supra*, at p. 849.) The defendant must "demonstrate that under no hypothesis is there a material factual issue requiring a trial." (*Rosenblum v. Safeco Ins. Co*. (2005) 126 Cal.App.4th 847, 856; accord, *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

Once the moving defendant has met its burden, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or the defense

thereto. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 849.) All doubts as to the propriety of granting the motion are resolved in favor of the opposing party. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

Additionally, Code of Civil Procedure section 437c, subdivision (c), provides that "[i]n determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact." The papers submitted by the parties must set forth evidentiary facts. (*Sheppard v. Morgan Keegan & Co.* (1990) 218 Cal.App.3d 61, 67; see also *Miller v. Bechtel* (1983) 33 Cal.3d 868, 874.) "Mere conclusions of law or fact are insufficient to satisfy the evidentiary requirements for a summary judgment." (*Perkins v. Howard* (1991) 232 Cal.App.3d 708, 713; *Sheppard, supra*, at p. 67.)

We review a grant of summary judgment de novo to determine whether triable issues of material fact exist. (*Wiener v. Southcoast Childcare Centers, Inc*. (2004) 32 Cal.4th 1138, 1142.) We examine the facts presented to the trial court and determine their effect as a matter of law. (*Parsons v. Crown Disposal Co*. (1997) 15 Cal.4th 456, 464; *Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 172.) We may affirm a summary judgment on any correct legal theory, even if the trial court relied on a different theory to reach the same conclusion. (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694; *California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22.)

B. *Wrongful Termination*

In *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, the Supreme Court held that an employer's right to discharge an at-will employee is subject to limits imposed by fundamental public policy concerns. (*Id*. at pp. 172, 178.) Public policy concerns fall

into four categories: termination for (1) refusing to violate a statute; (2) performing a statutory obligation; (3) exercising a constitutional or statutory right or privilege; and (4) reporting a statutory violation for the benefit of the public. (*Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 76.) The public policy must be "'tethered to' either a specific constitutional or statutory provision," it "must be 'public' in that it 'affects society at large' rather than the individual, must have been articulated at the time of discharge, and must be '"fundamental"' and '"substantial."' [Citations.]" (*Ibid*.)

The Sarbanes-Oxley Act provides that "'[n]o [publicly-traded company] . . . may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee (1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of [18 U.S.C] section 1341 [mail fraud], 1343 [wire fraud], 1344 [bank fraud], or 1348 [securities fraud], any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by (C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) . . . .' 18 U.S.C. § 1514A(a)(1)(C)." (*Sequeira v. KB Home* (S.D.Tex. 2009) 716 F.Supp.2d 539, 549-550.) This "whistleblower" protection "serves to 'encourage and protect [employees] who report fraudulent activity that can damage innocent investors in publicly traded companies.'" (*Day v. Staples, Inc.* (1st Cir. 2009) 555 F.3d 42, 52.)[4]

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[4] "Whistleblower" protections such as that provided by Sarbanes-Oxley reflect fundamental and substantial public policy concerns. (See *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384-1386.) Other courts have found that a wrongful termination cause of action may be based on retaliation against an employee for reporting Sarbanes-Oxley violations. (E.g., *Collins v. Beazer Homes USA, Inc.* (N.D.Ga. 2004) 334 F.Supp.2d 1365.)

The reasonable belief requirement of Sarbanes-Oxley has both a subjective and an objective component. (*Day v. Staples, Inc.*, *supra*, 555 F.3d at p. 54.) The employee must make his complaints in "subjective good faith," that is, the employee must "'actually believe[] the conduct complained of constituted a violation of pertinent law.'" (*Id*. at p. 54 and fn. 10.) The employee must also have "an objectively reasonable belief that the conduct constituted securities fraud or shareholder fraud," specifically one of the types of fraud specified in the act. (*Id*. at pp. 54-55.)

In order "[t]o have an objectively reasonable belief there has been shareholder fraud, the complaining employee's theory of such fraud must at least approximate the basic elements of a claim of securities fraud. 'Securities fraud' itself has additional relevant elements. The elements of a cause of action for securities fraud 'resembl[e] . . . common-law tort actions for deceit and misrepresentation.' [Citation.] Those elements typically include a material misrepresentation or omission, scienter, loss, and a causal connection between the misrepresentation or omission and the loss. [Citation.] Securities fraud under section 10(b) and Rule 10b–5 requires: '(1) a material misrepresentation or omission; (2) scienter; (3) connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation.' [Citation.] The employee need not reference a specific statute, or prove actual harm, but he must have an objectively reasonable belief that the company intentionally misrepresented or omitted certain facts to investors, which were material and which risked loss." (*Day v. Staples, Inc.*, *supra*, 555 F.3d at pp. 55-56.)

Complaints about internal company practices that may not maximize shareholder profit, may result in a loss of revenue or cost the company money do not support an objectively reasonable belief that shareholders have been or are likely to be defrauded. (*Day v. Staples, Inc.*, *supra*, 555 F.3d at p. 56.) Complaints about internal practices which are not reported to shareholders likewise do not support an objectively reasonable belief in shareholder fraud. (*Id*. at p. 58.) Rather, the complaints "'must "definitively and specifically" relate to [one] of the listed categories of fraud or securities violations under 18 U.S.C. [section] 1514A(a)(1).'" (*Van Asdale v. International Game Technology*

(9th Cir. 2009) 577 F.3d 989, 996-997; *Welch v. Chao* (4th Cir. 2008) 536 F.3d 269, 275.)

In granting the summary judgment motion, the trial court found that plaintiff could not "establish an essential element of his [*Tameny*] cause of action—that his complaints were a protected activity." The court explained: "Plaintiff claims that his complaints to defendant were complaints for violations of the Sarbanes-Oxley Act, designed to address a fraud on company shareholders that arose from plaintiff's supervisor's alleged conflict of interest and taking of kickbacks in connection with the supervisor's relationship with a company called High Radius, which did business with defendant and allegedly was owned by a friend of plaintiff's supervisor.

"Plaintiff's complaint was not sufficiently tethered to the statutory provisions of Sarbanes-Oxley to be sufficiently 'public,' 'substantial and fundamental' to support his *Tameny* claim here. He has not revealed any evidence showing that he actually meant to address a Sarbanes-Oxley violation when he reported his supervisor's alleged conflict of interest to the company, or that any complaint by him that Sarbanes-Oxley had been violated was subjectively or objectively reasonable. The court would not expect him to use particular 'buzz words' in making the complaint, but would expect that the complaints to management would have been articulated in a way to indicate some logical nexus to the provisions of Sarbanes-Oxley. It was not."

Specifically, the trial court found that plaintiff failed to show that he could present any evidence that Patel's "relationship with High Radius was something that he ever reasonably would have expected to be disclosed to shareholders or relied on by shareholders. Plaintiff has not pointed to any portion of Sarbanes-Oxley that would require the relationship between High Radius and his supervisor to be disclosed publicly. Therefore, he has not shown that he can present evidence of any subjectively or objectively reasonable belief that there would be a misrepresentation to shareholders or any intent by anyone to induce reliance, or any causation of shareholder reliance or damages. Nor is there any indication that any loss of corporate revenues that might have resulted from a conflict of interest would have been sufficiently significant to be

'material.' These types of things would have to be needed for there to have been a subjectively or objectively reasonable belief that a shareholder fraud was threatened as a result of the supervisor's alleged conflict of interest or relationship with High Radius. (*E.g., Day v. Staples, Inc.*[, *supra*,] 555 F.3d [at pp.] 52-58.) [¶] . . . [¶]

"An employee's mere concern that a corporate policy is wasteful, inefficient, imprudent, risky, involves accounting or other financial irregularities, or will result in reduced revenues due to things like crime or embezzlement, does not automatically rise to the level of a Sarbanes-Oxley violation. [Citations.] [¶] If it did, employees could refuse to cooperate with, obstruct and resist all manner of management decisions, reached through the exercise of management's business judgment, without fear of discipline or termination. As the court stated in an analogous situation in *Patten v. Grant Joint Union High School Dist.*[, *supra*, 134 Cal.App.4th at p.] 1385: "'To exalt . . . exclusively internal personnel disclosures with whistleblower status would create all sorts of mischief. Most damagingly, it would thrust the judiciary into micromanaging employment practices and create a legion of undeserving protected 'whistleblowers' arising from the routine workings and communications of the job site.'"

Plaintiff argues that he complained to Warner Bros. that Patel "had an illegal conflict of interest with a vendor called High Radius that was materially damaging the company's shareholders by: 1) siphoning off company resources to aid in its start up; 2) allowing access to and theft of proprietary accounting processes used to reconcile millions of dollars in accounts that were then offered to business competitors; 3) 'descoping' a valuable reconciliation tool in order to create a 'gap' to allow High Radius to create a fix, that placed untold millions of dollars at risk because Patel's conduct prevented the CCO department from reconciling its vendor accounts; 4) which directly implicated the company's SOX compliance functions related to internal controls, risk accrual and the quarterly audits to verify the company's risk provision, bad debt provision, debt reconciliation and to test the department's assumptions regarding debt reconciliation."

Plaintiff's argument is not based on the evidence presented on summary judgment. Rather, he is attempting to transform his complaints about Patel's management and violations of company policy into complaints about a Sarbanes-Oxley violation.

Plaintiff's initial complaints to HR were focused on Patel's management of CCO, that Patel was causing morale problems by setting unrealistic deadlines, imposing an excessive workload, giving conflicting directives, and blaming subordinates for his own mistakes. Among his other complaints about Patel, plaintiff expressed his concern that CCO staff was being used to start up High Radius.

When plaintiff subsequently complained to Employee Relations and the legal department, he expressed concern that Patel's hiring of High Radius to develop a tool for addressing returns was a bad business decision because CCO already had an effective tool for that. He also complained that WHV resources were used to form High Radius, and High Radius was sharing WHV's processes with other companies. Plaintiff believed that WHV could "potentially lose a competitive advantage that [it] currently hold[s] over other companies" if High Radius sold software that it created as a result of its relationship with WHV to WHV's competitors. Plaintiff additionally complained that Patel had a kickback agreement with High Radius, and that when WHV paid for Patel to attend credit industry conferences, Patel spoke about High Radius.

In written documents he submitted to Employee Relations and the legal department in early 2008, plaintiff wrote that he felt he was "required to come forward with the information that [he] passed along [about High Radius] due to [his] signing Warner Bros. Standards of Business Conduct, and Warner Bros. Conflict of Interest documents." In his July 21, 2008 email to Chapman and McNutt, plaintiff thanked them "for looking into the High Radius situation, which appeared to violate company policy . . . ." He stated that he appreciated the fact Chapman told him that he "did exactly what you would hope employees would do in these situations with regard to company compliance issues."

Plaintiff wrote that he wanted to confirm that he met his obligations "to Warner Bros. with regard to Warner Bros. compliance policies, such as, Conflicts of Interest,

Ethical Business Practices Agreement, Standards of Business Conduct, Protecting Confidential Information, or any other policy to which I am accountable. . . ." He summarized his concerns as follows: (1) "Have I fully met my obligation to the company on this matter?" (2) "Confirmation that sharing CCO process flows with Sashi in Jan. 2006 was to be found in line with Company policy?" (3) "Confirmation that pitching High Radius processes developed by WHV to competitors is OK per Company policy."

Nothing in the foregoing supports a finding that plaintiff believed in good faith that the conduct complained of constituted shareholder fraud within the meaning of Sarbanes-Oxley. (*Day v. Staples, Inc.*, *supra*, 555 F.3d at p. 54 and fn. 10.) His stated concerns were "Warner Bros. compliance policies, such as, Conflicts of Interest, Ethical Business Practices Agreement, Standards of Business Conduct, Protecting Confidential Information." He sought confirmation that Patel did not violate "Company policy." None of his complaints related to the specific types of shareholder fraud listed in Sarbanes-Oxley. (*Van Asdale v. International Game Technology*, *supra*, 577 F.3d at pp. 996-997; *Welch v. Chao*, *supra*, 536 F.3d at p. 275.) His complaints about violations of company policy do not support a subjectively reasonable belief in shareholder fraud of the types specified in Sarbanes-Oxley. (*Day*, *supra*, at pp. 56-58; see, e.g., *Platone v. U.S. Dept. of Labor* (4th Cir. 2008) 548 F.3d 322, 326-327 [plaintiff's complaints about billing discrepancies without any attempt to tie them to a securities violation and shareholder fraud insufficient establish a Sarbanes-Oxley violation].) Plaintiff's belated attempt to tie his complaints to Sarbanes-Oxley compliance finds no support in the evidence.

In addition, there is nothing in the evidence which would support an objectively reasonable belief that Patel's conduct constituted mail fraud, wire fraud, bank fraud or securities fraud. (*Day v. Staples, Inc.*, *supra*, 555 F.3d at pp. 54-55; *Sequeira v. KB Home*, *supra*, 716 F.Supp.2d at pp. 549-550.) Plaintiff's complaints, which essentially were that Patel's conduct was costing the company money and aiding the company's competitors, do not support an objectively reasonable belief that shareholders have been or are likely to be defrauded. (*Day*, *supra*, at pp. 56, 58.)

In sum, none of the evidence plaintiff presented established a triable issue of material fact as to whether plaintiff was terminated for complaining about a Sarbanes-Oxley violation. The trial court therefore did not err in granting summary judgment on his *Tameny* cause of action. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 849.)

C. *Completion of Discovery*

Code of Civil Procedure section 437c, subdivision (h), provides: "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just." If, and only if, the conditions of this subdivision are met, a continuance or denial of the summary judgment motion is required. (*Scott v. CIBA Vision Corp.* (1995) 38 Cal.App.4th 307, 313-314; *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 623.) In order to obtain a continuance pursuant to subdivision (h) of Code of Civil Procedure section 437c, a party must submit an affidavit showing: "(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts." (*Wachs*, *supra*, at p. 623.)

Plaintiff contends that he was entitled to complete his discovery in order to obtain information regarding Warner Bros.'s "investigation of the conflict of interest charges against Patel; whether Warner Bros. believed Plaintiff's complaints were a 'protected activity'; whether Plaintiff was retaliated against; the causal link between reporting the conflict of interest and retaliation; and the issue of pretext. These were crucial issues in the case."

We agree with the trial court that "the materials sought cannot change the nature of the complaint made by plaintiff and cannot affect the outcome of [the summary judgment] motion. The court need not reach the balance of the parties' arguments, as the

foregoing is dispositive." Plaintiff failed to make the requisite showing, and the trial court did not err in refusing to grant a continuance to plaintiff to complete further discovery.

DISPOSITION

The judgment is affirmed. Warner Bros. is to recover its costs on appeal.

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.