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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

NESTOR C. TUAZON, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, Defendant and Respondent.	B277998 (Los Angeles County Super. Ct. No. BC559241)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara Ann Meiers, Judge. Affirmed.

Law Offices of Margarita G. Trimor and Margarita G. Trimor for Plaintiff and Appellant.

Cole Pedroza, Kenneth R. Pedroza, and Tammy C. Weaver for Defendant and Respondent.

INTRODUCTION

Nestor C. Tuazon filed a complaint against his former employer, respondent Southern California Permanente Medical Group, alleging age discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), Gov. Code § 12900 et seq., and wrongful termination in violation of public policy. Respondent moved for summary judgment, arguing that appellant had failed to make a prima facie case of discrimination and retaliation, and that even if he did, respondent had presented legitimate, nondiscriminatory, nonretaliatory reasons for the adverse employment action. The trial court granted the summary judgment motion and dismissed the complaint. Appellant contends the trial court erred, arguing he produced evidence sufficient to meet his burden to make a prima facie case. He further contends that he produced evidence sufficient to raise a triable issue as to whether respondent's proffered reasons for the adverse employment action were pretextual or whether the adverse employment action was the result of discriminatory or retaliatory animus. For the reasons set forth below, we conclude that appellant failed to raise a triable issue whether respondent's proffered reason was pretextual or whether respondent's actions were animated by discriminatory or retaliatory animus. Accordingly, we affirm.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

A. *Appellant's Complaint*

On October 1, 2014, appellant filed a complaint for damages alleging causes of action for (1) age discrimination, (2) retaliation, and (3) wrongful termination in violation of public policy. The complaint alleged that appellant was employed as a

clinical laboratory scientist since October 21, 1991. On October 25, 2013, appellant was terminated on the grounds that he slept on the job and took unauthorized rest and meal breaks. The complaint asserted that the proffered reasons for termination were pretextual. The real reasons, the complaint alleged, were appellant's age (55) and his complaints about the discriminatory practices of and harassment by his supervisors.

B. *Respondent's Motion for Summary Judgment*

On April 8, 2016, respondent filed a motion for summary judgment, arguing appellant had not established a prima facie case of discrimination or retaliation because he voluntarily resigned. Alternatively, respondent argued the decision to terminate appellant's employment was based on legitimate, nondiscriminatory, nonretaliatory reasons.

Respondent explained that in March 2013, appellant, who worked the graveyard shift, voluntarily agreed to take two designated rest and meal periods: a rest break from 1:00 a.m. to 1:15 a.m., and a combined rest and meal break from 3:55 a.m. to 4:40 a.m. In May 2013, appellant's direct supervisor, James Cocjin, received complaints from other graveyard shift employees that appellant was repeatedly taking an unauthorized 45-minute break at 2:15 a.m. Cocjin consulted with assistant director Chiemi Tabata and human resources consultant Jody Weems about the complaints. Weems recommended that an investigation be conducted into the complaints. Cocjin and Tabata interviewed appellant with a union representative present. At the meeting, appellant stated he had not taken his rest break at 1:00 a.m., and had taken it instead at 2:15 a.m. However, Cocjin and Tabata interviewed appellant's coworkers, all of whom verified that appellant had been taking a third break

at around 2:15 a.m. nearly every night. Weems also interviewed the same employees and obtained signed statements from them. Cocjin personally observed appellant taking his designated breaks at 1:00 a.m. and 3:55 a.m. and taking an extra unauthorized 42-minute break at 2:20 a.m. on May 18. The investigators also reviewed building access records and surveillance video recordings, which showed appellant leaving and returning from his breaks, including the unauthorized break at around 2:15 a.m.

Cocjin, Tabata, and Weems met with the director of chemistry services, Vincent Dizon, to discuss the results of the investigation. They determined that appellant had taken an unauthorized 30-to-45-minute break at 2:15 a.m. on multiple occasions, in particular on May 11, 16, 17, and 18, on June 6 and 11 and on July 13. Because appellant had submitted timecards indicating he had worked when he was actually taking unauthorized breaks, they determined that appellant had committed timecard fraud and decided that terminating appellant's employment was the appropriate corrective action for the misconduct. On October 25, 2013, Cocjin, Tabata and Dizon met with Tuazon and his union representative to present the results of the investigation and to inform appellant of the termination decision. After consulting with his union representative, Tuazon requested that he be allowed to resign, and his resignation was accepted.

Respondent argued that on this factual record, appellant could not demonstrate a prima facie case of age discrimination or retaliation because he voluntarily resigned, and no facts suggested the decision to terminate his employment was based on discriminatory or retaliatory animus. Respondent further argued

that even if a prima facie case had been made, respondent had legitimate, nondiscriminatory, nonretaliatory reasons for terminating appellant's employment, namely, appellant's timecard fraud. Finally, respondent argued that because appellant had no viable discrimination or retaliation claim, the derivative claim for wrongful termination in violation of public policy also failed as a matter of law.

C. *Appellant's Opposition and Respondent's Reply*

Appellant opposed the motion for summary judgment.[1]

In reply, respondent argued that appellant did not dispute the facts demonstrating that respondent had legitimate, nondiscriminatory, nonretaliatory reasons for its decision to terminate his employment. Specifically, appellant did not dispute that his coworkers had complained to management that he was taking unauthorized breaks, that management had investigated the complaints, and that the investigation showed appellant repeatedly had taken unauthorized breaks.

Respondent also argued that appellant failed to demonstrate a triable issue that the proffered reason for the termination -- timecard fraud -- was pretextual. As an initial matter, respondent noted that appellant had relied on 11 declarations of former or current employees to demonstrate pretext, but these declarants were not disclosed during discovery. Thus, respondent asserted, these declarations should be excluded. Of the 11 undisclosed declarants, 10 filed declarations

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[1] Appellant's opposition is not in the record. Respondent noted the inadequacy of the record and augmented it with its motion and reply; appellant did not seek to augment the record with his opposition.

stating their belief that they had been demoted from laboratory assistant III to laboratory assistant II positions because of their age. In response to their claims, Weems submitted a declaration stating that she was involved in the process of transitioning employees from the laboratory assistant III position to the laboratory assistant II position. Weems asserted that the "demotion" was the result of a change in state law regulations, not age discrimination. As she explained, the new regulations prevented laboratory assistants from performing those tasks that differentiated the laboratory assistant III position from the laboratory assistant II position. In response to the new regulations, respondent eliminated the laboratory assistant III position and offered positions as laboratory assistant II to all former laboratory assistant III employees who wished to continue working for respondent.

Appellant also produced two declarations from former employees to support his claim that respondent had attempted to "force" older employees to retire. In her declaration, Adelaida Lacuata -- an undisclosed witness -- stated that assistant director Tabata had asked her and another older employee to submit a letter of intent to retire. Lacuata acknowledged she had not submitted such a letter and remained employed for several more years. In response, Tabata submitted a declaration explaining that she had overheard Lacuata and the other employee talking about retirement. Tabata then asked the two to promptly submit a letter of intent to retire if they intended to do so, in order to assist management in maintaining adequate staffing levels. Tabata stated that she neither suggested nor encouraged retirement. "I told them the decision when to retire was theirs,

but requested the courtesy of some notice so that I could plan for staffing issues."

Appellant also produced a declaration from Gladwin Obediah. Obediah stated that he felt that his own transfer from the evening shift to the graveyard shift over his "vehement objection" "forced [him] to retire." In response, Tabata explained that although all employees in the day and evening shifts had to work weekends, Obediah had refused to do so, which caused staff scheduling problems. She transferred Obediah to the graveyard shift because it was the only shift that did not require working on the weekend. Tabata asserted that the transfer was not an attempt to force Obediah to retire, but to resolve the problems resulting from his refusal to work weekends.

Respondent further argued that appellant's remaining evidence did not demonstrate that the proffered reason for his firing was pretextual. It argued the fact that Cocjin had approved appellant's timecards did not demonstrate there was no timecard fraud, as prior to the investigation, Cocjin had no basis to reject the submitted timecards. Likewise, the fact that other graveyard shift employees -- half of whom were over the age of 40 -- were not disciplined for taking a break to do so-called "KP Walks" did not demonstrate pretext[2]; appellant was terminated for taking additional unauthorized breaks, not for taking KP walks.

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[2] A "KP Walk" is a walk around the office building, which respondent encourages its employees to do if they have completed their work.

D. *Trial Court's Ruling*

On July 8, 2016, the trial court granted respondent's motion for summary judgment. It concluded that appellant had failed to establish a prima facie case of discrimination. Moreover, the court determined, the decision to terminate appellant's employment was based on legitimate, nondiscriminatory reasons. As additional and independent grounds to grant the summary judgment motion, the court adopted the reasons set forth in respondent's moving and reply papers.

Judgment dismissing the complaint was entered July 26, 2016. Appellant timely appealed.

DISCUSSION

A. *Standard of Review*

Appellant contends the trial court erred in granting respondent's motion for summary judgment. "On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained. [Citation.] Under California's traditional rules, we determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law." (*Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 334 (*Guz*).)

Here, appellant's complaint asserted causes of action for age discrimination and retaliation. In resolving such claims in summary judgment motions, California has adopted the three-

stage burden shifting test set forth in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802 (*McDonnell Douglas*). (See *Guz*, *supra*, 24 Cal.4th at p. 354 [age discrimination claim]; *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 *(Yanowitz)* [retaliation claim].) Under the *McDonnell Douglas* test, the plaintiff employee has the initial burden of establishing a prima facie case. (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 715 (*Mamou*).) This requirement is not onerous. (*Hersant v. Department of Social Services* (1997) 57 Cal.App.4th 997, 1002-1003 (*Hersant*).) Once the plaintiff meets this threshold, the burden shifts to the defendant employer to rebut the presumption of retaliation by producing evidence of a legitimate, nondiscriminatory or nonretaliatory reason for the termination. If the defendant meets its burden, the burden shifts back to the plaintiff to establish "whether the evidence as a whole supports a reasoned inference that the challenged action was the product of discriminatory or retaliatory animus." (*Mamou, supra*, 165 Cal.App.4th at p. 715.) "[E]vidence that the employer's claimed reason is *false*—such as that it conflicts with other evidence, or appears to have been contrived after the fact—will tend to suggest that the employer seeks to conceal the real reason for its actions, and this in turn may support an inference that the real reason was unlawful." (*Ibid.*) "The plaintiff . . . bears the burden of persuasion with respect to all elements of the cause of the action, including the existence and causal role of discriminatory or retaliatory animus." (*Ibid.*)

B. *Age Discrimination Claim*

In the context of the present case, to establish a prima facie case of age discrimination under the FEHA, appellant was required to present evidence that (1) an adverse employment

action was taken against him, (2) at the time of the adverse action he was 40 years of age or older, (3) at the time of the adverse action he was satisfactorily performing his job, and (4) the circumstances of the adverse employment action give rise to an inference of age discrimination, such as appellant's being replaced in his position by a significantly younger person. (*Hersant*, *supra*, 57 Cal.App.4th at p. 1003.) Here, appellant presented uncontradicted evidence that he was 55 years old at the time his employment ended, that he was satisfactorily performing his work duties, and that he was replaced by a then 26-year old employee. Respondent disputes that appellant suffered an adverse employment action, noting that he resigned. Appellant contends his resignation was involuntary. Regardless of the voluntariness of appellant's resignation, the decision to terminate appellant's employment -- which respondent concedes it made -- was an adverse employment action, as the decision adversely and materially affected his future employment. (See *Yanowitz*, *supra*, 36 Cal.4th at p. 1054 [adverse employment actions are those "reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career"].) In short, appellant has made a prima facie case of age discrimination.

Because appellant met his burden to establish a prima facie case of age discrimination, the burden shifted to respondent to offer evidence justifying the adverse employment action on a basis other than age. Respondent did so by presenting evidence that the decision to terminate appellant was based on an investigation disclosing appellant's repeated violations of the rest break and meal break policy sufficient to constitute timecard fraud. The burden thus shifted back to appellant "to meet his

ultimate obligation of proving that the reason for the adverse action was age discrimination." (*Hersant*, *supra*, 57 Cal.App.4th at p. 1003.) In order to meet this burden and to avoid summary judgment, "an employee claiming discrimination must offer substantial evidence that the employer's stated nondiscriminatory reason for the adverse action was untrue or pretextual, or evidence the employer acted with a discriminatory animus, or some combination of the two, such that a reasonable trier of fact could conclude the employer engaged in intentional discrimination." (*Id*. at pp. 1004-1005.)

Appellant produced no evidence that respondent's stated nondiscriminatory reason for terminating his employment was false. Notably, he does not dispute that coworkers complained he was taking unauthorized breaks, or that an investigation into those complaints disclosed he had repeatedly violated the rest break and meal break policy by taking an extra unauthorized break. Nevertheless, appellant contends he produced evidence sufficient to raise a triable issue of fact whether the proffered reason was pretextual or whether the decision to terminate his employment was actually based on his older age. For the reasons stated below, we reject appellant's contention.

First, appellant argues the fact that other graveyard shift employees took excessive and unauthorized breaks, including KP walks, but were not disciplined demonstrates pretext or gives rise to an inference of age-related animus. However, appellant does not dispute respondent's assertion that he was not terminated for taking KP walks, but for repeatedly taking extra unauthorized breaks. Moreover, as appellant was the only employee subject to complaints for taking unauthorized breaks -- and those complaints were substantiated -- the fact that appellant was the

only employee disciplined does not give rise to an inference of pretext or discriminatory animus.

In a related contention, appellant argues that the decision to terminate him instead of subjecting him to a lower level of discipline evidenced discriminatory animus. However, appellant produced no evidence that any younger workers who were found to have committed timecard fraud were not terminated. In addition, appellant presented no evidence that progressive discipline was the standard action in cases involving timecard fraud.

Next, appellant contends that the fact his timecards were approved by Cocjin and Tabata creates a triable issue of fact that the proffered reason for his termination was pretextual. However, until the investigation established that appellant's claimed hours were incorrect, neither Cocjin nor Tabata had a reasonable basis for disapproving appellant's submitted timecards.

Appellant further contends that because he was allowed to take his 15-minute rest break at 1:00 a.m. instead of 2:15 a.m., his "deviations" from the assigned rest and meal times were not unauthorized. Even if respondent permitted such deviations from assigned breaks, this fact does not contradict the investigation's finding that appellant was repeatedly taking a 30-to-45-minute break at 2:15 a.m. *in addition to* his assigned breaks at 1:00 a.m. and 3:55 a.m. Thus, any leeway in taking rest breaks does not demonstrate that respondent's proffered reason for termination was pretextual or that the decision to terminate was the result of discriminatory animus.

Appellant argues that the "delay" in the decision to terminate him demonstrates pretext. Specifically, appellant

contends that respondent was "fully-equipped" to fire him in July 2013 (when he was 54) but waited until October 2013 (when he was 55) to do so, and that the delay suggests its proffered reason was pretextual. Respondent contends any "delay" is explained by the fact that the investigation was not completed until September 2013. We conclude appellant has not shown any suspicious "delay," as terminating an employee the month following the completion of an investigation is not unduly tardy.

Appellant further argues that respondent cannot rely on the investigation to rebut the presumption of age discrimination because the investigators (Cocjin, Tabata, and Weems) were biased against him. However, appellant cites no evidence in the record demonstrating age bias, such as comments casting older workers in a negative light. (See, e.g., *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 866 [appellant failed to demonstrate discriminatory animus based on alleged discriminatory remarks where plaintiff's appellate brief failed to state what those remarks were or cite to record].) Nor does anything in the record before us give rise to an inference of discriminatory animus on the part of Cocjin, Tabata or Weems.

According to appellant, Cocjin's bias against older workers can be inferred from the fact that he did not select appellant for training, but picked other younger employees. However, out of the five training opportunities that appellant alleged he was denied, only the first went to someone significantly younger than appellant. For two of the training opportunities, Cocjin selected Dantes, who is indisputably older than appellant. On this record, appellant did not show a triable issue of fact that Cocjin was biased against older workers. (See *Smith v. International Brotherhood of Electrical Workers* (2003) 109 Cal.App.4th 1637,

1644 & 1658 [affirming summary judgment in favor of defendant on age discrimination claim where evidence showed that the duties of plaintiff, who was 55 when he was fired, were divided among 13 other employees, six of whom were over the age of 40, the youngest being 31 and the oldest 53]; see also *O'Connor v. Consolidated Coin Caterers Corp.* (1996) 517 U.S. 308, 313 [to make prima facie case of age discrimination, plaintiff cannot rely on evidence he was replaced "with another worker insignificantly younger"].)[3]

Likewise, Tabata's alleged treatment of Lacuata and Obediah did not give rise to an inference of age bias. With respect to Lacuata -- who stated that Tabata asked her and another older worker to submit a letter of intent to retire -- it is undisputed that Lacuata did not submit such a letter and continued to remain employed. More important, as Tabata explained, having overheard Lacuata discuss retirement, her request for a letter of intent to retire was to obtain prompt notice of retirement and thereby assist management in maintaining adequate staffing levels. With respect to Obediah -- who asserted he was transferred to the graveyard shift to force him to retire -- Tabata explained that he was transferred to resolve scheduling issues resulting from his refusal to work weekends. On this record, Tabata's conduct does not give rise to an inference of age discrimination.

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[3] In determining whether a plaintiff has made an age discrimination claim under the FEHA, we may look to federal cases addressing claims under the federal Age Discrimination in Employment Act (ADEA) because the ADEA is similar to the FEHA. (See *Guz*, *supra*, 24 Cal.4th at p. 362.)

Similarly, the "demotion" of 10 laboratory assistant III employees does not demonstrate age bias on the part of Weems. Appellant does not dispute Weems's assertion that the "demotions" were the result of changes in state law regulations, not the employees' age. Although appellant argues, without citation, that the "state law 'abolishing' the Laboratory Assistant III position became effective years back," he presents no evidence showing that respondent was required to implement those regulations immediately. In short, the "demotions" do not give rise to an inference that Weems was biased against older workers.[4]

Appellant further argues that the investigation itself constituted evidence of pretext or discriminatory animus. He notes that no other employee was investigated for taking unauthorized breaks, that Cocjin "spied" on him, and that other coworkers were required to participate in the investigation and to prepare and/or sign written testimony. However, as appellant

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[4] For the same reasons, the "demotions" do not support an inference that respondent generally was biased against older workers.

In a related argument, appellant contends that respondent's bias against older workers can be inferred from the 25 age discrimination claims filed against it from 2012 through November 2015. However, appellant neither produced these age discrimination complaints nor provided any details about the resolution of the claims; the record before us only shows no age discrimination claims were filed by any member of appellant's department during this period. In short, this evidence is too vague and attenuated to support an inference of age bias on the part of respondent generally or on the part of Cocjin, Tabata or Weems specifically.

was the only employee subject to complaints for taking unauthorized breaks, respondent had no reason to investigate other coworkers. Additionally, nothing about the investigative tactics used demonstrates pretext or discriminatory animus. Appellant does not contend that any employee submitted false statements or that the investigation failed to consider exculpatory evidence showing that appellant did not, in fact, repeatedly take unauthorized breaks. This was not a case where it can be inferred that a biased supervisor misused the disciplinary process to discriminate against an employee. (Cf. *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 280 [defendant employer could not rely on "investigation" into plaintiff employee's alleged harassment of coworker to defeat discrimination claim where employer failed to interview exculpatory witnesses]; *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 120 [reversing grant of summary judgment where a jury could find supervisor discriminated against employee by "exploiting a disciplinary process predisposed to confirm[ing] all charges"].)

In sum, appellant has submitted nothing to demonstrate that respondent's proffered reason for his employment termination was false. Nor has he raised a triable issue of fact whether the proffered reason was pretextual and whether the actual reason was age discrimination. Accordingly, the trial court properly granted summary judgment in favor of respondent on the age discrimination claim.

C. *Retaliation Claim*

In order to establish a prima facie case of retaliation under the FEHA, "a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an

adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." (*Yanowitz*, *supra*, 36 Cal.4th at p. 1042.) Here, appellant produced evidence that he engaged in protected activity when he "opposed and filed complaints of discrimination" against Cocjin for "excluding him from trainings," that appellant subsequently was disciplined and eventually terminated, and that a causal link existed between the adverse employment action and the protected activity because Cocjin disciplined him. Notably, appellant asserted that Cocjin's negative evaluation of appellant's communication ability -- based on the fact "[a]lthough [appellant] had the chance to communicate with me directly, he admitted that he intentionally went straight to the higher management to raise an issue" -- demonstrates retaliatory animus. Respondent contends no causal link was shown because the decision to terminate appellant was made by Tabata and Dizon, not Cocjin. However, it is undisputed that Cocjin was a central actor in the investigation that resulted in the decision to terminate appellant's employment and sufficient -- if weak -- evidence that Cocjin was biased against appellant based on his complaints to higher mamangement. Thus, even if Tabata and Dizon did not have a retaliatory animus against appellant, there is sufficient evidence to give rise to an inference that their decision to terminate appellant's employment was based on Cocjin's biased factfinding. (See *Staub v. Proctor Hospital* (2011) 562 U.S. 411, 418-419 [discrimination claim may be asserted despite lack of discriminatory animus on part of ultimate decisionmaker where earlier biased agent's action is also a proximate cause of adverse employment action].) In short, appellant made a prima facie case of retaliation.

However, respondent proffered a legitimate, nonretaliatory reason for the only adverse employment action appellant alleged in his complaint -- the decision to terminate his employment.[5] As discussed above, the decision to terminate appellant's employment was based on an investigation into complaints that appellant took unauthorized breaks. The investigation substantiated those complaints and supported a finding that appellant was fraudulently claiming on his timecards that he had worked during those breaks. For reasons similar to those stated above, appellant did not produce evidence sufficient to raise a triable issue that respondent's proffered reason was pretextual or that retaliatory animus motivated the decision to terminate his employment. We note that appellant produced no evidence suggesting that Tabata and Weems had a retaliatory animus toward appellant. Even had Cocjin developed retaliatory animus toward appellant for complaining about the selection of younger workers for training, appellant did not produce evidence to show that the investigation was predisposed to find him guilty or that the results of the investigation were factually untrue. In short,

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[5] In appellant's opening brief, he contends he was subject to other adverse employment actions as a result of his complaints about Dantes, specifically, Cocjin's issuance of a Level 1 Corrective Action for appellant's purported sleeping on the job and Tabata's denial of appellant's vacation plans in favor of another employee's. However, these adverse employment actions were not alleged in the complaint and thus are not cognizable on appeal. (See *Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1254 [defendant "had the burden on summary judgment of negating only those "'theories of liability as alleged in the complaint'""].)

the trial court properly granted summary judgment on appellant's retaliation claim.

D. *Wrongful Termination in Violation of Public Policy.*

In appellant's complaint, he alleges that his claim for wrongful termination in violation of public policy is based on the same facts alleged in his age discrimination and retaliation claims. Additionally, appellant does not contest respondent's contention that his wrongful termination claim is dependent on his age discrimination and retaliation claims. As we have concluded that respondent was entitled to judgment as a matter of law in its favor on those claims, we conclude that respondent is also entitled to judgment as a matter of law in its favor on the wrongful termination claim. Accordingly, the trial court properly granted summary judgment on this claim.

DISPOSITION

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

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J. COLLINS, J.