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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

NEILL NIBLETT, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B270460 (Los Angeles County Super. Ct. No. BC547643)

APPEAL from a judgment of the Superior Court of Los Angeles County, Teresa Sanchez-Gordon, Judge. Affirmed.

Haney & Young and Steven H. Haney for Plaintiff and Appellant.

Peterson Bradford Burkwitz, Avi Burkwitz and Ryan A. Graham for Defendant and Respondent.

Plaintiff and appellant Neill Niblett (Niblett) sued defendant and respondent County of Los Angeles (the County) for retaliation. The allegations arise out of his employment as a mechanic for the Los Angeles County Fire Department (LACFD). The trial court granted summary judgment in favor of the County, and Niblett appeals, arguing that his evidence raised triable issues of material fact. We conclude that Niblett failed to demonstrate a disputed issue of material fact in support of a prima facie case of retaliation based on the only theory pleaded in his complaint—his transfer to the East Los Angeles mechanics shop was in retaliation for his testifying in a fellow employee's employment case against the County. He similarly failed to show a disputed issue of material fact that the County's asserted reason for the transfer—the inability of Niblett and another employee at the Lancaster mechanic's shop to get along—was pretextual. Accordingly, we affirm.

FACTUAL BACKGROUND

A. Complaint

Niblett resides in the Antelope Valley. On June 4, 2014, Niblett filed a complaint alleging a single cause of action for retaliation under the Fair Employment and Housing Act (FEHA), Government Code section 12940, et seq.

Niblett alleged that he was hired by LACFD in 2006. According to Niblett, he testified in a lawsuit brought by a colleague, Donald Rakisits, against the LACFD. He further asserted that because of his testimony, the County retaliated by "transfer[ing] Plaintiff's work location from the Antelope Valley to some seventy-plus miles away." Niblett alleged that he faced the same retaliation as Rakisits, but provided no factual

allegations to support this conclusory allegation.[1] Niblett sought "an order returning his work station to the Antelope Valley."

As set forth above, Niblett claims that "he was transferred to East Los Angeles on April 5, 2013 because of his involvement in the Rakisits lawsuit." The transfer order stated: "This is to advise you that effective Monday, April 8, 2013, you have been reassigned from the North County Fire Shops to the Eastern Fire shops in your regularly assigned position as a Fire Equipment Mechanic. . . . It should be noted that this reassignment will remain in effect until further notice."

B. Summary Judgment

On April 29, 2015, the County moved for summary judgment, which Niblett opposed. The following facts in the parties' separate statements are undisputed, unless otherwise indicated.

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[1] A review of Rakisits's first amended complaint indicates he also claimed to have been transferred improperly. Other claims of retaliation by colleague Rakisits were personal to him such as being investigated for permitting Niblett flexibility in his schedule. Niblett does not explain either in his complaint or in his appellate briefs how Rakisits's claims of retaliation apply to him. We therefore do not consider claims raised by Rakisits in different litigation.

Niblett alleged that he obtained a right to sue letter from the Department of Fair Employment and Housing. The record shows that he filed a claim with the administrative entity and exhausted his administrative remedies. (See *Baker v. Children's Hospital Medical Center* (1989) 209 Cal.App.3d 1057, 1062-1063.)

1. Niblett's employment at LACFD

From 1992-2006, Niblett worked for the City of Los Angeles as a fire mechanic. Niblett applied on February 7, 2007 to be a fire mechanic with the County. On November 5, 2007, Niblett completed a County employment form, seeking, among other things, information on an applicant's convictions. Niblett did not disclose that he had been terminated or asked to resign, or that he had pleaded guilty to a misdemeanor in connection with being a City employee.[2] It is undisputed that on September 25, 2007, (prior to completing the County's employment form), Niblett was convicted of violating Government Code section 87100. That statute provides: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

The County hired Niblett on November 7, 2007 as a mechanic, and he continues to work in that position. There is no dispute that Niblett is a competent mechanic.

Only two County Fire Shops in Los Angeles employ mechanics. One is in East Los Angles and the other is in Lancaster. Some fire mechanics are assigned to the field rather than to a shop. Niblett testified that shop and field mechanic assignments were at the same level.[3] It was undisputed that he

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[2] Niblett claims that he did not check any box on the form. The County argues that Niblett affirmatively indicated he had not been convicted of any crime. It was undisputed that Niblett did not disclose his conviction.

[3] In his deposition Niblett testified: A field mechanic is "not a promotional spot. It's basically a transfer spot. I just

preferred a field assignment. Niblett also preferred to work in Lancaster rather than East Los Angeles because Lancaster was nearer his residence. Nevertheless, it was undisputed that Niblett was willing to work anywhere in the County.

2. Niblett's testimony against the County in a prior lawsuit

In 2009, Niblett was deposed in Rakisits's lawsuit against the County. In 2011, Niblett testified at trial on behalf of Rakisits. Rakisits obtained a judgment against the County.

3. Niblett's supervisors

Shortly after Niblett started working for the County, Rakisits became his supervisor. From September 2011 to April 2013, Ronald Seastead supervised Niblett. Niblett did not dispute the following fact in the County's separate statement: "Seastead knew nothing about the Rakisits lawsuit and was not a

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reapplied just recently for another field spot that opened, and they couldn't call it a transfer because it has to be done at the beginning of the year. They had to call it a promotion. So that's why it's—that's why I'm putting it out that way as far as—it's, the field spot is a fire equipment mechanic. We're all the same. One guy's in the field; one guy's in the shop." He testified the field mechanic and the shop mechanic: "[I]t's the same position."

Niblett presented evidence from Guy Tenerelli (senior fire mechanic), indicating that a field position was not necessarily more prestigious but that "[a] lot of field mechanics gravitate to it because they don't have direct supervision, and there's easy ways to go hide and hide out and not earn your day's keep." According to Tenerelli, those positions were assigned to mechanics in the "insider club."

witness. He does not have personal knowledge as to the substance of either any testimony given by Plaintiff in that lawsuit nor any personal knowledge about the facts of that lawsuit."

Seastead identified concerns with Niblett's work, most of which Niblett disputed. It was nonetheless undisputed that "[o]n or about April 20, 2012 between 9:00 and 10:00 a.m., Seastead saw an engine on the 'ready line' with completed repairs, yet Plaintiff's time card from April 20, 2012 reflected a full nine hours of completed work on that engine even though the engine was ready to be placed back into service and no other work was required." When questioned by Seastead, Niblett admitted "rolling time over to a future day." Niblett believed that fire mechanics "frequently" record time on a different day than the one worked.

Craig Weeks is the Division Chief of Fleet Services; his rank is above Seastead's. Fleet Services oversees the repair and maintenance of all County fire vehicles. Weeks oversees all fire mechanics including Niblett.

4. In 2012, Niblett is investigated and suspended

Following an investigation, the County determined that Niblett falsified his time cards. Niblett denied falsifying his time cards. Niblett did not dispute that he used a County vehicle to drive his children to school, but claimed the use of a County vehicle for personal errands was common. Niblett was placed on a five-day suspension on September 25, 2012 based on (1) his failure to report his misdemeanor conviction; (2) falsifying his time cards; and (3) using a County vehicle for personal use.

5. Disputes involving Niblett and fellow mechanic Chris Burroso

Niblett did not dispute the following fact in the County's separate statement: "During the first six months of [Niblett's] employment, he began to have work disputes with fellow fire mechanic Chris Burroso." In March 2013, shortly before the County transferred Niblett to East Los Angeles, Niblett and Burroso had an argument in the Lancaster shop. "While Seastead was on the phone with Chris Burroso, he [Seastead] could hear [Niblett] yelling at Burroso in the background." Seastead believed he heard Niblett threaten to "take down" Burroso, Seastead, and Weeks. Niblett disagrees, stating that his "comments were made as part of an argument with Chris Burroso, and were meant only to suggest to Burroso that he would be held accountable for wrongdoing."

6. Seastead's declaration

In a declaration in support of the County's motion for summary judgment, Seastead averred: "On March 20, 2013, I was off work when I received a call from Chris Burroso. I could hear Neil Niblett yelling at Burroso in the background. Mr. Niblett took the phone and yelled that he was going to take me and Fire Fleet Services Chief Craig Weeks down." "I took this threat to mean that Mr. Niblett would attack my job, my character, and my well being." Seastead believed that Niblett "needed to be immediately separated from the Lancaster facility and its employees to . . . ensure the physical safety of all persons at Lancaster."

7. Niblett's declaration

In a declaration in opposition to summary judgment, Niblett averred: "The alleged time card fraud was actually minor problems for conduct that is common throughout the shop, and for which others are not punished." "I did, on occasion carry time over from one day to the next for work performed. This was common practice for all Fire Mechanics, including Chris Burroso. I discontinued the practice after Seastead discussed it with me." "I have applied for open positions as a Field Mechanic on several occasions. My applications have all been denied because of Chief Weeks', Ernie Ramirez's (who is not identified) and others' efforts to retaliate against me because of my testimony in the Don Rakisits case."

Niblett further averred: "I never threatened to 'take down' Assistant Chief Ron Seastead or Chief Weeks. I made a comment to Chris Burroso in the middle of an argument which Burroso started, and in which he yelled and cursed at me. My statement was intended to convey to Burroso that he was breaking rules, and that I would make an effort to make sure he was accountable for those indiscretions. The statement was not intended as a physical threat." Niblett believed that his 2012 suspension was the result of his testimony in favor of Rakisits. Niblett opined that "Burroso should have been transferred or terminated, rather than transferring me."

8. Donald Lassig's declaration

Retired Fire Captain Donald Lassig supported Niblett's opposition to summary judgment. Lassig had been on the board of the firefighter's union and was familiar with disciplinary matters. He stated that he "interfaced" with management.

Lassig opined that carrying time over from the day worked and reporting it on another day was not in violation of any policy and should not have been a basis for discipline. Lassig believed that it was "not unusual" for employees to use County vehicles for personal use or to miss "short periods of work."

Lassig further opined that the three items mentioned in Niblett's suspension notice did not warrant the suspension. Lassig believed that the fire department "has a strong culture of retaliation." Lassig characterized Niblett's transfer to East Los Angeles as "a form of informal discipline known as 'freeway therapy.' " He explained: "Freeway therapy is often imposed as a form of punishment and retaliation against individuals for various perceived infractions."

9. David Clutter deposition

Clutter observed the argument between Niblett and Burroso "that ultimately led the department to decide to separate the two." This was the same argument that Seastead overheard on the phone. Clutter heard Niblett say "you're going to go down" and understood Niblett was warning Burruso that he was "going to get in trouble for breaking . . . rules." Clutter believed Burroso was unreasonable.

According to Clutter, there was "constant" conflict between Niblett and Burroso. "[T]hey had this personality quirk where they could set each other off."

10. Niblett's grievance

In April 2012, Niblett applied for the field mechanic position and was not considered for that position. Niblett believes that he was not considered because of his testimony in

the Rakisits case and because he is not part of the fire department's " 'insider club.' "

In June 2015, Niblett filed a "grievance form" indicating that his application for a field position was denied. He described the nature of his grievance: "Open Field Spot. Regarding being passed over for the appointment . . . to a field position. There is no transparent process. . . . I have been passed over for this appointment several times, including most recently, last week, 11 June 2015. . . . This assignment is not a promotion, it is a transfer, and my transfer request has been filed, and renewed since 2009." The grievance received several levels of review, and ultimately it was determined that Niblett "will be detailed to the next available field mechanic position."

C. The Trial Court Grants Summary Judgment

The trial court granted summary judgment in favor of the County. Niblett timely appealed from the judgment.

DISCUSSION

We review a summary judgment ruling de novo, " 'liberally construing the evidence in support of the party opposing summary [judgment] and resolving doubts concerning the evidence in favor of that party.' [Citation.] If summary [judgment] was properly granted on any ground, we affirm 'regardless of the trial court's stated reasons.' [Citation.] Although summary judgment is no longer a disfavored procedure, 'many employment cases present issues of intent, and motive, and hostile working environment, issues not determinable on paper, . . . [and] rarely appropriate for disposition on summary judgment, however liberalized it be.' " (*Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 925.) Properly presented,

evidentiary objections not ruled upon by the trial judge are preserved on appeal. (Code Civ. Proc., §437c, subd. (q).)

"Past California cases hold that 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. [Citations.] Once an employee establishes a prima facie case, the employer is required to offer a legitimate, nonretaliatory reason for the adverse employment action. [Citation.] If the employer produces a legitimate reason for the adverse employment action, the presumption of retaliation ' " 'drops out of the picture,' " ' and the burden shifts back to the employee to prove intentional retaliation." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042; see *Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1192-1193 (*Husman*).) An adverse employment action may be based collectively on multiple alleged retaliatory acts. (*Yanowitz*, *supra*, at p. 1055 [considering allegations in complaint collectively].) " '[A]n employer is entitled to summary judgment if, considering the employer's innocent explanation for its actions, the evidence as a whole is insufficient to permit a rational inference that the employer's actual motive was discriminatory.' " (*Husman*, *supra*, at p. 1182.)

A. The Pleadings Define the Scope of the Issues and the Only Alleged Retaliatory Conduct Was Transferring Niblett to East Los Angeles

" 'The pleadings delimit the issues to be considered on a motion for summary judgment. [Citation.]' [Citation.] Thus, a 'defendant moving for summary judgment need address only the

issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers.' [Citation.] 'To create a triable issue of material fact, the opposition evidence must be directed to issues raised by the pleadings. [Citation.] If the opposing party's evidence would show some factual assertion, legal theory, defense or claim not yet pleaded, that party should seek leave to amend the pleadings before the hearing on the summary judgment motion. [Citations.]' " (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253.) The pleadings also guide materiality for purposes of evaluating whether any disputed material fact precludes entry of summary judgment. (*Laabs*, *supra*, at p. 1253.)

Here, the County pointed out in its separate statement that Niblett did not allege he was wrongfully denied a field position. Niblett did not seek leave to amend his complaint. The complaint, construed broadly, alleges only one retaliatory act—transferring Niblett to East Los Angeles. (See *Laabs v. City of Victorville, supra*, 163 Cal.App.4th at p. 1257.)

B. The Evidence Is Insufficient to Raise a Prima Facie Case of Retaliation

The first step in analyzing Niblett's retaliation claim is to determine whether Niblett established a prima facie case. (*Husman, supra*, 12 Cal.App.5th at p. 1181.) As we shall explain, Niblett identifies no evidence of a causal link between the protected activity and the adverse employment action and therefore failed to establish a prima facie case.

1. Protected activity

It is undisputed that Niblett engaged in a protected activity. He testified in a lawsuit in favor of his colleague,

Rakisits, and against the County. Accordingly, we turn to the other elements of a prima facie case.

2. Adverse employment action

"[A]n employee seeking recovery on a theory of unlawful discrimination or retaliation must demonstrate that he or she has been subjected to an adverse employment action that materially affects the terms, conditions, or privileges of employment, rather than simply that the employee has been subjected to an adverse action or treatment that reasonably would deter an employee from engaging in the protected activity. [Citation.] 'A change that is merely contrary to the employee's interests or not to the employee's liking is insufficient.' [Citation.] . . . The plaintiff must show the employer's retaliatory actions had a detrimental and substantial effect on the plaintiff 's employment. (*McRae v. Department of Corrections and Rehabilitation* (2006) 142 Cal.App.4th 377, 386 (*McRae*).)

A lateral transfer may constitute an adverse employment action. (*Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1389-1390.) Here, the evidence supported the inference that transferring Niblett from Lancaster to East Los Angeles constituted an adverse action. Specifically, Lassig averred that " 'freeway therapy' " commonly was used to punish employees. Lassig had foundation for this conclusion because he was familiar with disciplinary matters from his service on the union's board. Interpreting the evidence in the light favorable to Niblett, Lassig's testimony raised a triable issue of material fact concerning whether County subjected Niblett to an adverse employment action. (See *Patten*, *supra*, at p. 1390.)

3. Causal link

"It is not enough that the plaintiff prove an employment decision has a substantial and detrimental effect on the terms and conditions of his or her employment. The employee also must show that the decision is linked to the employee's protected activity. For purposes of making a prima facie showing, the causal link element may be established by an inference derived from circumstantial evidence. A plaintiff can satisfy his or her initial burden under the test by producing evidence of nothing more than the employer's knowledge that the employee engaged in protected activities and the proximity in time between the protected action and the allegedly retaliatory employment decision." (*McRae, supra*, 142 Cal.App.4th at p. 388.) Only "minimal" evidence is necessary to establish a prima facie case. (*Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 353.)

On appeal, Niblett identifies no causal link between his testimony in the Rakisits case and the County's decision to transfer him to East Los Angeles. His brief is devoid of citation to evidence in the parties' separate statements or the record to support his claim of a causal link, as well as of citation to applicable legal authority. He merely states that the trial court correctly found a causal link. By failing to cite to the record or to legal authority, Niblett has forfeited his argument that there was evidence in the record to support a causal link between his testimony in the Rakisits case and his transfer to East Los Angeles. (*Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545-546.)

Despite Niblett's forfeiture, we have reviewed the record and find no *evidence* raising a triable issue of material fact as to a causal link between Niblett's testimony and Niblett's transfer to

East Los Angeles. There was no temporal proximity between the two events. Niblett's averment that he was "certain" he was transferred as a form of " 'freeway therapy' " is inadmissible lay opinion and merely conclusory. (See *McRae, supra*, 142 Cal.App.4th at p. 396.) Lassig's "belief " that Niblett was "a victim of freeway therapy" lacks any evidentiary basis as well. "Declarations based on information and belief are insufficient to satisfy the burden of either the moving or opposing party on a motion for summary judgment or adjudication."[4] (*Lopez v. University Partners* (1997) 54 Cal.App.4th 1117, 1124.) " 'Plaintiffs cannot manufacture a triable issue of fact through use of an expert opinion with self-serving conclusions devoid of any basis, explanation, or reasoning.' " (*Nardizzi v. Harbor Chrysler Plymouth Sales, Inc.* (2006) 136 Cal.App.4th 1409, 1415; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135.) In sum, Niblett failed to establish a prima facie case of retaliation.

At oral argument, Niblett contended that he demonstrated a causal link between his testimony in the Rakisits case and his transfer to East Los Angeles based on the temporal proximity of

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[4] The County objected to this evidence in Lassig's declaration because it was not based on personal knowledge, was speculation, and lacked foundation. The County's objections are persuasive because Lassig identified only a vague "interface[ ]" with management unrelated to any of the events in this case. The County objected to the statements in Niblett's declaration because the statements were speculative and conclusory. The trial court did not rule on the objections, but they are preserved. (Code Civ. Proc., § 437c subd. (q).) As explained above, the objections have merit, and Niblett does not address them on appeal.

the two events. Niblett asserted that only two months elapsed between his testimony and his reassignment. Niblett's argument is inconsistent with the evidence in the record. Specifically, the following undisputed fact contradicts Niblett's representation of a two month time period: "A minimum of 15 months went by between Plaintiff testifying in the Rakisits case in 2011 and his reassignment from Lancaster to East Los Angeles on April 5, 2013." The fact that Niblett was deposed in the Rakisits case on September 9, 2009 also was undisputed. The undisputed facts undermine Niblett's claim of temporal proximity between Niblett's testimony in the Rakisits matter and his reassignment to East Los Angeles.

C. The County Provided a Legitimate Reason for Niblett's Transfer from Lancaster to East Los Angeles

Even if Niblett had established a prima facie case of retaliation, the County bore its burden to demonstrate that Niblett's transfer to East Los Angeles was motivated by a legitimate nonretaliatory reason. (*Husman, supra*, 12 Cal.App.5th at p. 1181.) " 'A reason is " 'legitimate' " if it is "facially unrelated to prohibited bias, and which if true, would thus preclude a finding of discrimination." [Citation.] If the employer meets this burden, the employee then must show that the employer's reasons are pretexts for discrimination, or produce other evidence of intentional discrimination.' " (*Ibid.*)

Here, the County provided a legitimate reason for transferring Niblett. It was undisputed that beginning in 2008, Niblett and Burroso had "work disputes." They continued to have disputes in 2013, when Seastead overheard Niblett yelling at

Burroso. Even Niblett acknowledges that in the course of his argument with Burroso, Niblett was "loud."

Although the parties dispute the exact content of Niblett's statements and whether they were appropriately understood as threats to Seastead and Weeks, Niblett admitted that he and Burroso were arguing and that they should be separated. The dispute over whether Niblett threatened Weeks and Seastead is not material because even absent a threat, the constant conflict between Niblett and Burroso was a legitimate basis to separate Niblett and Burroso. While Niblett believed Burroso should have been transferred instead of him, the undisputed facts demonstrate that their separation was necessary to avoid workplace conflicts. Further, it was undisputed that even though Niblett preferred to work closer to his home, he was willing to work anywhere in the County.

In addition to the County's evidence described above, Niblett's evidence supported the conclusion that the County transferred him because of his workplace conflicts with Burroso. Specifically, Niblett provided Clutter's declaration. In it, Clutter explained that he observed the argument between Niblett and Burroso "that ultimately led the department to decide to separate the two." Further, Clutter explained that Burroso and Niblett "could set each other off." In short, the County had a legitimate reason to transfer Niblett to East Los Angeles—the only other Fire Shop in the County.

D. Niblett Fails to Provide Evidence Supporting the Inference that His Transfer to East Los Angeles Was In Retaliation for His Testimony in Favor of Rakisits

Because the County offered a legitimate reason for its decision to transfer Niblett, the (assumed) presumption of retaliation evaporated, and the burden shifted back to Niblett to show intentional retaliation. (*McRae, supra*, 142 Cal.App.4th at p. 388.) "The plaintiff must have the opportunity to attack the employer's proffered reasons as pretexts for discrimination, or to offer any other evidence of discriminatory motive. The plaintiff 's burden is to prove, by competent evidence, that the employer's proffered justification is mere pretext; i.e., that the presumptively valid reason for the employer's action was in fact a cover-up. [Citation.] In responding to the employer's showing of a legitimate reason for the complained-of action, the plaintiff cannot ' "simply show the employer's decision was wrong, mistaken, or unwise. Rather, the employee ' "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable fact finder *could* rationally find them 'unworthy of credence,' [citation], and hence infer 'that the employer did not act for the [. . . asserted] non-discriminatory reasons.' " ' " ' " (*Id*. at pp. 388-389.) At this stage, temporal proximity, standing alone, generally is insufficient. (*Arteaga v. Brink, Inc., supra*, 163 Cal.App.4th at p. 357.)

Niblett was required to offer evidence that the County's stated reasons were pretextual or that the circumstances support the inference that the " ' challenged action was the product of discriminatory or retaliatory animus.' " (*Joaquin v. City of Los*

Angeles (2012) 202 Cal.App.4th 1207, 1226.) Niblett argues that the following evidence demonstrates that the County's reason was false: "[O]n September 9, 2015, Deputy Chief Angel Montoya granted . . . Niblett's written grievance in which Niblett grieved not being assigned to a Field Mechanic position." According to Niblett, the resolution of his grievance shows that the County's reasons for not initially placing him in the field were pretextual.

Niblett's argument ignores the sole adverse action alleged in the complaint—transferring his "work location from the Antelope Valley to some seventy-plus miles away." As set forth above, Niblett identified no evidence supporting the inference that his transfer to East Los Angeles was in retaliation for his testimony against the County. In his opposition in the trial court, Niblett provided no citation to evidence suggesting that his transfer to East Los Angeles was based on discriminatory animus. Thus, Niblett has failed to raise a triable issue of material fact that the County's legitimate reason was pretext or that the County was motivated by discriminatory animus. Even if the County used "freeway therapy" as a form of retaliation, Niblett presented no evidence supporting an inference that the County used "freeway therapy" to retaliate against him for testifying in a lawsuit years before his transfer.[5]

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[5] Had Niblett alleged that the County's failure to place him in a field mechanic assignment was in retaliation for testifying in the Rakisits case—which he did not—he has still failed to raise a triable issue of material fact supporting an inference that discriminatory animus motivated the County's action. (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 863.) Niblett points to evidence that when he filed a grievance, the decision reached by his direct supervisor was reversed. He identifies no evidence suggesting that the

E. No Error In Denying A Continuance

Niblett argues that the trial court abused its discretion in denying a continuance to allow Niblett to take the depositions of John Searcy and Phil Delatova and to collect additional documents. "[A]ny error in failing to grant a request for a continuance—whether mandatory or discretionary—is reversible only if it is tantamount to the denial of a fair hearing. . . . [T]he burden to demonstrate prejudice is on the appellant." (*Freeman v. Sullivant* (2011) 192 Cal.App.4th 523, 527-528.)

According to Niblett (without citation to the record), "Searcy was a percipient witness and would have corroborated the County's retaliatory and harassing conduct against Niblett. In addition, Delatova's time cards and his testimony would have demonstrated that he too would carry over time, or turn in his time cards late but not be subject to any discipline." At the hearing on summary judgment, Niblett's counsel argued that Delatova's testimony was necessary "as to the issue of this timecard fraud."

" 'The nonmoving party seeking a continuance "must show: (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.

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motivation for the initial decision was retaliation for his testimony against the County. (See *id.* at p. 868.) The reversal of the decision not to place Niblett in the field supports the inference that the initial decision was wrong, but does not support the inference that it was motivated by retaliatory animus. "[P]laintiff cannot ' "simply show the employer's decision was wrong, mistaken, or unwise." ' " (*McRae*, *supra*, 142 Cal.App.4th at p. 389.)

[Citations.]" [Citation.]' Generally speaking, the party seeking the continuance must 'provide supporting affidavits or declarations detailing facts that would establish the existence of controverting evidence.' " (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 715.)

Niblett did not make the required showing. He fails to provide any statement of the facts he sought to obtain relevant to his transfer to East Los Angeles—the critical question framed by his complaint. His vague references to the potential testimony offered no assistance in explaining why the proposed testimony or documentary evidence would be useful. Simply put, he did not show that a continuance was necessary to obtain facts essential to his opposition. (See Code Civ. Proc., § 437c, subd. (h).) Nor did he demonstrate any prejudice from the denial of the requested continuance. In sum, the trial court's denial of the continuance does not support reversing the judgment against Niblett. (*Freeman v. Sullivant, supra*, 192 Cal.App.4th at p. 528.)

DISPOSITION

The judgment is affirmed. County of Los Angeles is awarded its costs on appeal.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CURREY, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.