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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

ARMANDO DUNGO, Plaintiff and Appellant, v. ST. FRANCIS MEDICAL CENTER et al., Defendants and Respondents.	B271215 (Los Angeles County Super. Ct. No. TC027994)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Brian S. Currey, Judge. Affirmed.

Law Offices of Gloria Dredd Haney and Gloria Dredd Haney for Plaintiff and Appellant.

Jeffer Mangels Butler & Mitchell, An Nguyen Ruda and Dan P. Sedor for Defendants and Respondents.

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Plaintiff Armando Dungo sued St. Francis Medical Center, and individual supervisory employees Cindy Garrison, Barbara Vargas and Regina Butler, for wrongful termination in violation of public policy, age discrimination in violation of the Fair Employment and Housing Act (FEHA; Gov. Code, § 12900 et seq.), retaliation, race/national origin discrimination, harassment, hostile work environment, failure to prevent workplace discrimination, sex discrimination, and defamation.[1] The individual defendants and St. Francis separately moved for summary judgment of the claims against them, and plaintiff filed a consolidated opposition.

The trial court granted summary judgment for defendants, concluding St. Francis established a legitimate basis for terminating plaintiff, and that plaintiff failed to demonstrate any nexus between his age, race, or gender and his termination. The trial court also found no evidence that plaintiff engaged in protected activity in support of his retaliation claim, and that his harassment and hostile work environment claims failed because they were based on a one-time incident that had nothing to do with plaintiff's protected characteristics, which was not sufficiently severe or pervasive, and because the claims were based on neutral policies that applied to all employees. The trial court also denied plaintiff's request for a continuance of the motions. The trial court concluded plaintiff was terminated

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[1] The defamation cause of action was disposed of by special motion to strike, and plaintiff has not argued error on appeal. The only claims asserted against the individual defendants were for harassment, hostile work environment, and defamation.

because he admitted that he was negligent in caring for a patient. Finding no error, we affirm the judgment below.

BACKGROUND

Plaintiff worked for St. Francis as a registered nurse in the intensive care unit (ICU) from January 8, 2007, until he was terminated on May 15, 2014. Plaintiff is a Filipino man, and was 58 years old at the time of his termination. Plaintiff's direct supervisor was defendant Cindy Garrison, the assistant unit manager for the night shift. Defendant Barbara Vargas was the director of the ICU. Plaintiff and Ms. Vargas had no contact, as she worked during the day shift and plaintiff worked at night. His only meeting with her occurred after he was terminated. Defendant Regina Butler was the administrative house supervisor. Plaintiff also had very limited contact with her. All three supervisors were female, younger than plaintiff, and of a different race or national origin than plaintiff.

Nurses in the ICU participated in a "buddy system" where one nurse would watch the other nurse's patients, and his or her own patients, while the other nurse was on a break. The buddy system applied to everyone in the unit, regardless of race or gender, and plaintiff participated in the buddy system. Plaintiff used the buddy system to have other nurses watch his patients. He sometimes refused to watch patients assigned to other nurses if he was too busy. In addition to the buddy system, St. Francis also used "breakers" or "relievers," who did not have their own patients, to fill in for a nurse so that he or she could take a break.

On May 3, 2014, ICU Nurse Kawana English asked plaintiff to cover her patients in rooms 27 and 28 while she went

on a smoke break. Plaintiff did not refuse her request. After Ms. English left for her break, plaintiff checked on Ms. English's patients, and then attended to one of his own patients. Plaintiff did not respond to a patient alarm for one of Ms. English's patients, and the patient experienced a "negative outcome." Plaintiff testified that he did not hear the alarm.

St. Francis conducted an investigation of the incident, and the findings were summarized in the declaration of Mary Lynne Knighten, St. Francis's chief nursing officer and vice president of patient services. As part of the investigation, Ms. Garrison asked plaintiff to provide a written statement. In the statement, plaintiff recounted that after he checked on Ms. English's patients, one of his own patients required a lot of attention, and he was unable to "pay[] much attention" to Ms. English's patients. When Ms. English returned from her break, her patient in room 27 was hanging out of his bed and was unresponsive. A code blue was called, and the patient had to be resuscitated with a defibrillator.

In his written statement, plaintiff admitted that there was "[n]o one to blame but myself. I should stay close . . . and can closely monitor 27." He took "full responsibility [for the] incident. The task of looking after patients is on me and I should pay attention to them, monitor and check on them frequently." Plaintiff never told St. Francis that anyone else was responsible for the incident. According to plaintiff's deposition testimony, the remarks in his written statement were true and accurate, and no one told him what to write.

St. Francis interviewed the nurses who were working in the ICU at the time of the incident, including plaintiff, and nurses Annamarie Bayoneta and Marbella Cabildo, who were also Filipino. Ms. Cabildo did not hear any critical alarms on the night of the incident. Plaintiff denied hearing any alarms, but admitted that he had been assigned to watch the patient monitors that evening. According to Ms. Bayoneta, the nurse assigned to the monitors was responsible for letting the other nurses know if an alarm sounded. "The monitor is used as a backup system so that if you are in a room and don't hear the alarm they notify you." Ms. Bayoneta did not hear any alarms because she was distracted with her own patient.

Also appearing in St. Francis's investigation file was a May 7, 2014 note from "Julio D. Mohim" stating that plaintiff was "observed throughout the night shift looking at his phone or asleep in front of his computer . . . ."

Plaintiff was suspended on May 7, 2014, and was terminated on May 15, 2014. Ms. Knighten decided to terminate plaintiff, based on the representations in his written statement. Ms. Bayoneta and Ms. Cabildo were issued final written warnings by Ms. Knighten for the May 3, 2014 incident. The discipline was challenged by the nurses' union, and reduced to written warnings. Ms. English received no discipline because she was on break at the time of the incident.

According to his deposition testimony, plaintiff's harassment and retaliation claims were based on a single incident which occurred several months before his termination. Plaintiff was "harassed" by Ms. Butler when she sent plaintiff to

work in the recovery room instead of the ICU, when plaintiff was working as a "reliever" to help out with breaks. Plaintiff was not trained to work in the recovery room, and therefore believed he should not have to go there as a reliever. Ms. Butler threatened to send him home and charge him with insubordination if he did not take the assignment. He therefore went to the recovery room for approximately 15 minutes.

Plaintiff did not have any contact with Ms. Butler after this incident. Plaintiff *believed* she "harassed" him because he was Filipino and she was African-American. However, plaintiff did not know if she harassed him because he was Filipino.

Plaintiff filed a grievance concerning the incident with Ms. Butler with human resources. His grievance did not mention race, age, or sex. At the time plaintiff was terminated, Ms. Knighten was not aware of his complaint about the recovery room incident, or any other complaints made by plaintiff.

According to plaintiff's evidence in opposition to the motions for summary judgment, plaintiff was the only person terminated for the May 3 incident. Ms. English failed to follow St. Francis protocol as she did not inform plaintiff of her patients' status before leaving for her break, and did not confirm with plaintiff that he would accept responsibility for her patients. Moreover, the break violated California Code of Regulations, title 22, section 70217, subdivision (a)(1), limiting the nurse-to-patient ratio in the ICU to one to two, and violated St. Francis's no smoking policy. According to plaintiff, his admission of fault was only intended to accept moral blame for the incident, as no one else accepted responsibility.

Plaintiff proffered evidence that he "constantly" brought up concerns about St. Francis's use of the buddy system. St. Francis discontinued the buddy system within weeks of the May 3, 2014 incident.

Plaintiff's opposition to the motions for summary judgment also requested a continuance of the hearing so that plaintiff could depose Ms. English, and depose St. Francis's "Person Most Knowledgeable."

The trial court denied the request for a continuance, and granted the motions for summary judgment, finding that St. Francis demonstrated a legitimate reason for terminating plaintiff. The trial court also concluded that plaintiff did not engage in protected activity because his complaints were based on staffing concerns, rather than any conduct prohibited by FEHA. The trial court concluded that plaintiff's harassment and hostile work environment claims were based on a one-time interaction with Ms. Butler, which was not sufficiently severe or pervasive, and was not based on any protected characteristic. Also, the buddy system could not form the basis of a harassment claim because it applied equally to all nurses.

Judgment was entered for defendants and plaintiff timely appealed.

DISCUSSION

1. Request for a Continuance

Plaintiff contends the trial court erroneously denied his request for a continuance of the hearing on the motions for summary judgment so that he could complete additional discovery. Counsel's declaration in support of plaintiff's request

for a continuance established the following facts: counsel was served with defendants' motions for summary judgment on November 13, 2015, and the motions were scheduled for hearing on January 28, 2016. On November 30, 2015, plaintiff's counsel emailed St. Francis with proposed dates to take the deposition of Ms. English. Two weeks later, St. Francis replied that Ms. English was represented by separate counsel, and provided counsel's contact information. Plaintiff contacted Ms. English's counsel, and was informed that Ms. English would oppose any attempt to depose her because she was currently under investigation by the Board of Registered Nursing. Counsel averred that "the [d]efendants have led [plaintiff] to believe that nothing happened to Ms. English as a result of [the May 3, 2014] incident. It could very well mean that Ms. English is being investigated for other reasons. [Plaintiff] does not know. The facts concerning Ms. English are essential to the Opposition in this matter."

Counsel also averred that she should be given the opportunity to depose another person most knowledgeable for St. Francis, as the person produced by St. Francis was not hired until 2015, after the incidents at issue in this case. "It is essential [that plaintiff] has available to him the established policies and procedures of St. Francis Medical Center in 2014 to determine clearly whether or not they were applied to [plaintiff]. . . . [¶] . . . There is good cause for a continuance so that additional discovery may take place, especially if the absence of this evidence could lead to summary judgment. I diligently

sought to take these depositions in order. There can be no harm to Defendants if there is a continuance . . . ."

St. Francis opposed plaintiff's request for a continuance.

"The [summary judgment] statute mandates a continuance of a summary judgment hearing upon a good faith showing by affidavit that additional time is needed to obtain facts essential to justify opposition to the motion. [Citations.] Continuance of a summary judgment hearing is not mandatory, however, when no affidavit is submitted or when the submitted affidavit fails to make the necessary showing . . . . [Citations.] Thus, in the absence of an affidavit that requires a continuance . . . , we review the trial court's denial of appellant's request for a continuance for abuse of discretion." (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253-254; see also Code Civ. Proc., § 437c, subd. (h).)

A party seeking a continuance must show that the facts to be obtained are essential to opposing the motion, that there is reason to believe such facts may exist, and that additional time is needed to obtain these facts. (*Wachs v. Curry* (1993) 13 Cal.App.4th 616, 623.) Declarations offered in support of a continuance ordinarily must show: "(1) 'Facts establishing a likelihood that controverting evidence may exist and why the information sought is essential to opposing the motion'; (2) 'The specific reasons why such evidence cannot be presented at the present time'; (3) 'An estimate of the time necessary to obtain such evidence'; and (4) 'The specific steps or procedures the opposing party intends to utilize to obtain such evidence.' " (*Johnson v. Alameda County Medical Center* (2012) 205

Cal.App.4th 521, 532, italics omitted.) Denial of a request for a continuance is proper where the party seeking the continuance has had adequate time to conduct discovery and the additional discovery sought would pertain to irrelevant issues. (*FSR Brokerage, Inc. v. Superior Court* (1995) 35 Cal.App.4th 69, 75-76; see also *Tilley v. CZ Master Assn.* (2005) 131 Cal.App.4th 464, 491-492.)

Plaintiff contends that a continuance was mandatory so that he could depose Ms. English, an "essential" witness to his opposition, reasoning that she was the person who initiated the events leading to his termination, but was not reprimanded for taking an unauthorized break. He also contends that a continuance was warranted because St. Francis had produced an inadequate person most knowledgeable for deposition. However, counsel's declaration did not explain why Ms. English had not been deposed earlier, did not establish why her testimony was essential to oppose the motions, provided no foundation for the contention that Ms. English took "an unauthorized break" and did not demonstrate how Ms. English's conduct was relevant to St. Francis's decision to terminate plaintiff based on his own professional negligence. Counsel also failed to explain what additional discovery plaintiff hoped to obtain from taking a second deposition of St. Francis's person most knowledgeable that plaintiff did not already obtain during the deposition of the person St. Francis previously produced.

On these facts, we conclude that a continuance was not mandatory, and that the trial court was well within its discretion in denying plaintiff's request for a continuance. Plaintiff's

original complaint, filed on November 10, 2014, named "Kawana," and stated that she was not reprimanded or disciplined for the May 3, 2014 incident. Plaintiff was aware of her role in this case from the very beginning, but did not depose her, despite having more than a year to do so between the filing of his complaint, and the due date for his opposition papers. Furthermore, defendants' motions did not rely on a declaration or deposition testimony from Ms. English.

Where, as here, there was adequate time to conduct discovery, no showing of additional facts to be obtained in further depositions that were essential to oppose the motion, and no justification for plaintiff's failure "to have commenced the use of appropriate discovery tools at an earlier date," the request for a continuance was properly denied. (*FSR Brokerage, Inc. v. Superior Court*, *supra*, 35 Cal.App.4th at p. 76.)

2. Summary Judgment

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "Once the [movant] has met that burden, the burden shifts to the [other party] to show that a triable issue of one or more material facts exists as to [that] cause of action . . . ." (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.) The party opposing summary judgment "shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . ." (§ 437c, subd. (p)(2).) A

triable issue of material fact exists where "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar*, at p. 850.)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542; *Aguilar*, *supra*, 25 Cal.4th at p. 854.) It is no longer called a "disfavored" remedy. "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Perry,* at p. 542.) On appeal, "we take the facts from the record that was before the trial court . . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citation omitted.)

a. Discrimination and wrongful termination claims

FEHA prohibits an employer from discriminating on the basis of race, age, or gender in the terms and conditions of employment. (Gov. Code, § 12940, subd. (a).) To resolve discrimination claims, California courts use the three-stage burden-shifting test established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 354 (*Guz*).) Under this test, the plaintiff has the initial burden of establishing a prima facie case of discrimination. (*Ibid.*) A prima

facie case generally means the plaintiff must prove that (1) the plaintiff was a member of a protected class, (2) the plaintiff was performing competently in the position held, (3) the plaintiff suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests a discriminatory motive. (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1004 (*Scotch*).)

"If the plaintiff establishes a prima facie case, then a presumption of discrimination arises, and the burden shifts to the employer to rebut the presumption by producing admissible evidence . . . the employer took its actions for a legitimate, nondiscriminatory reason. [Citation.] If the employer meets that burden, the presumption of discrimination disappears, and the plaintiff must challenge the employer's proffered reasons as pretexts for discrimination or offer other evidence of a discriminatory motive." (*Scotch*, *supra*, 173 Cal.App.4th at p. 1004.)

An employer moving for summary judgment may either present evidence that one or more of plaintiff's prima facie elements of discrimination is lacking, or that the adverse employment action was based on legitimate nondiscriminatory factors. (*Sada v. Robert F. Kennedy Med. Ctr.* (1997) 56 Cal.App.4th 138, 150.) Here, St. Francis presented evidence that plaintiff was terminated because he accepted fault for an incident where a patient under his care suffered a negative outcome. St. Francis produced the declaration of Ms. Knighten, its chief nursing officer and vice president of patient services, who testified she made the decision to terminate plaintiff based on the

representations in his written statement. This evidence satisfied St. Francis's burden of showing legitimate, nondiscriminatory reasons for plaintiff's termination. The burden thus shifted to plaintiff to demonstrate that St. Francis's claimed reason was not its true reason, and that St. Francis harbored a discriminatory motive. (*Villanueva v. City of Colton* (2008) 160 Cal.App.4th 1188, 1195 (*Villanueva*).)

Pretext may be demonstrated by showing that the proffered reason for the adverse employment action had no basis in fact, did not actually motivate the discharge, or was insufficient to motivate the discharge. An employee must demonstrate such " ' " ' "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered reasons for the termination that a reasonable trier of fact could rationally find them 'unworthy of credence,' [citation], and hence infer 'that the employer did not act for the [asserted] non-discriminatory reasons.' " " ' " (*Villanueva*, *supra*, 160 Cal.App.4th at p. 1195.) An employer's proffered reasons do not need to be "correct," "wise, shrewd, prudent, or competent"; they need only be nondiscriminatory. (See *Guz*, *supra*, 24 Cal.4th at p. 358.) To avoid summary judgment, plaintiff must produce specific and substantial evidence of pretext. (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 807 (*Horn*).)

Plaintiff failed to meet this burden. Plaintiff points to several facts which he claims support an inference of pretext, including that the female nurses on duty in the ICU on the night of the incident were not terminated, that Ms. English was not disciplined for taking an unauthorized smoke break and

abandoning her patients, that his statement was intended only to take moral responsibility for the incident, and that St. Francis reported to the Board of Registered Nursing that plaintiff was sleeping and talking on his cellphone, when its motion claimed a different basis for his termination. We disagree that any of this evidence is sufficient to establish a triable issue of pretext.

The evidence showed that plaintiff was responsible for Ms. English's patients at the time of the incident, and that he accepted full responsibility for the incident. That other nurses, who were not responsible for the injured patient, were not terminated is irrelevant. Although the other nurses did not take responsibility for the incident, they were also disciplined for failing to respond to the alarm. Moreover, there was evidence that St. Francis was informed that plaintiff was sleeping on the job, and distracted by his cell phone. Therefore, the report to the Board of Registered Nursing is not probative of pretext, as it is consistent with the findings of St. Francis's investigation.

b. Retaliation

FEHA also makes it unlawful "[f]or any employer . . . to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under [FEHA] or because the person has filed a complaint, testified, or assisted in any proceeding under [FEHA]." (Gov. Code, § 12940, subd. (h).) "Employees may establish a prima facie case of unlawful retaliation by showing that (1) they engaged in activities protected by the FEHA, (2) their employers subsequently took adverse employment action against them, and (3) there was a causal connection between the protected activity

and the adverse employment action." (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 472.) Complaints of practices not prohibited by FEHA do not constitute protected activity. (*Villanueva*, *supra*, 160 Cal.App.4th at pp. 1198-1199.) " '[A]n employee's unarticulated belief that an employer is engaging in discrimination will not suffice to establish protected conduct for the purposes of establishing a prima facie case of retaliation, where there is no evidence the employer knew that the employee's opposition was based upon a reasonable belief that the employer was engaging in discrimination.' " (*Id.* at p. 1199.)

There is no evidence that plaintiff engaged in any protected activity nor any causal connection between the recovery room incident with Ms. Butler and the termination of plaintiff's employment. Plaintiff's complaint regarding the incident with Ms. Butler did not mention race, age, or sex, or any practice prohibited by FEHA. Moreover, at the time plaintiff was terminated, Ms. Knighten was not aware of his complaint about the recovery room incident, or any other complaints made by plaintiff. Plaintiff relies on the "cat's paw" doctrine adopted in *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 108, which holds that retaliation may be established even if a plaintiff was terminated by an unbiased decision maker if the decision maker was influenced by a supervisor harboring a retaliatory motive. Plaintiff argues that defendants Butler and Vargas had retaliatory motives, and influenced Ms. Knighten. The record, however, does not support the speculative claims that Ms. Butler and Ms. Vargas had retaliatory motives or that they influenced Ms. Knighten. Plaintiff's evidence of pretext must be substantial,

not speculative, in order to demonstrate a triable dispute. (*Horn*, *supra*, 72 Cal.App.4th at p. 807.)

In his reply brief, plaintiff contends that his complaints about the "illegal" buddy system and staffing ratios support a retaliation claim under Labor Code section 1102.5, subdivision (b), which prohibits retaliation against whistleblowers who complain about a "violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation." (*Ibid.*) Plaintiff's complaint did not state a cause of action for whistleblower retaliation. A party moving for summary judgment " 'need not ". . . refute liability on some theoretical possibility not included in the pleadings." ' " (*Tsemetzin v. Coast Federal Savings & Loan Assn.* (1997) 57 Cal.App.4th 1334, 1342.) Nor may a party opposing summary judgment "defeat a summary judgment motion by producing evidence to support claims that are outside the issues framed by the pleadings." (*Vournas v. Fidelity Nat. Tit. Ins. Co.* (1999) 73 Cal.App.4th 668, 674, fn. 6.)

c. Harassment and hostile work environment

To establish a prima facie case of harassment or hostile work environment, plaintiff was required to show that (1) he was a member of a protected class; (2) he was subjected to unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently severe and pervasive so as to interfere with his work performance by creating an intimidating, hostile, or offensive work environment; and (5) the defendant is liable for the harassment. (*Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 876.) " 'In

determining what constitutes "sufficiently pervasive" harassment, the courts have held that acts of harassment cannot be occasional, isolated, sporadic, or trivial, rather the plaintiff must show a concerted pattern of harassment of a repeated, routine or a generalized nature.' " (*Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 142.) Here, the purported harassment was a one-time incident where Ms. Butler threatened to discipline plaintiff if he did not provide coverage in the recovery room. As a matter of law, it was not sufficiently severe and pervasive to support plaintiff's claims.

d. Failure to prevent discrimination, harassment, or retaliation

Finally, plaintiff's cause of action for failure to prevent discrimination is derivative of his other claims, and fails for this reason. (*Okorie v. Los Angeles Unified School Dist.* (2017) 14 Cal.App.5th 574, 597.)

3. Evidentiary Rulings

Lastly, plaintiff complains about the trial court's evidentiary rulings. He contends the trial court erroneously sustained defendants' objections to his evidence, and improperly overruled his objections to Ms. Knighten's declaration. "[A]n appellate court reviews a court's final rulings on evidentiary objections by applying an abuse of discretion standard." (*Carnes v. Superior Court* (2005) 126 Cal.App.4th 688, 694.)

Plaintiff sought to introduce his termination notice, a letter from the Board of Registered Nursing indicating that plaintiff was being investigated for negligence for sleeping and talking on his cell phone while on the job, performance evaluations from

2007 and 2008, and a "fake" drawing of the nursing station that defendants attributed to plaintiff. The trial court sustained defendants' objections that the evidence lacked foundation and was irrelevant. We find no abuse of discretion. Plaintiff had not laid a sufficient foundation for the documents, and his performance evaluations were irrelevant, as he was not terminated for poor performance before the events of May 3, 2014, but for his admission of negligent care for a patient on that night. (See Evid. Code, §§ 210, 350.)

The trial court also overruled plaintiff's objections to the Knighten declaration. The Knighten declaration recounted the events of May 3, 2014, when a patient had to be resuscitated with a defibrillator after a critical alarm sounded for an extended period of time. She also recounted that human resources conducted an investigation, and she was provided with statements gathered during the investigation, which were appended to her declaration. Plaintiff made written a statement, taking responsibility for the incident. Based on the statements and interview notes, Ms. Knighten decided to terminate plaintiff, and to discipline two other nurses.

Plaintiff objected to the statements in the declaration, as well as the exhibits to the declaration, on the basis of hearsay, lack of foundation, inadmissible expert conclusion, lack of authentication (of the exhibits), and on the basis that the declaration was "self-serving." Plaintiff essentially argued that Ms. Knighten did not observe the May 3, 2014 incident, did not conduct the investigation, and therefore her declaration was based on the hearsay statements of others.

The trial court did not abuse its discretion when it overruled plaintiff's objections. The declaration was offered to establish that St. Francis did not harbor a retaliatory or discriminatory motive when it terminated plaintiff. It is well settled that "[w]here the reasonableness of a person's conduct is at issue, statements of others on which [she] acted are admissible." (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 265.)

Plaintiff also complains that the trial court improperly credited Ms. Knighten's declaration. Code of Civil Procedure section 437c, subdivision (e) provides that "[i]f a party is otherwise entitled to a summary judgment pursuant to this section, summary judgment may not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court if the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or if a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof." However, plaintiff offers no explanation why he believes the Knighten declaration should be discredited, and consideration of the evidence contained in the Knighten declaration was well within the trial court's sound discretion. (*Violette v. Shoup* (1993) 16 Cal.App.4th 611, 621 ["Although the summary judgment statute provides the court is not *bound* to accept an undisputed declaration by an individual as to his or her

state of mind, such matter is committed to the discretion of the trial court."].) In employment cases, courts routinely consider the declaration of the supervisor who made the decision to terminate a plaintiff's employment. We are not persuaded that the trial court abused its broad discretion here.

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.