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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**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 FIVE

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| WAYNE A. KEYWORTH,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>FEDERAL EXPRESS CORPORATION,<br><br>Defendant and Respondent. | B238928<br><br>(Los Angeles County<br>Super. Ct. No. BC428475) |

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

Mangum Law and Jacqueline A. Mangum, for Plaintiff and Appellant.

Charles W. Matheis, Jr., for Defendant and Respondent.

## I. INTRODUCTION

Plaintiff, Wayne A. Keyworth, appeals from a summary judgment in favor of defendant, Federal Express Corporation. Plaintiff contends defendant wrongfully terminated his employment when he did not complete a drug test. We affirm the judgment.

## II. BACKGROUND

### A. Plaintiff's Complaint

On December 21, 2009, plaintiff filed his complaint which alleges the following. Plaintiff was employed by defendant as an aircraft maintenance technician at FedEx Hangar Maintenance in Los Angeles, California. Plaintiff worked for defendant in this capacity for several years prior to his termination. On December 20, 2007, defendant required plaintiff to report for random drug testing. Plaintiff was not contacted regarding the testing until he was about to go off his shift. Plaintiff was scheduled to pick up his minor child and that of a friend to take them home from school.

Defendant required plaintiff to report to Reliant Immediate Care Medical Group, Inc. (the testing facility) near Los Angeles International Airport. Plaintiff reported for testing. However, plaintiff was required to wait for a long time. Defendant made no attempt to assist plaintiff with his obligation to pick up the children. Plaintiff called a manager for assistance. The manager said he would contact the testing facility staff. Plaintiff stayed at the testing facility until he felt he could no longer delay in picking up the two children. Plaintiff was suspended without pay on December 21, 2007, and terminated from employment in February 2008. Plaintiff alleges defendant: wrongfully terminated him in violation of public policy; breached its contract and implied covenant of good faith and fair dealing (the implied covenant); acted negligently; and violated Business and Professions Code section 17200.

B. Summary Judgment Motion, Opposition, And Reply

1. The parties' legal arguments

On August 19, 2011, defendant moved for summary judgment as to all four claims. Defendant contended plaintiff cannot identify the public policy that was violated by his termination from employment. Defendant argued: plaintiff cannot state a claim for contract and implied covenant breach because his employment was at-will in nature; plaintiff cannot identify a legal duty that it breached; and the unfair business practice claim was unsupported because the other claims failed.

On November 15, 2011, plaintiff filed his opposition. Plaintiff argued his employment termination violated several criminal statutes, namely Penal Code child abuse, neglect, and endangerment provisions. Plaintiff argued the long delay in administering the drug test would result in him not timely picking up the children and possibly endangering their safety.

Also, plaintiff contended: defendant created ambiguity and uncertainty in the testing process, violating their contract and the implied covenant; the drug test was not random, but rather an attempt to tie up a loose end because he had not been tested that year; he clocked out prior to receiving written notice of the drug test; his past experience informed him written notice of a drug test was given while an employee was on-duty; he was unaware of his at-will employment; and defendant had a duty to ensure drug testing protocols were adhered to by the testing facility.

On November 22, 2011, defendant filed its reply. Defendant contended: plaintiff's wrongful termination claim was speculative; plaintiff's employment agreement was at-will; and it owed no legal duty to ensure the testifying facility followed relevant protocols.

2. Undisputed Facts

On September 1, 2004, plaintiff applied for a courier position with defendant. Plaintiff signed an employment agreement as part of the application. The agreement stated plaintiff was an at-will employee and could be terminated at any time with or without cause and without notice or liability. A letter dated March 7, 2005, signed by Pamela D. Williams, offered plaintiff a full-time swing driver position with defendant. Ms. Williams never provided plaintiff any document stating he was not an at-will employee. No executive for defendant told plaintiff his employment was not at-will. No one employed by defendant told plaintiff his employment was not at-will.

Plaintiff received the new hire safety orientation booklet "Safety Above All." Plaintiff understood the workplace policy set forth in the booklet applied to him. This policy applied throughout plaintiff's employment with defendant. Plaintiff acknowledged his employee rights were governed by the employment agreement. Plaintiff understood while defendant employed plaintiff, defendant had a drug and alcohol policy. Plaintiff understood failure to comply with Department of Transportation and Federal Aviation Administration random drug and alcohol testing could result in immediate termination.

Plaintiff was offered the position of senior aviation maintenance technician with defendant by letter on May 16, 2006. Plaintiff understood he was required to take a Department of Transportation drug screen test for the new position because it was safety-sensitive. Plaintiff understood he had to comply with the Department of Transportation and Federal Aviation Administration regulations regarding the safety-sensitive position. Plaintiff understood he was subject to random drug and alcohol testing. If requested to take a drug test, plaintiff would have to proceed to the medical clinic immediately and provide a urine sample.

Plaintiff understood refusal to take a random drug and alcohol test required defendant to notify the Federal Aviation Administration. Plaintiff also understood refusal to provide a urine sample as part of the Department of Transportation random drug and

alcohol testing violated defendant's drug and alcohol policy. In order to complete a Department of Transportation random drug test, plaintiff would have to: report to the medical clinic; identify himself; wait to be called; and provide a urine sample for analysis.

Plaintiff completed two workplace training courses for defendant on September 22, 2006. Plaintiff was instructed refusal to submit to a test occurred when an individual refused to provide adequate urine for analysis or obstructed the testing process. Plaintiff knew refusal to complete a drug test had serious consequences. No employee told plaintiff anything different regarding the drug and alcohol testing.

In addition to the workplace education, plaintiff received additional training, all of which applied to him. Plaintiff acknowledged in writing he received and read all the drug and alcohol training from defendant, including viewing a video and receiving a copy of the workplace policy. The policy states failure to comply with the policy could result in very serious consequences, including termination.

Plaintiff acknowledged the employment agreement governed his employee rights when he accepted his position as a senior aviation maintenance technician. Plaintiff acknowledged defendant's "People Manual" was a series of guidelines regarding how employees are to act. Plaintiff understood the alcohol and drug workplace policy applied to him. He understood serious consequences could occur if an investigation confirmed an employee violated the alcohol and drug workplace policy, including termination.

Plaintiff was unaware of anything in defendant's policies that an individual only had to wait a reasonable time at the testing clinic before leaving. Plaintiff was unaware of any policy allowing an employee to leave the testing facility before providing the urine sample.

Plaintiff's manager was Ted Serafin. On December 20, 2007, at approximately 2:00 p.m., plaintiff was notified he had been selected for a random drug test. The notification was provided by Mr. Serafin. Plaintiff understood this required him to report to the testing facility for a drug test. Plaintiff was told he had been selected for drug testing prior to clocking out. Plaintiff had a concern regarding the drug test because he

was driving a carpool. Mr. Serafin arranged for another person to drive the carpool. Plaintiff was instructed he had to proceed to the clinic immediately. Plaintiff did not contact human resources staffers with any issues regarding the drug test prior to leaving for the testing facility. Plaintiff did not complain to anyone regarding his belief the notification protocol for drug testing was broken.

Plaintiff proceeded to the Centinela Hospital Airport Medical Clinic. Upon arrival, plaintiff went to the window and stated he was there for a random drug test. Plaintiff provided the testing notice he had received. Maria Cervantes provided plaintiff with paperwork which he completed and returned. Ms. Cervantes entered plaintiff's information into the computer system without waiting for return of the paperwork. Plaintiff had previously been to the clinic and had already been entered into the computer system. At 2:57 p.m., plaintiff contacted Mr. Serafin. At his deposition, plaintiff presented the following testimony: "Q Isn't it true that Mr. Serafin told you . . . during the conversation to not leave the clinic. [¶] A Yes. [¶] Q . . . And didn't he tell [its] policy that you stay at the clinic and complete your random [Department of transportation] drug test. [¶] A Can't remember if he said that or not. He made it very clear that I couldn't leave." Mr. Serafin explained leaving prior to completion of the testing process would have severe consequences.

Plaintiff was concerned about the timing because he had accepted responsibility for picking up his daughter and a friend from Los Alamitos High School at 4:00 p.m. During the time he waited, he made no attempt to contact anyone else to pick up his daughter from school. Plaintiff left the medical clinic before 3:30 p.m. without being seen and without providing a urine sample to complete the drug test. No one working for defendant authorized plaintiff to do so. Plaintiff did not inform Ms. Cervantes he was leaving. Plaintiff was paid for the time he spent at the medical clinic which was adjusted to 3:30 p.m.

Gene Fontanilla was plaintiff's co-worker who arrived at the medical clinic for drug testing. Mr. Fontanilla completed the urine sample at 3:24 p.m., and the alcohol breath collection at 3:25 p.m. Mr. Fontanilla waited approximately 30 minutes.

Mr. Fontanilla was back on the street by 3:35 p.m. By memorandum dated December 21, 2007, plaintiff was suspended pending investigation of the possible violation of defendant's alcohol and drug workplace policy. On December 31, 2007, defendant terminated plaintiff's employment for his failure to submit to the random drug testing on December 20, 2007.

3. Plaintiff's Facts

Plaintiff presented the following facts. Plaintiff arrived at the clinic on December 20, 2007, at 2:22 p.m. Osvaldo Miranda, a medical assistant at the clinic, filed a declaration. Mr. Miranda called plaintiff's name for urine specimen collection shortly after 2:45 p.m. Plaintiff did not respond at that time. Mr. Miranda stated he called plaintiff's name twice more, the final time being 3:15 p.m. Plaintiff did not respond.

Plaintiff presented the following additional facts. Prior to December 20, 2007, Mr. Serafin spoke to plaintiff about previously having been subject to random drug testing. Plaintiff said he had never been tested. Plaintiff was notified he had to take a drug test. Plaintiff spoke to Mr. Serafin. Plaintiff said he had to pick up his daughter from school. Plaintiff asked if he could take the test the next morning. Mr. Serafin agreed that the test could be taken the next morning. Plaintiff declared: "I had left FedEx and was going to my car when Serafin called and came running up. He told me Dave Eulberg, Serafin's higher-up, said I had to take the test now. Serafin said he would take care of the carpool and I took the notice and went to the . . . collection site." Plaintiff left his workplace before 2:00 p.m. and the testing site was a 5-minute drive away.

Plaintiff did not understand the meaning of at-will employment. Plaintiff believed he could not be arbitrarily terminated from employment. Plaintiff did not understand leaving the test site prior to completing the test was considered a refusal to test. Plaintiff understood he was subject to random drug and alcohol testing while on duty and performing safety-sensitive duties. In this instance, plaintiff thought the drug test was

voluntary. Plaintiff believed based on his prior experience while working at Continental Airlines, a person assigned to training was not a person considered on-duty and in a safety-sensitive position. Plaintiff did not hear his name called the entire time he waited at the clinic until minutes before 3:30 p.m.

### C. Hearing And Order

On November 28, 2011, the trial court held a summary judgment motion hearing. The trial court granted summary judgment for defendant on all four of plaintiff's claims. The trial court entered judgment on December 7, 2011. On February 2, 2012, plaintiff appealed.

## III. DISCUSSION

### A. Standard of Review

In *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851, our Supreme Court described a party's burdens on summary judgment motions as follows: "[F]rom commencement to conclusion, the 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. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, 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. . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of

material fact . . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (Fns. omitted, see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 878.) We review the trial court's decision to grant the summary judgment motion de novo. (*Coral Const., Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding on us because we review its ruling not its rationale. (*Coral Construction, Inc. v. City and County of San Francisco, supra,* 50 Cal.4th at p. 336; *Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673, overruled on a different point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527.) Those are the only issues a motion for summary judgment must address. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249-1250; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364.)

B. No Wrongful Termination In Violation Of Public Policy

Plaintiff was an at-will employee of defendant. Labor Code section 2922 provides, "An employment, having no specified term, may be terminated at the will of either party on notice to the other." Defendant presented evidence no person working for it ever informed plaintiff he was anything other than an at-will employee. Plaintiff presented no evidence his employment was not at-will.

Nonetheless, plaintiff correctly notes it is unlawful to terminate an at-will employee for a reason that violates a fundamental public policy. Plaintiff argues his employment termination violated public policy. Our Supreme Court has held: "'[W]hile an at-will employee may be terminated for no reason, or for an arbitrary or irrational reason, there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy.' [Citations.]" (*Silo v. CHW Medical Foundation*

(2002) 27 Cal.4th 1097, 1104; *Gantt v. Sentry Ins.* (1992) 1 Cal.4th 1083, 1094, overruled on other grounds in *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 80, fn. 6; *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 178.) Our Supreme Court identified the elements for a qualifying public policy: "'First, the policy must be supported by either constitutional or statutory provisions. Second, the policy must be "public" in the sense that it "inures to the benefit of the public" rather than serving merely the interests of the individual. Third, the policy must have been articulated at the time of the discharge. Fourth, the policy must be "fundamental" and "substantial."'" (*Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 932, quoting *Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 889-890; *Henry v. Red Hill Evangelical Lutheran Church of Tustin* (2011) 201 Cal.App.4th 1041, 1050; *Phillips v. St. Mary Regional Medical Center* (2002) 96 Cal.App.4th 218, 226.) Also our Supreme Court has held, "[We] recognized that public policy cases fall into one of four categories: the employee (1) refused to violate a statute; (2) performed a statutory obligation; (3) exercised a constitutional or statutory right or privilege; or (4) reported a statutory violation for the public's benefit." (*Green v. Ralee Engineering Co., supra*, 19 Cal.4th at p. 76 citing *Gantt v. Sentry Ins., supra*, 1 Cal.4th at pp. 1090-1091.) Our Supreme Court held that a nexus is required between the plaintiff's alleged protected activity and the defendant's alleged adverse treatment. (See *Turner v. Anheuser Busch, Inc., supra*, 7 Cal.4th at p. 1258 [finding the plaintiff's claim for whistle-blower harassment failed because he could not demonstrate his whistleblowing was related to the defendant's negative performance evaluations]; *Lidow v. Superior Court* (2012) 206 Cal.App.4th 351, 364-365 [same].)

Plaintiff argues his termination violated Labor Code section 1102.5, subdivision (c), which states, "An employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation." (See *Tameny v. Atlantic Richfield Co., supra*, 27 Cal.3d at p. 178 ["[A]n employer's authority over its employee does not include the right to demand that the employee commit a criminal act

to further its interests, and an employer may not coerce compliance with such unlawful directions by discharging an employee who refuses to follow such an order."]; *Lidow v. Superior Court, supra,* 206 Cal.App.4th at pp. 364-365 [same].)

Plaintiff contended his firing for leaving before completion of the drug test conflicted with the fundamental public policy of parents protecting and caring for their children. Plaintiff relies on: Penal Code section 270, governing abandonment and neglect of children; Penal Code section 272, subdivisions (a)(1) and (a)(2), regarding duty to exercise reasonable care, supervision, protection, and control over a minor child; and Penal Code sections 273a, subdivisions (a) and (b), concerning child endangerment. Plaintiff also argues parental obligations underlie several portions of the Family Code.

Plaintiff has not raised a triable issue of material fact concerning a violation of public policy. Defendant never asked plaintiff to participate in an illegal activity or subjected him to harassment for exercising a statutory right. (*Turner v. Anheuser-Busch, Inc., supra,* 7 Cal.4th at p. 1258; *Gant v. Sentry Ins., supra*, 1 Cal.4th at pp. 1090-1091.) Plaintiff argued the two children he was responsible for picking up could have been kidnapped if he did not leave the testing site prior to completing the drug test. This speculative argument fails to demonstrate defendant's actions violated a public policy. Defendant did not direct plaintiff to endanger his children, only to take a drug test.

Even assuming defendant's firing of plaintiff implicated fundamental public policy, as noted our Supreme Court held that a nexus is required between the plaintiff's alleged protected activity and the defendant's alleged adverse treatment. (See *Turner v. Anheuser Busch, Inc., supra*, 7 Cal.4th at p. 1258 [finding the plaintiff's claim for whistle-blower harassment failed because he could not demonstrate his whistleblowing was related to the defendant's negative performance evaluations]; *Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 868, fn. 4 [holding claim of whistleblower harassment and retaliation may fail if nexus not shown].) Plaintiff failed to present evidence that defendant fired plaintiff in retaliation for any protected activity. The evidence indicated plaintiff was fired for not completing the drug test.

C. No Breach Of Contract And Implied Covenant

Plaintiff argues his employment termination breached his contract and the implied covenant. Our Supreme Court has held: "Labor Code section 2922 establishes the presumption that an employer may terminate its employees at will, for any or no reason. A fortiori, the employer may act peremptorily, arbitrarily, or inconsistently, without providing specific protections such as prior warning, fair procedures, objective evaluation, or preferential reassignment. Because the employment relationship is 'fundamentally contractual' ([*Foley v. Interactive Data Corporation* (1988) 47 Cal.3d 654, 696]), limitations on these employer prerogatives are a matter of the parties' specific agreement, express or implied in fact. The mere existence of an employment relationship affords no expectation, protectable by law, that employment will continue, or will end only on certain conditions, unless the parties have actually adopted such terms. Thus if the employer's termination decisions, however arbitrary, do not breach such a substantive contract provision, they are not precluded by the covenant. [¶] This logic led us to emphasize in *Foley* that 'breach of the implied covenant cannot logically be based on a claim that [the] discharge [of an at-will employee] was made without good cause.' (*Foley*, *supra*, 47 Cal.3d 654, 698, fn. 39.) As we noted, '[b]ecause the implied covenant protects only the parties' right to receive the benefit of their agreement, and, in an at-will relationship there is no agreement to terminate only for good cause, the implied covenant standing alone cannot be read to impose such a duty. [Citation.]' (*Ibid.*)" (*Guz v. Bechtel Nat., Inc.* (2000) 24 Cal.4th 317, 350; see *Starzynski v. Capital Public Radio, Inc.* (2001) 88 Cal.App.4th 33, 37.)

Defendant argues plaintiff cannot demonstrate a triable issue of material fact for contract and implied covenant breach because he was an at-will employee. As noted, defendant presented evidence plaintiff was an at-will employee. Defendant met its initial burden of demonstrating there was no triable issue of material fact for this cause of action.

Plaintiff argues he had clocked out with the permission of his supervisor and only received the written notice to take the drug test afterwards. Plaintiff believed his agreement to take the test was voluntary at that time and subject to good faith and fair dealing. Plaintiff's perception of the situation does not raise a triable issue of material fact. Plaintiff testified at his deposition that no person employed by defendant informed plaintiff he was not at-will or that his termination could only be for good cause. Plaintiff's termination did not violate the terms of his employment agreement or the implied covenant. The trial court did not err by granting defendant summary adjudication as to plaintiff's contract-based causes of action.

D. No Negligence

Plaintiff argued defendant was negligent in enforcing the mandatory Department of Transportation drug testing protocols. Our Supreme Court has held: "[I]n order to prove facts sufficient to support a finding of negligence, a plaintiff must show that [the] defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury." (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292; see *Conroy v. Regents of University of Cal., supra*, 45 Cal.4th at p. 1250.)

Defendant argues it breached no duty with respect to plaintiff. Defendant presented evidence that: plaintiff was advised of its alcohol and drug testing policies on numerous occasions; plaintiff was randomly selected for a drug test; plaintiff was advised of the drug test notice before his shift ended and before he left for the day; and plaintiff was sent to a medical clinic which began the process upon his arrival. Defendant also asserted plaintiff's injury would not occur but for him leaving the clinic before completion of the drug test. Defendant met its initial burden of persuasion for summary judgment.

Plaintiff argued defendant did not comply with its own random drug testing protocols. Plaintiff contended the drug test was not random because his supervisor had

asked him a few days prior to the test whether plaintiff had been drug-tested yet. Plaintiff argued defendant had a responsibility to ensure Reliant followed the Department of Transportation protocol. Plaintiff submitted in support of his opposition a document entitled "Best Practices for [Department of Transportation] Random Drug and Alcohol Testing." As noted, plaintiff declared he originally received permission to take the test the following morning right before he clocked out. As he was going to his car, plaintiff received a call from Mr. Serafin. Plaintiff was told he had to take the test immediately. Plaintiff received the written notice for testing.

Defendant owed no duty to provide plaintiff with a random drug testing procedure that was convenient for him. For example, the Department of Transportation's recommended best practices include conducting tests at the start, middle, or end of each shift. The best practices also recommended random selection for testing should be performed at least quarterly. This document is not an exhaustive list, but rather best practices for random drug testing. Plaintiff did not produce any evidence indicating plaintiff's selection for drug testing violated some required protocol. Plaintiff does not raise a triable issue of material fact regarding defendant's alleged failure to provide a random selection procedure for drug testing.

Also, plaintiff argues the testing facility failed to follow Department of Transportation requirements, for which defendant was responsible. Plaintiff cites to select portions of the Department of Transportation regulations which govern procedures for workplace drug and alcohol testing programs. Part 40.15(c) of the Department of Transportation regulations provides, "[The employer] remain[s] responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when [the employer] use[s] a service agent." (49 C.F.R. § 40.15(c).) In this instance, defendant used the testing facility as its service agent. (See 49 C.F.R. § 40.3 ["Service agent. Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with [Department of Transportation] drug and alcohol testing requirements. This includes, but is not limited to, collectors [of urine specimens], [Breath Alcohol

Technicians and Screening Test Technicians] . . . ."].) Thus, plaintiff argues defendant was responsible for the testing facility's compliance with the drug and alcohol testing regulations.

Specifically plaintiff argues the facility failed to comply with Department of Transportation regulations by not beginning the testing process without undue delay. (49 C.F.R. § 40.61(b).) There is a dispute as to whether plaintiff's name was called between his arrival at the facility and his departure before 3:30 p.m. We need not decide the issue of whether defendant breached any duty because the test was conducted in a timely manner. Plaintiff did not produce a triable issue of material fact demonstrating that defendant's alleged breach of duty caused him harm. Our Supreme Court has held: "[T]o demonstrate actual or legal causation [for negligence], the plaintiff must show that the defendant's act or omission was a 'substantial factor' in bringing about the injury. [Citations.] In other words, plaintiff must show some substantial link or nexus between omission and injury." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 778; *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 481.) Plaintiff's alleged injury was the termination of his employment. Plaintiff does not point to any regulations, procedures, or protocols that would support a conclusion he could leave the testing site and not be found to have refused a drug test. (See 49 C.F.R. § 40.191(a) ["As an employee, you have refused to take a drug test if you: [¶] . . . [¶] Fail to remain at the testing site until the testing process is complete . . . ."]). It was plaintiff's refusal of the drug test which led to his termination from employment. Plaintiff produced no evidence indicating any alleged breach of a testing protocol was a substantial factor in causing his injury. The trial court did not err in granting defendant summary adjudication for this cause of action.

E. No Unfair Competition Violation

Business and Professions Code section 17200 provides, "[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice . . . ."

Our Supreme Court has held: "'By proscribing "any unlawful" business practice, [Business and Professions Code] "section 17200 'borrows' violations of other laws and treats them as unlawful practices" that the [unfair competition law] makes *independently* actionable. [Citations.]'" (*Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 396, quoting *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) Plaintiff's unfair competition claim exclusively relied upon the three previously discussed causes of action. We found summary adjudication appropriate for the prior causes of action. Thus, defendant is also entitled to summary adjudication for the Business and Professions Code section 17200 cause of action.

## IV. CONCLUSION

The judgment is affirmed. Defendant, Federal Express Corporation, is awarded its appeal costs from plaintiff, Wayne A. Keyworth.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.