S266001

No. 19-55802

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALLEN LAWSON,

Plaintiff-Appellant,

v.

PPG ARCHITECTURAL FINISHES, INC.

Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
No. 8:18-cv-00705-AG-JPR
Hon. Andrew J. Guilford

APPELLANT'S EXCERPTS OF RECORD
VOLUME I

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 18-00705 AG (JPRx)	Date	June 21, 2019
Title	WALLEN LAWSON V. PPG ARCHITECTURAL FINISHES, INC.		

Present: The Honorable	ANDREW J. GUILFORD	
Melissa Kunig/Rolls Royce Paschal	Not Present	
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	

Proceedings: **[IN CHAMBERS] ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This is an employment dispute between Plaintiff Wallen Lawson and his former employer, Defendant PPG Architectural Finishes, Inc. Plaintiff asserts the following six claims: (1) retaliation in violation of California Labor Code Section 1102.5; (2) wrongful termination in violation of public policy; (3) unpaid wages in violation of the Fair Labor Standards Act; (4) unpaid wages in violation of California Labor Code Sections 510, 558, and 1194 *et seq.* and Wage Order No. 7-2001; (5) failure to reimburse business expenses in violation of California Labor Code Section 2802; and (6) violations of California's Unfair Competition Law ("UCL"). (*See generally* Second Amended Compl., Dkt. No. 37.) Defendant now moves for summary judgment. (*See generally* Mot., Dkt. No. 57-1.)

The Court GRANTS Defendant's motion for summary judgment. The Court will separately sign and file Defendant's proposed judgment.

1. BRIEF BACKGROUND

Defendant "manufactures and sells interior and exterior paints, stains, caulks, repair products, adhesives and sealants for homeowners and professionals." (Mot. at 2.) Defendant sells its products through its own retail stores and through other retailers like The Home Depot, Menards, and Lowe's. (*Id.*)

In June 2015, Plaintiff began working for Defendant as a Territory Manager ("TM"). (Defendant's Statement of Uncontroverted Facts ("SUF"), Dkt. No. 57-2 at 2.) Plaintiff

claims his duties included "merchandizing Olympic paint and other PPG products in Lowe's home improvement stores in Orange and Los Angeles counties" and "ensur[ing] that PPG displays are stocked and in good condition", among other things. (Plaintiff's Statement of Disputed Facts ("SDF"), Dkt. No. 58-1 at 1.)

As a TM, Plaintiff reported directly to a Regional Sales Manager ("RSM"). (Mot. at 2.) During most of the events at issue here, Plaintiff reported to RSM Clarence Moore. (*Id.*) RSM Moore in turn reported to Divisional Manager ("DM") Sean Kacsir. (*Id.*)

According to Defendant, a TM's performance was measured using two metrics: "the [TM's] ability to meet monthly sales goals" and the TM's score on company "Market Walks". (SUF at 4, 6.) Market Walks worked like this. RSMs and TMs would visit several stores within the TM's assigned territory "and walk through the store to ensure TMs [were] building relationships with Lowe's employees, PPG product is properly placed throughout the store, and TMs are training and helping customers." (*Id.* at 7.) Based on their performance during Market Walks, TMs would be scored on a five-category spectrum ranging from to "unsuccessful" to "exceptional". (*Id.* at 9.)

Between October 2016 and August 2017, Plaintiff participated in six Market Walks. (*See* SUF at 10-12, 15, 23-24, 61, 66.) Plaintiff's first Market Walk earned him an "exceptional" score. (*Id.* at 10.) Plaintiff's second and fifth Market Walks earned him a "marginal" score. (*Id.* at 12, 61.) And Plaintiff's remaining Market Walks earned him an "unsuccessful" score. (*Id.* at 15, 24, 66.) All but the first Market Walk were conducted with RSM Moore. (*Id.* at 10.) Among other things, RSM Moore said Plaintiff struggled with training Lowe's associates, completing PPG product demonstrations and displays, and establishing relationships with key Lowe's staff members. (*Id.* at 17, 24.)

Further, for the year leading up to March 2017, Plaintiff missed his monthly sales goals eight times. (*Id.* at 19.) This, along with Plaintiff's Market Walk scores, caused Plaintiff to be placed on a Performance Improvement Plan ("PIP") in April 2017. (*Id.* at 20; *see also* Mot. at 7-8.) Among other things, the PIP required Plaintiff to earn a Market Walk score of "successful" by the time the PIP expired in July 2017. (SUF at 40). Plaintiff failed to do so. (*Id.* at 61) Defendant nevertheless extended Plaintiff's PIP by thirty days since Plaintiff had shown some signs of improvement. (*Id.* at 63.) RSM Moore also supported extending the PIP "because he

recognized that he had not been able to check-in with Plaintiff as frequently as intended" during the progression of Plaintiff's PIP. (*Id.* at 64.) But after Plaintiff received an "unsuccessful" Market Walk score in August 2017, RSM Moore and DM Kascir recommended Plaintiff be terminated. (*Id.* at 67, 71.) Plaintiff was then terminated on September 6, 2017. (*Id.* at 72.)

Amid all this, something else was happening. Plaintiff claims that, beginning in April 2017, RSM Moore started instructing TMs to "mis-tint" Defendant's paint products at Lowe's stores. (SDF at 8-9.) According to Plaintiff, mis-tinting forced Lowe's to place the mis-tinted paint "on an 'oops' rack next to the paint desk and [sell it] at a deep discount." (Opp'n at 4.) This in turn allowed Defendant to avoid buying back unsold inventory from Lowe's. (*Id.* at 3.)

Plaintiff disagreed with this practice. (SDF at 13-14.) So on April 18, 2017, Plaintiff filed an anonymous report using Defendant's web-based confidential ethics reporting portal about the alleged directive to mis-tint Defendant's paint products. (*Id.* at 13.) Shortly after filing this report, Plaintiff also told RSM Moore over the phone that Plaintiff believed mis-tinting was wrong and that there was "no way" Plaintiff was going to participate in it. (*Id.* at 14.) Defendant says it followed up with the anonymous reporter to request more information. (Mot. at 7.) But because Defendant never heard back, Defendant closed the investigation. (*Id.*.)

Then on June 15, 2017, Plaintiff submitted another anonymous complaint through the online ethics reporting portal. (SDF at 15.) That complaint also expressed concerns about RSM Moore's alleged directives to TMs to mis-tint paint. (*Id.*) After this second report was filed, Defendant's compliance department contacted Plaintiff to ask if Plaintiff would speak with David Duffy, Defendant's Senior Manager of Investigations and Corporate Security. (*Id.*) Plaintiff agreed and provided his personal cell phone number. (*Id.*) So on June 28, 2017, Duffy and Plaintiff spoke about the mist-tinting allegations. (SUF at 15, 47.) That conversation led John Dalton, PPG's Forensic Audit and Loss Prevention Specialist, to interview RSM Moore about the alleged mis-tinting. (*Id.* at 50-51.) During that interview, Dalton told RSM Moore to discontinue the practice and to text his TMs to tell them to immediately stop mis-tinting Defendant's paint products, among other things. (SDF at 18.)

The investigation ultimately ended with RSM Moore being warned about his actions. (SDF at 25.) But RSM Moore continued to supervise Plaintiff and oversee Plaintiff's Market Walks. (*See id.* at 28-29.)

Plaintiff believes RSM Moore knew Plaintiff reported his misconduct. (*See* Opp'n at 13.) Plaintiff further believes that this motivated RSM Moore to give Plaintiff poor scores on his July and August 2017 Market Walks, and eventually recommend Plaintiff be terminated. (*Id.*) Accordingly, Plaintiff claims he was improperly retaliated against for anonymously reporting RSM Moore's actions. (*Id.*)

Based on these and other facts, Plaintiff filed this case asserting the following six claims: (1) retaliation in violation of California Labor Code Section 1102.5; (2) wrongful termination in violation of public policy; (3) unpaid wages in violation of the Fair Labor Standards Act; (4) unpaid wages in violation of California Labor Code Sections 510, 558, and 1194 *et seq.* and Wage Order No. 7-2001; (5) failure to reimburse business expenses in violation of California Labor Code Section 2802; and (6) violations of California's UCL. (*See generally* Compl.) Defendant now moves for summary judgment.

2. LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the non-moving party, shows that "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). Material facts are those necessary to the proof or defense of a claim, as determined by reference to substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual issue is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party," based on the issue. *See id.* In deciding a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party "is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249–50.

The burden is first on the moving party to show an absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving party satisfies this burden either by showing an

absence of evidence to support the nonmoving party's case when the nonmoving party bears the burden of proof at trial, or by introducing enough evidence to entitle the moving party to a directed verdict when the moving party bears the burden of proof at trial. *See Celotex*, 477 U.S. at 325; *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000). If the moving party satisfies this initial requirement, the burden then shifts to the nonmoving party to designate specific facts, supported by evidence, showing that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324.

3. ANALYSIS

3.1 Plaintiff's First Claim for Retaliation

Plaintiff's first claim is based on the allegation that Plaintiff was retaliated against for anonymously reporting the mis-tinting of Defendant's paint products, and for refusing to mis-tint paint products himself. (*See* SAC ¶¶ 37-38.) Plaintiff brings this claim under California Labor Code Section 1102.5, which generally prohibits employers from retaliating against employees who disclose information that the employee reasonably believes is illegal. *See* Cal. Labor Code § 1102.5(b). Section 1102.5 also prohibits retaliation "against an employee for refusing to participate in an activity that would result in a violation of state or federal statute . . . ." *Id.* at § 1102.5(c).

Section 1102.5 claims are governed by the burden-shifting framework outlined by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Ferretti v. Pfizer Inc.*, No. 11-CV-04486, 2013 WL 140088, at *10 (N.D. Cal. Jan. 10, 2013). Under this framework, the burden is first on the plaintiff to establish a prima facie claim of retaliation. *McDonnell Douglas*, 411 U.S. at 802. If the plaintiff establishes a prima facie claim, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its actions. *Id.* If the defendant is successful, the burden shifts back to the plaintiff to show that the defendant's stated reason is in fact pretext. *Id.* at 804.

Relying on this framework, Defendant makes two arguments in favor of summarily adjudicating Plaintiff's first claim. First, Defendant argues Plaintiff fails to present a prima facie case of retaliation. (Mot. at 15-16.) Second, Defendant argues Plaintiff doesn't provide

sufficient evidence that Defendant's proffered reason for terminating Plaintiff is pretextual. (*Id.* at 16-19.) For clarity, the Court separately addresses these arguments.

3.1.1 Whether Plaintiff Makes a Prima Facie Case of Retaliation

To establish a prima facie case for retaliation under California Labor Code Section 1102.5, Plaintiff must show: (1) he engaged in protected activity, (2) he was later subjected to adverse employment action, and (3) there was a causal link between the two. *See Morgan v. Regents of University of Cal.*, 88 Cal. App. 4th 52, 69 (2000). Defendant here focuses on the third element, arguing that Plaintiff fails to show a causal link since "there is no evidence" that the "decision makers[, which include RSM Moore and DM Kascir,] had *any* knowledge that Plaintiff submitted two anonymous complaints until *after* Plaintiff filed [t]his lawsuit." (Mot. at 16.)

It's true that, to establish a causal link, Plaintiff must offer evidence showing his "employer was aware that [Plaintiff] had engaged in . . . protected activity." *Morgan*, 88 Cal. App. 4th at 70 (quoting *Cohen v. Fred Meyer, Inc.*, 686 F.2d 793, 796 (9th Cir. 1982). But Plaintiff provides such evidence here. Indeed, Plaintiff points to various facts in the record that could lead a reasonable jury to conclude RSM Moore knew Plaintiff was responsible for reporting the mis-tinting. (*See* Opp'n 11-14.) Most convincingly, Plaintiff points to the following. After Plaintiff filed the June 2017 report, RSM Moore was interviewed about the alleged mis-tinting. During that interview, RSM Moore was told several things that could've led him to deduce that one of his fourteen TMs reported his conduct. Specifically, RSM Moore was instructed to immediately text all his TMs to order them to stop mis-tinting paint. (SDF at 18.) RSM Moore was also directed to have his TMs re-read Defendant's Global Code of Ethics. (*Id.*) And because Plaintiff had previously told RSM Moore that mis-tinting was unethical and that there was "no way" Plaintiff was going to participate in it, a reasonable jury could also conclude RSM Moore pegged Plaintiff as the most likely reporter. (*See id.* at 14.)

Still, Defendant insists Plaintiff fails to show a causal link because RSM Moore wasn't aware that any complaints about him were filed, and so RSM Moore couldn't have known Plaintiff reported his alleged misconduct. (Reply at 3.) In support, Defendant says RSM Moore testified that he thought the June 2017 investigation was initiated to review expensed-out paint, not because a TM had reported the alleged mis-tinting. (SUF at 55.) But Plaintiff submits evidence that tends to undermine the credibility of this testimony. (*See* Opp'n at 14-

15.) And regardless, RSM Moore's statements don't eliminate the possibility that he could've later deduced Plaintiff reported his alleged misconduct. Consequently, a jury trial is required to determine whether RSM Moore knew Plaintiff was responsible for reporting the mis-tinting allegations. Plaintiff therefore sufficiently states a prima facie case of retaliation under California Labor Code Section 1102.5.

3.1.2 Whether Plaintiff Presents Sufficient Evidence of Pretext

Since Plaintiff has established his prima facie case, the burden shifts to Defendant to articulate some "legitimate, nonretaliatory reason" for terminating Plaintiff. *See McDonnell Douglas*, 411 U.S. at 802. Defendant carries this burden here. Defendant asserts Plaintiff was fired for "fail[ing] to meet the performance expectations set forth in the PIP." (Mot. at 16.) And Defendant offers sufficient evidence to support this assertion. As Defendant points out, the PIP required Plaintiff to earn a "successful" score on his July 2017 Market Walk, which Plaintiff failed to do. (SUF at 40, 61). Still, Defendant extended Plaintiff's PIP for an additional thirty days allowing Plaintiff one more opportunity on his August 2017 Market Walk to improve his score. (*Id.* at 63.) But Plaintiff scored poorly on this Market Walk too, leading Defendant to terminate Plaintiff. (*Id.* at 67, 71.) Defendant thus articulates a legitimate, nondiscriminatory reason for firing Plaintiff.

The burden now shifts back to Plaintiff to submit evidence showing Defendant's proffered reason is pretextual. *See McDonnell Douglas*, 411 U.S. at 802. Plaintiff may accomplish this "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 256 (1981). Where evidence of pretext is purely circumstantial, it must also be "specific and substantial" to survive summary judgment. *See Villiarmo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1062 (9th Cir. 2002) (citing *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217, 1222 (9th Cir. 1998)).

Plaintiff fails to raise triable issues of fact regarding pretext. To show pretext, Plaintiff first cites his declining Market Walk scores, calling the decline between his October 2016 and August 2017 Market Walk scores "inexplicable" and suggesting that a reasonable jury could "interpret this sudden drop as the product of a highly subjective and unfair paper trial designed to mask [a] retaliatory purpose". (*See* Opp'n at 16.) But in between the October 2016

and August 2017 Market Walks, Plaintiff had four other Market Walks, three of which indisputably occurred before Plaintiff participated in any protected activities. (*See* SUF at 12, 15, 24). And on those three Market Walks, Plaintiff received an "unsuccessful" score twice and a "marginal score" once. (*See id.*) Thus, the record makes clear Plaintiff consistently performed poorly on his Market Walks with RSM Moore even before Plaintiff reported RSM Moore's alleged misconduct. The fact that Plaintiff received one "excellent" score in October 2016 doesn't change this conclusion. So the progression of Plaintiff's Market Walk scores is insufficient to create triable issues concerning pretext.

The same is true for Plaintiff's other evidence of pretext. Plaintiff says certain "inconsistencies" in the way RSM Moore evaluated Plaintiff's August 2017 Market Walk suggests pretext. (Mot. at 17.) For example, Plaintiff asserts RSM Moore failed to award Plaintiff bonus points for having more product placements in Lowe's stores than required. (SDF at 40.) Plaintiff also claims RSM Moore "docked [Plaintiff] five points" for failing to clock out once despite a company policy saying points shouldn't be deducted unless a TM fails to clock out multiple times. (*Id.* at 41.) But Plaintiff offers no evidence that these alleged "inconsistencies" or deviations impacted Plaintiff's Market Walk score in an outcome-determinative way. *Cf. Diaz v. Eagle Product, Ltd.*, 521 F.3d 1201, 1214 (9th Cir. 2008) (finding sufficient evidence of pretext to survive summary judgment where the employer didn't consider the factor that weighed most heavily against termination). Plaintiff also fails to offer evidence that RSM Moore's purported deviations violated some well-established company policy or practice. *Cf. id.* (noting that "[d]eviation from *established* policy or practice may be evidence of pretext." (emphasis added) (quoting *Brennan v. GTE Govt. Sys. Corp.*, 150 F.3d 21, 29 (1st Cir. 1998))). Plaintiff doesn't, for example, offer evidence that other RSMs abide strictly by Defendant's scoring guidelines. Nor does Plaintiff offer evidence that RSM Moore scored Plaintiff differently from how he'd scored any other TM in the same category. Plaintiff thus fails to show RSM Moore's alleged scoring "inconsistencies" constitute the kind of "specific and substantial" circumstantial evidence of pretext required to survive summary adjudication. *See Villiarmo*, 281 F.3d at 1062 (citing *Godwin*, 150 F.3d at 1222).

Plaintiff's last attempt to show pretext focuses on Defendant's reasons for firing Plaintiff, claiming that these reasons "shifted" over time, suggesting that "[Defendant] knew its reasons were not genuine . . . ." (Opp'n at 18.) Specifically, Plaintiff says RSM Moore changed his justification for implementing Plaintiff's PIP by initially saying the PIP was necessary to

address Plaintiff's sales numbers but then later saying the PIP was meant to help Plaintiff's "unfairly low [Market Walk] scores" and other problems in Plaintiff's performance. (*Id.*) But Plaintiff's conclusion about the "shifting" justifications for the PIP isn't adequately supported by the record. For starters, Defendant has consistently maintained that the PIP was appropriate partially because Plaintiff repeatedly failed to achieve his monthly sales goal. (SUF at 21, 38-40.) But regardless, the PIP's very terms encompassed Plaintiff's overall performance as a TM, including improving Plaintiff's sales numbers *and* Plaintiff's Market Walk scores. (*See id.* at 39-40.) This means RSM Moore's "shifting" justifications aren't internally inconsistent or conflicting, and thus don't show pretext. *See Villiarimo*, 281 F.3d at 1063 (explaining that, to show pretext, the reasons for termination must not only be shifting but also be inconsistent or conflicting). Further, "[t]he decision to put Plaintiff on a PIP was ultimately made by Human Resources". (*See* SUF at 22.) So RSM Moore's justifications for the PIP are somewhat irrelevant to the question of pretext. Plaintiff therefore fails to create triable issues regarding pretext, necessitating summary adjudication on Plaintiff's first claim.

The Court GRANTS summary adjudication on Plaintiff's first claim.

3.2 Plaintiff's Second Claim for Wrongful Termination

The Court now turns to Plaintiff's second claim for wrongful termination in violation of public policy. Among other things, this claim requires Plaintiff to prove that his termination "was substantially motived by a violation of public policy". *Nosal-Tabor v. Sharp Chula Vista Medical Center*, 239 Cal. App. 4th 1224, 1235 (Cal. Ct. App. 2015) (quoting *Yau v. Allen*, 229 Cal. App. 4th 144, 154 (Cal. Ct. App. 2014)). Plaintiff here argues Defendant's actions meet this test because, under Section 1102.5, it's public policy that "an employer may not retaliate . . . against an employee for making an oral or written complaint regarding illegal activity . . . to their employer." (SAC at ¶ 42.) Plaintiff's second claim thus depends entirely on the sufficiency of Plaintiff's retaliation claim. But because the Court summarily adjudicated Plaintiff's retaliation claim in the previous section, Plaintiff's second claim for wrongful termination must also be summarily adjudicated in Defendant's favor.

The Court GRANTS summary adjudication on Plaintiff's second claim.

3.3 Plaintiff's Third and Fourth Claims for Unpaid Wages

Plaintiff's third and fourth claims for unpaid wages arise under the Fair Labor Standards Act ("FLSA") and California law. *See* 29 U.S.C. § 201, *et seq.*; Cal. Labor Code §§ 510, 558, 1194, *et seq*. These claims are based on Plaintiff's allegations that Plaintiff "regularly found it necessary" to work more than forty-five hours per week, and that Defendant "had a policy and practice of refusing to" compensate Plaintiff for these excess hours. (SAC at ¶¶ 48, 50, 56.)

Defendant argues Plaintiff's unpaid wages claims fail because Plaintiff can't show Defendant knew Plaintiff was working off-the-clock without compensation. (Mot. at 21-23.) It's true that, under the FLSA, an employer is only liable for failure to pay overtime wages if the employer knew or should have known that the employee was working overtime. *See Forrester v. Roth's I.G.A. Foodliner, Inc.*, 646 F.2d 413, 414 (9th Cir. 1981). California law imposes the same requirement. *See White v. Starbucks Corp.*, 497 F. Supp. 2d 1080, 1083 (N.D. cal. 2007) ("To prevail on his off-the-clock claim, [Plaintiff] must prove that [Defendant] had actual or constructive knowledge of the alleged off-the-clock work." (citing *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 585 (2000))); *see also Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1051 (2012) ("[L]iability is contingent on proof [Defendant] knew or should have known off-the-clock work was occurring."). Thus, to avoid summary adjudication, Plaintiff must raise triable issues regarding whether Defendant knew or should've known about Plaintiff's alleged overtime.

Plaintiff fails to do so here. The only evidence Plaintiff submits to show Defendant had the requisite actual or constructive knowledge consists of two paragraphs in Plaintiff's own declaration. Those paragraphs state the following. First, Plaintiff declares that, when he asked his former RSM how to account for his time, he was told "sometimes you need to make sacrifices"—a statement Plaintiff "interpreted" to mean overtime was required. (Decl. of Wallen Lawson ("Lawson Decl."), Dkt. No. 58-2 at ¶ 14.) Second, Plaintiff declares he told RSM Moore that he had been working off-the-clock, and RSM Moore responded by saying, "[N]ow that you have told me, I have to write you up." (*Id.* at ¶ 15.) Plaintiff believes that, in making this comment, RSM Moore was implicitly instructing Plaintiff to continue working overtime without telling anyone. (*Id.*) But neither of these statements create triable issues regarding whether Defendant knew Plaintiff was working overtime without pay. For one,

these statements seem to directly contradict Plaintiff's sworn deposition testimony. (*See, e.g.*, SUF at 93.) This is particularly a problem since Plaintiff fails to corroborate these statements with any other supporting evidence. *See F.T.C. v. Neovi, Inc.*, 604 F.3d 1150, 1159 (9th Cir. 2010) ("[A court] need not find a genuine issue of fact if, in its determination, the particular declaration was 'uncorroborated and self-serving.'"). And second, Defendant's evidence, which is largely undisputed, proves Defendant couldn't have known Plaintiff was working off-the-clock without pay. The Court finds the following evidence decisive. Defendant maintained a policy that TMs couldn't work overtime without prior approval from their RSM, and that TMs were required to accurately record all the time they worked each day—including any off-the-clock hours. (SUF at 84.) TMs also had to "carefully review [their] time entries and certify that the reported hours [were] accurate . . . ." when accounting for their time. (*Id.*) Yet Plaintiff concedes he was never denied a request to work overtime, never told not to record his overtime hours, and never denied payment for overtime hours he *did* record. (*Id.* at 87-90.) Given all this, a reasonably jury couldn't conclude Defendant knew Plaintiff was working unrecorded, unapproved overtime hours without compensation. *See Forrester*, 646 F.2d at 414 ("[W]here an employer has no knowledge that an employee is engaging in overtime work and that employee fails to notify the employer or deliberately prevents the employer from acquiring knowledge of the overtime work, the employer's failure to pay for the overtime hours is not a violation of the [FLSA].")

Still, Plaintiff contends Defendant discouraged accurate time reporting, and that this in turn raises a genuine dispute about Defendant's knowledge. (Opp'n at 22-23.) But this argument is also unavailing. Why? Because Plaintiff bases this argument on his subjective interpretation about what hidden meanings lie beneath the statements in his declaration. (*See* Lawson Decl. at ¶¶ 14-15). And baseless speculation of this nature fails to sufficiently show Defendant discouraged Plaintiff from reporting his overtime, as Plaintiff haphazardly suggests. *Cf. Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1028 (9th Cir. 2001) ("A plaintiff's belief that a defendant acted from an unlawful motive, without evidence supporting that belief, is no more than speculation or unfounded accusation about whether the defendant really did act from an unlawful motive. To be cognizable on summary judgment, evidence must be competent.") Plaintiff's third and fourth claims for unpaid wages must therefore be summarily adjudicated in Defendant's favor.

The Court GRANTS summary adjudication on Plaintiff's third and fourth claims.

3.4 Plaintiff's Fifth Claim for Failure to Reimburse Business Expenses

Plaintiff's fifth claim for failure to reimburse business expenses is based on Plaintiff's allegation that "[i]n order to discharge his duties, [Plaintiff] incurred necessary and reasonable expenses that were not reimbursed by [Defendant]." (SAC at ¶ 64.) More specifically, Plaintiff asserts "[he] incurred these expenses because he had to use his home internet to fulfill his duties" and Defendant didn't pay "any portion of this cost." (*Id.* at ¶ 65.)

California Labor Code Section 2802(a) "requires an employer to [reimburse] its employees for expenses they necessarily incur in the discharge of their duties." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 558 (2007); *see also* Cal. Labor Code § 2802(a). An employer's duty to reimburse is only triggered if it "either know[s] or [has] reason to know that the employee has incurred an expense." *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901, 904 (N.D. Cal. 2009); *see also Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1140-41 (Cal. Ct. App. 2014). Further, whether an expense is "necessary" depends on "the reasonableness of the employee's choices." *Gattuso*, 42 Cal. 4th at 568.

Defendant first argues Plaintiff's failure to reimburse claim fails because Plaintiff "admitted [Defendant] provided him with a company iPhone and a company tablet" that allowed Plaintiff to access the internet from home using his mobile hotspot. (Mot. at 20.) This, according to Defendant, indisputably shows Plaintiff's home internet expenses weren't necessary to the discharge of his duties, causing these expenses to fall outside the scope of Section 2802(a). But Plaintiff insists that his home internet expenses are reimbursable because "it was reasonable for [him] to use his home internet for work" since his home internet had "faster connection and [was] more convenient than using his [mobile hotspot]." (Opp'n at 21.) Essentially, this argument suggests Plaintiff's home internet costs should be reimbursed simply because it was easier for Plaintiff to use his home internet than his company-provided mobile hotspot. Plaintiff cites no caselaw to support this argument. And without any supporting authority, the Court isn't convinced convenience alone makes an expense reasonable or necessary under Section 2802(a). Summary adjudication on Plaintiff's fifth claim is thus appropriate.

But there's another reason why Plaintiff's fifth claim should be summarily adjudicated. As Defendant correctly points out, Plaintiff also fails to offer evidence sufficiently showing

Defendant knew or had reason to know Plaintiff was using his home internet to complete his job duties. Indeed, the only evidence Plaintiff offers to support this assertion is one statement in his own declaration that reads, "I know that many territory managers complained that they were going to continue using their home internet and that they felt that [Defendant's] failure to . . . reimburse[ ] was unfair." (Lawson Decl. at ¶ 13.) Notably, Plaintiff doesn't say who these TMs are, who these complaints were made to, or when these complaints were made. Without these basic details, and without any other evidence showing Defendant knew its employees were using their home internet for work purposes, a reasonable jury couldn't conclude that Defendant had a duty to reimburse Plaintiff for his home interest costs. *See F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997) ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.").

The Court GRANTS summary adjudication on Plaintiff's fifth claim.

3.5 Plaintiff's Sixth Claim for Violation of California's UCL

Plaintiff's sixth claim alleges Defendant violated California's UCL by "failing to pay overtime wages, failing to timely pay all wages earned, failing to keep required payroll records, and failure to reimburse for business expenses". (SAC at ¶ 71.) Plaintiff's UCL claim is thus predicated on Plaintiff's third through fifth claims. Because the Court already determined these other claims must be summarily adjudicated in Defendant's favor, the same is true for this claim.

The Court GRANTS summary adjudication on Plaintiff's sixth claim. Because this disposes of Plaintiff's last surviving claim, summary judgment is appropriate. The Court GRANTS summary judgment.

4. DISPOSITION

The Court GRANTS Defendant's motion for summary judgment. The Court will separately sign and file Defendant's proposed judgment.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SACV 18-00705 AG (JPRx)	Date	June 21, 2019
Title	WALLEN LAWSON V. PPG ARCHITECTURAL FINISHES, INC.		

Any arguments not addressed in this lengthy order either weren't convincing or didn't need to be addressed at this time.

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Initials of Preparer mku/rrp

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Wallen Lawson v. PPG Arch. Finishes, Inc.**
Case Number: **TEMP-8478RWNK**
Lower Court Case Number:

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ADDITIONAL DOCUMENTS	19-55802_docket_report
EXHIBITS	19-55802_opening_brief
EXHIBITS	19-55802_Appellant_EOR_Vol1
EXHIBITS	19-55802_Appellant_EOR_Vol2_part1
EXHIBITS	19-55802_Appellant_EOR_Vol2_part2
EXHIBITS	19-55802_Appellant_EOR_Vol2_part3
EXHIBITS	19-55802_Appellant_EOR_Vol3_part1
EXHIBITS	19-55802_Appellant_EOR_Vol3_part2(exhibit A_part1)
EXHIBITS	19-55802_Appellant_EOR_Vol3_part2(exhibit A_part2)
EXHIBITS	19-55802_Appellant_EOR_Vol3_part3
EXHIBITS	19-55802_Appellant_EOR_Vol3_part4
EXHIBITS	19-55802_Appellant_EOR_Vol3_part5
EXHIBITS	19-55802_Appellant_EOR_Vol4
EXHIBITS	19-55802_answering_brief
EXHIBITS	19-55802_appellee_EOR
EXHIBITS	19-55802_Appellant_reply_brief

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/8/2020

Date

/s/Records Unit

Signature

Unit, Records (Pro Per)

Last Name, First Name (PNum)

United States Court of Appeals for the Ninth Circuit

Law Firm