

APR 23 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GERALD REESE,

Plaintiff - Appellant,

v.

MICRO DENTAL LABORATORIES,

Defendant - Appellee.

No. 07-17152

D.C. No. CV-06-05873-SBA/BZ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Submitted April 17, 2009**
San Francisco, California

Before: T.G. NELSON and M. SMITH, Circuit Judges, and KING,*** District
Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Samuel P. King, Senior United States District Judge
for the District of Hawaii, sitting by designation.

Plaintiff-Appellant Gerald Reese appeals the district court's grant of summary judgment to Defendant-Appellee Micro Dental Laboratories on his claim of retaliation. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Because the parties are familiar with the facts, we do not supply them here except as necessary to explain our decision. Reese failed to present specific, substantial evidence sufficient to demonstrate a genuine issue of material fact as to whether the reason advanced by Micro Dental for his termination was pretextual. *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000). Micro Dental presented credible evidence that it had begun a workforce restructuring process six months before Reese's termination, and long before the alleged protected activity took place. Reese's position was eliminated as part of that restructuring process, not in retaliation for his protected activity.

AFFIRM.