

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Wednesday, June 24, 2026, 3:00 p.m.  
Courtroom 16 – Various for Hon. Patrick M. Broderick  
3035 Cleveland Avenue, Suite 200, Santa Rosa**

**TO JOIN “ZOOM” ONLINE,  
Courtroom 16  
Meeting ID: 161-460-6380  
Passcode: 840359**

<https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09>

**TO JOIN “ZOOM” BY PHONE,  
By Phone (same meeting ID and password as listed above):  
(669) 254-5252 US (San Jose)**

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing. Parties in motions for claims of exemption are exempt from this requirement.

**PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.**

***ALL MATTERS ARE BEING COVERED BY ALTERNATIVE DEPARTMENTS. PLEASE SEE EACH CASE FOR WHICH DEPARTMENT/JUDGE IS CALLING SAID MATTER.***

***Requests for appearance should still be made to Dept. 16’s JA at (707) 521-6725.***

**1. 24CV01487, Jasso v. Santa Rosaidence Opco, LLC.**

***(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)***

**IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19’S ZOOM LOGIN INFORMATION.**

Plaintiff Daniel Jasso (“Plaintiff”) moves for an order granting final approval of class action and PAGA settlement. **The motion is granted, with modification of attorney fees. Attorney fees are granted in the amount of \$98,750.**

1. Complaint

On October 31, 2024, Plaintiff filed his first amended complaint for: 1) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 204, 223, 510,1194, 1194.2, 1197, 1197.1 and 1198); 2)

Failure to Provide Meal Periods (Lab.Code §§ 204, 223, 226.7, 512 and 1198); 3) Failure to Provide Rest Periods (Lab.Code §§ 204, 223, 226.7 and 1198); 4) Failure to Properly Pay Sick Pay (Lab.Code § 246); 5) Failure to Indemnify (Lab. Code § 2802); 6) Failure to Provide Accurate Wage Statements (Lab. Code §§ 226(a)); 7) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); 8) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*); and, 9) Civil Penalties (Lab. Code § 2698, *et seq.*).

## 2. Settlement

On November 8, 2024, the parties participated in private mediation before Jill Sperber, Esq., a respected and highly experienced mediator in wage and hour class actions. (Manus decl., ¶ 4.) The mediation was successful, and the parties agreed to a resolution. (*Ibid.*)

The mediation resulted in a non-reversionary Gross Settlement Amount of \$395,000.00 on a class wide and PAGA representative basis. (Manus decl., ¶ ¶ 5, 6.) The Class Period is defined as February 29, 2020, through November 8, 2024. (*Ibid.*) Aggrieved Employees means a person employed by Defendant in California and classified as an hourly, non-exempt employee, who worked for Defendant during the PAGA Period. (*Ibid.*)

The Class consists of the named Plaintiff and all current and former non-exempt employees of Defendant who worked in the state of California at any time during the Class Period and who did not sign an arbitration agreement. (*Id.*, ¶ 6.)

On October 15, 2025, the Court granted Preliminary Approval of this settlement, approved the Notice of Class Action and related forms, appointed Plaintiff Daniel Jasso as the Class Representative, appointed Class Counsel, approved Apex Class Action Administration (“Apex”) as the Administrator, and set timelines for the settlement administration process, pursuant to the Settlement Agreement. (Manus Decl., ¶ 9.)

## 3. Final Fairness Hearing Standards

After preliminary approval, the court determines whether the settlement is fair, adequate, and reasonable in a final hearing. (CRC 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; see also *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F. 2d 615, 625; Fed. Rule of Civ. Proc., Rule 23(e).) The trial court has broad powers to determine whether the settlement is fair. (*Dunk v. Ford, supra*, at 1801; *Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) The purpose of this requirement is “the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” (*Officers for Justice v. Civil Service Com., supra*, 688 F. 2d at 624.)

At this hearing, the court should consider relevant factors, such as the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. However, the list is not fixed and the factors which the court considers must be tailored to each case. (*Dunk v. Ford, supra*, at 1801.) Ultimately, “the inquiry ‘must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.’ [Citation.]” (*Ibid.*) The determination is in the end “an amalgam of delicate balancing, gross approximations and rough justice.” (*Officers for Justice v. Civil Service Com.* (9th Cir.1982) 688 F.2d 615, 625; see also *Dunk v. Ford, supra*, at 1801, quoting *Officers for Justice, supra.*) However, while the party seeking settlement approval has the burden of showing the settlement is “fair and reasonable,” nevertheless “there is a presumption of fairness when: (1) the settlement is reached through arm's-length bargaining; (2)

investigation and discovery are sufficient to allow counsel and the trial court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337; see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43; *Dunk v. Ford, supra*, at 1801.)

#### 4. Notice to Class

Apex served as the Settlement Administrator. (Tran decl., ¶ 1.) It reviewed the data provided by Class Counsel and determined the class consisted of 371 individuals. (*Id.*, ¶ 5.) On March 20, 2026, the Class Notice was sent to all 371 individuals listed in the Class Data via U.S First Class Mail. (*Id.*, ¶ 7.) After skip tracing returned mailing, seven Class Notices were considered undeliverable. (*Id.*, ¶ ¶ 8, 9.)

The Response Deadline was May 19, 2026. (Tran decl., ¶ 10.) An extended Response Deadline for Class Members who received a re-mailed notice was June 2, 2026. (*Ibid.*) As of the date of this declaration, Apex has received one Request for Exclusion from Reyna Alcala-Sanchez and as not received any objections or disputes. (Tran decl., ¶ ¶ 11, 12.)

#### 5. Settlement

The total number of work weeks worked by Participating Class Members during the Class Period is 12,740. (Tran, ¶15.) The Net Settlement Amount available to Participating Class Members is estimated to be \$211,295.64 and was calculated by subtracting the requested Class Counsel Fees Payment (\$131,666.67), the amount requested for Class Counsel Litigation Expenses Payment (\$20,357.69), the requested Class Representative Service Payment (\$5,000.00), the requested Administration Expenses Payment (\$6,680.00), and the PAGA Penalties (\$20,000.00) from the Gross Settlement Amount of \$395,000.00. (*Ibid.*)

The highest Individual Class Payment to a Participating Class Member is approximately \$4,063.38, the average Individual Class Payment is approximately \$1,235.65, and the lowest Individual Class Payment is approximately \$16.59. (Tran decl., ¶ 16.) These amounts are subject to employee-side tax and withholdings. (*Ibid.*)

Pursuant to the Agreement, 25% of the PAGA Payment (\$5,000.00) will be allocated to Aggrieved Employees regardless of whether they opt out of the Class settlement. (Tran decl., ¶ 17.) The highest Individual PAGA Payment to an Aggrieved Employee is approximately \$37.55 the average Individual PAGA Payment is approximately \$15.58, and the lowest Individual PAGA Payment is approximately \$0.59. (*Id.*, ¶ 18.)

#### 6. Presumption of Fairness

As detailed in this court’s preliminary approval of the settlement, a presumption of fairness exists in this case as the settlement was reached through arm’s-length bargaining with the help of an experienced mediator; investigation and discovery were sufficient to allow counsel and the trial court to act intelligently; and counsel is experienced in similar litigation. In addition, none of the class members have objected to the settlement.

#### 7. Attorney Costs and Fees

Class Counsel requests \$131,666.67 in attorney fees and \$20,357.69 in expenses. (Manus decl., ¶ ¶ 7, 19.) The attorney fee request is one-third of the Gross Settlement Amount.

A finding that the settlement is fair is not dispositive of the attorney fees issue. This court assumes a fiduciary role for the class members in evaluating a request for an award of attorney’s fees from the common fund. (*In re Mercury Interactive Corp. Securities Litigation* (9th Cir. 2010) 618 F.3d 988, 994.) The distribution of fees must bear some relationship to the services rendered. (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1142.)

Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254.) The latter method is most commonly used in statutory fee-shifting schemes to reward attorneys for engaging in socially useful litigation. It is also applied when the type of recovery does not allow easy calculation of the settlement's value.

Class Counsel are seeking a percentage of the settlement fund. In determining what percentage is reasonable, courts commonly consider: the percentage likely to have been negotiated between private parties in a similar case (e.g., 30-40% in tort cases); percentages applied in other class actions (usually around 25%); the quality of class counsel; and the size of the award. (See Weil, et al, *Civil Procedure Before Trial*, (TRG 2024) § 14:145.3, citing *In re Ikon Office Solutions, Inc. Secur. Litig.* (ED PA 2000) 194 FRD 166, 193.)

Use of the percentage method is particularly appropriate in “common fund” cases such as this one, as it simply awards counsel some percentage of the settlement fund. (*In re Ikon Office Solutions, Inc. Secur. Litig, supra*, at p. 193.) This method theoretically aligns the interests of counsel and class more closely than does the lodestar method: a larger recovery with fewer hours expended benefits all parties. (*Ibid.*)

The question is whether thirty-three percent is an appropriate percentage for Class Counsel in this action. This determination is somewhat elastic and depends largely on the facts of a given case, but certain factors are commonly considered. Specifically, the court may address the percentage likely to have been negotiated between private parties in a similar case, percentages applied in other class actions, the quality of class counsel, and the size of the award. (See *In re Ikon Office Solutions, supra*, at p. 193.)

The Ninth Circuit has consistently approved a “benchmark” award of 25 percent of the common fund. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) However, that percentage is often higher for smaller cases where recovery is under \$10 million. (*Haro v. Walmart, Inc.* (E.D. Cal., Jan. 10, 2025, No. 1:21-CV-00239-KES-SKO) 2025 WL 73109, at \*13.)

With respect to the contingent nature of litigation, courts tend to find above-market-value fee awards more appropriate in this context given the need to encourage counsel to take on contingency-fee cases for plaintiffs who otherwise could not afford to pay hourly fees. (*Bellinghausen v. Tractor Supply Company* (N.D. Cal. 2015) 306 F.R.D. 245, 260.) Moreover, when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-payment after years of litigation justifies a significant fee award. (*Ibid.*)

In cross-checking the attorney fee request, “the ‘lodestar’ is calculated by multiplying the number of hours ... reasonably expended on the litigation by a reasonable hourly rate.” (*Id.* at p. 261.) In determining the reasonable hourly rate, the district court should be guided by the rate prevailing in the community for similar work performed by attorneys of comparable skill, experience, and reputation. (*Ibid.*) “Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative ‘multiplier’ to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.” (*Ibid.*)

Here, the attorney’s hourly rates are excessive for this area. The benchmark 25% of the net amount is \$98,750, which is still significantly larger than Class Counsel’s lodestar calculation.

The lower percentage is appropriate in this case. Counsel’s declaration indicates that Class Counsel spent approximately 90 hours on this case, which was filed over two years ago. In addition, large expenses were made for the mediator and a consultant.

Attorney fees of 25% of the net settlement amount, calculated as \$98,750, are granted.

#### 8. Administrative Fees

Apex fees amount to \$6,680.00. (Tran decl., ¶ 19.)

9. Representative Fee

Plaintiff seeks \$5,000 as a representative service payment. Plaintiff's declaration supports the requested fee award based upon Plaintiff's assistance to counsel and the risk associated with litigating the action.

10. Conclusion

Based on this court's review of the motion and the terms of the settlement, the settlement is "fair, adequate and reasonable" and the rights of the class members have been protected such that there is no sign of fraud, collusion, or unfairness. Accordingly, the motion for final approval of the class action settlement is granted with a modification of the requested amount of attorney fees.

This court will enter final judgment in this case in accordance with the terms of the Settlement Agreement, the order of preliminary approval and this order.

Class counsel is directed to submit a revised order and judgment consistent with this ruling.

2. **24CV02971, Maverick Excavating, Inc. v. Dalk**

***(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19'S ZOOM LOGIN INFORMATION.

Defendant Jason Dalk ("Defendant") moves pursuant to CCP section 425.16 for an order awarding attorney's fees and costs in the amount of \$41,257.50, plus amounts incurred on this motion, against Plaintiffs Maverick Excavating, Inc., and Herring and Sons Construction, Inc. ("Plaintiffs").

1. Issue of Fees - Not Moot

A party who is voluntarily dismissed, with or without prejudice, after he or she files a Code Civ. Proc., § 425.16, motion to strike, is nevertheless entitled to have the merits of such motion heard as a predicate to a determination of the party's motion for attorney fees and costs under Code Civ. Proc., § 425.16, subd. (c). (*Moore v. Liu* (1999) 69 Cal.App.4th 745, 747-748.)

"If indeed respondents' cross-complaint against appellant is a SLAPP suit, then the court's decision to not hear the merits of appellant's motion to strike deprives appellant of the monetary relief which the Legislature intended to give her, while at the same time it relieves respondents of the punishment which section 425.16 imposes on persons who use the courts to chill others' exercise of their constitutional rights. We therefore reverse the trial court's order denying appellant attorney's fees and costs, and remand the case for further proceedings on the issue of the merits of appellant's motion to strike and, depending on the ruling thereon, her request for fees and costs." (*Id.*, at p. 748; See also *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1055 ["Nor is the issue of attorney fees and costs rendered moot even by an involuntary dismissal after a demurrer is sustained without leave to amend."]) The same reasoning applies here. Despite that Defendant's anti-SLAPP motion was rendered moot by the ruling on his motion to strike, the issue of attorney fees remains.

2. Objections

Defendant's objections are overruled.

3. Defendant's Anti-SLAPP motion

Defendant moved pursuant to CCP section 425.16 to strike paragraphs 152, 153, and 159-166 of the cause of action for fraud, and 173 through 183 of the third cause of action for conspiracy to commit fraud alleged in the Second Amended Complaint ("SAC") filed by Plaintiffs.

A determination on an Anti-SLAPP motion is effectuated by a series of shifting burdens: "At the first step, the moving defendant bears the burden of identifying all allegations of protected activity, and the claims for relief supported by them. When relief is sought based on allegations of both protected and unprotected activity, the unprotected activity is disregarded at this stage. If the court determines that relief is sought based on allegations arising from activity protected by the statute, the second step is reached. There, the burden shifts to the plaintiff to demonstrate that each challenged claim based on protected activity is legally sufficient and factually substantiated. The court, without resolving evidentiary conflicts, must determine whether the plaintiff's showing, if accepted by the trier of fact, would be sufficient to sustain a favorable judgment. If not, the claim is stricken. Allegations of protected activity supporting the stricken claim are eliminated from the complaint, unless they also support a distinct claim on which the plaintiff has shown a probability of prevailing." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 396.)

a. Alleged fraudulent time sheets and employment letter

Paragraphs 152, 153, and 159-166 were part of Plaintiffs' fraud cause of action. Paragraphs 152 and 153 allege Defendant intended to present further falsified timesheets in an effort to be paid even more in this lawsuit and that he intended to present a forged employment letter to establish further claims for benefits. Defendant argued that these allegations refer to statements made in connection with or in preparation of litigation and were subject to being stricken under CCP section 425.16. Defendant filed a declaration that the alleged further falsified timesheets and forged employment letter were submitted in anticipation of Defendant's wage and hour claim with the California Labor Commissioner or in this litigation.

Paragraphs 159 through 166 refer to an alleged "fake estimate" presented after the parties' efforts of compromise failed. Defendant argued this was relayed as part of settlement communications in connection with or preparation of this litigation. Defendant provided the declaration of Susan Riggle stating that the supposedly fake estimate was provided to Plaintiffs on April 5, 2024, in the settlement conference. Ms. Riggle stated in her declaration that it was, in fact, genuine and executed by Garcia Paving, and represented evidence of loss to Mustang Court from the Plaintiffs' defective performance.

Defendant cited two cases in support of his section 425.16 motion to strike these allegations: "*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 908 (pre-litigation statements made in connection with potential environmental litigation were 'statements made in connection with or in preparation for litigation are subject to section 425.16'); *Baral v. Schnitt* (2016) 1 Cal.5th 376, 384-35 (defendant's burden to show challenged claim arises from activity protected by section 425.16)." (Anti-SLAPP memo, 8:14-19.)

It is difficult to understand how Defendant concludes that the citation to these two cases alone, without any discussion of how they apply to the present case, meets his burden on this motion. (See Cal. Rules of Court, Rule 3.1113(b) ["The memorandum must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced."]) In *Kashian*, plaintiff filed a lawsuit alleging that defendant Harriman had engaged in unfair and deceptive business practices and defamation. The thrust of the complaint included allegations that Harriman had created sham entities that he then used to file environmental claims "to extort settlements and reap financial benefits to Harriman." *Id* at 902. The complaint also alleged that Harriman made defamatory statements against plaintiff in a letter he sent to the Attorney General. *Id*. Defendant Harriman then filed an anti-SLAPP motion in which he highlighted all these allegations and argued that both his

environmental litigation activities in his letter to the Attorney General were absolutely privileged (Civ. Code, §47, subd. (b)). *Id.* at 902-903. The court agreed that such activities constituted protected activity under CCP §425.16 and Defendant Harriman passed the first stage of an Anti-SLAPP analysis.

*Baral v. Schmitt*, a California Supreme Court case, provided a more expansive analysis of a moving party's burden on an anti-SLAPP motion. Schmitt filed an anti-SLAPP (Strategic Lawsuit Against Public Participation) motion to strike certain allegations, arguing they arose from protected activity under California's anti-SLAPP statute (Code Civ. Proc. § 425.16). The Supreme Court held that an anti-SLAPP motion may be used to strike allegations of protected activity even if it does not defeat the entire cause of action. *Baral v. Schmitt* (2016) 1 Cal.5th 376, 393. However, allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute. (*Id.* at p. 394.) In *Baral* court also required specificity from the moving party as to what allegations regarding protected activities were at issue in the motion. Alternatively stated, there is a specificity which a moving party needs to meet in order to establish that the allegations or causes of action that have been asserted against them are in fact related to protected activity. Conclusory arguments are insufficient.

Plaintiffs' fraud cause of action is based upon allegedly falsified timesheets that Defendant then allegedly submitted while he was employed with Plaintiffs and for money allegedly paid to Defendant which was intended for another contractor. (SAC, ¶151.) Plaintiffs explain that they thought it was reasonable to include information about additional timesheets Defendant intended to use in this lawsuit as further evidence of Defendant's falsification of time records. The Court's prior ruling on the motion to strike these types of allegations on the basis that they do not establish the element of reliance for fraud does not serve as proxy for also establishing this as protected activity.

With respect to the allegedly forged employment agreement, Plaintiffs state it was presented to them on November 1, 2023—prior to this action and as part of facts supporting their claims against Defendant in this lawsuit. Plaintiffs argue that during the pendency of this action, Defendant presented a new version of the agreement, backdating his own signature to April 23, 2023, and explained he intended to use the backdated copy with the Plaintiffs' allegedly forged signature in this litigation as proof of an agreement that Plaintiffs argue was never reached.

Plaintiffs' inclusion in the SAC of evidence Defendant intended to present in support of his defense and the allegations based upon an allegedly fake estimate presented during settlement discussions were irrelevant and extraneous. While these allegations do reference litigation activities that Plaintiffs believed Defendant would make, the cause of action for fraud does not seek redress based upon those litigation activities or settlement negotiations.

The central purpose of CCP section 425.16 is screening out meritless claims that arise from protected activity, before the defendant is required to undergo the expense and intrusion of discovery. (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 392.) However, allegations of protected activity that merely provide context, without supporting a claim for recovery, cannot be stricken under the anti-SLAPP statute. (*Id.* at p. 394.) Allegations subject to section 425.16 are those that seek redress based upon protected activity. Here, Plaintiffs sought exemplary damages as a multiplier of all amounts paid to Defendant, prior to November 27, 2023, and, specifically, the \$30,937 paid to Defendant that was intended for contractor Garcia. (SAC, ¶¶161-166.) Thus, the allegations regarding the allegedly false estimate merely add context based upon supporting evidence. Therefore, section 425.16 is not applicable as there is no cause of action based upon the allegations related to protected activity. (See *Baral, supra*, at pp. 394-395.)

Paragraphs 173 through 183 are part of Plaintiffs' fourth cause of action for conspiracy to commit fraud. While some of the allegations suggest that Plaintiffs are seeking redress for the presentation of forged documents, as it alleges Plaintiffs were harmed by these actions, this cause of

action only seeks damages based upon pre-litigation billing issues, not litigation activities. (SAC, ¶185.) Therefore, these allegations were also not the basis of a cause of action seeking to chill the valid exercise of Plaintiff’s constitutional rights of freedom of speech and petition for the redress of grievances.

4. Conclusion and Order

Defendant has not met his burden to establish that the allegations were subject to being stricken under CCP section 425.16; i.e., that they constituted a “cause of action,” which included a request for damages based upon specific allegations. Accordingly, Defendant’s request for attorney fees for bringing the section 425.16 motion is **DENIED**.

Plaintiffs’ counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

3. **24CV06350, Looney v. Itaewon Street, a California Corporation**

***(TENTATIVE ISSUED BY HON. DANA B. SIMONDS)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 18. PLEASE USE DEPT. 18’S ZOOM LOGIN INFORMATION.

Plaintiff Gary E. Looney dba Collectronics of California (“Plaintiff”) moves for an order appointing Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of defendant Liquor King, LLC (“Judgment Debtor”) in order to carry out the judgment entered in this case in the amount of \$6,175.96.

Specific statutory procedures are established for enforcement of money judgments. This includes the appointment of a receiver after judgment to carry the judgment into effect. (CCP section 564(b)(3).) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment. (CCP § 708.630(a).)

A trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

“California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution.” (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) “It is said by the state's courts that the appointment of a receiver is ‘an extraordinary and harsh,’ and ‘delicate,’ and ‘drastic,’ remedy to be used ‘cautiously and only where less onerous remedies would be inadequate or unavailable...’” (*Ibid.*)

Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, “Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the ‘necessity’ required to justify the ‘extraordinary’ remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary.”

On April 2, 2025, judgment was entered in this action for the above stated amount. According to Plaintiff’s declaration, Vick S. Arora is the personal guarantor of Judgment Debtor.

(Looney decl., ¶3.) Plaintiff states he has attempted to collect on the judgment by attempting to locate a bank or deposit account; mailing a letter requesting payment; serving post-judgment interrogatories and requests for production of documents, mailing a letter requesting responses to the post-judgment discovery; and filing a motion to compel post-judgment discovery responses. (Looney decl., ¶¶6-10, 16.) Based upon a web search, Judgment Debtor's business is open. (*Id.*, ¶7.)

According to Plaintiff, the sheriff's office will not sell liquor inventory; the installation of a sheriff's keeper is unavailable or ineffective; the size of the judgment makes it impractical to levy upon equipment, fixtures, or inventory; plus, the value of equipment and fixtures is depressed. Thus, Plaintiff concludes there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the inadequacy of alternate remedies. Rather, as in *Medipro, supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. Plaintiff's representations regarding the inadequacy of alternative remedies are not supported by foundation. Moreover, the number of motions filed by Plaintiff to appoint a receiver in various actions itself shows that this method of collection has become routine rather than being reserved for cases in which it is truly necessary.

Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter. **The motion is DENIED.** Due to the lack of opposition, the court's minutes shall constitute the order of the court.

#### 4. 24CV07110, Looney v. Liquor King, LLC

**(TENTATIVE ISSUED BY HON. DANA B. SIMONDS)**

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 18. PLEASE USE DEPT. 18'S ZOOM LOGIN INFORMATION.

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") moves for an order appointing Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of defendant Itaewon Street, Inc. ("Judgment Debtor") in order to carry out the judgment entered in this case in the amount of \$4,993.32.

Specific statutory procedures are established for enforcement of money judgments. This includes the appointment of a receiver after judgment to carry the judgment into effect. (CCP section 564(b)(3).) The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment. (CCP § 708.630(a).)

A trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

"California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution." (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) "It is said by the state's courts that the appointment of a receiver is 'an

extraordinary and harsh,’ and ‘delicate,’ and ‘drastic,’ remedy to be used ‘cautiously and only where less onerous remedies would be inadequate or unavailable...’” (*Ibid.*)

Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, “Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the ‘necessity’ required to justify the ‘extraordinary’ remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary.”

On February 3, 2025, judgment was entered in this action for the above stated amount. According to Plaintiff's declaration, Miran Kim, aka Michelle Kim, is the personal guarantor of Judgment Debtor. (Looney decl., ¶9.) Plaintiff states he has attempted to collect on the judgment by attempting to locate a bank or deposit account; mailing a letter requesting payment; making phone calls to “the responsible parties”; serving post-judgment interrogatories and requests for production of documents, mailing a letter requesting responses to the post-judgment discovery; and filing a motion to compel post-judgment discovery responses. (Looney decl., ¶¶6-10, 16.) Based upon a web search, Judgment Debtor's business is closed. (*Id.*, ¶7.)

According to Plaintiff, the sheriff's office will not sell liquor inventory; the installation of a sheriff's keeper is unavailable or ineffective; the size of the judgment makes it impractical to levy upon equipment, fixtures, or inventory; plus, the value of equipment and fixtures is depressed. Thus, Plaintiff concludes there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the inadequacy of alternate remedies. Rather, as in *Medipro, supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. Plaintiff's representations regarding the inadequacy of alternative remedies are not supported by foundation. Moreover, the number of motions filed by Plaintiff to appoint a receiver in various actions itself shows that this method of collection has become routine rather than being reserved for cases in which it is truly necessary.

Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter. **The motion is DENIED.** Due to the lack of opposition, the court's minutes shall constitute the order of the court.

## 5. 25CV00610, Jones v. The California Department of Forestry and Fire Protection

*(TENTATIVE ISSUED BY HON. OSCAR A. PARDO)*

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 19. PLEASE USE DEPT. 19'S ZOOM LOGIN INFORMATION.

Defendant California Department of Forestry and Fire Protection (“CalFire”) moves for summary judgment or, in the alternative, summary adjudication of the causes of action alleged by Plaintiff Don Jones (“Plaintiff”) for disability discrimination, failure to accommodate, failure to

engage in the interactive process, retaliation, and failure to prevent discrimination. **The motion for summary judgment, or in the alternative, summary adjudication is DENIED.**

## **I. Complaint**

Plaintiff's complaint alleges causes of action for: (1) Disability Discrimination – Violation of Cal. Gov't Code §§12 940 et seq., (2) Failure to Provide Reasonable Accommodations - Violation of Cal Gov't Code §§12940 et seq., (3) Failure to Engage in the Interactive Process – Violation of Cal. Gov't Code §§12940 et seq., (4) Retaliation- Violation of Cal. Gov't Code §§12940 et seq., (5) Violation of Labor Code §1102.5, and (6) Failure to Prevent Discrimination - Violation of Cal. Gov't Code §§12940 et seq.

Plaintiff alleges he was hired by CalFire in 2007 as an engineer and firefighter. In 2015 he was promoted to Fire Captain. From 2012 to 2020, Plaintiff served concurrently as a flight medic for the U.S. Armed Forces. At some point allegedly due to his work with CalFire and other factors, Plaintiff was diagnosed with Post Traumatic Stress Disorder (“PTSD”). In 2019, at the recommendation of his doctors, Plaintiff applied to Canine Companions for a service dog to assist him with his PTSD symptoms. Plaintiff alleges he informed his Division Chief, Jeff Gahgan, that he would be receiving a trained service dog from Canine Companions and notified Battalion Chief, Dave Diggs, that he would need to attend service dog training during the first week of June, which he did. Plaintiff alleges Canine Companions trained Walla to be with Plaintiff at all times, including going on assignments with Plaintiff anywhere his job took him.

In the summer of 2020, Plaintiff submitted a Reasonable Accommodation Request Form to CalFire requesting that he be allowed to bring Walla to work and to have her with him at all times, except for in a hot fire situation, in which case she would be kenneled safely in Plaintiff's vehicle or another safe location. Plaintiff alleges he informed CalFire that Walla could be in her kennel for 4-6 hours at a time and in fact needed a small amount of down-time to decompress. Plaintiff alleges he provided all requested documentation, including a doctor's note confirming his PTSD diagnosis and stating that he should be permitted to bring Walla to work. Plaintiff alleges that over the next two years, CalFire repeatedly raised questions and objections and placed obstacles in Plaintiff's way, refusing to allow Plaintiff to bring Walla to work. Plaintiff alleges each time CalFire raised a question, Plaintiff provided answers and repeatedly provided information and assurances from Canine Companions about Walla's training, certification, and qualifications. In December 2020, Plaintiff was informed that he was not selected for the next round in his application for Battalion Chief, despite that he was invited to interview for Battalion Chief positions earlier in 2020. Plaintiff's request to bring Walla to work was denied and Plaintiff continued to appeal that denial without success. This lawsuit followed.

### **A. First Cause of Action – Disability Discrimination (Violation of Cal. Govt. Code section 12940 et. seq.)**

To establish a prima facie case of disability discrimination under Government Code § 12940(a), a plaintiff must show that he: "(1) suffered from a disability, or was regarded as suffering from a disability; (2) could perform the essential duties of the job with or without reasonable accommodations, and (3) was subjected to an adverse employment action because of the disability or perceived disability." (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 159- 160.)

“Ordinarily, a plaintiff employee who claims discrimination must first make a prima facie case, consisting of evidence that she was within the class protected from discrimination and was performing her job competently, but was terminated—plus some other circumstance suggesting discriminatory motive. [Citation.] This showing raises a presumption of discrimination, shifting to the defendant employer the burden of producing evidence to establish a genuine issue that the termination was made for a legitimate, nondiscriminatory reason. [Citation.] If the employer does so, the presumption disappears, but the employee, who retains the overall burden of persuasion,

may then yet seek to show discriminatory motive, by evidence that the employer's proffered reason was false and a pretext, and any other evidence of discriminatory motive. [Citation.]” (*Kelly v. Stamps.com Inc.* (2005) 135 Cal.App.4th 1088, 1097.)

A defendant employer's motion for summary judgment slightly modifies the order of these showings. (*Ibid.*) The employer defendant moving for summary judgment bears the initial burden of demonstrating that at least one of the elements of plaintiff's employment discrimination claim is without merit. (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 432.) Alternatively, if the motion for summary judgment relies in whole or in part on a showing of nondiscriminatory reasons for the discharge, the employer satisfies its burden as moving party if it presents evidence of such nondiscriminatory reasons that would permit a trier of fact to find, more likely than not, that they were the basis for the termination. (*Kelly v. Stamps.com Inc.*, 135 Cal. App. 4th at pp. 1097-1098.) To defeat the motion, the employee then must adduce or point to evidence raising a triable issue, that would permit a trier of fact to find by a preponderance that intentional discrimination occurred. (*Id.*, at p. 1098.) In determining whether these burdens were met, the court views the evidence in the light most favorable to plaintiff, as the nonmoving party, liberally construing the evidence while strictly scrutinizing defendant's evidence.

#### 1. Undisputed Facts

The following are the undisputed facts in CalFire's separate statement. Plaintiff has been a Fire Captain from January/February 2015 to the present. (Undisputed Material Fact [“UMF”] No. 3.) Plaintiff was diagnosed with PTSD in 2016 or 2017. (UMF No. 4.) The three promotional applications that Plaintiff claims were denied to him due to discriminatory animus have the job numbers ending in 006, 001, and 028, respectively. (UMF No. 6.) The remaining facts provided by CalFire in support of granting the motion as to this cause of action are disputed by Plaintiff.

#### 2. Protected Activity

CalFire first argues that the basis of Plaintiff's claim is that he filed a complaint against CalFire, and that such filing is not a protected activity under the feha. Plaintiff argues Defendant mischaracterizes Plaintiff's testimony and takes it out of context. When asked about the basis for discrimination at his deposition, Plaintiff testified that he felt discriminated against “because of the claim that I had filed against the Department.” This statement was made in the context of discussing Plaintiff's request for an accommodation and his PTSD disability. (Jones Dep. 127:10-128:12) Plaintiff states his discrimination claim is based on his PTSD disability and request for accommodation, not merely or solely on filing a complaint. CalFire has not met its burden on this issue.

#### 3. Adverse Action

CalFire argues that Plaintiff cannot show an adverse employment action that was due to his PTSD. An element of a cause of action for disability discrimination is that the employee was subjected to “an adverse employment action because of the disability or perceived disability.” (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 159- 160.) With respect to the adverse action allegedly sustained by Plaintiff, CalFire argues Plaintiff cannot show he sustained an adverse action in connection with his request to leave his shift early during the Dixie Fire because he was later relieved from working this shift because he reported that he had COVID. In the summer of 2021, Plaintiff was assigned to two different fires back-to-back in contradiction of CalFire's policy providing for relief after 14 consecutive days, with possible extension to 21 days when operationally necessary, and despite his request for relief. (Jones decl., ¶ ¶ 38-41.) He was only relieved after he reported testing positive for COVID several days later. (*Id.*, ¶ 42.)

CalFire's argument is based upon its undisputed material facts, numbers 92 and 103. Number 92 provides: “Plaintiff further contends that he was retaliated against, for requesting a

reasonable accommodation, when unidentified supervisors denied his request to be pulled out of his assigned duty on one occasion after he told the duty chiefs and chiefs that he was ‘getting exhausted, having difficulty performing (his) job, (he) needed relief’. Plaintiff’s only fact in support of the claim that this was retaliation is that others were pulled off duty and he was not.”

In response, Plaintiff argues that around days 16 to 18 of Plaintiff’s continuous assignment on the Dixie Fire in Summer 2021, Plaintiff contacted his supervisors, including Chief Chad Smith, and informed them he was burnt out and needed relief from the incident. He was told by Chief Smith that they could not pull him off the incident because they did not have a replacement for him. (Jones Decl. ¶¶ 40-41). Plaintiff states he was aware that other employees in similar positions were not assigned to back-to-back incidents and were allowed to go home when they requested relief and replacements were brought in for them. (Jones Decl. ¶41). Plaintiff argues this differential treatment—denying relief to Plaintiff while granting it to similarly situated employees—supports finding retaliation. The inference is that the retaliation was based upon his request for an accommodation and his disability.

Plaintiff notes he had been assigned continuously from the River Fire (July 13-18, 2021) directly to the Dixie Fire (July 18-August 2, 2021), totaling over 20 consecutive days, which exceeded Cal Fire’s own policy guidance of 14-day assignment relief with possible extension to 21 days only when operationally necessary. Plaintiff argues the denial of relief occurred approximately 7-8 months after Plaintiff’s accommodation denial, maintaining temporal proximity to the protected activity.

CalFire’s Number 103 provides: “Plaintiff was allowed to leave his shift at the 2021 Dixie Fire the very day he first requested leave, because he reported being infected with Covid to his superiors.” Plaintiff argues the characterization that Plaintiff “first requested leave” on the day he reported COVID is factually inaccurate. Plaintiff states he had previously requested relief around days 16-18 of his assignment, citing burnout and exhaustion, before reporting COVID symptoms. (Jones Decl. ¶ 43). Text messages from August 1, 2021, show Plaintiff reported feeling “burned out” and experiencing physical illness symptoms before testing positive for COVID. (Exhibit 8; text messages between Jones and Smith). Plaintiff argues that relief was ultimately granted due to COVID does not erase the earlier retaliatory denial of relief based on exhaustion when others in similar positions were granted such relief.

CalFire argues that Plaintiff did not suffer an adverse employment action because he got what he requested. The evidence provided by CalFire fails to meet its burden on this issue. In addition, Plaintiff has provided evidence that he did not get relief when he first requested it.

CalFire also argues an isolated incident of being denied a request to quit work early, when one’s job is to fight a catastrophic fire, falls far short of materially affecting the terms, conditions, or privileges of employment. However, Plaintiff has not alleged an isolated incident. He alleges a series of adverse events including being made to work more days in a row than other employees and not being promoted.

4. Promotion to Battalion Chief – Not most qualified  
a) CalFire’s Evidence

With respect to Plaintiff’s allegation that he should have been promoted to Battalion Chief, CalFire argues that Plaintiff was not the most qualified person for the job. CalFire argues that Plaintiff had previously applied and been denied the Battalion Chief position nine times. (Plaintiff’s deposition testimony at 151:22-153:9; 158:1-21; 160:8-9; 163:1- 5; 166:21-167:3; 167:15-22; 168:12-19; 169:2-18; 185:11-186:5; 186:10-17.) Brandon Gunn is the unit chief in the Mendocino unit. (Gunn decl., ¶ 2.) He states that in February of 2022, he served on the 3-person interview panel for Battalion Chief. (*Ibid.*) Plaintiff was one of the applicants. (*Ibid.*) Based upon his review of the interview record and his discussion with CalFire legal counsel, Mr. Gunn opined that Plaintiff

was not retaliated against in not being chosen for that position. (*Ibid.*) He states the most qualified applicants were Nathan Deurloo and Andrew Rhoads, who were chosen instead of Plaintiff. (*Id.*, ¶ 5.) Both Nathan Deurloo and Andrew Rhoads performed better in their interviews and were more qualified than Plaintiff. (*Ibid.*) He states they demonstrated better experience and a better understanding of the Battalion Chief position. (*Id.*, ¶ 6.) Fire Captain Joe Ortegel also scored higher than Plaintiff but was not chosen for the position. (*Id.*, ¶ 7.) Mr. Gunn explains that Plaintiff scored below the cut-off required for an interview. (*Id.*, ¶ ¶ 8-9.) Mr. Gunn states there was no discussion about Plaintiff's request to bring Walla to work. (*Id.*, ¶ 10.) Mr. Gunn states that he takes transparency and integrity of the interview process seriously and that if he felt that Plaintiff was being scored on any factor other than the interview performance, he would have reported as much to his supervisor. (*Id.*, ¶ 11.)

CalFire has provided a legitimate non-discriminatory reason for not promoting Plaintiff—others were more qualified.

b) Plaintiff's Evidence

Once an employer satisfies its initial burden of proving the legitimacy of its reason for termination or, as here the failure to promote, the employee seeking to avert summary judgment must present specific and substantial responsive evidence that the employer's evidence was in fact insufficient or that there is a triable issue of fact material to the employer's motive. (*King v. United Parcel Service, Inc.*, *supra*, 152 Cal.App.4th at p. 433.) Plaintiff must show that the employer's ostensible motive was pretextual; that is, "that a discriminatory reason more likely motivated the employer or that the employer's explanation is unworthy of credence." (*Ibid.*)

Plaintiff argues that the temporal proximity between the denial of his accommodation request (December 9, 2020) and the subsequent adverse employment actions demonstrates the connection between his disability and the discrimination he experienced. (Complaint ¶¶12-40.) He argues he suffered clear adverse employment actions after he notified CalFire that he had PTSD; i.e., a pattern of promotional denials. Plaintiff states that in December 2019, he informed Division Chief Jeff Gahagan that he would be getting a service dog from Canine Companions for Independence. (Jones decl., ¶ 2.) In or around April 2020, Plaintiff informed Battalion Chief David Diggs that he would be required to attend training with Walla, his assigned service dog with CCI, the first week of June 2020. (*Id.*, ¶ 3.) On June 8, 2020, Jeff Gahagan emailed Plaintiff a Reasonable Accommodation Request Form and copied David Diggs. (*Id.*, ¶ 3.) Plaintiff's declaration purports to attach the subject email but no exhibits are attached.

Plaintiff states he was thereafter denied a promotion for Battalion Chief in December of 2020, in the spring of 2021, and in October 2022. Plaintiff states he had participated in several Battalion Chief interviews in 2020; but he was not chosen for an interview after December 2020—after his accommodation request was denied. (Jones decl., ¶ ¶ 7, 14(2)-15(2).) In December 2020 he applied for a Battalion Chief Position but was denied the opportunity to interview despite the fact that he had been repeatedly invited to interview for Battalion Chief Positions before he had notified CalFire of his disability and his request for a reasonable accommodation. (*Id.*, ¶ 4.)

In the spring of 2021, Plaintiff states he applied for, and was interviewed for, a Battalion Chief position by a panel that included Division Chief Jeff Gahagan and he was not selected for the position despite, in his opinion, being highly qualified for the position and being at least as qualified as the person selected for the position. (Jones Decl., ¶ 6.)

He states he later learned that Jennifer Van Huis's handwritten notes from the interactive process meetings included the phrase "MENDO NO," which Plaintiff states referred to Mendocino senior staff members who write the standards for each Battalion Chief promotional exam. (Jones

Decl., ¶ ¶ 8, 9.) The phrase “MENDO NO” could be interpreted in many ways. However, on this motion, this court must construe it in the light most favorable to Plaintiff.

In October 2022, Plaintiff was not selected for Position 028 after an interview marked by what he describes as apparent bias. (Jones Dep. 178:1-17; 179:4-12; Jones Decl. ¶¶10-13.) He states that during a Battalion Chief interview with Chief Engelbert on the interview panel, he observed Chief Engelbert erasing answers on his scoring sheet after he had already provided his responses to questions. (Jones decl., ¶ 10.) Plaintiff states he would respond to a question, the panelists would mark their sheets, and then one or two questions later, Chief Engelbert would use an erasable pen to remove answers he had previously marked on the sheet. (*Id.*, ¶ 11.) However, Plaintiff could not see which specific questions or answers Chief Engelbert was erasing due to the angle and distance. (*Id.*, at ¶ 12.) Plaintiff states that the Battalion Chief interview scoring uses checkboxes to indicate whether the interviewee mentions information indicating they are qualified. “After I answered those questions, Engelbert’s check marks were erased which would allow evaluators to decide my answers were not complete or not to their liking.” (*Id.*, ¶ 13.) This evidence could be construed in different ways, but on this motion it must be construed in Plaintiff’s favor.

Plaintiff states that HR policy requires the same interview panel for all candidates but Plaintiff’s interview used different chiefs on different days, which violates CalFire’s own process and prevents fair comparison across candidates. (Jones decl. ¶ 14.) Plaintiff knows this because he participated in designing and conducting interviews for Forestry Technician positions. (Jones decl., ¶ 14.)

He states that in another exam cycle in summer 2021, he was sent out on a fire assignment during the posting period for a Battalion Chief position such that he missed the opportunity to apply. (Jones decl., ¶ ¶ 8(2)-9(2). [Plaintiff’s paragraph 15 is marked as number 8. The subsequent paragraphs proceed as paragraph 9 and continuing. This court will use the numbers used by Plaintiff with the addition of “(2)” if it is the second instance of an already numbered paragraph.]) Plaintiff states senior staff have discretion to excuse absences and extend promotional deadlines for employees who are on assignment, but Chief Engelbert refused to support him or allow him to apply for that position despite his being on a mandatory fire assignment. (Jones decl., ¶ 10(2).)

Plaintiff states that the same senior staff members referenced in the "MENDO NO" notation, Brandon Gunn and Jeff Gahagan, are individuals who influence and control the screening decisions for Battalion Chief positions in the Mendocino Unit. (Jones decl., ¶ 11(2).) Plaintiff states these same senior staff members also develop the Battalion Chief exam standards and interview parameters, giving them the ability to design criteria that can include or exclude specific candidates. (Jones decl., ¶ 12(2).) Plaintiff states the individuals who had advanced knowledge that he would not be considered favorably (as evidenced by the "MENDO NO" notation) were the same individuals responsible for creating the evaluation standards and conducting the screening process. (Jones decl., ¶ 13(2).)

Plaintiff cites deposition testimony of Jennifer Van Huis. At her deposition, Ms. Van Huis, who is presented in Plaintiff’s memorandum as being CalFire’s Reasonable Accommodations and Return to Work Coordinator, was shown an email dated August 19th, 2020, which Plaintiff’s counsel indicated was sent by her to Ashley Glisan. (Van Huis decl., p. 12.) At the deposition, Plaintiff’s counsel stated the email read: “Hi Ashley. We have received an unusual RA request to Don Jones, an FC in MEU. Do you have time this week to speak with Gena and me?” (*Ibid.*) Gena is presumably Genavina Mabary, who is represented to be CalFire’s Manager of the Injury and Accommodations Unit.

The email itself is not provided and Plaintiff's counsel's recitation at the deposition of what the email says is hearsay. It is not even clear if the email relates to Plaintiff's request for an accommodation or if it was made by someone supervised by him as it states the "RA," presumably Request for Accommodation, was made "to" Plaintiff not by him.

Plaintiff states that he learned in 2021 of another Fire Captain who was allowed to bring her service animal to work. (Jones decl., ¶¶ 16-17.) Plaintiff states that CalFire used the excuse that Walla would need protective gear as a reason not to grant his accommodation despite its own K9 program dogs not wearing said protective gear. (Jones decl., ¶¶ 17-19.)

Plaintiff states that when he proposed to be placed in an alternative position, Employee Support Services (ESS), Genavina Mabary rejected it by stating that ESS had no openings and that "Walla is only for you," which suggested to Plaintiff that his need for accommodation was not being taken seriously. (Jones decl., ¶ 21.)

Plaintiff argues CalFire's actions are all pretense because Plaintiff's position as a Prescribed Fire Crew Captain was primarily supervisory, with his duty statement showing that 50% to 60% of his work time was spent at a computer performing administrative tasks. (Jones decl. ¶¶ 22, 27-30.) He states his role as Prescribed Fire Crew Captain was vegetation management. (*Id.*, ¶ 23.) He states he had no structure-fire PPE; Forestry Technicians assigned to fuels are not trained or certified to respond to emergency incidents. (*Id.*, at ¶ 23, 27, 28.) The fuels crew program was intentionally created to avoid pulling staff into fire incidents so fuels work could continue statewide. (*Id.*, ¶¶ 23-25.)

He states other proposed solutions during the interactive process, including kenneling Walla in his vehicle during the limited situations where he would need to enter dangerous fire environments, were also rejected. (Jones decl., ¶ 27.) Plaintiff argues that CalFire failed to consider that Canine Companions for Independence certified that Walla was trained in over 40 commands and approximately 60 skills, and that it had advised that Walla could accompany Plaintiff in his job duties, similar to how police canines accompany law enforcement officers. (*Id.*, ¶ 28.) He states all of his job duties could accommodate Walla's presence. (*Id.*, ¶¶ 29-37, 43-44, 47.)

Plaintiff states he has never had any work performance issues. (Jones decl., ¶¶ 48-49.) CalFire's only solution was to downgrade Plaintiff's position with a significant cut to pay, benefits, and retirement. (Jones decl., ¶¶ 43-46.)

Here, Plaintiff presents evidence of CalFire's failure to promote Plaintiff, of Plaintiff being subjected to harsher working conditions, and of CalFire's failure to accommodate his disability request. One link presented by Plaintiff that these adverse employment actions occurred because of his disability is the timing. Overall, a triable issue of material fact exists regarding whether Plaintiff suffered an adverse employment action because of his request for an accommodation or his disability.

##### 5. Conclusion on First Cause of Action

There is substantial conflicting evidence in this case. Construing the evidence presented in the light most favorable to Plaintiff, Plaintiff has provided sufficient evidence to overcome the motion for summary judgment. CalFire's motion as to this cause of action is DENIED.

##### **B. Third Cause of Action – Failure to Engage in the Interactive Process (Gov't. Code section 12940 et seq.)**

Plaintiff's third cause of action for failure to engage in the interactive process alleges CalFire failed to engage in a good faith interactive process. The FEHA imposes an additional duty on the employer "to engage in a timely, good faith, interactive process with the employee ... to

determine effective reasonable accommodations ....” (§ 12940, subd. (n).) An employer's failure to engage in this process is a separate FEHA violation. (*Wilson, supra*, 169 Cal. App. 4th at p. 1193.)

CalFire argues it engaged in an extensive interactive process with Plaintiff to determine whether he could bring his service dog Walla to work with him in performing his Fire Captain duties. CalFire spent four months discussing and considering the logistics and weighing the risks and benefits of having a service animal accompany Plaintiff to his firefighting duties, including discussions with Canine Companions for Independence, and various outside providers of fire safety gear. (UMF 19, 52.) CalFire spent considerable time communicating with Plaintiff to determine whether there was a way to allow him to bring Walla to work, especially during the most stressful, demanding and dangerous parts of his job of fighting fires. (UMF 19, 52.) CalFire determined, however, that permitting a service dog to accompany a Fire Captain in his firefighting duties would compromise CalFire’s operations and the safety of Plaintiff, Walla, the firefighter crew, and the public who needed CalFire’s emergency services. (UMF 19-45; 48-77.) CalFire offered to assign Plaintiff to an alternative, non-safety position that would have allowed Plaintiff to keep Walla with him at all times. (UMF 46, 78.) Plaintiff rejected this offer and insisted on his preferred accommodation of bringing Walla to work while he performed his firefighting duties. (UMF 46, 79.) Plaintiff testified at his deposition that he refused to return to work until he could have Walla accompany him to his Fire Captain job. (Plaintiff’s deposition, 59:21- 24.)

An element of a cause of action for failure to engage in the interactive process requires defendant make reasonable accommodation that would allow the employee to be able to perform the essential job requirements. (CACI Civil Jury Instruction 2546.) This necessarily requires the essential job requirements to be identified. Plaintiff argues that CalFire’s explanation for its failure to accommodate him by allowing him to bring Walla to work with him, and thus CalFire’s failure to engage in the interactive process *in good faith*, was based upon Plaintiff’s job function of fighting active fires. Plaintiff argues that fighting active fires was not an essential function of his job. Plaintiff states his position was primarily supervisory and administrative, with 50-60% of supervision time spent at a computer performing administrative work and less than 5% responding to emergency incidents and disasters. (Jones Decl. ¶ 22; Mabary Dep. 55:19-22.) Plaintiff states he was never required to respond to emergency incidents and many Fire Captains in CalFire rarely or never respond to emergency incidents. (Jones Decl. ¶ 28-29.) Plaintiff states his fuels reduction crew consisted of Forestry Technicians who performed the hands-on fieldwork while Plaintiff supervised and coordinated their activities. (Jones Decl. ¶ 24; Mabary Dep. 22:3-6, Exhibit N.) Plaintiff argues his fuels crew did not have structure-fire personal protective equipment such as SCBA or turnouts and could not be dispatched to active fire emergencies due to lack of specialized training and equipment. (Jones Decl. ¶¶ 25, 28). The fuels crew program was intentionally created to avoid pulling staff into fire incidents so fuels work could continue statewide. (Jones Decl. ¶ 23). Most fuels work involves pile burning in cool, wet seasons with large burns scheduled months in advance and are heavily staffed; they are not emergency fire line operations. (Jones Decl. ¶ 27)

In reply, CalFire argues Plaintiff’s testimony contradicts other testimony; e.g., that Plaintiff was assigned to the Dixie Fire for 16 to 18 days causing him to burn out—showing that his job duties do include emergency fire response. Despite the inconsistency, this issue requires a determination of whether CalFire negotiated with Plaintiff in good faith. (Gov. Code, § 12940(n).) Based upon the evidence presented, this court cannot make this determination without weighing evidence and determining credibility, which is improper on a motion for summary judgment.

CalFire argues Plaintiff cannot show harm as a result. However, this issue is also disputed as Plaintiff was not provided with an accommodation that would allow him to continue in his same position. The alternate position was a demotion with a pay cut and reduced retirement benefits. (Jones decl., ¶¶45-46.) CalFire argues that because it did offer Plaintiff an accommodation, that is

the end of the discussion; i.e., CalFire did not have to offer Plaintiff the accommodation he requested. However, again, this depends upon finding that CalFire negotiated in good faith, which is disputed.

Based upon the foregoing, CalFire's motion as to this cause of action is DENIED.

**C. Second Cause of Action – Failure to Provide Reasonable Accommodation (Gov't. Code section 12940 et seq.)**

Plaintiff's second cause of action alleges Cal Fire failed to provide a reasonable accommodation by not allowing him to bring his service dog to work. Under section 12940, it is an unlawful employment practice "to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee" unless the employer demonstrates doing so would impose an undue hardship. (§ 12940, subd. (m).) The essential elements of a failure to accommodate claim are: (1) the plaintiff has a disability covered by the FEHA; (2) the plaintiff is a qualified individual (i.e., he or she can perform the essential functions of the position); and (3) the employer failed to reasonably accommodate the plaintiff's disability. (*Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1192.)

CalFire argues that it did not fail to reasonably accommodate Plaintiff because Plaintiff's preferred accommodation was not reasonable. CalFire argues that allowing Walla to accompany Plaintiff to work would have prevented Plaintiff from performing the essential functions of his job. CalFire argues that it did provide a reasonable accommodation by offering to transfer him to a different position which would allow him to have Walla at work.

Based upon review of the evidence, a triable issue of material fact exists regarding whether Plaintiff's requested accommodation was reasonable under the circumstances and whether having Walla present would not have allowed Plaintiff to perform the essential functions of the job. Based upon the foregoing, Cal Fire's motion as to this cause of action is DENIED.

**D. Fourth Cause of Action – Retaliation (Gov. Code section 12940, et seq.); Fifth Cause of Action – Violation of Labor Code section 1102.5**

Plaintiff's fourth cause of action for retaliation is for violation of Government Code section 12940 et seq. It alleges CalFire retaliated against him by refusing to promote him as a result of his seeking accommodation and complaining about CalFire's violation of his rights under the FEHA. Plaintiff's fifth cause of action alleges CalFire violated Labor Code section 1102.5 when CalFire retaliated against him by refusing to promote him as a result of Plaintiff raising what he believed to be illegal acts by CalFire.

Both of these claims require that Plaintiff prove he engaged in a "protected activity" within the meaning of each statute and that such "protected activity" was causally connected to the defendant's decision to take an adverse employment action. (*Light v. Dep't of Parks & Recreation* (2017) 14 Cal.App.5th 75, 90–91 [FEHA]; *Cuevas v. SkyWest Airlines*, 17 F.Supp.3d 956, 964 (N.D. Cal. 2014) [Labor Code § 6310].) "To establish a prima facie case of retaliation under FEHA, a plaintiff must show that (1) he or she engaged in a protected activity; (2) the employer subjected the plaintiff to an adverse employment action; and (3) the protected activity and the employer's action were casually connected." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal. 4th 1028, 1042.)

CalFire argues that Plaintiff's claim based upon Labor Code section 1102.5 lacks the threshold requirement of being a "protected activity" because requesting an accommodation is not a "protected activity." However, the governing statute, Gov. Code section 12940(m), expressly includes a request for an accommodation as a basis for a claim of retaliation.

CalFire argues that Plaintiff can offer no evidence to create a triable issue of material fact that he was not selected for promotion or was denied relief from the Dixie Fire as a result of his request for an accommodation. Close proximity in time between protected activity and adverse action is often strong evidence of a retaliatory motive even without direct evidence of a retaliatory

animus. (*Le Mere v. Los Angeles Unified School District* (2019) 35 Cal.App.5th 237, 243.) Plaintiff notes the short period of time between his request for an accommodation and being screened out for a promotion support his claim. (Plaintiff’s response to CalFire’s UMF No. 86.) This is a triable issue of material fact.

Based upon the foregoing, CalFire’s motion as to this cause of action is DENIED.

**E. Sixth Cause of Action – Failure to Prevent Discrimination**

Plaintiff’s sixth cause of action alleges CalFire failed to take all reasonable steps necessary to prevent disability discrimination against him. As Plaintiff’s claim for disability discrimination remains, the motion on this cause of action must also be denied.

**II. Conclusion and Order**

CalFire’s motion for summary judgment or, in the alternative, summary adjudication is DENIED.

Plaintiff’s counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

**6. 26CV01827, Stone Street Originations, LLC v. R.-M.**

***(TENTATIVE ISSUED BY HON. JANE GASKELL)***

IF ORAL ARGUMENT IS REQUESTED, MATTER WILL BE HEARD IN DEPT. 17. PLEASE USE DEPT. 17’S ZOOM LOGIN INFORMATION.

This matter is on calendar for the petition of Stone Street Originations, LLC (“Petitioner”) for approval of the transfer of certain structured settlement payment rights.

**1. Petitions**

The original petition filed on March 9, 2026 (“Petition”) refers to the party in interest as “A.R.-M.” (Petition, ¶2.) The majority of the Petition refers to “A.R.-M.” as “Payee” or “Transferor.”

The Petition states that in 1993, Payee became entitled to certain structured settlement payments in connection with a personal injury claim. (Petition, ¶3.) The periodic payments are not listed and only stated as being “XXXX.” (Petition, ¶4.) The proposed Purchase Agreement whereby Petitioner seeks to purchase the payment rights is attached as Exhibit A to the Petition. The name of the real party in interest and the amount Petitioner seeks to purchase from the real party in interest is redacted.

On May 28, 2026, Petitioner filed a First Amended Petition (“FAP”). In the body of the FAP, the real party in interest is identified as Arnulfo Rosas-Montes (“Payee”) and the terms of the proposed transfer are set forth. (FAP, ¶¶2-4.)

**2. Procedural Issues**

“Every action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute.” (Code Civ. Proc., § 367.) “In the complaint, the title of the action shall include the names of all the parties.” (Code Civ. Proc., § 422.40.) One who is not named is not a proper party to an action. (*Fuss v. City of Los Angeles* (1958) 162 Cal.App.2d 643, 646.)

The failure to identify Mr. Rosas-Montes as a party in the title of this action is problematic for several reasons. One important issue is the right of public access to court proceedings. Among the guarantees of the First Amendment to the United States Constitution is that court proceedings are open and public. (*Department of Fair Employment and Housing v. Superior Court of Santa Clara County* (2022) 82 Cal.App.5th 105, 110.) Public access to court proceedings is essential to a

functioning democracy. It promotes trust in the integrity of the court system, and it exposes abuses of judicial power to public scrutiny. (*Id.*, at pp. 110-111.) The right to access court proceedings necessarily includes the right to know the identity of the parties. (*Id.*, at p. 111.) Without naming Mr. Rosas-Montes, his identity is not discoverable through a search of court records, obscuring his association with the requested transfer.

More fundamental is that this court obtains jurisdiction to enter an order against a person only if the person is named as a party. (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1297.) Without Mr. Rosas-Montes being a named party in the title of this action, this court is without jurisdiction to make any determinations about his rights under the FAP.

### 3. Conclusion and Order

Based upon the procedural defects, the motion is DENIED.

As no opposition has been filed, this court's minutes shall constitute the order of this court.