TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, June 13, 2025 9:00 a.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252 US (San Jose)

PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 24CV01989, 505 SR Ave. LLC v. Anderson

Defendants Eric Anderson and Urban Green Food, LLC's unopposed application for an order of this Court permitting counsel Andrew Hayes, Esq., to appear as counsel pro hac vice is **GRANTED** pursuant to California Rules of Court, Rule 9.40. Defendants shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 24CV02546, Hartman v. City of Santa Rosa

Defendant City of Santa Rosa's ("Defendant" or "City") moves for summary judgment or summary adjudication in the alternative to Plaintiff Clare Hartman's Complaint pursuant to Code of Civil Procedure ("C.C.P.") section 437c. Summary adjudication is **GRANTED in part** only as to the Second Cause of Action for Unlawful Age Discrimination, and **DENIED in part** as to the First, Third, Fourth, Fifth, and Sixth Causes of Action.

Defendant's request for judicial notice is **GRANTED**.

Defendant's objections are **OVERRULED**.

I. Material Facts

Plaintiff filed her Complaint alleging violation of the Fair Employment and Housing Act ("FEHA") in relation to her termination. (See Complaint, filed April 25, 2024.) Defendant hired Plaintiff in 1999 and was eventually appointed as Director of Planning and Economic Development on or around February 2022. In that position she reported to Assistant City Manager, Daryel Dunston ("Dunston") who reported to City Manager, Maraskeisha Smith ("Smith"). (Undisputed Material Facts ["UMF"], Nos. 1–2.) On August 21, 2023, Plaintiff requested leave for August 24, 2023, to seek treatment for her depression, which was continuously worsening, and it was granted by Dunston. (UMF, No. 2.) On September 11, 2023, Plaintiff submitted a doctor's note to Serena Lienau ("Lienau"), Administrative Services Officer, in support of her request for accommodation to obtain weekly therapy under the California Family Rights Act ("CFRA") and the Family Medical Leave Act ("FMLA") detailing Plaintiff's depression diagnosis and her doctor's recommended time off work to complete a three-week intensive program. (UMF, Nos. 12, 14–15.) Lienau approved Plaintiff's requested accommodation under the FMLA to see a therapist every week. (UMF, Nos. 13, 15–16.) On September 18, 2023, Plaintiff was terminated in a meeting with Dunston and Smith. (UMF, No. 10.)

The Parties dispute as to Plaintiff's job responsibilities, her productivity, and the reasoning behind her termination. (UMF, Nos. 3–9, 11, 28, 40–42; Plaintiff's Additional Material Facts ["AMF"] 178–215.) Defendant presents evidence that Plaintiff was not performing her job duties to Smith's expectations even with the intervention of Smith and Dunston. (UMF, Nos. 4–9.) However, Defendant states that Plaintiff was an at-will employee so her professional performance is irrelevant and immaterial. (AMF, Nos. 1–6, 14–17 Responses.) Plaintiff asserts that she consistently maintained a "yes-attitude," that Dunston testified that Plaintiff did not display any significant performance issues before her termination, and that Smith instructed HR to prepare Plaintiff's termination paperwork one day after Plaintiff filed her FMLA accommodation paperwork. (UMF, Nos. 4–9 Responses.) Defendant claims that Smith did not base her decision to terminate Plaintiff on the basis of her gender or age. (UMF, Nos. 28, 40–42.) Plaintiff contends that her successor is a male five years younger with a lower costing pension than Plaintiff. (UMF, Nos. 28, 40–42 Responses.)

Defendant filed the instant motion for summary judgment, or summary adjudication in the alternative, on the basis that (1) the First, Second, Third, and Fifth Causes of Action are barred because Plaintiff's termination was non-discriminatory based upon job performance; (2) the Fifth Cause of Action is barred because Plaintiff's termination was unrelated to Plaintiff's request for accommodation; and (3) the Fourth and Sixth Causes of Action fail because the requested accommodation was granted.

II. Governing Law

A. Requests for Judicial Notice

Judicial notice of official acts is statutorily appropriate. (Evid. Code § 452(c).) The court may take judicial notice of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Evid. Code § 452(h).) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

B. Summary Judgment or Adjudication

Pursuant to C.C.P. section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (C.C.P. § 437c(c).) Per C.C.P. section 437c(f), a party may move for summary adjudication "as to one or more causes of action within an action, one or more affirmative defenses… if the party contends that… that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs."

C. Unlawful Employment Practices under FEHA

California Government Code section 12940 deems it as an unlawful employment practice to discriminate, harass, or terminate the employment of an employee based on their race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decision making, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. The section does not prohibit an employer from refusing to hire an individual with a physical or mental disability or medical condition on the basis that it prevents the employee from performing their essential duties even with reasonable accommodations in a manner that would not endanger the employee's or others' health or safety. (Govt. Code § 12940(a)(1)–(2).)

California courts apply a burden-shifting approach in evaluating claims of discrimination under FEHA pursuant to *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792. Plaintiff must establish a prima facie case of discrimination, which then shifts the burden to the employer to rebut the presumption of discrimination by offering a legitimate, nondiscriminatory reason for the adverse employment action. (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 355–56.) To state a prima facie case of discrimination under FEHA, a plaintiff must show that: "(1) he was a member of a protected class, (2) he was qualified for the position he sought or was performing competently in the position he held, (3) he suffered an adverse employment action ... and (4) some other circumstance suggests discriminatory motive." (*Id.* at 355.) An employer meets its initial burden in moving for summary judgment by presenting evidence that (1) plaintiff failed to prove one or more elements of its prima facie case or (2) the employer acted for a legitimate, nondiscriminatory reason. (*Id.* at 355–56.) A "legitimate, nondiscriminatory reason" is defined as one that unrelated to unlawful bias and, if true, would preclude a discrimination finding. (*Id.* at 358.) If the employer meets its burden, the burden shifts back to the plaintiff to show that the

employer's stated reason was a pretext for unlawful animus, creating a triable issue of fact showing in order to avoid summary judgment. (*Husman v. Toyota Motor Credit Corp.* (2017) 12 Cal.App.5th 1168, 1185–1186.) "If triable issues of material fact exist whether discrimination was a substantial motivating reason for the employer's adverse employment action, even if the employer's professed legitimate reason has not been disputed, the FEHA claim is not properly resolved on summary judgment." (*Id.* at 1186.)

III. Analysis

A. Defendant's Request for Judicial Notice

In support of its motion for summary judgment/adjudication, Defendant requests judicial notice of a Sonoma County Press Democrat news article from February 2, 2023, entitled "Most Bay Area cities missed the deadline to submit their housing plans. New penalties could be in store." The request is **GRANTED** pursuant to Evidence Code section 452(h).

B. Defendant's Evidentiary Objections to Plaintiff's Declaration

Defendant objects to Plaintiff's Declaration as lacking foundation, hearsay, and speculation. Defendant's objections are **OVERRULED**.

C. Defendant's Motion for Summary Judgment/Summary Adjudication

1. Second Cause of Action – Disability, Age, and Gender Discrimination

Defendant argues that Plaintiff's Second Cause of Action fails because she cannot show any adverse actions were taken against her on the basis of disability, gender, or age. (Motion for Summary Judgment ["MSJ"], 14:19–26.) Defendant asserts that Plaintiff cannot establish a prima facie case of disability discrimination because Smith did not know Plaintiff had a disability and Dunston, who knew about Plaintiff's health issues, was not a part of the decision to terminate Plaintiff. (MSJ, 16:4–17:10.) Regarding gender discrimination, Defendants argue that Plaintiff fails to present admissible evidence that she was discriminated against of the basis of gender because Plaintiff was the first woman to hold her position in the City's history and that Smith is a woman herself and did not consider Plaintiff's gender upon deciding to terminate her. (MSJ, 17:13–18:1.) Regarding age discrimination, Defendant's claim that Plaintiff's assertion that her termination saved Defendant money given her age (52) and years of service is false because appointing Plaintiff's successor, while five years younger, cost the City more money than it would have cost to keep Plaintiff as the Director. (MSJ, 18:4–19:5.)

In Opposition, Plaintiff argues that Dunston was aware of Plaintiff's diagnosis and her consideration of taking Kaiser's recommendation that she take three weeks off work for intensive outpatient treatment. (Opposition, 11:12–21.) Plaintiff further argues that a reasonable juror could infer that Dunston communicated this disability and potential leave to Smith as Dunston was Plaintiff's direct supervisor and could have communicated Plaintiff's disability and possible three-week leave to Smith in their regular meetings. (Opposition, 11:22–12:7.) For gender discrimination, Plaintiff argues that she presents evidence that would allow a reasonable

juror to find that Defendant's decision to terminate Plaintiff was influenced by stereotypes at the intersection of sex and disability, including perceptions about emotional stability and mental health. (Opposition, 14:1–20.) For age discrimination, Plaintiff contends that Defendant's decision to terminate Plaintiff happened during times of budgetary pressures and this coupled with Plaintiff's age and associated pension costs contributed to Defendant's decision-making. (Opposition, 14:23–15:3.)

In Reply, Defendant asserts whether its justifications for Plaintiff's termination are pretextual are irrelevant because Plaintiff was an at-will employee. (Reply, 6:5–17.)

The Court disagrees with Defendant's unsupported argument that whether its justifications for Plaintiff's termination are pretextual are irrelevant because Plaintiff was an at-will employee. In fact, whether the employer's justifications are pretextual for unlawful animus is "the sine qua non of a discrimination claim." (*Husman, supra,* 12 Cal.App.5th at 1186.)

Here, Plaintiff is a member of a protected class—having a disability (depression), being a woman, and being over the age of 40—and has presented evidence that she was performing competently as Director of Planning and Economic Development. (Hartman Declaration, ¶¶ 5, 7, 8, 11, 12, 13, 22, Exhibits 1–3; Dunston Deposition, 175:15–178:2.) Additionally, Plaintiff faced adverse action by being terminated. Regarding disability, the timing of Plaintiff's requested accommodations and approval of such accommodations compared to her termination suggest a discriminatory motive. While Defendant presents evidence that Smith was unaware of Plaintiff's disability and recent accommodation request, there is a triable issue of fact as to whether disability discrimination was a substantial motivating reason for Plaintiff's termination due to the timing of Defendant's actions. Regarding gender, whether Plaintiff was resistant to Smith's counselling and broke down in tears in meetings (UMF, No. 5) is a pretext for unlawful animus creates a triable issue of fact as there is uncertainty as to whether that fact applies to a possible pretextual animus for disability or gender discrimination. This UMF suggests that Defendant's decision to terminate Plaintiff could have been influenced by gender stereotypes about emotional stability and mental health issues. Regarding age discrimination, Plaintiff fails to show that there was some other circumstance suggesting discriminatory motive for Plaintiff's termination based on her age. While Plaintiff's successor was five years younger than her, Defendant presented evidence showing that Plaintiff's successor was employed by Defendant for 27 years (compared to Plaintiff's 24 years of service) and thus would have been more cost effective to retain Plaintiff rather than appoint her successor. (Blanquie Declaration, ¶¶ 4–8.) Therefore, Plaintiff fails to show a prima facie case for age discrimination.

Summary adjudication is **GRANTED** as to Plaintiff's claim for age discrimination but is **DENIED** as to disability and gender discrimination under the Second Cause of Action.

2. First Cause of Action – Wrongful Termination

Defendant contends that the underlying failure of Plaintiff's FEHA claim necessitates her claim for wrongful termination to fail. (MSJ, 19:8–15.)

However, as found above, Plaintiff has demonstrated triable issues of fact regarding her underlying FEHA claims for disability and gender discrimination. Therefore, Plaintiff's claim for wrongful termination survives summary adjudication and summary adjudication is **DENIED** as to the First Cause of Action for wrongful termination.

3. Third Cause of Action – Failure to Take Reasonable Steps to Prevent Discrimination

Defendants argue that Plaintiff's Third Cause of Action fails because Plaintiff failed to show discrimination and Defendant lacked notice of alleged improper conduct. (MSJ, 19:20–20:13.) Defendants fail to present any persuasive caselaw to support this proposition.

In her opposition, Plaintiff asserts that FEHA requires an employer to take all reasonable steps necessary to prevent discrimination from occurring. (Opposition, 16:12–17:15.)

Here, as determined above, Plaintiff has demonstrated triable issues of fact regarding her underlying FEHA claims for disability and gender discrimination and those issues survive summary adjudication. While Defendant argues that notice to the employer is required, Defendant provides no legal authority for its contention. The relevant case cited in Defendant's Reply, *Trujillo v. N. Cnty. Transit Dist.* (1998) 63 Cal.App.4th 280, does not support Defendant's argument that Plaintiff's claim must fail because it lacked notice of the alleged improper conduct. Additionally, this portion of Defendants' brief cites to various unidentified paragraphs within the Clearly and Dunston declarations which further detracts from their argument. Therefore, summary adjudication is **DENIED** as to the Third Cause of Action.

4. Fourth Cause of Action – Failure to Provide Reasonable Accommodation

Defendant contends that Plaintiff's claim for failure to provide reasonable accommodation must fail because her request for accommodation was approved. (MSJ, 20:16–21:7.)

In opposition, Plaintiff argues that Defendant was required to proactively engage and facilitate the requested accommodations, which Plaintiff claims was more than the single two-hour absence. (Opposition, 17:18–18:16.) Plaintiff claims Defendant interfered with her accommodation request because she was terminated before she could request for leave to complete Kaiser's recommended three-week intensive treatment program. (Opposition, 18:17–25.)

In its Reply, Defendant argues that Plaintiff did not make an accommodation request for a three-week intensive, in-person therapy program and that Plaintiff's cited cases do not support her argument. (Reply, 8:14–10:22.)

Here, Dunston first approved Plaintiff's requested time off on August 24, 2023, to attend a therapy visit. (Dunston Declaration, ¶¶ 7–8, Exhibits B–C; UMF, No. 12.) Lienau eventually approved Plaintiff's request to have the FMLA cover her therapy visits after she submitted a doctor's note supporting a series of therapy sessions on September 11, 2023. (Hartman Declaration, ¶¶ 34–35, Exhibits 5–6.) While Plaintiff told Lienau that a letter "supporting a long-

term program [was] forthcoming" in a communication on September 11, 2023, and that she told Dunston about the recommended three-week program on August 21, 2023, Plaintiff argues that she never was able to submit such accommodation because she was terminated the next week. (Hartman Declaration, Exhibit 6; Dunston Declaration ¶¶ 7–8, Exhibits B–C; UMF, No. 12.) It is uncertain whether Plaintiff had sufficient time to make the request for accommodation for the three-week program and whether Plaintiff was terminated in part so that she was unable to request three weeks of leave. These are triable issues of fact and survive summary adjudication. Summary adjudication as to the Fourth Cause of Action is **DENIED**.

5. Fifth Cause of Action – Retaliation for Requesting Accommodation

Defendant argues there is no causal nexus between her termination and any protected activity because Smith was the sole decision-maker for firing Plaintiff and she did not know of Plaintiff's requested accommodation. (MSJ, 21:10–22:12.)

Plaintiff asserts that she has presented substantial evidence that Smith has knowledge of Plaintiff's requested accommodation. (Opposition, 18:28–19:10.)

Here, as discussed above, there is a triable issue of fact as to whether disability discrimination was a substantial motivating reason for Plaintiff's termination due to the timing of Defendant's actions. Therefore, summary adjudication as to the Fifth Cause of Action is **DENIED**.

6. Sixth Cause of Action – Failure to Engage in Interactive Process

Defendant argues that Plaintiff's requested accommodation was granted and that there was no need for further interactive process. (MSJ, 22:15–22.)

In Opposition, Plaintiff argues that Defendant had an obligation to engage in the interactive process beyond granting an initial accommodation and persisted whenever the provided accommodation proved inadequate or ineffective. (Opposition, 19:13–20:11.)

"To prevail on a claim for failure to engage in the interactive process, the employee must identify a reasonable accommodation that would have been available at the time the interactive process occurred." (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 379.)

Here, Plaintiff argues that she told Dunston and Lienau that her work demands prevented her from attending therapy sessions that had been approved but failed to take any further action to engage with Plaintiff and told her to "stay on track" with her work. (AMF, 201, 205.) While Defendant granted the requested accommodation for a series of therapy sessions, it terminated Plaintiff one week before her potential need for accommodation knowing that Plaintiff would be making such a request. (Hartman Declaration, Exhibit 6; Dunston Declaration ¶¶ 7–8, Exhibits B–C; UMF, No. 12.) Therefore, Plaintiff has presented evidence of a triable issue of fact as to whether Defendant engaged in the interactive process since it terminated her before it could become a meaningful interactive process. Summary adjudication as to the Sixth Cause of Action is **DENIED**.

7. CFRA Retaliation

Plaintiff argues that she intends to seek leave to amend her Complaint to include a cause of action for CFRA retaliation. As this request is not squarely before the Court in this motion, the Court disregards this request and its associated arguments.

IV. Conclusion

Based on the foregoing, summary adjudication is **GRANTED in part** only as to the Second Cause of Action for Unlawful Age Discrimination, and **DENIED in part** as to the First, Third, Fourth, Fifth, and Sixth Causes of Action. Defendant shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3-4. 24CV07293, County of Sonoma v. Koelker

The County of Sonoma ("Plaintiff") commenced this abatement action against Defendant Karen Koelker ("Defendant") on December 3, 2024. Plaintiff then served the Summons and Complaint via substituted service on December 17, 2024. Per the Proof of Service ("POS"), Plaintiff effectuated substituted service on Defendant's niece, Shauna Armstrong.

The matter is currently on calendar for the following: (1) Defendant's Motion to Set Aside the Default pursuant to Code of Civil Procedure ("C.C.P.") section 473.5, and (2) Plaintiff's Motion for Default Judgment and Permanent Injunction.

Impeding the Court's determination on both motions is a POS that does not mention at what location substituted service occurred and what mailing address was then used to complete service pursuant to CCP §415.20. In order to establish *prima facie* compliance with CCP §415.20, additional information is needed.

Therefore, APPEARENCES ARE REQUIRED on both motions.

****This is the end of the Tentative Rulings.*****