SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 6
Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

October 29, 2024
9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

ORAL ARGUMENT

Before 4:00 PM today you must notify the:

(1) Court by calling (408) 808-6856 and

(2) Other side by phone or email that you will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

APPEARANCES

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COURT REPORTERS

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LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	22CV396331	Jon Balli vs Planned Parenthood Mar Monte, Inc. et al	Defendants' motion for summary adjudication is GRANTED, IN PART. Scroll to line 1 for complete ruling. Court to prepare formal order.
2	22CV406672	Glenn Steiner vs Maria Norins et al	The motion for requests for admission be deemed admitted was already addressed in August. The Court cannot locate any additional motion, and this date is therefore off calendar.
3	19CV351016	John Fernandez et al vs General Motors, LLC et al	The Court is not aware of authority for finding a settlement not to be in good faith where the settling parties do not seek a finding of good faith. Put another way, there does not appear to be a dispute for the Court to decide here. There is no evidence that the settlement with the driver was ruled a good faith settlement in the prior action. There is also no impediment to General Motors seeking contribution from the driver, which is the purpose of Code of Civil Procedure section 877. This motion is therefore denied without prejudice to General Motors making arguments regarding the driver. Court to prepare formal order.
4	24CV430590	Guaranteed Rate Affinity, LLC vs Juan Alegria	Petitioner's motion to compel arbitration is GRANTED. A notice of motion with this hearing date and time was served by U.S. mail on September 23, 2024. Respondent failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Petitioner seeks repayment of Respondent's sign on bonus for his alleged failure to remain employed with Petitioner for a full two years. Petitioner provides a copy of a "Voluntary Mutual Agreement to Arbitrate Claims" signed through DocuSign by both parties. This is prima facie evidence of the existence of an arbitration agreement, which evidence Respondent fails to refute. (*Condee v. Longwood Management Corp.* (2001) 88 Cal. App. 4th 215, 218; *Gamboa v. Northeast Community Clinic* (2021) 72 Cal. App. 5th 158, 165 (once moving party produces prima facie evidence of a written arbitration agreement by attaching the agreement or summarizing the terms in a motion to compel, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement.); California Rules of Court, Rule 371.) On this record, the Court is required to send this matter to arbitration. (Code Civ. Pro. § 1281.2 ("the court shall order a matter to arbitration if it determines that there is an agreement to arbitrate and (1) the agreement has not been waived or (2) the agreement has not been revoked."); *Cinel v. Barna* (2012) 206 Cal.App.4th 1383, 1389.) Accordingly, this case is ordered to arbitration, the matter is stayed pending the outcome of arbitration, and a status conference regarding arbitration is set for May 8, 2025 at 10:00 a.m. in Department 6.

5	19CV355094	Persolve Legal Group, LLP vs ISMAIL KANU	Defendant's motion to set aside default and default judgment is DENIED. Defendant's motion is not timely, and his representation that he was not aware of a lawsuit or judgment until September 2024 is not credible. Default was entered against Defendant on February 17, 2022, and judgment was entered on February 13, 2023. While Defendant swears that he never resided at the Topaz address where notice of these papers was sent, Defendant was plainly on notice of a lawsuit and judgment at least by September 25, 2023 when a notice of a November 9, 2023 hearing regarding and Persolve's opposition to his claim of exemption was sent to 737 South 2d Street, Unit 3 in San Jose. Persolve's September 22, 2023 opposition states: "Judgment Debtor has filed a claim of exemption as a result of wage garnishment ("WG")served on his employer. The WG is the result of a Judgment entered against Judgment Debtor on 2/2/2023 in favor of Judgment Creditor. Judgment Debtor has recently raised Identity Theft concerns. As a result, Judgment Creditor submits this opposition to protect a future hearing date pending the outcome of the Identity Theft investigation." No party appeared at the November 9, 2023 hearing and it therefore was taken off calendar. Code of Civil Procedure section 473.5 permits relief to be granted two years after entry of default judgment or 180 days after service of notice of entry of judgment, whichever is earlier. Notice of entry of judgment was served on February 13, 2023. Thus, a motion to set aside under this section would have to have been filed by August 12, 2023. Defendant's motion was not filed until more than a year later. Civil Code section 1788.61 required Defendant to file a motion to set aside the earlier of six years after entry of default or default judgment or 180 days after the first actual notice of the action. Here, Defendant was on notice of the action at least by September 25, 2023. Thus, a motion to set aside under this section would have to have been filed by March 23, 2024. Civil Code section 1788.61 also provides: (B) (i) In the case of identity theft, the person alleging that they are a victim of identity theft shall provide the court with either a copy of a Federal Trade Commission identity theft report or a copy of a police report filed by the person alleging that they are the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt associated with the judgment. (ii) In the case of mistaken identity, the moving party shall provide relevant information or documentation to support the claim that they are not the party named in the judgment or is not the person who incurred or owes the debt. Defendant's motion does not include these required materials. Finally, while the Court does have inherent equitable authority to grant the relief sought where it finds extrinsic fraud, extrinsic mistake, or duress, the record here does not support such a finding. Defendant's motion provides no evidence of identity theft other than his conclusory statement, and his declaration claims—on information and belief—that he may have co-signed for the residence where the papers were served. Thus, the place where the papers were served was a place associated with the Defendant, and there is no evidence in the record that the person who received the papers on behalf of Defendant failed to deliver them or understand what they were. What this record shows is that Defendant was served at a residence associated with him through a person who knew him and did not deny that he resided there, and learned about the action at least by September 2023 and took no action to set aside the default/default judgment until a year later. This case was filed over five years ago on September 16, 2019, thus the Court disagrees that setting aside the default and default judgment after so much time has passed would not prejudice Plaintiff. Accordingly, Defendant's motion is DENIED. Court to prepare formal order.

6	19CV356261	Sherry Chuang vs Shiuh Chuang et al	Defendant/Cross-complainant Mei Haw Chuang's motion for preliminary injunction to install security cameras at the Pomona Property is DENIED. The stated basis for this request is to protect rent money. That is not an appropriate basis for preliminary injunctive relief. Whether Defendant/Cross-complainant is owed rent is something that can be determined by a trier of fact. There is also no evidence before the Court that factual circumstances have changed since the Honorable Christopher Rudy denied Defendant/Cross-complainant's motion to appoint a receiver. For the reasons set forth in that October 13, 2022 order, this motion must also be denied. Court to prepare formal order.
7	22CV396495	Silicon Valley Group, Inc. vs San Jose Demolition, Inc.	Joseph M, Sweeny, William M. Kaufman, and Sweeny Mason LLP's motion to withdraw as counsel for SV Group, Inc. and SVG Contractors, Inc. are GRANTED for this case. A company, regardless of corporate form, cannot represent itself in civil litigation in California. (See *Clean Air Transp. Sys. v. San Mateo County Transit Dist.* (1988) 198 Cal. App. 3d 576, 578 ("[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent."); *Ferruzzo v. Superior Court* (1980) 104 Cal. App. 3d 501, 503 ("The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court."); *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal. 3d 724, 727 ("the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record in behalf of another person, including a corporate entity.") Accordingly, on February 27, 2025 at 10:00 a.m. in Department 6, SV Group, Inc. and SVG Contractors, Inc. are ordered to appear and show cause why their answers should not be stricken and default be entered against them for failure to obtain counsel. Court to use proposed orders on file.
8	23CV423808	ARCHON DESIGN SOLUTIONS, INC. vs GLOBAL SEMICONDUCTOR ALLIANCE	Continued to November 7, 2024 per stipulation.
9	23CV427633	David Arken et al vs Tesla Energy Operations et al	The Arken's motion is DENIED. The relief sought in the motion was plainly addressed in both the arbitrator's interim award and the Court's February 13, 2024 order confirming that award. In fact, the focus of the motion practice around the Arken's petition to confirm the award was this language: "Roof repair of ½ replacement if necessary $10,800". This Court found the Arkens were entitled to be paid this amount because it was part of the $13,504 the arbitrator awarded for Tesla's breach of the HIA. Accordingly, the Arkens' motion is DENIED. Court will prepare formal order. As petitioners are self-represented, the parties are ordered to appear at the hearing.
10	24CV430511	Wells Fargo Bank, N.a. vs Avidan Gaona	Wells Fargo Bank, N.A.'s motion to deem requests for admissions admitted is GRANTED. A notice of motion with this hearing date was served on Defendant by regular mail on July 30, 2024. Defendant failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff served requests for admission on Defendant by mail on March 28, 2024. To date, Defendant served no responses. A party served with requests for admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the requests for admission deemed admitted—as Defendant has done here, the Court must order the requests for admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, Plaintiff's motion is granted, and the matters set forth in Plaintiff's requests for admission are deemed admitted. Court to prepare formal order.
11-12	24CV434229	Mohammad Ghanbaran vs Rex Bennett	Defendant's demurrer to the First Amended Complaint is SUSTAINED WITHOUT LEAVE TO AMEND. Scroll to lines 11-12 for complete ruling. Court to prepare formal order. As Plaintiff is self-represented, the parties are ordered to appear at the hearing.

13	24CV438636	Kandie Gonsalves vs Eric Griesshaber et al	Justin Farahi's motion to withdraw as counsel of record for Plaintiff Kandie Gonsalves is GRANTED. The withdrawal will be effective upon counsel's filing of the proof of service of the formal order, which formal order the Court will prepare using the proposed order on file.

Calendar Line 1
Jon Balli v. Planned Parenthood Mar Monte, Inc., et al. Case No. 22CV396331

Before the Court is defendant Planned Parenthood Mar Monte's ("PPMM") motion for summary judgment, or in the alternative summary adjudication against plaintiff Jon Balli.[1] Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from Plaintiff's alleged wrongful termination. According to the first amended complaint ("FAC"), on October 7, 2019, Defendants hired Plaintiff as a voice of internet protocol ("VoIP") architect. (FAC, ¶ 24.) When he was hired, he informed LaValle that he suffered from several disabilities and explained how they could affect his work. (FAC, ¶ 37.) Defendants failed to accommodate his known disabilities. (FAC, ¶ 39.)

Plaintiff's work was overseen by the interim Vice President of Information Technology, Jessica LaValle ("LaValle"). (FAC, ¶ 27.) Plaintiff alleges LaValle repeatedly lost control her of emotions with Plaintiff and singled him out for negative treatment. (FAC, ¶¶ 43-44.) On November 15, 2019, Plaintiff informed LaValle about a serious data breach of Personal Health Information ("PHI") and she said she could not do anything because it would risk PPMM's accreditation status with PPFA. (FAC, ¶¶ 46-47.) After Plaintiff insisted action was required, she threatened him and informed him that he would be terminated if he disobeyed her. (FAC, ¶ 48.)

In the winter of 2019, Plaintiff accepted a full-time position with PPMM and in mid to late January 2020, he reported the PHI breach to PPMM's Chief Medical Officer Laura Dalton ("Dalton") and its Chief Administrative and Financial Officer Tom Motsiff ("Motsiff"). (FAC, ¶¶ 49-51.) On January 28, 2020, he reported the breach to PPMM's Interim General Counsel and Chief Compliance Officer Kathy Fritz ("Fritz"). (FAC, ¶ 52.) On January 29, 2020, Plaintiff was suspended from work and his information technology rights were revoked. (FAC, ¶¶ 56-57.) That day he complained to the Senior Human Resources Director Marian Robinson ("Robinson")

[1] The Court will refer to PPMM and Planned Parenthood Federation of America, Inc. ("PPFA") collectively as "Defendants."

and the chief of Staff Andrew Adams ("Adams") about the breach. (FAC, ¶¶ 58-59.) On February 12, 2020, Defendants wrongfully terminated Plaintiff. (FAC, ¶ 62.)

Plaintiff initiated this action on March 24, 2022 and on March 24, 2023 filed the FAC, asserting (1) retaliation (Lab. Code, § 1102.5), (2) retaliation (Lab. Code, § 98.6), (3) discrimination, (4) failure to prevent discrimination and harassment, (5) failure to engage in interactive process, (6) failure to provide reasonable accommodation, (7) harassment, (8) slander, and (9) libel.[2] On May 30, 2024, PPMM filed the instant motion, which Plaintiff opposes.

II. Evidentiary Objections

PPMM objections 1-5, 7-9, 15-25, 26, 34, and 39 are OVERRULED and objections 6, 10-14, 27-33, 35-38, and 40-42 are SUSTAINED.

III. Legal Standard

Any party may move for summary judgment. (Code of Civ. Proc., §437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) The motion "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." (Code of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 843.) The object of the summary judgment procedure is "to cut through the parties pleading" to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra*, 25 Cal.4th at p. 843.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (*Aguilar, supra*, 25 Cal.4th at p. 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in questions. (*Aguilar, supra*, 25 Cal.4th at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (Code of Civ. Proc., 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 850.) A triable issue of material fact exists "if, and only if, the evidence would allow of reasonable trier of fact to find the underlying facts in favor of the party opposing the motion in accordance with the

[2] On April 24, 2024, Plaintiff filed a request to dismiss the fifth and sixth causes of action.

applicable standard of proof." (*Aguilar, supra*, 25 Cal.4th at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id*. at p. 843.)

"Another way for a defendant to obtain summary judgment is to 'show' that an essential element of plaintiff's claim cannot be established. Defendant does so by presenting evidence that plaintiff 'does not possess and cannot reasonably obtain, needed evidence' (because plaintiff must be allowed a reasonable opportunity to oppose the motion)." (*Aguilar, supra,* 25 Cal.4th at pp. 854-855.) "Such evidence usually consists of admissions by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action." (*Ibid.*)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra*, 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id*. at 843.)

Pursuant to Code of Civil Procedure section 437c, PPMM moves for summary judgment against Plaintiff, or in the alternative, summary adjudication of the first, second, third, fourth, seventh, eighth, and ninth causes of action.

IV. Summary Judgment/Adjudication in FEHA Discrimination/Retaliation Cases

Special rules govern the allocation of the burden of proof on motions for summary judgment in wrongful termination and employment discrimination cases, under both federal and state law. State courts follow the approach taken by federal courts in these cases. (*Moore v. Regents of Univ. of Calif.* (2016) 248 Cal.App.4th 216, 233.) Because direct evidence of discrimination is seldom available, courts use a system of shifting burdens as an aid to the presentation and resolution of such cases both at trial and on a motion for summary judgment. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 354-355 (*Guz*).) "California has adopted a three-stage burden-shifting test established by the United States Supreme Court for trying employment discrimination claims that are based on the disparate treatment theory. Under this '*McDonnell Douglas* test,' (1) the plaintiff must establish a prima facie case of discrimination; (2) if the plaintiff is successful, the employer must offer a legitimate nondiscriminatory reason

for its actions; and (3) if the employer produces evidence on that point, the plaintiff must show that employer's reason was a pretext for discrimination." (*Trop v. Sony Pictures Entertainment, Inc.* (2005) 129 Cal.App.4th 1133, 1144 [citations omitted]; see also *King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433 (*King*).) CFRA retaliation claims are also subject to the *McDonnell Douglas* test. (See *Bareno v. San Diego Community College Dist.* (2017) 7 Cal.App.5th 546, 560 (*Bareno*).)

When the employer is the moving party, the initial burden rests with the employer to show that no unlawful discrimination occurred. (Code Civ. Proc., §437c(p)(2); See *Guz*, *supra* at pp. 354-355; *Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 309; *McGrory v. Applied Signal Technology, Inc.* (2013) 212 Cal.App.4th 1510, 1523 [employee has no obligation to produce evidence until defendant "has established either the existence of a complete defense or the absence of an essential element of plaintiff's claim."].) The employer may do this by presenting admissible evidence either: negating an essential element of the employee's claim; or showing some legitimate, nondiscriminatory reason for the action taken against the employee. (*Caldwell v. Paramount Unified School Dist.* (1995) 41 Cal.App.4th 189, 202-203 (*Caldwell*).) An example of negating an essential element would be establishing that no adverse employment action occurred.

An employer may also "move for summary judgment against a discrimination cause of action with evidence of a legitimate, nondiscriminatory reason for the adverse employment action. A legitimate, nondiscriminatory reason is one that is unrelated to prohibited bias and that, if true, would preclude a finding of discrimination. The employer's evidence must be sufficient to allow the trier of fact to conclude that it is more likely than not that one or more legitimate, nondiscriminatory reasons were the sole basis for the adverse employment action." (*Featherstone v. Southern California Permanente Medical Group* (2017) 10 Cal.App.5th 1150, 1158 (*Featherstone*) [citations omitted].) The burden is then on the plaintiff employee to rebut with evidence raising an inference that intentional discrimination occurred. "The stronger the employer's showing of a legitimate, nondiscriminatory reason, the stronger the plaintiff's evidence must be in order to create a reasonable inference of a discriminatory motive." (*Id*. at p.

1159.) Summary judgment for the employer should be granted where, "given the strength of the employer's showing of innocent reasons, any countervailing circumstantial evidence of discriminatory motive, even if it may technically constitute a prima facie case, is too weak to raise a rational inference that discrimination occurred." (*Guz*, *supra*, at p. 362.)

If the employer meets the initial burden, to avoid summary judgment the employee must produce "substantial responsive evidence that the employer's showing was untrue or pretextual" thereby raising at least an inference of discrimination. (*Hersant v. Cal. Dept. of Social Services* (1997) 57 Cal.App.4th 997, 1004-1005 (*Hersant*).) A plaintiff's "suspicions of improper motives . . . primarily on conjecture and speculation" are not sufficient to raise a triable issue. (*Kerr v. Rose* (1990) 216 Cal.App.3d 1551, 1564.) Evidence showing facts inconsistent with the employer's claimed reasons tends to prove the employer's discriminatory intent; that the stated reason was mere pretext. (*Martin v. Lockheed Missiles & Space Co.* (1994) 29 Cal.App.4th 1718, 1735; *Reeves v. MV Transp., Inc.* (2010) 186 Cal.App.4th 666, 675. "Pretext" does not require proof that discrimination was the only reason for the employer's action. It is enough that discrimination was a determinative factor; i.e., that discriminatory intent was a substantial motivating factor in the employer's decision to take the adverse action. (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 232 (*Harris*); *Mendoza v. Western Med. Ctr. Santa Ana* (2014) 222 Cal.App.4th 1334, 1341-1342.) A "plaintiff's subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations." (*King, supra,* 152 Cal.App.4th at p. 433; see also *Doe v. Dept. of Corrections & Rehabilitation* (2019) 43 Cal.App.5th 721, 733, quoting *King*.)

V. Analysis

PPMM submits the following undisputed material facts: In August or September 2019, Plaintiff was recruited by Align Technical Resources ("Align") as a W-2 employee to fill a temporary VoIP architect position with PPMM. (PPMM's Undisputed Material Facts ("UMF"), No. 1.) He was hired after an interview with LaValle, and he began on October 7, 2019. (PPMM's UMF, Nos. 2-4.) His role was all related to VoIP to address server issues. (PPMM's UMF, No. 5.) Plaintiff informed LaValle of his medical conditions and disabilities within 30 days of his

employment. (PPMM's UMF, No. 6.) PPMM's KeePass database maintained every employee's log-in and password—it contained confidential information. (PPMM's UMF, Nos. 7-8.) Its policy prohibits employees from downloading, copying, or transporting confidential information or documents onto laptops, C drive, USB sticks, thumb drives, or other portable devices or media for security reasons. (PPMM's UMF, No. 9.) Downloading the KeePass database to a laptop was a serious security issue and violated PPMM's policies and procedures. (PPMM's UMF, No. 10.) Plaintiff was not supposed to access the KeePass database as it was not his department, and he was not required to maintain it. (PPMM's UMF, No. 11.)

LaValle was "notorious for being hot, cold, and all over the place." (PPMM's UMF, No. 12.) She could oscillate between being dismissive or denigrating and effusive and appreciative. (PPMM's UMF, No. 13.) She was authoritarian in her decision making, dismissive of contrary opinions, tended to micromanage, and was averse to criticism. (PPMM's UMF, No. 14.) She would make comments Plaintiff perceived as denigrating by publicly stating Align's rate for Plaintiff and commenting, "[t]his is what we pay for? This is how much money you make? People that make this kind of money don't laugh like this." (PPMM's UMF, No. 15.) She made similar comments about other Align contractors and criticized them for laughing or having a good time. (PPMM's UMF, No. 16.) LaValle treated contractors differently than PPMM employees, holding them to more stringent standards because they were paid more than PPMM employees and she had a turbulent relationship with all Align contractors. (PPMM's UMF, Nos. 17-18.)

Around December 2019 and January 2020, Plaintiff relayed his ongoing issues with LaValle to Align. (PPMM's UMF, No. 20.) Plaintiff believes that in November of 2019, LaValle made a verbal offer to covert him from a contractor to a permanent PPMM employee and she worked with Human Resources to finalize the terms of the offer. (PPMM's UMF, Nos. 21-22.) During the process, LaValle was supportive of Plaintiff and tried to do everything she could to negotiate the best offer to him. (PPMM's UMF, No. 23.) On January 28, 2020, Plaintiff scheduled a meeting with Fritz to discuss his compliance concerns. (PPMM's UMF, No. 24.) During the meeting, Plaintiff identified numerous potential security concerns and suspected breaches of PPMM's IT systems and Fritz thanked him for bringing those issues to her attention. (PPMM's

UMF, Nos. 25-26.) She agreed, at Plaintiff's urging, PPMM would hire an outside cybersecurity firm to investigate, but declined his offer to take part in the investigation. (PPMM's UMF, No. 27.)

On January 30, 2020, following the meeting, PPMM entered an agreement with a cybersecurity firm. (PPMM's UMF, No. 28.) On January 29, 2020, Plaintiff reported to Fritz that his administrative rights had been modified, which he thought was in retaliation for the January 28 meeting. (PPMM's UMF, No. 29.) His concern was related to his January 29 conversation with Robinson. (PPMM's UMF, No. 30.) Pursuant to PPMM's practice, Robinson placed Plaintiff on paid administrative leave, without LaValle's involvement, to protect him while PPMM investigated his complaint. (PPMM's UMF, Nos. 31-32.) PPMM would conduct periodic checks on employee access rights because contractors and employees had a habit of sharing passwords among each other and improperly giving each other administration rights. (PPMM's UMF, No. 33.) LaValle initiated a review of those rights before the January 28 meeting and the review had nothing to do with Plaintiff's conduct at PPMM. (PPMM's UMF, Nos. 34-35.)

Plaintiff's administrator rights were revoked on January 27, 2020. (PPMM's UMF, No. 36.) While he was on administrative leave, PPMM's system administrator, Shannon Searcy ("Searcy"), alerted Fritz and LaValle that Plaintiff had downloaded the KeePass database to his laptop locally. (PPMM's UMF, No. 37.) Fritz asked Raytheon to investigate, and it verbally reported that Plaintiff's concerns were unsubstantiated but confirmed that Plaintiff had downloaded KeePass onto his laptop. (PPMM's UMF, No. 39.) Plaintiff was subsequently terminated for violating PPMM's policy. (PPMM's UMF, No. 40.) LaValle did not participate in the decision to terminate him. (PPMM's UMF, No. 41.)

The only other examples of discriminatory conduct Plaintiff identifies is Robinson's demeanor when she interviewed him early in his employment and Fritz's dismissive treatment of Plaintiff. (PPMM's UMF, No. 42.) Robinson appeared hostile or dismissive during the interview with Plaintiff because she had a close personal relationship with LaValle and refused to accept any criticism of LaValle as a result. (PPMM's UMF, No. 43.) Plaintiff similarly felt discriminated against by Fritz because, during the January 28 meeting, Fritz did not accept his

attempts to involve himself in the investigation. (PPMM's UMF, No. 44.) Plaintiff does not contend he was unlawfully harassed during his employment. (PPMM's UMF, No. 45.) Plaintiff never heard comments he perceived to be negative about employees with disabilities, medical conditions, gender, race, or ethnicity from PPMM management. (PPMM's UMF, No. 46.) He does not believe his contract was cancelled because of his race, ethnicity, or disabilities. (PPMM's UMF, No. 47.) He believes his contract was cancelled due to lodging a complaint about numerous IT concerns and his concerns about LaValle's behaviors. (PPMM's UMF, No. 48.) Plaintiff believes PPMM made false statements that he violated PPMM policy to the Department of Fair Employment and Housing ("DFEH") during the DFEH investigation of Plaintiff's discrimination and retaliation complaint. (PPMM's UMF, No. 49.)

Plaintiff provides the following additional material facts ("AMF"): Robinson participated in the decision to terminate Plaintiff, but at her deposition, she testified that she does not know what KeePass is. (Plaintiff's AMF, No. 1.) KeePass is a secure encrypted password management tool; the encryption prevents access to data and ensures that it is secure. (Plaintiff's AMF, Nos. 2-3.) KeePass users access the database's information with a unique password and certificate. (Plaintiff's AMF, No. 4.) PPMM offers conflicting evidence about who was authorized to access KeePass. (Plaintiff's AMF, No. 5.) Fritz testified that when she investigates, she interviews individuals with knowledge of the event. (Plaintiff's AMF, No. 6.) PPMM did not interview Plaintiff or LaValle about his KeePass actions. (Plaintiff's AMF, No. 7.) PPMM never investigated Plaintiff's explanation that he was instructed to copy KeePass nor did it investigate whether downloading KeePass was a standard practice at the company. (Plaintiff's AMF, Nos. 8-9.) Fritz testified that she creates a summary report at the conclusion of her investigations, however, she did not prepare any kind of written report or memo in this case. (Plaintiff's AMF, Nos. 10-11.) PPMM's Employee Handbook identifies the investigation procedure for discrimination, harassment, and retaliation complaints. (Plaintiff's AMFs, No. 12.)

Plaintiff complained to Align that he was "being treated completely different than other employees, that I was being singled out, and that [LaValle] would make a lot of derogatory comments." (Plaintiff's AMF, No. 13.) In late January 2020, Align informed Robinson about the

complaints it received about LaValle. (Plaintiff's AMF, Nos. 14-15.) Plaintiff circulated an anonymous latter to several PPMM executives expressing his concerns about LaValle's workplace behavior. (Plaintiff's AMF, No. 17.) LaValle was not informed of complaints that had been made about her workplace behavior. (Plaintiff's AMF, No. 18.) Robinson told Plaintiff that she would investigate the complaints, but LaValle was not interviewed and PPMM did not follow up with Align regarding the complaints. (Plaintiff's AMF, Nos. 19-21.) Robinson did not interview any of the IT department contractors, who were potential witnesses to LaValle's behavior, despite admitting that all witnesses should be interviewed during a HR investigation. (Plaintiff's AMF, Nos. 22-24.) Robinson did not recall the name of the individuals she interviewed regarding LaValle's conduct. (Plaintiff's AMF, Nos. 26-27.) The investigation was limited to "one big meeting" with "four or five people" from the IT department who were present at work that day and two follow-ups. (Plaintiff's AMF, No. 28.) Robinson did not recall taking any notes during her interviews and she could not recall whether she created any written report or documents after the interviews. (Plaintiff's AMF, Nos. 29-32.)

PPMM never imposed any form of discipline on LaValle. (Plaintiff's AMF, No. 33.) On January 29, 2020, Plaintiff complained to Fritz that (1) LaValle had disabled his administrative IT rights rendering him entirely unable to perform his job; and (2) he had been singled out for unfair treatment and was being retaliated against for being a whistleblower. (Plaintiff's AMF, No. 34.) After Plaintiff reported LaValle's retaliatory actions, PPMM did not question her about her underlying motivations (i.e., Plaintiff's report to Fritz). (Plaintiff's AMF, Nos. 36-38.) PPMM does not support unencrypted USB drives or external hard drives. (Plaintiff's AMF, No. 41.)

In late 2019, Plaintiff, along with other members of the IT department, became aware of a data breach. (Plaintiff's AMF, Nos. 43-44.) Plaintiff was concerned that sensitive information protected by the Health Insurance Portability and Accountability Act ("HIPAA") was being exposed and when he reported the breach to LaValle, she became "very upset," and "very, very combative." (Plaintiff's AMF, Nos. 45-49.) The data breach jeopardized PPMM's accreditation status and LaValle's job depended on the accreditation going through. (Plaintiff's AMF, No. 51-56.) LaValle did not follow up with Plaintiff about the breach, nor did she elevate the issue.

(Plaintiff's AMF, No. 58.) As a result, Plaintiff elevated his concerns to Dalton who told him to report it to Fritz. (Plaintiff's AMF, Nos. 59-61.) He also raised his concerns with Motsiff and Adams. (Plaintiff's AMF, Nos. 62-63.)

LaValle directed and controlled all aspects of Plaintiff's work. (Plaintiff's AMF, Nos. 65-69.) Plaintiff performed his PPMM work using a company issued laptop and he had a work email which he was expected to use exclusively. (Plaintiff's AMF, Nos. 71-72.) In November 2019, he was hired as a permanent employee and he was asked to look into PPFA's call center, exchange, messaging infrastructure, email performance connectivity issues, and the active directory. (Plaintiff's AMF, Nos. 74-77.) He understood that he was no longer a contractor. (Plaintiff's AMF, No. 78.) Plaintiff performed his job duties. (Plaintiff's AMF, Nos. 79-81.) LaValle never raised any concerns with Plaintiff about his job performance and behavior and PPMM never informed Align that it was unhappy with his work. (Plaintiff's AMF, Nos. 82-83.)

Plaintiff is a 49-year-old disabled Hispanic male. (Plaintiff's AMF, No. 85.) He had prior relevant experience dealing with challenges to networks as well and call and video quality. (Plaintiff's AMF, No. 86.) He received praise from LaValle and other PPMM leaders. (Plaintiff's AMF, No. 87.) Plaintiff was the only individual that PPMM placed on leave following a complaint. (Plaintiff's AMF, No. 89.) After he was placed on leave, PPMM took his laptop so he could not perform any work. (Plaintiff's AMF, No. 90.) He remained on administrative leave until he was terminated on February 12, 2020. (Plaintiff's AMF, Nos. 91-92.)

A. First and Second Causes of Action-Retaliation (Lab. Code, §§ 98.6, 1102.5)[3]

To establish a prima facie case of retaliatory discharge under Section 1102.5, a plaintiff must show that "(1) she engaged in a protected activity, (2) her employer subjected her to an adverse employment action, and (3) there is a causal link between the two." (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 468.) An employee engages in protected activity when she or he discloses "to a person with authority over the employee, or to another employee who has the authority to investigate, discovery, or correct the violation or noncompliance… if the employee has reasonable cause to believe that the information

[3] The parties addressed the retaliation claims together.

discloses…a violation of or noncompliance with a local, state, or federal rule or regulation…" (Lab. Code, § 1102.5, subd. (a).)

The California Supreme Court recently clarified that: "Section 1102.6 provides the governing framework for the presentation and evaluation of whistleblower retaliation claims brought under Section 1102.5. First, it places the burden on the plaintiff to establish, by a preponderance of evidence, that retaliation for an employee's protected activities was a contributing factor in a contested employment action. The plaintiff need not satisfy *McDonnell Douglas* in order to discharge this burden. Once the plaintiff has made the required showing, the burden shifts to the employer to demonstrate, by clear and convincing evidence, that it would have taken the action in question for legitimate, independent reason even had the plaintiff not engaged in protected activity." (*Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 718.)

The Court later explained that "[u]nder section 1102.6, a plaintiff does not need to show that the employer's nonretaliatory reason was pretextual. Even if the employer had a genuine, nonretaliatory reason for its adverse action, the plaintiff still carries the burden assigned by statute if it is shown that the employer also had at least one retaliatory reason that was a contributing factor in the action." (*Lawson*, *supra*, 12 Cal.5th at pp. 715–716.) It further noted that "were we to adopt PPG's bifurcated approach, employee plaintiffs might never have the opportunity to show at trial that retaliation was a contributing factor in an adverse action, because they would have first been required to show at summary judgment that retaliation was, in effect, the *only* factor. . . . To the extent PPG is concerned that the existing framework sets the plaintiff's bar too low by requiring only a showing that retaliation was a contributing factor in an adverse decision, PPG's remedy lies with the Legislature that selected this standard, not with this court." (*Id*. at pp. 717-718, internal citations omitted, emphasis in original.)

"'Clear and convincing' evidence requires a finding of high probability." (*In re Angelia P*. (1981) 28 Cal.3d 908, 919; see also CACI 201 [Highly Probable—Clear and Convincing Proof]. "Under the clear and convincing standard, the evidence must be so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every

reasonable mind." (*Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1158, internal quotations omitted.)

Labor Code §98.6 "prohibits an employer from retaliating against an applicant or employee because the applicant or employee exercised a right afforded him or her under the Labor Code. 'A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment … because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.' (§ 98.6, subd. (a) The phrase 'any rights' refers to rights provided under the Labor Code." (*Garcia-Brower v. Premier Auto. Imports of CA, LLC* (2020) 55 Cal.App.5th 961, 972, internal citations omitted. (*Garcia-Brower*).)

To establish a prima facie case of a Labor Code §98.6 violation it must be shown that the employee engaged in protected activity, that the employer subjected the employer to an adverse employment action, and that the employee's protected activity substantially motivated the employer's adverse employment action. The retaliatory motive in a wrongful discharge case is proved by showing that plaintiff engaged in protected activities, that the employer was aware of the protected activities, and that the adverse action followed within a relatively short time thereafter. *The causal link may be established by an inference derived from circumstantial evidence, such as the employer's knowledge that the employee engaged in protected activities and the proximity in time between the protected action and allegedly retaliatory employment decision*. Essential to a causal link is evidence that the employer was aware that the plaintiff had engaged in the protected activity. (*Garcia-Brower*, *supra*, at pp. 977-978, emphasis added.)

PPMM contends Plaintiff's retaliation claims fail as a matter of law because he cannot show that alleged protected activity was a contributing factor to the adverse employment actions. (MPA, p. 11:2-4.) It appears the parties agree that Plaintiff's protected activity was meeting with Fritz on January 28, 2020. He was placed on administrative leave on January 29, 2020, and he was terminated on February 12, 2020. Plaintiff contends he was subject to the following adverse employment actions: (1) the elimination of his administrative rights, (2) his placement on administrative leave, and (3) his termination. (Opp., p.16:24-26.)

PPMM argues Plaintiff was terminated after PPMM discovered that he downloaded the KeePass database onto his laptop locally. PPMM relies on Searcy's declaration in which he states:

- Around February 3, 2020, I was asked to retrieve a recording from Mr. Balli's computer regarding a meeting he had conducted with PPMM's call center in Clovis about the requirements for their phone systems (Searcy Decl., ¶ 7), and
- On February 5, 2020, I began searching for the recording on Mr. Balli's computer. During the search, I discovered Mr. Balli had copied the entire KeePass database, a secure database password file, from the IT department share drive to his local laptop. I immediately notified Ms. LaValle of the breach on the same day. (Searcy Decl., ¶ 8.)

PPMM also relies on Fritz's deposition, in which she testified that Plaintiff was terminated based on the findings from Raytheon's report and the fact that downloading the KeePass database onto the C-drive violated PPMM policies and procedures and was inconsistent with IT security practices. (PPMM Exh. 7, p.112:11-15, 113:21-114:2.)

Plaintiff argues his protected activity was a contributing factor in the adverse employment actions because: (1) PPMM had knowledge of Plaintiff's protected activity, (2) the timing of Plaintiff's protected activity related to the adverse actions, (3) the identity of the decision-maker (LaValle), (4) PPMM's lack of a thorough investigation into his concerns, (5) a pattern of discriminatory conduct by LaValle, Fritz, and Robinson, consistent with retaliatory intent, (6) PPMM's admission that Plaintiff was singled out for administrative leave, (7) PPMM's shifting reasons for the adverse employment action, (8) the pretextual nature of PPMM's KeePass defense, and (9) LaValle's retaliatory comments about being upset with Plaintiff's breach reporting. (Opp., p. 16:26-17:6.)

Plaintiff admits his admin rights were revoked on January 27, 2020, before his protected activity occurred. (Plaintiff's Exh. 1, p.159:16-23, 163:1-7; PPMM's Exh. 11.) Thus, it cannot be a retaliatory act based on his January 28 meeting with Fritz because the meeting had not occurred at the time of the revocation.

Plaintiff contends the fact that he was placed on administrative leave the day after he met with Fritz and during his meeting with Robinson on January 29, 2020, shows a causal link between his protected activity and the adverse employment actions. During her deposition, Robinson was asked why she decided to place Plaintiff on administrative leave and she stated, "this is a common practice if the employee could be or a contractor could be at risk where he was saying that, you know, he was being retaliated against, remove the employee, he's going to get paid while the rest of the investigation continues until we come to a determination." (Plaintiff's Exh. 4, p. 104:13-18.) However, Robinson also admitted that Plaintiff was the only employee she had placed on administrative leave after they voiced a complaint at PPMM. (Plaintiff's Exh. 4, p.34:25-35:5.)

PPMM contends LaValle was not involved in the decision to place Plaintiff on administrative leave. (PPMM's Exh. 9, p. 116:12-15.) However, PPMM's assertion is contradicted by the following portion of Fritz's deposition,

> Q. Who made the determination as to whether an individual raising a compliance issue at PPMM was automatically put on administrative leave?
>
> A. It's not an automatic determination. It's an evaluation at the beginning of whether or not administrative leave was an appropriate process to preserve the integrity of the investigation. So, it's not automatic, and the determination would be made between the department manager and HR, involving HR.
>
> Q. Were you involved in determining whether an individual raising a compliance issue was put on administrative leave at PPMM?
>
> A. They would potentially ask me, but ultimately the determination would be in the HR and department manager.
>
> …
>
> Q. Was there anyone else present aside from HR during this discussion about having [Plaintiff] go on administrative leave?
>
> A. I think it was his department manager, or the department manager.
>
> Q. Are you referring to Jessica LaValle?

A. Yes.

(Plaintiff's Exh. 5, p. 23:22-25:4.)

PPMM relies on *Michael v. Caterpillar Financial Services Corp.* (6th Cir. 2007) 496 F.3d 584, 594 (*Michael*), to argue that being placed on administrative leave did not constitute an adverse action. *Michael* is a federal court decision and PPMM fails to cite to any California court decisions in support of its argument. Moreover, in *Michael*, the plaintiff was only placed on administrative leave for *two days*, whereas here, Plaintiff was placed on administrative leave for two weeks. Moreover, whether LaValle was involved in the decision to place Plaintiff on administrative leave is a disputed fact.

Plaintiff also argues the reason for the adverse employment action is merely pretext because he did not violate the policy and he was told to download KeePass to his laptop. Plaintiff provides PPMM's Use of Affiliate Technology Resources, dated July 23, 2019, which states:

> Employees may not download or copy or transport ePHI or other confidential information and/or documents to *any unencrypted* portable device or media including laptops, C drive, on a USB stick, thumb drive, or CD/DVD for security reasons. Employees may not copy, store, remove, or transport ePHI or confidential information and/or documents from PPMM for *non-business-related purposes*. All confidential documents and ePHI are subject to the same HIPAA privacy and security regulations when off-site or telecommuting.

(Plaintiff's Exh. 20, ¶3(j) [emphasis added].)

Plaintiff also relies on the following portions of his deposition testimony:

> Q. Okay. Did anybody ever tell you not to download any sort of encrypted documents or databases to your local laptop?
>
> A. No. In fact, the assets at Planned Parenthood were considered to be safe and secure. So that would be a workstation, the virtual desktop environment, the internal infrastructure, anything that was on an asset was supposed to be secure because of encryption on drives and…servers. So, my understanding is as long as

you use our assets and you use our device, then you're in compliance which is why I never used anything personal.

…

Q. During your assignment at [PPMM], did anyone tell you that you can or should download or copy the KeePass database to your local desktop?

A. The answer was yes, that the application could be installed on a local workstation in the event, because we were managing so many services and devices, that the network and/or internet went down… We were told that because these are protected assets that are managed by Planned Parenthood, they are encrypted. The password, the database that is referred to it is also encrypted, it is also password protected. There's no way of getting into that data unless I or somebody else gives them that information. It's locked down.

(Plaintiff's Exh. 1, p. 149:12-22, 155:2-20.)

Plaintiff also relies on the declaration of Richard Giguere's ("Giguere"), who was a Senior Network Engineer at PPMM and functioned as the Infrastructure Team Lead. (Giguere Decl., ¶¶ 1, 9.) He states that he personally instructed and authorized Plaintiff to download and utilize KeePass. (Giguere Decl., ¶ 9.) Moreover, during his deposition Searcy testified, as follows,

Q. In your understanding, which PPMM assets are encrypted?

A. All of them.

Q. Would that include encrypted storage devices?

A. What do we mean by, "storage devices"?

Q. So hard drives, laptops, other kinds of places where data can be stored?

A. Well, we don't support say USB drive, or external hard drives. We are referencing mostly work stations when we are talking about all devices being encrypted.

Q. What do you mean by, "work stations"?

A. Desktop or laptop.

(Plaintiff's Exh. 7, p. 51:1-13.)

PPMM repeatedly states that Plaintiff downloaded KeePass to his local laptop, but it appears that refers to his work laptop. The Court is not persuaded by PPMM's reliance on LaValle's testimony that her laptop was not encrypted because that does not mean that Plaintiff's laptop was not encrypted. (See Plaintiff's Exh. 3, p.12:2-9.) Moreover, PPMM fails to provide any evidence that Plaintiff's laptop was not encrypted, and Searcy testified that desktops and laptops were encrypted. (See Plaintiff's Exh. 7, p. 51:1-13.) Relying on the testimony below, PPMM also argues that PPMM's previous policies regarding the use of KeePass were not proper, and LaValle sought to change that:

> Q. Okay. So is it your testimony that PPMM started using KeePass after you began working there; is that correct?
>
> A. They started using it appropriately, yes.

(PPMM's Exh. 7, p.51:7-10.)

However, PPMM fails to provide more information regarding when PPMM supposedly began using KeePass appropriately. It is also undisputed that the Use of Affiliate Technology Resources applied at the relevant time. Therefore, there is a triable issue of material fact as to whether Plaintiff's laptop was encrypted and as a result, a triable issue of material fact as to whether Plaintiff violated the policy.

On this record, a fact finder could reasonably infer from the evidence that Plaintiff's protected activity was a contributing factor in his termination. PPMM also fails to submit "clear and convincing evidence" that Plaintiff's termination would have occurred "for legitimate, independent reasons" despite his protected activity; the evidence submitted does not "leave no substantial doubt" that Plaintiff's protected activity was not a contributing factor in his termination. Thus, PPMM's motion for summary adjudication of the first and second causes of action is DENIED.

B. Third Cause of Action-FEHA Discrimination

> It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

> (a) For an employer, because of the race, … color, national origin, ancestry, physical disability, mental disability, sex, [or] gender … of any person, … to discharge the person from employment …, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

(Govt. Code, §12940, subd. (a).)

"The specific elements of a prima facie case [for discrimination] may vary depending on the particular facts. [Citations omitted.] Generally, the plaintiff must provide evidence 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, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 355 [Citations omitted.] (*Guz*).)

During his deposition, Plaintiff admitted that neither LaValle nor anyone else in management made negative comments about his medical conditions, his race or ethnicity. (PPMM's Exh. 5, p. 48:1-49:1, 50:20-23, 53:3-6; PPMM's Exh. 6, p. 329:11-4, 331: 4-13.) He further testified that he did not believe his contract was terminated because of his race, ethnicity, gender, or disability. (PPMM's Exh. 6., p.331:17-331:1.) This is sufficient for PPMM to meet its burden. (See *Caldwell, supra,* 41 Cal.App.4th at p. 202-203.) Thus, the burden shifts to Plaintiff to provide evidence to raise an inference that intentional discrimination occurred. (See *Featherstone, supra,* 10 Cal.App.5th at p. 1159 ["The stronger the employer's showing of a legitimate, nondiscriminatory reason, the stronger the plaintiff's evidence must be in order to create a reasonable inference of a discriminatory motive."].)

Plaintiff contends LaValle "singled him out for negative treatment including derogatory comments, reprimands, belittling, discrediting, ignoring him, treating him as though he were subhuman, like he was "less of a person" and "not an equal-class citizen," giving him looks "of disgust" and "publicly disclosing his pay rate." (Opp., p. 9:15-18.) He relies on his testimony that his "treatment was completely different [than] he received from the staff. There was a lot of belittling. There was a lot of – as I said before, your opinions, your answers don't matter. Any

time I would try to give any type of sound technical advice, it was always -- not always—the majority of the time discriminated or discredited only to find out to have another engineer say the exact same thing that I did and hear that that's the correct answer." (Plaintiff's Exh. 1, p.40:20-41:6.) He testified that LaValle made comments about his salary and would reprimand him for laughing or smiling. (Plaintiff's Exh. 1, p. 43:19-44:1, 45:9-16.) Similarly, he testified:

> Q. Okay. And what were the concerns with [LaValle's] behavior that you discussed with Mr. Lammers?
>
> A. The treatment, the way that I was being treated completely different than other employees, that I was being singled out, and that she would make a lot of derogatory comments. She brought up my pay and how much I made so much in front of people that I actually said her when I pulled her to the side that, "Hey, I've been on government assistance. I've struggled, and we're trying our very best to live life…
>
> Q. You mentioned that you told Jason that [LaValle] would make a lot of derogatory comments. What were those comments?
>
> A. "This is what we pay for? This is how much money you make? People that make this kind of money don't laugh like this." Those are some of the things that come off the top of my head.

(Plaintiff's Exh. 1, p. 103:19-104:13.)

While it is undisputed that LaValle treated contractors differently than PPMM employees, employment status/category is not a protect class under the FEHA. Moreover, Plaintiff does not provide any evidence that the male employees in the IT department were treated differently *on the basis of gender* as opposed to their status as contractors and LaValle's friction with them on that basis. (See Plaintiff's Exh. 1, p. 43:12-17 ["She would come in and accuse us of not working and saying that, you know, 'we pay you $100 an hour and this is what you do,' I mean, while we were literally working. We were talking about whether it be network, exchange, you name it, she would come in and always thing we weren't doing things."], p. 44:2-10 [Plaintiff's testimony that the female engineers were employees, not contractors].) Furthermore, Plaintiff provides

declarations from two male contractors, Giguere and Andres Zuniga, and neither individual provides any facts regarding disparate treatment on the basis of gender. LaValle's undisputed hot and cold behavior does not itself support of an inference of gender discrimination or discriminatory animus based on gender.

Plaintiff further relies on the following portions of his testimony:

> Q. And that conduct by [LaValle] caused you to feel less human by her?
>
> A. You know, there are things where people can treat you differently in different days and in different ways; and [LaValle] was notorious for being hot, cold, and all over the place. So absolutely. One day she could treat me like I'm less of a person; and the other day, she thinks I'm great. She was very or cold. It was quite spectacular to watch her cycle back and forth.
>
> …
>
> Q. Do you feel that disabled worked are treated differently at PPMM?
>
> A. I can only speak for my behalf, and that is that I experienced difficulties, right, with expressing the issues that I had had with Tourette's syndrome. So, I can't speak for any others. I just know that I ran into challenges, as I said before, myself.
>
> Q. And those challenges were [LaValle] being hot and cold; is that right?
>
> A. Hot, cold, as I said, looking at me differently. I don't know if you've ever experienced what its like to have people literally look at you like you're not an equal class citizen, but it sucks, and you know that look when you get it.

(Plaintiff's Exh. 2, p. 325:6-16, 329:15-330:4.)

Plaintiff fails to provide any evidence that LaValle's conduct was based on his race, ethnicity, gender, or disability. Plaintiff's testimony that LaValle gave him a look which made him feel like he was less of a person is not sufficient to create a triable issue of material fact. (See *King, supra,* 152 Cal.App.4th at p. 433 [A "plaintiff's subjective beliefs in an employment discrimination case do not create a genuine issue of fact; nor do uncorroborated and self-serving declarations."]; see also *Doe v. Dept. of Corrections & Rehabilitation* (2019) 43 Cal.App.5th 721,

733, quoting *King*.) As a result, Plaintiff fails to meet his burden as to this claim. Thus, PPMM's motion for summary adjudication of the third cause of action is GRANTED.

C. Seventh Cause of Action-Harassment

Government Code section 12940, subdivision (j)(1), prohibits employers from harassing employees because of their race, religious creed, national origin, mental or physical disability, gender, and age, among other things. (Gov. Code, § 12940, subd. (j)(1).) The elements of a FEHA harassment cause of action are (1) the plaintiff was a member of a protected class; (2) he or she was subjected to unwelcome harassment; (3) the harassment was based on the plaintiff's protected status; and (4) the harassment unreasonably interfered with his or her work performance by creating an intimidating, hostile, or offensive work environment. (*Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 876 (*Thompson*).)

"[H[arassment consists of conduct outside the scope of necessary job performance, conduct presumably engaged in for personal gratification, because of meanness or bigotry, or for other personal motives. (*Janken v. GM Hughes Electronics* (1996) 46 Cal.App.4th 55, 63 (*Janken*).) "[H]arassment focuses on situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communications an offensive message to the harassed employee." (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 706 (*Roby*).) The plaintiff must show the harassment was sufficiently severe or pervasive so as to alter the terms and conditions of his or her employment. The conduct complained of "cannot be occasional, isolated, sporadic, or trivial; rather the plaintiff must show a concerted pattern of harassment of a repeated, routine or a generalized nature." (*Hope v. California Youth Auth.* (2005) 134 Cal.App.4th 577, 588 (*Hope*).) Moreover, "a mere offensive utterance or…a pattern of social slights by either the employer or co-employees cannot properly be viewed as materially affecting the terms, conditions, or privileges of employment for the purposes of section 12940, subdivision (a)." (*Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1381.)

"Whether the conduct of the alleged harassers was sufficiently severe or pervasive to create a hostile or abusive working environment depends on the totality of the circumstances."

(*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 869 (*Serri*).) The totality of the circumstances may include the frequency and severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance, and whether it reasonably interferes with work performance. (*Ibid*.) "Common sense, and an appropriate sensibility to social context, will enable courts and juries to distinguish between simple teasing or roughhousing… and conduct [that] a reasonable person in the plaintiff's position would find severely hostile or abusive." (*Id*. at p. 870.)

PPMM argues Plaintiff's claim fails because he admitted he does not contend he was unlawfully harassed. (PPMM's Exh. 3, 203.1; see also *Aguilar, supra,* 25 Cal.4th at pp. 854-855 [a defendant can obtain summary judgment through demonstrating a plaintiff has no evidence to establish an essential element].) Moreover, as the Court stated above, Plaintiff fails to provide evidence to show that his treatment was based on any protected status. Therefore, Plaintiff fails to meet his burden here. Thus, PPMM's motion for summary adjudication of the seventh cause of action is GRANTED.

D. Fourth Cause of Action-Failure to Prevent Discrimination and Harassment (FEHA)

"The FEHA makes it unlawful for an employer 'to fail to take all reasonable steps to prevent discrimination and harassment from occurring.' ([Gov. Code,] § 12940, subd. (k).)" (*Scotch v. Art Institute of California* (2009) 173 Cal.App.4th 986, 1003 (*Scotch*).) "An actionable claim under section 12940, subdivision (k)[,] is dependent on a claim of actual discrimination." (*Id*. at p. 1021.) A prerequisite to a finding of liability for the failure to take all reasonable steps is a finding that the plaintiff suffered unlawful discrimination, harassment, or retaliation. (See *Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4th 280, 282-283; see also *Scotch, supra,* 173 Cal.App. at p. 1021.)

For reasons stated above, the Courts grants the motion as to the third and seventh causes of action. As a result, there is no actionable claim under Government Code section 12940, subdivision (k). Thus, PPMM's motion for summary adjudication of the fourth cause of action is GRANTED.

E. Eighth and Ninth Causes of Action-Slander and Libel[4]

There are two types of defamation, libel and slander. (Civ. Code, § 44.) "Slander is a false and unprivileged publication, orally uttered…which (1) charges any person with crime, or with having been indicted, convicted, or punished for crime; (2) imputes in him the present existence of an infectious, contagious, or loathsome disease; (3) tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputed something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits; (4) imputes to him impotence or a want of chastity; or (5) which, by natural consequences, causes actual damage." (Civ. Code, § 46.) "Libel is a false and unprivileged publication by writing…which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injury him in his occupation." (Civ. Code, § 45.)

The elements of a defamation claim are: "(1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage." (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369.) Defamation per se and per quod share these elements. Defamation per se is when a defamatory meaning is reflected from the language itself and does not require extrinsic facts to explain why the statement is defamatory. (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5.) In contrast, defamation is per quod is when the defamatory meaning is only ascertainable through extrinsic facts. (*Ibid*.)

"[T]he dispositive question is whether a reasonable fact finder could conclude the published statement declares or implies a provably false assertion of fact." (*Franklin v. Dynamic Details, Inc.* (2004) 116 Cal.App.4th 375, 385.) Such a question is a question of law for which we have to consider the totality of the circumstances. (*ZL Technologies, Inc. v. Does 1-7* (2017) 13 Cal.App.5th 603, 624.)

PPMM argues the claims fail because the alleged statements do not constitute defamation, they are true, and they are privileged because they were made in the course of a judicial or

[4] The parties addressed the defamation claims together.

quasi-judicial proceeding. Plaintiff argues PPMM made the following statements that he: (1) violated its policy by copying KeePass to his laptop, (2) exhibited childish, unprofessional, erratic workplace behavior involving crying at work, missing work, and not producing work product.[5] (Opp., p.20:16-18.)

It is undisputed that Plaintiff downloaded KeePass to his laptop. However, as the Court explained above, there is a triable issue of material fact regarding whether Plaintiff violated the PPMM policy and thus, whether the statements are false. Therefore, PPMM cannot establish that the "gist or sting" of the statements are substantially true, and as a result, it cannot establish the truth defense. (See *Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 697.)

PPMM also argues the alleged statements are protected by litigation privilege. The litigation privilege applies to "any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." (*Silberg v. Anderson* (1990) 50 Cal.3d 205, 212.) The privilege is absolute and applies regardless of whether the communication was made with malice or the intent to harm. (*Wise v. Thrifty Payless, Inc.* (2000) 83 Cal.App.4th 1296, 1302.)

PPMM contends the statements were made only *to* Plaintiff or to the DFEH. To the extent, Plaintiff bases these claims on statements contained in his DFEH complaint or they were made during the DFEH investigation, they are privileged. (See *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 14, 31-32 [statements made in advance of litigation are generally protected].) However, PPMM also admitted to communicating the information with third parties such as Align and Raytheon. (Plaintiff's Exh. 16, SPROG 10-13.) PPMM fails to provide any argument or authority that litigation privilege applies to the communication to those third parties. PPMM fails to meet its burden with regard to the defamation claims, thus, PPMM's motion for summary adjudication of the eighth and ninth causes of action is DENIED.

[5] PPMM only offers argument regarding the violations of the policy and fails to offer any argument regarding Plaintiff's work behavior.

Calendar Lines 11-12
Mohammad Ghanbaran v. Rex Bennett Case No. 24CV434229

Before the Court is Defendant, Rex Bennett's motion to strike and demurrer to Plaintiff's first amended complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from an alleged housing discrimination. According to the FAC, Live Oak Apartments advertised an available rental unit on Zillow. On January 25, 2023, Plaintiff submitted his rental application, credit score, and application fees online. Manager of Live Oaks Apartments, Mr. Bennett contacted Plaintiff and asked him to come to the office to submit the rental and credit check applications once more. In each application, Plaintiff noted that he had a Section 8 voucher for government rent subsidy. On January 26, 2023, Plaintiff received a letter from Live Oak Apartments denying his rental application. (FAC, pp. 2, 4:1-3, 5:1-7.)

Claiming housing discrimination, Plaintiff initiated this action on April 2, 2024, and subsequently filed his FAC on July 25, 2024, alleging (1) FEHA housing discrimination violation, (2) violation of Unruh Act, (3) elder abuse, (4) unfair business practices, and (5) FEHA violation.

II. Legal Standard

A. Demurrer

"The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain." (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by "[t]he party against whom a complaint [ ] has been filed" to object to the legal sufficiency of the pleading as a whole, or to any "cause of action" stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management*

Agency (2014) 226 Cal.App.4th 685, 688 (*Piccinini*), citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children's Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

"Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The burden is on the plaintiff to show in what manner plaintiff can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Id*.)

B. Motion to Strike

The Court may, upon a motion made pursuant to Code of Civil Procedure section 436, or at any time in its discretion, and upon terms it deems proper, strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc., § 436.) Motions to strike are disfavored, and the policy is to construe the pleadings liberally, with a view to substantial justice. (Code Civ. Proc., § 452).

Code of Civil Procedure section 436, subdivision (a), states that matters that are "irrelevant, false or improper" are subject to a motion to strike. "Irrelevant" means any immaterial allegation in the complaint. Section 431.10, subdivision (b), defines an immaterial allegation as any of the following: (1) an allegation that is not essential to the statement of a claim or defense; (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense; or (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (Code Civ. Proc., § 431.10, subd. (b).)

Like a demurrer, the grounds to strike shall either appear on the face of the pleading or from matters that are judicially noticed. (Code Civ. Proc., §437.) The court reads the allegations as a whole, with all parts in their context, and assumes their truth. (*Spielholz v. Sup. Ct.* (2001) 86 Cal.App.4th 1366, 1371.)

III. Analysis

A. Demurrer

The gravamen of Plaintiff's FAC is that Defendant violated the Fair Employment and Housing Act and the Unruh Civil Rights Act, all of which prohibit landlords from refusing to accept Section 8 vouchers, and by violating these laws, Defendant unlawfully engaged in elder abuse and unfair business practices.

Defendant contends the FAC does not state a viable claim because it fails to allege facts that (1) Plaintiff was qualified for a housing accommodation, (2) similarly situated individuals applied for and obtained housing near the time Plaintiff was denied housing, (3) Defendant's discriminatory motive, and (4) selection based on financial criteria was not uniformly applied to all housing applicants. Defendant adds the FAC is further defective on its face because the indispensable corporate entities that employ, own, and/or manage Live Oaks Apartments are not joined.

In its July 9, 2024 Order sustaining Defendant's demurrer to the initial complaint, the Court alerted Plaintiff to the requirements of California Rules of Court, Rule 3.113(a) for properly opposing Defendant's demurrer and cautioned Plaintiff that self-represented litigants are required to follow the same pleading and procedural rules as parties represented by legal counsel. Nonetheless, Plaintiff again submitted oppositions to Defendant's demurrer and motion to strike that fail to comply with these requirements, instead arguing that Defendant's motions are irrelevant and a tactic to prevent this case from going forward. (Opposition Demurrer, p. 5:1-12; Opposition Strike, p. 6:1-13.) However, in the interest of justice, the Court addresses Defendant's arguments.

1. *FEHA Housing Discrimination*

Government Code section 12955 makes it unlawful for housing owners to discriminate because of source of income and Government Code section 12927 includes in their definition of discrimination refusing to negotiate for the rental of housing accommodations due to Plaintiff's source of income and refusing to rent housing accommodations to Plaintiff due to source of income. More specifically, Government Code section 12955 provides:

> It shall be unlawful: (a) For the owner of any housing accommodation to discriminate against or harass any person because of … source of income … that person…(c) For any person to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on… source of income…or an intention to make that preference, limitation or discrimination … (k) To otherwise make unavailable or deny a dwelling based on discrimination because of…source of income… (Gov. C. §12955(a), (c) and (k).)

Government Code section 12955(p)(1) defines source of income "to mean lawful, verifiable income paid directly to a tenant, or to a representative of a tenant, or paid to a housing owner or landlord on behalf of a tenant, including federal, state, or local public assistance, and federal, state, or local housing subsidies, including, but not limited to, federal housing assistance vouchers issued under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f)."

The necessary elements for establishing housing discrimination are: (1) plaintiff is a member of a protected class; (2) plaintiff applied for and was qualified for a housing accommodation; (3) plaintiff was denied a housing accommodation; and (4) circumstantial evidence of a discriminatory motive, such as similarly situated individuals applied for and obtained housing. (*Department of Fair Employment & Housing v. Superior Court* (2002) 99 Cal.App.4th 896, 902.)

Here, the FAC alleges:

- Live Oak Apartment advertised an available unit for monthly rent of $2,595.00.

- On January 25, 2023, Plaintiff, as a first applicant, submitted his rental application with his Section 8 voucher and paid the rental application fees to Zillow. Plaintiff's credit score was 774.
- Upon receipt of the application, Defendant contacted Plaintiff requesting that he come to the office and file another rental application and credit check.
- At all relevant times, Defendant was the manager of Live Oak Apartment.
- Defendant understood Plaintiff's source of income was from Section 8 housing voucher because Plaintiff had noted it on the rental form.
- On a letter dated January 26, 2023, Plaintiff was informed that his rent application was denied reasoning "Plaintiff's gross income did not meet the required 2.5x of Plaintiff's rental contribution requirement." The letter stated, "this is standard we apply to all applicant (sic)." (FAC p. 5:1-7.)
- Plaintiff is informed and believes that the Defendant's denial of housing accommodation was due to his section 8 voucher as source income.
- The apartment unit was later rented to another tenant, who did not have section 8 voucher.
- "Defendant's apartment manager knew, and Plaintiff told him that source of income for section 8 tenant mostly came from GOVERNMENT and the Plaintiff should paid[sic] only 30 PERCENT of HIS MONTHLY INCOME for the portion of the rent." (FAC p. 5:1-3)
- "Generally, the monthly housing assistance payment by the PHA [Public Housing Agency] is the difference between the applicable payment standard and 30 percent of monthly adjusted family income." (FAC Ex. 1(a), ¶ B.)

(FAC pp. 2:4-13; 3:1-5, 4:14-16; 5:1-7; Exs. 1(c) and (d).)

FAC's allegations fail to state facts showing (1) Plaintiff was qualified for housing accommodation, (2) Plaintiff was discriminated due to his source of income, and (3) Defendant's discriminatory motive or intent. According to the alleged January 26, 2023, letter, Plaintiff's application was denied because his monthly gross income was not 2.5 times more than his

required 30% contribution—a standard Defendant applied to all applicants. As such, Plaintiff's application was not denied due to his Section 8 source of income. Plaintiff's conclusory allegation of source of income discrimination is solely based on information and belief, which is insufficient to defeat the demurrer.

Accordingly, Defendant's demurrer to Plaintiff's FEHA violation claims is SUSTAINED WITHOUT LEAVE TO AMEND.

2. *Violation of Unruh Civil Rights Act*

Unruh Civil Rights Act bars discrimination based on protected categories identified in Civil Code §§ 51(b) and (e), including sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, sexual orientation, citizenship, primary language, immigration status or genetic information. In the context of housing discrimination, actionable discrimination is not limited to those listed in the Unruh Act. For instance, Government Code § 12955, subdivision (b) provides: "For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, to discriminate against any person on the basis of sex, gender, gender identity, gender expression, sexual orientation, color, race, religion, ancestry, national origin, familial status, marital status, disability, genetic information, source of income, or on any other basis prohibited by that section . . ."

The elements for a cause of action for civil rights violation are: (1) defendant denied plaintiff full and equal accommodations and/or refused to contract with plaintiff; (2) a substantial motivating reason for defendant's denial and/or refusal was plaintiff's status or perceived status as a member of a protected category; (3) plaintiff was harmed; and (4) that defendant's conduct was a substantial factor in causing plaintiff's harm. (See CACI Jury Instruction Nos. 3060, 3061.) An Unruh Civil Rights Act cause of action requires a showing of intentional discrimination. (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1159-1162.)

Here, Plaintiff's conclusory allegation that Defendant "arbitrarily discriminated" against him due to his income source is insufficient to state an Unruh Act violation. Plaintiff fails to allege facts showing (1) Defendant engaged in discrimination, other than using the term

discrimination in a conclusory manner, and (2) Defendant's refusal to rent an apartment to him was substantially motivated by his Section 8 source of income. Statutory causes of action must be pleaded with particularity. *(Covenant Cam, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

Accordingly, Defendant's demurrer to Plaintiff's cause of action for Unruh Civil Rights Act violation is SUSTAINED WITHOUT LEAVE TO AMEND.

3. Financial Elder Abuse

Financial elder abuse is defined by Welf. & Inst. Code § 15610.60(a) as follows: "(a) 'Financial abuse' of an elder or dependent adult occurs when a person or entity does any of the following: (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both; (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both; (3) Takes secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70." In order to state a claim for financial elder abuse, Plaintiffs must plead and prove the following: (1) the plaintiff was "elderly" within the meaning of the Elder Abuse Act, i.e., 65 years of age or older; (2) the defendant took or retained Plaintiffs' property with the intent to defraud the plaintiff, for a wrongful use, or by undue influence; (3) the Plaintiffs were harmed; and (4) the Defendant's conduct was a substantial factor in causing the Plaintiffs' harm. (*Knox v. Dean* (2012) 205 Cal.App.4th 417.) A cause of action under the Elder Abuse Act must be alleged with particularity. (See *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) "In order to obtain the remedies available in section 15657, a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct. The latter three categories involve 'intentional,' 'willful,' or 'conscious' wrongdoing of a 'despicable' or 'injurious' nature." (*Delaney v. Baker* (1999) 20 Cal.4th 23, 31-32.)

Here, Plaintiff alleges Defendant has financially abused him by "depriving his [sic] of a

real property interest, specifically by illegally denying the right to utilize his Housing Choice Voucher to pay rent at the Apartment, in violation of FEHA, the Tenant Harassment Ordinance, and the Unruh Act." (FAC p. 8:25-28) This allegation is insufficient to give rise to direct liability against Defendant for financial elder abuse. The FAC contains no factual allegations that Defendant took, secreted, obtained, or retained Plaintiff's property with an intent to defraud or by undue influence.

Accordingly, Defendant's demurrer to the Plaintiff's cause of action for elder abuse is SUSTAINED WITHOUT LEAVE TO AMEND.

4. Unfair Business Practices

By prohibiting unlawful business practices, Business and Profession Code § 17200 borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable. (See *De La Torre v. CashCall, Inc*. (2018) 5 Cal.5th 966, 980.)

Here, Plaintiff's claim for unfair competition is based on FEHA and Unruh Civil Rights Act violation i.e., housing discrimination based on section 8 source of income. As stated above, the FAC fails to allege sufficient facts establishing FEHA and Unruh Act violations.

Accordingly, Defendant's demurrer to the Plaintiff's cause of action for unfair business practices is SUSTAINED WITHOUT LEAVE TO AMEND

5. Leave to Amend

The Court must grant leave to amend if there is a reasonable possibility that the foregoing deficiencies can be cured by amendment. (*See Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal. 4th 962, 967.) Toward that end, Plaintiff bears the burden of demonstrating in what manner he can amend the FAC and how that amendment will change the legal effect of his pleading. (See, *Goodman v. Kennedy* (1976) 18 Cal. 3d 335, 349.) In this case, Plaintiff fails to satisfy his burden as he presents no information about how he can amend the pleading to state viable claims for FEHA housing discrimination, Unruh Act violation, unfair business practices, and financial elder abuse. Consequently, the demurrer is sustained without leave to amend.

6. Joinder

Defendant contends the FAC is defective on its face because while Plaintiff alleges Defendant is the property manager for Live Oak Apartments, he has only included him as the single adversary party without including the indispensable corporate entities (Dunn Properties & Daly Dilbeck Management) that employ him and own and/or manage the property.

When the defense of nonjoinder of parties appears on the face of the complaint or with the aid of judicial notice, the defense is properly asserted by demurrer. (Code. Civ. Proc. § 430.30(a); *Jermstad v. McNelis* (1989) 210 Cal.App.3d 528.) However, there is no reason to address joinder of the corporate entities since the Court has sustained Defendant's demurrer to the FAC without leave to amend.

B. Motion to Strike

Given the Court's ruling on demurrer, Defendant's motion to strike is DENIED as MOOT.