

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Kelley Sullivan v. The Home Depot, U.S.A., Inc.

No. 2:23-cv-01981-DJC-CKD (E.D. Cal. Nov. 17, 2025) · No. No. 2:23-cv-01981-DJC-CKD · Decided
November 17, 2025

OPINION

Sullivan

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 KELLEY SULLIVAN, No. 2:23-cv-01981-DJC-CKD

12 Plaintiff, 13 v. ORDER 14

THE HOME DEPOT, U.S.A., INC.,

15 Defendants. 16

17 18 Pending before the Court is Defendant's Motion for Summary Judgment. 19 Plaintiff brought nine causes of action against Defendant largely stemming from 20 Plaintiff's allegations that her religious beliefs precluded her from wearing a mask, 21 which ultimately resulted in her termination from Defendant's store. For the reasons 22 discussed below, the Court GRANTS Defendant's Motion for Summary Judgment.

23 BACKGROUND

24 Plaintiff Kelley Sullivan brings the instant action against Defendant Home Depot 25 U.S.A., after she was terminated from her position as a Pro Account Sales Associate at 26 the store's location in Carmichael, California. (Defendant's Separate Statement of 27 28 1 Undisputed Facts ("DSSUF") (ECF No. 36-4) ¶ 1.)1 Plaintiff's role involved acting as a 2 sales associate on the store's floor and required direct contact with other associates 3 and customers. (Id. ¶ 3.) Plaintiff was employed by Defendant during the start of the 4 COVID-19 pandemic in June 2020. (See id. ¶ 1.) From June 2020 through January 5 2023, the State of California implemented various masking guidelines. (See id. ¶¶ 4– 6 9.) During that time, Defendant complied with the State's various masking 7 requirements. (Id. ¶ 17.) By March 2022, masks were not required by the State for 8 vaccinated or unvaccinated individuals. (Id. ¶ 8.) However, masks were still required 9 where a work location was determined to be in "outbreak status." An "outbreak" was 10 defined as three suspected, probable or confirmed COVID cases within a 14-days 11 period among people who are epidemiologically linked. (Id. ¶ 9.) 12 From January 2021 through January 2022, Plaintiff was on a leave of absence 13 from her job following certifications from her health care providers

that mask wearing 14 exacerbated her health conditions. (See *id.* ¶¶ 11–15.) Plaintiff returned to work in 15 early January 2022 and had no medical restrictions relating to mask use. (*Id.* ¶¶ 14, 16 15.) Plaintiff had another leave of absence and returned to work on January 2, 2023, 17 which was a time when the Carmichael store was determined to be in “outbreak 18 status.” (*Id.* ¶ 19.)² Plaintiff refused to wear a mask, even though she was informed 19 that the store was in outbreak status. (*Id.* ¶¶ 21–22.) Plaintiff had a meeting with Store 20 Manager Jeff Lawson and Assistant Manager Sheri Ables where she was told that 21 masks were required because the store was in outbreak status. (*Id.* ¶ 20.) Kathleen 22 Burris, a Direct Human Resources Manager, was also involved in the conversation. 23 (*Id.* ¶ 23.) After Plaintiff refused to wear a mask, she was told that she would be 24 required to leave the store, but was offered unpaid leave of absence until the store 25 1 The Court only cites portions of the separate statement of facts provided by Defendant that Plaintiff 26 states are undisputed. The Court notes that some of the facts are technically disputed by Plaintiff, but upon review of the evidence, the Court finds that there is not a genuine dispute. 27 2 Plaintiff disputes whether the store was in “outbreak status” but provides no evidence to support her 28 dispute as to this fact. 1 was no longer in outbreak status. (*Id.* ¶ 23.) Plaintiff rejected that offer and said that 2 she would not leave the store and that someone would have to remove her. (*Id.* ¶ 24.) 3 Plaintiff was ultimately terminated for insubordination. (*Id.* ¶ 25.) 4 Plaintiff brings several causes of actions against Defendant for violations of the 5 Fair Employing and Housing Act, the Bane Act, and the California Constitution.³ 6 Defendant now moves for Summary Judgement. The matter is fully briefed and was 7 ordered submitted without oral argument pursuant to Local Rule 230 (See MSJ (ECF 8 No. 36), Opp’n (ECF No. 39), Reply (ECF No. 47)).

9 LEGAL STANDARD

10 Summary judgment may be granted when the evidence shows that there is no 11 genuine issue as to any material fact and the moving party is entitled to a judgment as 12 a matter of law. Fed. R. Civ. P. 56(c). The principal purpose of summary judgment is 13 to dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477 14 U.S. 317, 325 (1986). Therefore, the “threshold inquiry” is whether there are any 15 factual issues that could reasonably be resolved in favor of either party, or conversely, 16 whether the facts are so one-sided that one party must prevail as a matter of 17 law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250–52 (1986). However, “[o]nly 18 disputes over facts that might affect the outcome of the suit under the governing law 19 will properly preclude the entry of summary judgment.” *Id.* at 248. 20 In a summary judgment motion, the moving party must inform the court of the 21 basis for the motion and identify the portion of the record that it believes 22 demonstrates the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 23 323. If the moving party meets its initial burden, the burden then shifts to the 24 opposing party, which must establish that there is a genuine issue of material 25 fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986). To 26 meet their burden, parties must either cite to materials in the record supporting their 27 3

Plaintiff dismisses her cause of action for Medical Experimentation under California Health and Safety 28 Code §§ 24170 et seq. (Opp’n (ECF No. 39) at 22.) 1 position or show that the materials cited do not establish the absence or presence of a 2 genuine dispute. Fed. R. Civ. P. 56(c)(1). 3 For the opposing party to succeed and avoid summary judgment, they “must 4 do more than simply show that there is some metaphysical doubt as to the material 5 facts.” *Matsushita*, 475 U.S. at 586. Rather, the opposing party must produce enough 6 evidence such that the specific facts set forth by the nonmoving party, coupled with 7 undisputed background or facts, are such that a reasonable jury might return a verdict 8 in its favor. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th

9 Cir. 1987). In other words, for the moving party to succeed, the court must conclude 10 that no rational trier of fact could find for the opposing party. *Matsushita*, 475 U.S. at 11 587. However, so as not to usurp the role of the jury, “[c]redibility determinations, the 12 weighing of the evidence, and the drawing of legitimate inferences from the facts are 13 jury functions,” and so the court draws all reasonable inferences and views all 14 evidence in the light most favorable to the opposing party. *Liberty Lobby*, 477 U.S. at 15 255; *Matsushita*, 475 U.S. at 587–88.

16 DISCUSSION

17 I. Evidentiary Objections 18 As an initial matter, both parties have lodged evidentiary objections to the 19 other’s evidence. (See ECF Nos. 45, 50.) At the summary judgment stage, district 20 courts consider evidence with content that would be admissible at trial, even if the 21 form of the evidence would not be admissible at trial. See *Fraser v. Goodale*, 342 F.3d 22 1032, 1036 (9th Cir. 2003); *Block v. City of Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 23 2001) (explaining that at summary judgment, “a party does not necessarily have to 24 produce evidence in a form that would be admissible at trial.”). 25 To the extent that the Parties base evidentiary objections on lacking foundation, 26 speculation, constituting an improper legal conclusion, and/or relevance, other district 27 courts have disregarded such objections as “duplicative of the summary judgment 28 standard itself[.]” See, e.g., *Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1 1119 (E.D. Cal. 2006). However, Plaintiff also objects to certain pieces of evidence on 2 other grounds. First, Defendant argues that the Rosen Declaration (ECF No. 42) 3 should be dismissed in its entirety for failure to disclose a witness in violation of 4 Federal Rule of Civil Procedure 37(c)(1). Although the Court finds that the Plaintiff 5 acted improperly in failing to disclose the witness, the Court finds that the failure here 6 is harmless. Second, Defendant argues that Plaintiff’s recording of, and reliance on, 7 the audio of a private workplace meeting without obtaining the consent of the other 8 parties violated California Penal Code § 632. Without opining on whether the 9 recording itself was improper, the Court still considers its contents to the extent that it 10 would be admissible at trial. 4 11 II. Requests for Judicial Notice 12 Both Parties also filed Requests for Judicial Notice. (ECF Nos. 37, 40, 48.) 13 Courts may take judicial notice of an adjudicative fact that is “not subject to 14 reasonable dispute.” Fed. R. Evid. 201(b); see also *Khoja v. Orexigen Therapeutics, 15 Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (“clarify[ing] when it

is proper to take judicial notice of facts in documents, or to incorporate by reference documents into a complaint, and when it is not []”). A fact is “not subject to reasonable dispute” if it “(1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)–(2). From Defendant’s Request, the Court grants the request in part and takes judicial notice of the following documents: • Exhibit E: California Department of Public Health Guidance for the Use of Face Masks, March 14, 2022. Plaintiff’s Complaint also discusses her belief against receiving the COVID-19 vaccine but concedes that she has never received the vaccine. (DSSUF ¶ 35.) Thus, the Court focuses only on her claims as they relate to mask-wearing. • Exhibit F: California Department of Industrial Relations COVID-19 Emergency Temporary Standards Frequently Asked Questions, 3 November 8, 2022.

• Exhibit G: California Department of Public Health Non-Healthcare Congregate Facilities COVID-19 Outbreak Definitions and Reporting Guidance for Local Health Departments, June 20, 2023 (originally published on May 1, 2020). • Exhibit H: California Code of Regulations, § 3205 (8 C.C.R. § 3205) • Exhibit I: California Code of Regulations, § 3205 (8 C.C.R. § 3205.1) • Exhibit J: Cal/OSHA’s Emergency Temporary Standards, § 3205, effective May 2, 2022 – February 2, 2023. • Exhibit K: Cal/OSHA’s Emergency Temporary Standards, § 3205.1, effective May 6, 2022- February 2, 2023. The Court need not rely on any other document submitted by Defendant, and denies the remainder of the Request for Judicial Notice as moot. As to Plaintiff’s Request, the Court grants Plaintiff’s request as to Exhibit 1: California Department of Public Health Guidance for the Use of Face Masks, February 28, 2022, and need not rely on the remaining documents. Accordingly, the Court denies the remainder of the Plaintiff’s request. III. Legitimacy of State Regulations A large part of Plaintiff’s Opposition focuses on what she perceives to be the illegitimacy of the State regulations and guidelines on which Defendant relied on in adopting its COVID-19 policies. In particular, Plaintiff argues that Governor Newsom, via the California Public Health Department, violated the California Administrative Procedure Act with the executive orders issued pertaining to COVID-19 and are therefore invalid. Additionally, Plaintiff argues that Defendant’s compliance with State guidelines was pretext for violating her rights. Defendant contends that Plaintiff’s 1 claims are meritless, and that the CDPH masking requirements were binding on 2 employers, like Defendant. 3 First, any argument related to Governor Newsom or the Secretary of State’s 4 authority to implement directives during the COVID-19 pandemic are misplaced. The 5 State is not a defendant in this suit and any hypothetical relief granted on a claim that 6 the Secretary exceeded her authority would be meaningless. Second, there is no 7 genuine dispute of material fact that Defendant, as an employer, was required to 8 abide by State guidelines related to COVID-19. (See Def. RJN Ex. F.) As discussed 9 above, the Court takes judicial notice of the State guidelines Defendant was following 10 during the time of the alleged incidences. Aside from

arguments about the APA, 11 Plaintiff has provided no relevant authority to support her argument that Defendant, 12 as an employer, did not have to abide by State guidance in the absence of a court 13 order invalidating them, or any evidence that Defendant believed it did not have to 14 abide such guidance. Whether Defendant used the guidelines as pretext is a question 15 subject to discussion below, but to the extent Plaintiff disputes the legitimacy of the 16 State guidelines themselves, or that Defendant had to follow such guidelines, the 17 Court rejects such arguments.

18 IV. FEHA Claims 19 Plaintiff brings several claims under California’s Fair Employment and Housing 20 Act. Specifically, Plaintiff brings claims for religious discrimination, failure to 21 accommodate, religious harassment, discrimination based on medical condition, 22 harassment based on medical condition, retaliation and failure to prevent 23 discrimination. Defendant argues that there is no genuine dispute of material fact as 24 to any of these causes of action. The Court agrees.

25 A. Religious Discrimination 26 Plaintiff’s second cause of action alleges a violation of FEHA for religious 27 discrimination. Under California Government Code § 12940(a), it is unlawful for an 28 employer to discriminate against a person in compensation or in terms, conditions, or 1 privileges of employment because of a person’s religious creed. Plaintiff theorizes 2 that she was discriminated against by Defendant because her religious beliefs 3 precluded her from wearing a mask, and that her employment was terminated 4 because of her beliefs. 5 A plaintiff in an employment discrimination case may prove her claims via the 6 burden-shifting test established by the Supreme Court in *McDonnell Douglas Corp. v. 7 Green*, 411 U.S. 792 (1973).⁵ See *DeJung v. Superior Court*, 169 Cal. App. 4th 533, 8 550 (2008). Under this framework, the plaintiff must first establish a prima facie case 9 of discrimination, then the defendant may show that the action was taken for a 10 legitimate, non-discriminatory reason, and finally, the plaintiff may rebut the 11 defendant’s evidence by showing the reasons offered by the defendant are a pretext 12 for discrimination. *McDonnell Douglas*, 411 U.S. at 802–05.

13 1. Prima Facie Religious Discrimination 14 Generally, a plaintiff must first present a prima facie case showing that (1) she 15 was a member of a protected class, (2) she was qualified for the position he sought or 16 was performing competently in the position he held, (3) she suffered an adverse 17 employment action, such as termination, demotion, or denial of an available job, and 18 (4) some other circumstance suggests discriminatory motive. See *Guz v. Bechtel Nat. 19 Inc.*, 24 Cal. 4th 317, 355 (2000) (outlining the burden-shifting framework in an age 20 discrimination FEHA claim but stating that the test applies to “claims of discrimination” 21 that are “based on a theory of disparate treatment.”); see also *Hittle v. City of Stockton*, 22 Cal., 101 F.4th 1000, 1012 (9th Cir. 2024) (stating that the fourth element in the FEHA 23 context is characterized as “some other circumstance suggest[ing a] discriminatory 24 motive.”).⁶ 25 26 5 An employee may also prove a FEHA case with direct evidence, and in such instances the burden-shifting framework is not used. *DeJung v. Superior Court*, 169 Cal. App. 4th 533, 549-50 (2008). Here, 27 Plaintiff’s arguments of discrimination appear to be based solely on circumstantial evidence. 28 6 Plaintiff’s Opposition appears to analyze the religious discrimination cause of action with the standard 1 Defendant first

argues that Plaintiff cannot establish a prima facie case of discrimination because she has not provided any evidence suggesting a discriminatory motive for her termination. To support this argument, Defendant points to Plaintiff's deposition testimony where she states that she was unaware of anyone associated with Defendant who had a bias against her because of her religion. (Chun Dec. (ECF No. 36-1, Ex. A) at 252:17–19.) Plaintiff argues that she need not present direct evidence of bias and appears to rest on the failure to accommodate Plaintiff's beliefs as evidence of a discriminatory motive. Plaintiff is correct that direct evidence need not be presented to make her case, see *DeJung*, 169 Cal. App. 4th at 549–50, but as discussed below the Court concludes that she has not stated a claim for failure to accommodate, and so that alleged failure does not lend itself to her religious discrimination theory. Plaintiff also argues that her termination was discriminatory because insubordination was a pretext for the true reason she was terminated. Rather, Plaintiff argues that she was terminated because she refused to mask due to a violation of her religious beliefs and was told to leave for that reason. However, it is undisputed that Plaintiff returned to work at a time when the store was in "outbreak status" and refused to wear a mask. (DSSUF ¶¶ 21–22.) Moreover, Plaintiff was offered an unpaid leave of absence for the time the store was in "outbreak status" (*Id.* ¶ 23), but Plaintiff refused the offer and continued to refuse to wear a mask and refuse to follow a directive to leave the store (*Id.* ¶ 22, 25.) To the extent that Plaintiff relies on the statement made by Davis about being fired for not wearing a mask, it appears that insubordination is not inconsistent with Plaintiff's actions since she refused to leave the store after being told to do so and failing to wear a mask while at the store. Thus, this argument also does not support a finding of religious discrimination. The Court will address the failure to accommodate standard when addressing the FEHA failure to accommodate cause of action. Plaintiff also appears to argue that Defendant's requirement that she was told to remove religious pins from her work apron while others were allowed to wear other symbols, constitutes sufficient evidence of discrimination to support a prima facie claim. (Opp'n at 10.) Although Plaintiff discusses this evidence in the context of pretext, even when considered as part of a prima facie claim, the Court finds that Plaintiff's cause of action still fails. It is undisputed that Lawson and Burris were unaware that the two employees in question were violating the dress code. (DSSUF ¶¶ 30, 31; Chun Dec. at 206:4–208:10.) Moreover, in her deposition Plaintiff acknowledged that there was another Christian employee who was not told that she had to remove her religious pin even though Plaintiff was required to. (Chun Dec. at 181:6–188:1.) Accordingly, Plaintiff has not provided any evidence suggesting that supervisors treated her differently from other employees because of her religious beliefs. The Court finds that no genuine dispute of material fact exists as to whether there was "some other circumstance suggesting a discriminatory motive" and that Plaintiff has failed to establish a prima facie claim of religious discrimination.⁹

B. Failure to Accommodate

Plaintiff's third cause of action alleges that Defendant violated FEHA because her supervisors failed to

accommodate Plaintiff's religious beliefs. These individuals 19 are also alleged to have taken adverse employment actions against Plaintiff, including 20 by not meaningfully engaging in an interactive process and denying all requests for 21 22 7 Plaintiff also states that other employees were not penalized for wearing a mesh mask or for wearing a mask pulled down. However, Plaintiff has included no evidence of these "other employees" who were 23 treated differently. 24 8 Because the Court concludes that Plaintiff has not established a prima facie case, the Court need not reach the second and third McDonnell Douglas steps, which would include pretext. See Cal. Fair Emp. 25 & Hous. Com. v. Gemini Aluminum Corp., 122 Cal. App. 4th 1004, 1020 (2004) ("A discussion of pretext is premature until the employee establishes the prima facie case and the employer offers a legitimate, 26 nondiscriminatory reason for the adverse employment action."). 27 9 Because Plaintiff has failed to establish a prima facie case of discrimination, her failure to prevent discrimination claim also fails. See *Mayes v. Kaiser Found. Hosp.*, 917 F. Supp. 2d 1074, 1079–80 (E.D.

28 Cal. 2013) (citation omitted).

1 religious accommodations regardless of the information provided because of a "zero 2 tolerance" policy for not wearing masks. 3 Under California Government Code § 12940(l)(1), an employer is required to 4 make reasonable accommodations for their employees' religious beliefs unless doing 5 so would impose an undue hardship. FEHA claims for failure to accommodate are 6 analyzed under a burden-shifting framework. *Bolden-Hardge v. Off. of Cal. State 7 Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023) (citation omitted). First, the employee 8 must plead a prima facie case of failure to accommodate religion. *Id.* Second, if the 9 employee is successful, the employer can show that it was nonetheless justified in not 10 accommodating the employee's religious beliefs or practices. *Id.* (citation omitted). 11 1. Prima Facie Case 12 To establish a prima facie failure to accommodate claim, the "employee must 13 establish. . . that he or she had a bona fide religious belief, of which the employer was 14 aware that conflicts with an employment requirement." *Soldinger v. Nw. Airlines, Inc.*, 15 51 Cal. App. 4th 345, 370 (1996). 16 Defendant argues that Plaintiff cannot establish a prima facie failure to 17 accommodate religion claim because her refusal to wear a mask is not based on a 18 religious belief. To support their argument, Defendant cites to the factors developed 19 in the concurring opinion in *Malnak v. Yogi*, 592 F.2d 197 (3d Cir. 1979), which some 20 California courts, and district courts have adopted in the FEHA context to determine if 21 a set of beliefs is religious. See, e.g., *Friedman v. Southern Cal. Permanente Med. 22 Grp.*, 102 Cal. App. 4th 39, 66 (2002); *Meintser v. T-Mobile USA, Inc.*, No. 2:23-cv- 23 02562-TLN-CKD, 2024 WL 4289579, at *5–6 (E.D. Cal. Sept. 25, 2024). Defendant 24 highlights Plaintiff's own testimony where she admits to not knowing whether her 25 religious prohibits or discourages the use of masks. (DSSUF ¶ 26.) Plaintiff argues 26 that her religious beliefs are sincerely held as her beliefs about wearing masks come 27 straight from God. 28 1 In *Detwiler v. Mid-Columbia Medical Center*, ---- F.4th ----, 2025 WL 2700000 2 (9th Cir. 2025), the Ninth Circuit addressed the "bona fide religious belief" aspect of 3 the prima facie inquiry.10

Acknowledging that the Ninth Circuit has not yet endorsed a 4 test for determining whether a belief is religious or secular, the court explained that 5 entirely conclusory assertions of religious belief need not be taken as true. *Id.* at *6. 6 However, whether a belief is religious should not “turn upon a judicial perception of 7 the particular belief or practice in question; religious beliefs need not be acceptable, 8 logical, consistent, or comprehensible to others. . . .” *Id.* (citation omitted). Thus, a 9 plaintiff seeking a religious exemption must plead a sufficient nexus between her 10 religion and the specific belief in conflict with the work requirement. *Id.* “Invocations 11 of broad, religious tenets cannot, on their own, convert a secular preference into a 12 religious conviction.” *Id.* 13 Plaintiff alleges that she is a member of a protected class within the meaning of 14 FEHA because she is a Christian. Plaintiff states that she had a religious belief that 15 masking was straight from the “pits of hell”, that God told her “it [including masks] was 16 all a lie” and “tyranny. . .[and] he’s against all tyrannical tyranny.” God also told her not 17 to mask anymore at the end of 2022. This is sufficient to create a triable issue of fact 18 as to Plaintiff’s religious beliefs. 19 2. Reasonable Accommodation 20 Defendant argues that even if Plaintiff is found to have a sincere religious belief 21 and requested a religious accommodation, Defendant did, in fact, offer Plaintiff a 22 reasonable accommodation: an unpaid leave of absence until the store was no longer 23 in outbreak status. Additionally, Plaintiff’s other requests for accommodations were 24 unreasonable. Plaintiff argues that “[n]o meaningful discussion about a reasonable 25 26 10 The Court notes that *Detwiler* discusses a motion to dismiss, whereas the motion here is for summary 27 judgment, and will proceed with its analysis with the proper standards in mind. Additionally, the Court notes that *Detwiler* discusses a Title VII failure to accommodate religion claim, but “FEHA is interpreted 28 consistently with Title VII.” *Bolden-Hardge*, 63 F.4th at 1222 n.2 (collecting cases) . 1 accommodation” ever occurred and that she was told by Defendant’s managing 2 agents that her religious beliefs would not be accommodated. 3 If a prima facie failure to accommodate religion is established, the employer 4 must then show that it initiated good faith efforts to accommodate, or that no 5 accommodation was possible without producing undue hardship. *Soldinger*, 51 Cal.

6 App. 4th at 370 (citations omitted). Under FEHA, “a reasonable accommodation is 7 one that eliminates the conflict between the religious practice and the job 8 requirement.” 2 C.C.R. § 11062. Any reasonable accommodation is sufficient to meet 9 an employer’s obligations. *Soldinger*, 51 Cal. App. 4th at 370. Importantly, “the 10 employer need not adopt the most reasonable accommodation nor must the 11 employer accept the remedy preferred by the employee. *Id.* The reasonableness of 12 the employer’s efforts to accommodate is determined on a case-by-case basis. *Id.* 13 Here, the circumstances were such that while Plaintiff’s role involved direct 14 contact with other employees and customers, she did not want to wear a mask at a 15 time when the store was in “outbreak status.” (DSSUF ¶¶ 3, 21, 22.) Defendants met 16 with Plaintiff and in response to her stated religious beliefs, offered her unpaid leave 17 until the store was no longer in “outbreak status.” (*Id.* ¶ 23); see 2 C.C.R. § 11062 18 defining a reasonable

accommodation and explaining that allowing time off to avoid a 19 conflict with religious observances may constitute a reasonable accommodation).¹¹ 20 Plaintiff's issue appears to be that she did not receive the accommodation she wanted. 21 Moreover, it is clear that the alternative accommodations that Plaintiff proposes 22 would not have been acceptable given California's regulatory requirements at the 23 time. Plaintiff essentially wanted either (1) paid leave or (2) to not wear a mask at 24 work. (See PSSUF (ECF No. 41) ¶¶ 65, 80 stating she would have accepted paid time 25 off, wearing a mesh mask, paid medical leave, and or signing a waiver or paying an 26 27 11 The Plaintiff disputes this fact but states "Plaintiff was given only one choice in response to her refusal to mask – leave and be unpaid." The Court finds that this does not contradict the Defendant's 28 statement and considers it undisputed. 1 "OSHA fine".) These options were not possible as Plaintiff had used her paid leave or 2 would not have followed then-existing state requirements. Additionally, to the extent 3 that Plaintiff sought Defendant's "extra paid leave for COVID", it is undisputed that the 4 policy was expired by the time Plaintiff sought to make use of it. (Sullivan Dec. (ECF

5 No. 44) ¶ 15, Ex. 5; Reply at 5.). Accordingly, , the Court finds that granting summary 6 judgment on Plaintiff's third cause of action is proper. 7 C. Religious Harassment 8 Plaintiff also brings a cause of action under FEHA for religious harassment. 9 Plaintiff alleges that she was subjected to a pattern of inappropriate and non-work- 10 related questions about her individual religious beliefs, including whether or not she 11 was vaccinated. Additionally, Plaintiff contends that she was ridiculed for her religious 12 conviction and was treated differently than other employees who were vaccinated and 13 was harassed with invasive questions and verbally abused by her superiors. 14 "[H]arassment focuses on situations in which the social environment of the 15 workplace becomes intolerable because the harassment (whether verbal, physical, or 16 visual) communicates an offensive message to the harassed employee." *Roby v. 17 McKesson Corp.*, 47 Cal.4th 686, 706 (2009) (emphasis in original); *Serri v. Santa Clara 18 Univ.*, 226 Cal. App. 4th 830, 869 (2014). "A workplace may give rise to liability when 19 it is permeated with discriminatory [] intimidation, ridicule, and insult that is 20 sufficiently severe or pervasive to alter the conditions of the victim's employment and 21 create an abusive working environment[.]" *Lyle v. Warner Bros. Television Prods.*, 38 22 Cal.4th 264, 279 (2006) (internal quotations and citation omitted). To establish a claim 23 of FEHA harassment, a plaintiff must demonstrate that: (1) [s]he is a member of a 24 protected group; (2) [s]he was subjected to harassment because he belonged to this 25 group; and (3) the alleged harassment was so severe or pervasive that it created a 26 hostile work environment." See *Lawler v. Montblac N. Am., LLC*, 704 F.3d 1235, 1244 27 (9th Cir. 2013). "Harassment cases are rarely appropriate for disposition on summary 28 judgment." Cal. Gov't Code § 12923. 1 Defendant argues that Plaintiff's religious harassment claim is meritless because 2 she admitted at her deposition that she was not harassed based on her religion and 3 was not aware of anyone who had a bias against her because of her religion. Plaintiff 4 argues that a co-worker, Amanda who worked as an Associate Support Department 5

Specialist, singled Plaintiff out by telling Plaintiff to pull up her mask but said nothing to other co-workers.¹² Plaintiff also argues that she was given points as a punishment⁷ for no valid reason and in August 2022 was required to remove her religious pins from⁸ her apron and her computer, while other co-workers were allowed to keep their⁹ symbols. Lastly, Plaintiff argues she was forced to take medical leave to keep her job.¹⁰ Here, the conduct that could potentially serve as harassment would be the¹¹ disproportionate assignment of attendance points and the removal of her religious¹² pins. The evidence supporting Plaintiff's claim on the issue of the points is her own¹³ declaration stating that Amanda gave her negative points for the same things others¹⁴ would do. (Sullivan Dec. ¶ 18.) However, Plaintiff does not dispute that she received¹⁵ points because she violated the company policy and provides no evidence of said¹⁶ other employees who violated the attendance policy were not given attendance¹⁷ points. (See id.); see also Roby, 47 Cal.4th at 706 (explaining that "the exercise of¹⁸ personnel management authority properly delegated by an employer to a supervisory¹⁹ employee might result in discrimination, but not in harassment."). Moreover, these²⁰ instances are not so "severe or pervasive" so as to constitute harassment. See Lyle, 38²¹ Cal.4th at 283 (stating that FEHA does not create liability for "harassment that is²² occasional, isolated, sporadic, or trivial[]"). Finally, as Defendant argues, Plaintiff²³ appears to be uncertain as to whether this conduct was directed toward her because²⁴ of her religious beliefs, and what the circumstances regarding the discipline of other²⁵ employees entailed. (Chun Supp. Dec. (ECF No. 47-1, Ex. C) at 105:21–107:23.)²⁶ ²⁷ Plaintiff admits not knowing if other employees were in fact told to pull up their masks by Amanda.²⁸ (Chun Supp. Dec. at 104:8–105:19.)¹ Accordingly, Defendant is entitled to summary judgment as to Plaintiff's religious² harassment claim.³ D. Medical Condition Harassment and Discrimination⁴ Plaintiff brings additional causes of action under FEHA for alleged violations of⁵ harassment and discrimination premised on Plaintiff's health conditions. Beginning⁶ with harassment, Defendant argues that summary judgment is proper because⁷ Plaintiff admitted that she had not been harassed based on her medical conditions.⁸ Plaintiff argues that she was forced to take medical leave because of her religious⁹ beliefs since she not allowed to work without a mask.¹⁰ Here, the evidence presented does not show conduct that was so severe or¹¹ pervasive so as "to create a hostile or abusive working environment." Serri, 226 Cal.

12 App. 4th at 870. Rather, in light of Plaintiff's statements to store management that she¹³ was unable to wear a mask due to her medical conditions, she was granted paid leave¹⁴ for a year. (PSSUF ¶ 79; DSSUF¶¶ 11–14.) Plaintiff also concedes that her "medical¹⁵ leave had nothing to do with the conflict of her religious beliefs with Home Depot's¹⁶ mask requirement." (Opp'n at 7.) These statements compel finding that summary¹⁷ judgment on the medical harassment claim under FEHA is proper.¹⁸ Turning to discrimination based on medical condition, Defendant argues that¹⁹ through her own testimony, Plaintiff again admits that she was not treated unfairly²⁰ based on her medical conditions and was not aware of anyone who had bias against²¹ her because of her medical conditions. Plaintiff does not include any response to this²²

argument in her opposition. Absent any argument or evidence to the contrary, the 23 Court finds that no genuine dispute of material fact exists. Accordingly, summary 24 judgment is GRANTED as to Plaintiff's eighth cause of action. 25 E. Retaliation 26 Plaintiff also brings a claim for retaliation under FEHA. FEHA prohibits an 27 employer from discriminating against an employee based on religion and prohibits an 28 employer from retaliating against an employee because he has made a charge of 1 discrimination or opposed a discriminatory practice. See Cal. Gov't Code § 12940(h). 2 Courts again apply the burden shifting process described in McDonnell Douglas to 3 FEHA retaliation claims. See *Wilkin v. Community Hospital of the Monterey Peninsula*, 4 71 Cal. App. 5th 806, 828 (2021). 5 1. Prima Facie Case 6 To state a prima facie claim of retaliation under FEHA, a plaintiff must show that 7 (1) she engaged in a protected activity; (2) her employer subjected her to an adverse 8 employment action; and (3) a causal link exists between the protected activity and the 9 adverse action. *Nazir v. United Airlines, Inc.*, 178 Cal. App. 4th 243, 287 (2009). 10 Defendant first argues that Plaintiff cannot establish a prima facie case of 11 retaliation because there is no evidence of a causal link between any protected act 12 and the termination of Plaintiff's employment. Specifically, Defendant points to 13 Plaintiff's statement she does not believe she was retaliated against based on her 14 accommodation requests. (Chun Dec. at 253:15–24.) Plaintiff objects to such 15 testimony as calling for a legal conclusion and for being taken out of context. Plaintiff 16 also contends that when she, a Christian, objected to wearing a mask for religious 17 reasons, complained about being discriminated against to three of her supervisors, 18 and was then terminated, retaliation was established. (Opp'n at 19.) 19 Although the timing between Plaintiff's statements about refusing to mask and 20 her termination are close, review of the undisputed facts demonstrates that Plaintiff 21 was asked to leave the store after she turned down the proposed accommodation and 22 refused to mask, did not leave, and was terminated. These facts do not support a 23 finding that Plaintiff was terminated for requesting an accommodation or other 24 protected activity and instead show that Plaintiff was terminated for failing to abide by 25 directives from her superior. Moreover, the Policy cited to by Plaintiff shows that "all 26 lines of business" were required to mask in accordance with state or local guidelines, 27 and that California locations were required to comply with California regulations and 28 Cal/OSHA's requirements where a location was in "outbreak status." (See Policy at 2); 1 see *Hodges v. Cedars-Sinai Med. Ctr.*, 91 Cal. App. 5th 894, 914 (affirming summary 2 judgment in defendant's favor on retaliation claim where plaintiff acknowledged in her 3 briefing that her employer "terminated [her] because she did not get the 4 [flu] vaccination," making "any claim it terminated her for requesting a reasonable 5 accommodation untenable"). Thus, there is no dispute of material fact as to Plaintiff's 6 cause of action for retaliation. 7 V. Bane Act 8 Plaintiff also brings a cause of action under the Bane Act. Defendant argues 9 that this cause of action is meritless because Plaintiff admits that no one threatened 10 violence against her and she did not have a fear that if she exercised her constitutional 11 rights, she would be subjected to violence. Plaintiff contends that she experienced 12 coercive pressure and an

intolerance through her beliefs that kept her from exercising her constitutional right to religious freedom. Plaintiff also argues that a threat of violence is no longer needed to support a claim under the Bane Act. “The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., ‘threats, intimidation or coercion’), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.” *Shoyoye v. County of Los Angeles*, 203 Cal. App. 4th 947, 955–56 (2012). Liability under the Bane Act may not be based on “speech alone” unless “the speech itself threatens violence.” Cal. Civ. Code § 52.1(k). California courts have expressed uncertainty as to whether a Bane Act claim requires a threat of violence or whether intimidation or coercion involving a nonviolent consequence would suffice. See *Shoyoye*, 203 Cal. App. 4th at 959, (stating that the court “need not decide that every plaintiff must allege violence or threats of violence in order to maintain an action under section 52.1.”); *City and Cnty. of San Francisco v. Ballard*, 136 Cal. App. 4th 381, 28 408 (2006) (noting the issue but finding it unnecessary to address)). However, the Court need not reach this issue because Plaintiff’s substantive causes of action alleging violations of state law have failed for the reasons discussed above. The Court also notes that Plaintiff’s claims about her constitutional right to religious freedom and not adequately explained. The Opposition cites to several of Plaintiff’s own statements but does not outline what legal authority she is referring to. (Opp’n at 6.) Thus, Defendant is granted judgment as a matter of law as to this cause of action.

VI. Constitutional Right to Privacy Plaintiff next brings a cause of action under the California Constitution, alleging that Plaintiff has a protected privacy interest in her bodily integrity, and the right to choose which medical treatment she receives. Moreover, Plaintiff argues she has a right to exercise informed consent to accept, or not accept, novel medical treatments without pressure from the State. As such, Plaintiff contends that Defendant’s managing agents’ actions in, mandating that Plaintiff wear a mask or be fired constituted a serious invasion of her privacy without a legitimate employer interest. The California Constitution establishes an express right to privacy. See *Hill v. Nat’l Collegiate Athletic Ass’n*, 7 Cal.4th 1, 20 (1994); *Wilson v. Cal. Health Facilities Com.*, 110 Cal. App. 3d 317, 324 (1980) (explaining that the California Constitutional right to privacy “protects a larger zone in the area of financial and personal affairs than the federal right.”). However, this right is balanced against “other important interests” and may be outweighed by supervening public concerns. *Hill*, 7 Cal. 4th at 37. The party asserting a privacy right must establish “a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious.” *Williams v. Superior Court*, 3 Cal.5th 531, 552 24 (2017) (citation omitted). Here, Defendant does not deny that right a to privacy exists in protecting medical history and information. Instead, Defendant argues that none of Plaintiff’s claims allege an infringement on such a right. Plaintiff argues that because Defendant was not the “state” or a “health officer with police power over health emergencies” a

eI I SII IIE IIE IIE OS IS EET ENE

1 | dispute exists by Defendant “demanding to know one’s vaccination status.” (Opp’n at 2 | 22.) Moreover, Plaintiff contends that Defendant had no legitimate business interest 3 | in determining whether employees had to mask. 4 The Court rejects Plaintiff’s arguments to the extent that they rest on 5 | Defendant’s following of the State’s masking requirements. Moreover, the undisputed 6 | facts illustrate that Plaintiff was not required to get vaccinated, wear a mask, or be 7 | fired. (See DSSUF 4] 32 explaining that Plaintiff was offered unpaid leave while the 8 | store was in outbreak status; DSSUF 4] 14 explaining that Plaintiff took paid medical 9 | leave due to her health restrictions around masking.) Additionally, at the time of 10 | Plaintiff’s termination, there was a requirement that all employees — regardless of 11 | vaccine status — wear a mask when the store was in “outbreak” status, such that 12 | information about her vaccination status does not appear to have been at issue. (Def. 13 | RJN Exs. J, K.) Thus, the Court finds that no genuine dispute of material fact exists as 14 | to Plaintiff’s fourth cause of action for a violation of the California Constitution.’%

15 CONCLUSION

16 For the reasons discussed above, the Court GRANTS Defendant’s Motion for 17 | Summary Judgment (ECF No. 36) in its entirety. This Order resolves all outstanding 18 | motions, and the Clerk of Court shall enter judgment and close this case. 19 IT |S SO ORDERED. 20 . Dated: _November 17, 2025 Daniel . Cob bra tto— 21 Hon. Daniel alabretta

22 UNITED STATES DISTRICT JUDGE

23 24 '3 Plaintiff states that her wrongful termination in violation of public policy claim is in violation is based on her constitutional right to religious freedom. However, Plaintiff has not specified which constitution, 25 | oF constitutional provision she is tying this claim to. To the extent that her claim for wrongful termination in violation of public policy is derivative of her FEHA causes of action or her California 26 Constitution right to privacy claim, the Court finds that it is derivative and also fails. See, e.g., *Ashcroft v. Southern Cal. Permanente Med. Grp.*, 763 F. Supp. 3d 1133, 1143 (S.D. Cal. 2025) (dismissing a 27 | termination in violation of public policy claim where plaintiff failed to establish a violation of public policy premised on her FEHA claims). Additionally, the Court does not address Defendant’s argument 28 relating to punitive damages or seeking alternative employment because the other causes of action fail. yn