

Tentative Rulings for June 16, 2022
Department 502

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re: **Lee v. Lazy Dog Restaurants, LLC**
Superior Court Case No. 21CECG02504

Hearing Date: June 16, 2022 (Dept. 502)

Motion: Plaintiff's Motion for Preliminary Approval of Class Settlement

Tentative Ruling:

To deny plaintiff's motion for preliminary approval of class settlement, without prejudice.

Explanation:

1. Class Certification

a. Standards

An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); see also Newberg, *Newberg on Class Actions* (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

"Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there will be no trial. But other specifications of the rule -- those designed to protect absentees by blocking unwarranted or overbroad class definitions -- demand undiluted, even heightened, attention in the settlement context." (*Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620, internal citation omitted.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

California case law requires that substantial evidence underlie a decision to certify. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470.) "In particular, we must consider whether the record contains substantial evidence to support the trial court's predominance finding, as a certification ruling not supported by substantial evidence cannot stand." (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th

1096, 1106; see also *Carabini v. Superior Court* (1994) 26 Cal. App. 4th 239, 245: "In the absence of supporting declarations or other admissible evidence, . . . plaintiffs have yet to establish one of the requisites for the maintenance of a class action.")

b. Numerosity and Ascertainability

"Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible when that identification becomes necessary. While often it is said that class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records, that statement must be considered in light of the purpose of the ascertainability requirement. Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." (*Nicodemus v. Saint Francis Memorial Hospital* (2016) 3 Cal.App.5th 1200, 1212, internal citations and quote marks omitted.)

Here, plaintiff seeks to certify a class consisting of all consumers in California who, from August 24, 2017 to the preliminary approval date, possess or possessed a Lazy Dog gift card with a balance of less than \$10.00. Plaintiff estimates that there are approximately 3,417 customers with gift cards that have a value of less than \$10.00, and that the class is ascertainable as the class members can be identified by the class members themselves or through defendant's records.

It does appear that the proposed class is sufficiently numerous to warrant certification, as there are approximately 3,400 people in the class. However, it is unclear that the class is ascertainable, as the parties admit that defendant has no records showing who bought the gift cards. Relying on potential class members to identify themselves is also problematic, as they may not even know that they might be class members until they receive notice of the settlement, and it will be difficult to give them notice without knowing who bought gift cards. Many of the customers will not even have their gift cards anymore, so they will have no way of proving that they bought the cards, or what the remaining value on them is. Apparently, the parties will simply take the customers' word that they bought gift cards and that they have a value of less than \$10. This does not appear to be a very practical way of determining the class. Thus, plaintiff has not shown that the class is ascertainable.

c. Community of Interest

"[T]he 'community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021, internal citations omitted.)

"The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.) "[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence

of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 669.)

Here, it does appear that there are common questions of law and fact, as each class member has a Lazy Dog gift card worth less than \$10, and each class member has a right to receive cash back for their card. Defendant allegedly has a common practice of not giving cash back for cards worth less than \$10.

Plaintiff's counsel states that the class representative has claims typical of the class, as she has a gift card worth less than \$10 that Lazy Dog refused to cash out. Plaintiff's counsel also claims that the named plaintiff will be able to adequately represent the class, that she does not have any conflicts that would make her unable to represent the class, and she has experienced and qualified counsel who are representing her and the rest of the class.

There is sufficient evidence to establish that class counsel are experienced and qualified to represent the class based on the declarations of counsel. However, the named plaintiff herself has not provided a declaration in support of the motion, so she has not attested under penalty of perjury that she has no adverse interests to the other class members, or that her claims are typical of the rest of the class. Without some admissible evidence from the class representative, the court cannot find that the representative can adequately represent the class or that her claims are typical of the class.

Therefore, at this time there is insufficient information before the court to grant certification of the class for the purpose of approving the settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished

... [therefore] the factual record before the ... court must be sufficiently developed.” (*Id.* at p. 130.) The court must be leery of a situation where “there was nothing before the court to establish the sufficiency of class counsel’s investigation other than their assurance that they had seen what they needed to see.” (*Id.* at p. 129.)

b. Fairness and Reasonableness of the Settlement

“In determining whether a class settlement is fair, adequate and reasonable, the trial court should consider relevant factors, such as ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.’ The list of factors is not exclusive and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–245, internal citations omitted, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260.)

Here, plaintiff has a strong case that defendant’s policy of refusing to cash out gift cards with a value of less than \$10 is illegal, as Civil Code section 1749.5 requires stores to offer cash back where a customer has a gift card with a value of less than \$10. Plaintiff has sent investigators to several of defendant’s restaurants, and in many of the restaurants the investigators have not been able to cash out gift cards worth less than \$10. Therefore, plaintiff’s chances of prevailing at trial are good.

However, it is likely that defendant would vigorously oppose plaintiff’s claims at the class certification stage and at trial. There is always a risk that plaintiff would not prevail, or would not recover enough money to make the expense of risk of trial worth the trouble. Therefore, the risk, expense, complexity and duration of further litigation weigh in favor of approving the settlement.

The amount offered in settlement is minimal here, since most of the settlement is non-monetary. Defendant is essentially agreeing to comply with the law by offering cash back to customers with gift cards worth less than \$10, as well as retraining its employees to offer cash back, post notices regarding giving cash value for gift cards, etc. Defendant will also offer restitution for customers who no longer have their gift cards by giving out new gift cards worth \$10 to the first 1,286 customers who make claims, up to a total of \$12,860.

While the amount paid in settlement here is not substantial, the class members would likely receive a real benefit, since they would be more likely to be able to cash out their low value gift cards. Any customers who lost or discarded their low value cards would receive a benefit as well, as they can receive a new card worth \$10, which is more than their old card was worth. On the other hand, it is unclear whether defendant would allow them to simply cash their card out for its full value, or whether they would have to use their card to buy defendant’s food or merchandise. Potentially, the customers could still be stuck with a gift card that has no real value to them. Still, it appears that the

amount paid in settlement is fair and reasonable here given the low value of each class member's claim.

The parties did conduct some discovery into their claims, as well as some pre-lawsuit investigation to determine whether defendant had a policy of refusing to cash out low value gift cards. Counsel has not given much information about the exact nature of the discovery conducted. Still, given the nature of plaintiff's claims here, it appears that there was adequate discovery conducted to determine defendant's potential liability and the strength of each party's case.

The experience and views of counsel weigh in favor of approving the settlement, as counsel is highly experienced in class litigation and has represented many consumers in class actions in the past. Counsel believe that the settlement is fair and reasonable, and is in the best interest of the class members. The settlement was also reached after an arm's length mediation with the assistance of a neutral mediator, which creates a presumption of fairness.

c. Proposed Class Notice

Plaintiff claims that the proposed class notice is appropriate here. Plaintiff notes that there are no records showing which customers purchased gift cards, or how much money is left on each card. Therefore, the parties have agreed to publish a ¼ page summary notice in USA Today (California Edition) one time within 20 days after the preliminary approval date. The class notice will give a brief explanation of the case, and refer readers to a website where the full class notice can be reviewed and where there will be directions to make a claim. The plaintiff will also publish the full class notice on the website. The class notice will explain the proposed settlement and procedures for making written objections and for appearing at the final approval hearing. The website will also have instructions for making a claim upon final approval of the settlement.

However, it is not clear that the proposed class notice is adequate to give notice to the putative class members. Essentially, plaintiff will only give notice for one day in a single publication, USA Today. Thus, it seems likely that many potential class members will never see the notice, and will either not raise objections before the final approval or make a claim after the settlement has been finally approved. It would seem more reasonable to require notices be published in multiple different newspapers or other media outlets, rather than relying on a single day's publication in one newspaper. If the cost of paying for notices in multiple new outlets is too high, the parties might consider sending out press releases to different new outlets to give the case broader exposure and increase the chances of the class members actually receiving notice of the settlement. Otherwise, there does not seem to be much chance that the putative class members will get notice and either raise objections or make claims after the settlement is approved.

3. Attorney's Fees and Costs

Plaintiff's counsel will receive \$62,000 for fees and costs from defendant if the settlement is approved. The amount of attorney's fees and costs does not appear to be unreasonable on its face, especially since it will not reduce the overall amount paid to the class. On the other hand, counsel has not provided any evidence regarding the

amount of work done or hourly rate of counsel so that the court can perform a lodestar calculation to determine whether the amount paid is reasonable. Counsel states that they will provide declarations regarding the work done when the settlement is reviewed at the final approval stage. However, the court still needs to make a preliminary determination of the reasonableness of the requested fees, so counsel needs to provide evidence of the amount of work done and hourly rate of the attorneys who worked on the case.

4. Payment to Class Representative

The named plaintiff will receive a \$1,500 payment under the settlement. While the courts frequently approve incentive payments to named class representatives, the court still needs to see evidence regarding the work done by the representative in order to determine whether the amount being paid to her is fair and reasonable. Plaintiff's counsel has stated that they will provide a declaration before the final approval hearing regarding the activities performed by plaintiff, the time spent, the risks undertaken, the adverse consequences, and the benefits received by her. However, the court will need evidence regarding plaintiff's involvement in the case before granting preliminary approval of the incentive payment to her. Therefore, plaintiff needs to provide a declaration regarding her activities in the case, the risks and benefits to her, and any adverse consequences to her of being the class representative.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM **on** 6/13/2022.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: **Wood v. Sanger Unified School District**
Superior Court Case No. 20CECG03623

Hearing Date: June 16, 2022 (Dept. 502)

Motion: by defendant for summary judgment/adjudication

Tentative Ruling:

To deny summary judgment. To deny summary adjudication.

Explanation:

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c(c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

Affidavits of the moving party must be strictly construed and those of the opponent liberally construed. (*Petersen, supra*, 259 Cal.App.2d at p. 775.) The opposing affidavit must be accepted as true, and need not be composed wholly of strictly evidentiary facts. (*Ibid.*) Any doubts are to be resolved against the moving party. The facts in the affidavits shall be set forth with particularity. (*Ibid.*) The movant's affidavit must state all of the requisite evidentiary facts and not merely the ultimate facts or conclusions of law or conclusions of fact. (*Ibid.*) All doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502.)

Plaintiff brings three causes of action against defendant for medical discrimination, disability discrimination, and failure to prevent discrimination. Plaintiff alleges that defendant discriminated against her by terminating her employment because of her diagnosis of colon cancer and history of prior knee injury.

Defendant moves for summary judgment or, in the alternative, summary adjudication of each cause of action. The court initially notes that plaintiff, in opposition, agreed to withdraw the first cause of action, for medical condition discrimination. Therefore the court proceeds with the disability discrimination, and failure to prevent discrimination causes of action.

Disability Discrimination

Plaintiff alleges that she had a disability condition within the meaning of Government Code section 12940, subdivision (a), upon which she was discriminated. Government Code section 12940 states, in pertinent part:

It is an unlawful employment practice, unless based upon a bona fide occupational qualification... [¶] (a) For an employer, because of the... physical disability [or] mental disability... of any person, to... bar or to discharge the person from employment..., or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

To succeed, a plaintiff must show a set of circumstance that, if unexplained, permit an inference that it is more likely than not the employer intentionally treated the employee less favorably than others on prohibited grounds. (*Jones v. Dept. of Corrections* (2007) 152 Cal.App.4th 1367, 1379.) The specific elements of a prima facie case may vary depending on the particular facts. (*Guz v. Bechtel Nat'l Inc.* (2000) 24 Cal.4th 317, 355.) Generally, the plaintiff must provide evidence that she was (1) a member of a protected class; (2) was performing competently in the position she held; (3) suffered an adverse employment action; and (4) some other circumstance suggests discriminatory motive. (*Ibid.*)

Generally, a defendant employer's motion for summary judgment bears the burden to present evidence of nondiscriminatory reasons that would permit a trier of fact to find, more likely than not, that they were the basis for the termination. (*Wilkin v. Comm. Hospital of the Monterey Peninsula* (2021) 71 Cal.App.5th 806, 821-822.) To defeat the motion, the employee then must adduce or point to evidence raising a triable issue that would permit a trier of fact to find by a preponderance that intentional discrimination occurred. (*Id.* at p. 822.)

Qualified Individual – Competency

Here, defendant submits that plaintiff's adverse employment action was due to plaintiff's inability to competently perform essential functions of her position. (UMF, Second Cause of Action, First Claim, No. 11.¹) Specifically, defendant found that plaintiff could not have performed her emergency duties as it related to pre-trip safety checks, and evacuating students in an emergency because of her restriction against squatting. (Defendant's Statement of Evidence, Ex. B, Declaration of Karina Ledezma, ¶ 39; Ex. C,

¹ Defendant's Statement of Undisputed Material Facts restarts sequential numbering for each element on each cause of action in a confusing manner. The court provides as much identifying information to reference the proposed undisputed fact, as filed.

Declaration of Tabitha Perez, ¶ 6; Ex. D, Declaration of Eduardo Martinez, ¶ 4; Ex. E, Declaration of Jimmy Robles, ¶ 4-7.)

However, in the light most favorable to plaintiff, defendant's position necessarily requires a parallel finding that, but for the restriction of "no squatting", there would be no cause to consider whether plaintiff's ability to conduct pre-trip safety checks or evacuate students off the bus in an event of emergency. In other words, defendant's assessment of plaintiff's ability to perform essential duties was predicated on plaintiff's conditions of disability. In contrast, defendant previously treated prior workplace restrictions from a 2015 knee injury, including a squatting restriction, as temporary, assigning temporary light duty. (Defendant's Statement of Evidence, Ex. B, Ledezma Decl., ¶¶ 12-14.) When plaintiff returned to full duty without restrictions following recovery from the 2015 knee injury, no fitness for duty examination was ordered to check if plaintiff could properly perform pre-trip safety inspections or could evacuate children in the event of an emergency. (See *id.*, ¶ 15; see also Plaintiff's Statement of Evidence, Ex. 7, Declaration of Patricia Wood, ¶ 13.) In any event, on August 8, 2018, plaintiff passed the fitness for duty examination. (E.g., Defendant's Statement of Evidence, Ex. LL.)

For the above reasons, the court finds sufficient dispute of the facts to create a triable issue as to whether plaintiff was unable to competently perform essential functions of her position to support her claim for disability discrimination. As such, summary adjudication of the issue as to whether plaintiff was a qualified individual competently performing her job duties as part of the cause of action for disability discrimination is denied.

Adverse Employment Action Based on Protected Characteristic

Defendant argues that only two pertinent actions were taken against plaintiff regarding the restriction of squatting, a fitness for duty examination and the prevention from bidding on a desired bus route, and that neither can be considered an adverse employment action. As to the characterization of the fitness for duty examination, defendant argues that the duty was a "job related" inquiry and therefore not an adverse employment action or discriminatory to demand.

Defendant cites to *Kao v. University of San Francisco* (2014) 229 Cal.App.4th 437, which found that where a professor with noted incidents of threatening behavior was subjected to fitness for duty (FFD) evaluations as part of the university's investigation and subsequent termination. (*Id.* at pp. 440-444.) The matter went to trial on the professor's discrimination action, and the jury found in favor of the university. (*Id.* at pp. 439-440.) The professor appealed for, among other reasons, a contention that the jury did not have substantial evidence to find that the FFD evaluations were job related and that there were insufficient bases to support the necessity for such. (*Id.* at p. 451.) The *Kao* court found that there was sufficient evidence in the record to support a basis to find that an FFD was "job related" because it was necessary to determine whether he posed a danger to himself or others pursuant to California Code of Regulations, Title 2, section 11065, subdivision (k), and section 11071, subdivision (d). (*Ibid.*) The evidence that multiple people reported instances of threatening behavior was challenged by the professor on appeal. He argued that the behavior did not explicitly threaten others or include a physical component suggestive of significant or imminent violence. (*Ibid.*) The *Kao* court

concluded that under the circumstances, the contested “job related” basis “at best are jury arguments, and the jury could reasonably reject [the professor’s] benign view of the situation.” (*Ibid.*) The Kao court held that the employer unquestionably had a duty to maintain a safe working environment, and at trial, the jury heard sufficient testimony to support their conclusion that the professor’s behavior warranted an assessment of fitness for duty. (*Id.* at p. 452.)

In Kao the matter was tried and submitted to a jury who made certain factual findings. It was after resolving factual disputes that the jury reached its conclusion. In the present case, there are factual disputes that must be resolved before liability can be determined.

Here, defendant argues that the necessity of the fitness for duty examination was based on concerns that a no-squatting restriction would impact plaintiff’s ability to perform daily pre-trip inspections, as well as whether plaintiff could evacuate a bus or incapacitated students in the event of an emergency. (Defendant’s Statement of Evidence, Ex. E, Robles Decl., ¶ 7.) Defendant contends that plaintiff was not the only person who has been sent for such a test, and that several other employees were required to submit to examination on return to work following injury. (*Ibid.*)

Plaintiff argues that she has never seen or heard of a bus driver being subjected to a fitness for duty examination, particularly when returning to work following injury. (Plaintiff’s Statement of Evidence, Ex. 7, Wood Decl., ¶ 13.) The fact that plaintiff is not aware of other employees being required to submit to an examination prior to returning to work, in the court’s assessment, does not raise a triable issue of fact. However, as defendant’s evidence shows, plaintiff had a history of knee injury and other medical conditions which required either or both of accommodations and time off, for which plaintiff was never subjected to a fitness for duty examination. (See *ibid.*; Defendant’s Statement of Evidence, Ex. B, Ledezma Decl., ¶¶ 11-33.) This does create a triable issue of fact.

In a light most favorable to plaintiff, the court finds that there is a triable issue of whether the order of a fitness for duty examination was “job related” because it was necessary to determine whether plaintiff posed a danger to herself or others, or an improper disability-related inquiry constituting an adverse employment action based on a protected characteristic. Summary adjudication as to this issue is denied.

Pretext

On the same bases as discussed above, the court finds a triable issue as to whether the fitness for duty examination was a pretextual inquiry into plaintiff’s disability.

Plaintiff noted that the fitness for duty examination was ordered only after she had filed a grievance for being prevented from bidding to work a particular bus route. (*Id.*, ¶¶ 9-10.) In response to the grievance, her supervisor informed her that drivers who are not medically cleared may not bid for a route. (*Id.*, ¶ 15; see also Defendant’s Statement of Evidence, Ex. E, Robles Decl., ¶ 7; Ex. D, Martinez Decl., ¶ 9.)

Defendant identified no other basis for which it sought, only on this occasion, to obtain more assurances of fitness. Rather, defendant confirms that the basis for the examination was due to concerns over plaintiff's conditional restrictions, variations on orders from treating physicians, and plaintiff's reporting that she sought a physician's reevaluation of prior work restrictions. (Defendant's Statement of Evidence, Ex. B, Ledezma Decl., ¶¶ 35-40.) Concerned that plaintiff, in challenging medical orders, may have caused a medically unsound recommendation, defendant itself sought to challenge medical orders, to see if plaintiff's released restrictions were sound. (*Id.*, Ex. D., Martinez Decl., ¶ 7; cf. Plaintiff's Statement of Evidence, Ex. 7, Wood Decl., ¶ 14.) In any event, this inquiry is secondary to a determination of whether the fitness for duty examination was a proper disability-related inquiry. Summary adjudication as to this issue is denied.

Failure to Prevent Discrimination

Defendant moves for summary adjudication of this cause of action on the grounds that plaintiff's discrimination cause of action fails. For the reasons stated above, plaintiff's claim for disability discrimination remains at issue. Summary adjudication as to this cause of action is denied.

Prior Settlement

Though not raised in defendant's notice of motion, defendant argues that plaintiff previously settled all matters regarding her knee injury through a workers' compensation claim. As plaintiff responded to the argument, the court finds sufficient grounds to proceed.

Defendant contends that the terms of the settlement under the workers' compensation claim, including psychiatric claims, were released. As such, defendant argues that plaintiff released her claims against defendant for both physical and, pertinent here, "psychosocial injuries" of which plaintiff now complains. Defendant cites no basis upon which to include claims of discrimination as a psychosocial injury within the meaning of the workers' compensation settlement.

Plaintiff argues that claims of discrimination under the Fair Employment and Housing Act are not subject to the workers' compensation exclusivity rule. Plaintiff asserts that nothing in the workers' compensation settlement references issues outside the jurisdiction of the Workers Compensation Appeals Board. Defendant, on reply, did not address this argument.

The general presumption is that the standard language of a workers' compensation claims release releases only those claims that are within the scope of the workers' compensation system and does not apply to claims asserted in separate civil actions. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 376.) Thus, absent a showing of clear intent to settle matters outside the scope of workers' compensation, claims under the Fair Employment and Housing Act are not included in the release. (See *Jefferson v. Cal. Dept. of Youth Authority* (2002) 28 Cal.4th 299, 303-304.)

Here, a review of the settlement release reveals no clear intent to settle matters outside the scope of workers' compensation. (Defendant's Statement of Evidence, Ex. RR.) Summary adjudication as to this issue is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM **on** 6/15/2022.
(Judge's initials) (Date)