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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MICHAEL SARGENT,

Plaintiff and Appellant,

v.

CITY OF GARDENA et al.,

Defendants and Respondents.

B347293

(Los Angeles County
Super. Ct. No. 23TRCV03283)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Gary Y. Tanaka, Judge. Affirmed.

Ferrone Law Group, Stefon L. Jackson, Sydney R.
Romaine, Brett Rutkowski and Derek Thompson for Plaintiff and
Appellant.

Liebert Cassidy Whitmore and Danny Y. Yoo for
Defendants and Respondents.

INTRODUCTION

Michael Sargent worked for the City of Gardena (City) as a police officer for approximately 20 years until his retirement in 2022 from an industrially related disability. Sargent sued the City and city manager Clint Osorio (collectively, Defendants) for various disability and age discrimination claims under the Fair Employment and Housing Act (FEHA; Gov. Code, § 12940).¹ In the operative third amended complaint, Sargent alleged the City wrongfully denied him paid health insurance retirement benefits under City Resolution No. 6475 (Resolution), and that Osorio requested personal favors in exchange for amending the Resolution so Sargent would be eligible for such retirement benefits and/or to exempt Sargent from the Resolution's requirement that a retiring employee be at least 50 years old.

The trial court sustained Defendants' demurrer to Sargent's complaint. Sargent appeals, arguing he stated claims for disparate treatment discrimination due to disability and age, as well as disparate impact discrimination, retaliation, and harassment due to disability. We affirm because Sargent's complaint did not allege a cognizable claim of age discrimination, Sargent did not show the Resolution constitutes disparate treatment based on disability, and his remaining claims failed to allege facts supporting discriminatory or retaliatory animus.

¹ Undesignated statutory references are to the Government Code.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Sargent's Third Amended Complaint*²

Sargent sued the City in October 2023 and added Osorio as a defendant in a second amended complaint in June 2024.

As relevant here, Sargent's third amended complaint (filed September 2024) alleged he had worked as a police officer for the City since 2002. Through his role as President of the Gardena Police Officers' Association, Sargent became acquainted with Osorio, the Gardena city manager, in December 2019.

After Sargent was promoted to police lieutenant in March 2021, he noticed a "change" in his formerly "cordial" relationship with Osorio. Osorio "began to ask for inappropriate favors," "insist[ing]" Sargent "run VIN numbers on vehicles." "On or around March of 2021," Osorio asked Sargent for help to "streamline" obtaining a concealed carry weapons license. Sargent declined, but in October 2021 Osorio followed up on the matter. Sargent alleged Osorio would "continuously reach out to request various uncomfortable favors" asking Sargent to "misuse his police authority."

In November 2021, Sargent "filed a workers' compensation claim claiming stress" and was "placed off work" due to an "industrially related" injury. Sargent alleged he informed Osorio of his workers compensation claim.

While Sargent was on leave, Osorio told Sargent about a former city employee who was suing Osorio for harassment. Osorio had previously admitted to harassing the employee and

² We previously granted Defendants' motion to augment the record with Sargent's third amended complaint in addition to other trial court documents.

had called the employee a homophobic slur. Sargent referred Osorio to an attorney because he did not feel comfortable discussing the harassment lawsuit further.

“While out on workers’ compensation, it became known to [Sargent] that he was going to have permanent work restrictions and most likely not be eligible to return to work.” Sargent told Osorio that Resolution No. 6475 would exclude him from “Tier 1” paid health insurance benefits after retirement, and he further disclosed that he had Parkinson’s disease, which would require “lifelong medication.”

Sargent alleged Osorio had “made deals with prior employees that did not meet the criteria of Resolution 6475 to provide health insurance for them,” and Sargent hoped to make a similar deal. Sargent and Osorio also talked about amending Resolution No. 6475 “so no officer who suffered a work related injury would be denied medical benefits.” “In or around the beginning of 2022, [Sargent] and Osorio had a verbal agreement to change the Resolution and award [Sargent] the medical benefits” he desired. Sargent sent Osorio “proposed amendments” to Resolution No. 6475 in January 2022.

Around the time of these discussions, Osorio “inquired again about using [Sargent’s] influence” to streamline a concealed carry weapons license. Sargent “could not do anything to assist” because he was on leave, and he reported the matter to the police chief. In July 2022, Osorio texted Sargent, “Told [police chief] about when I inquired about ccw. Disappointing.” Although Sargent tried to meet with Osorio to discuss the issue, Osorio blocked his phone number and did not speak to Sargent again. “Osorio knew [Sargent] was in a vulnerable position with his age and disability, and Osorio stopped responding to further efforts to

amend the Resolution and/or award [Sargent] with medical benefits.”

Sargent was approved for an industrial disability retirement, and he retired in October 2022. He did not receive Tier 1 medical benefits because he retired under the age of 50 and due to disability.

Sargent’s third amended complaint pleaded a cause of action against the City for disparate impact discrimination due to age and disability (§ 12940, subd. (a)), alleging Sargent and other Gardena police officers “between the ages of 40-49 were targeted by” the Resolution, and the Resolution had “a disproportionate effect on disabled employees.” Based on “the aforesaid conduct,” Sargent further alleged disparate treatment discrimination by the City due to age and disability (§ 12940, subd. (a)).

Against both Defendants, Sargent alleged a hostile work environment harassment claim due to disability (§ 12940, subd. (j)). Sargent alleged that Osorio “personally engaged in the above-identified harassing actions against [Sargent] on account of [his] physical disability,” because when “Osorio realized [Sargent] would not do questionable favors for him, Osorio used [Sargent’s] disability and age to deny him medical benefits.”

Against the City, Sargent alleged an unlawful retaliation claim (§ 12940, subd. (h)). The complaint alleged that Sargent “made it known to Defendants that the Resolution was discriminatory, and Osorio made verbal agreements to fix this issue As a result of [Sargent] not providing questionable favors to Osorio, Osorio then harassed [Sargent] by withdrawing on their verbal agreement, sending him upsetting messages, and taking away [Sargent’s] medical benefits.” Sargent also alleged both Defendants failed to prevent harassment, retaliation, and

discrimination (§ 12940, subd. (k)).³

B. Demurrer Proceedings

Defendants demurred to the third amended complaint in October 2024. As to the first cause of action for disparate impact discrimination, they argued Sargent failed to “allege disparate impact based on either disability or age.” As to the disparate treatment claim, Defendants argued Sargent failed to allege he suffered an adverse employment action, and he “did not and cannot allege that he was a qualified individual to perform his essential functions, with or without an accommodation.” As to Sargent’s harassment claim, Defendants argued he “fail[ed] to allege harassing conduct that was sufficiently severe or pervasive.” And as to the retaliation claim, Defendants asserted Sargent did not allege facts showing “he engaged in any protected activity” or that he suffered “any materially adverse employment actions.”

Defendants also requested judicial notice of the Resolution in support of their demurrer. Defendants asserted the City Council of Gardena enacted the Resolution, effective August 11, 2020. As relevant here, the Resolution provided:

□ POST RETIREMENT HEALTH INSURANCE
COVERAGE

1. Tier 1: Employees hired before the date of this Resolution and meet the minimum requirements listed below shall receive, and continue

³ Sargent does not raise any arguments on appeal as to his failure to prevent claim.

to receive after the termination of this Agreement, paid health insurance benefits based on the formula set forth below:

i. Any affected employee who is at least fifty (50) years of age, and elects a service retirement from the City, shall receive paid health insurance coverage for the retired employee and his or her dependent . . . if the employee completed twenty-five (25) years of service with the Gardena Police Department and was continuously enrolled in any of the City's health insurance plans during the twenty-five (25) years of service; or

ii. Any affected employee who is at least fifty (50) years of age, and elects a service retirement from the City, shall receive paid health insurance coverage for the retired employee . . . if the employee completed fifteen (15) years of service with the Gardena Police Department and was continuously enrolled in any of the City's health insurance plans during the fifteen (15) years of service.

[. . .]

□ INDUSTRIAL DISABILITY: . . . [A]ll regular full-time employees who retire from the City on industrial disability with less than the minimum requirements specified [above] shall be offered the opportunity to continue their participation in the group health insurance in effect at the time of such separation. The cost of such participation shall be borne by the retiree

Sargent opposed the demurrer. As to his disability discrimination claim, Sargent argued he pleaded discriminatory

animus because “Osorio knew [he] was vulnerable and in need of retiree medical benefits because of his Parkinson’s disease, and then proceeded to extort [Sargent] by using his influence to receive illegal personal favors.” As to disability harassment, Sargent argued he adequately alleged that “Osorio engaged in [] quid-pro-quo style harassment, where he extorted Sargent’s disabilities and need for medical benefits in exchange for illegal personal favors” and Osorio harassed him “by knowingly rescinding an agreement that would severely hinder [Sargent’s] ability to access medical care.” Regarding the retaliation claim, Sargent argued “Osorio engaged in discussions about changing [the Resolution] with [Sargent], then abruptly stopped,” and therefore Sargent had alleged “close temporal proximity” between Sargent’s protected activity (complaints about the Resolution) and the adverse action (denial of benefits).

Sargent also argued he stated age discrimination claims under disparate treatment and disparate impact theories based on the Resolution because the “policy discriminates against [those] aged between 40-49.” And as to disability disparate treatment discrimination, Sargent argued he sufficiently alleged that the Resolution “on its face[] grant[s] more favorable benefits to officers without a disability.”

The court sustained the demurrer without leave to amend in March 2025. The court reasoned that Sargent did not sufficiently allege disparate impact or treatment based on the Resolution because “the Resolution actually favors older individuals rather than younger individuals” and “the plain language of the Resolution does not exclude individuals with disabilities from Tier 1 benefits.” The court determined Sargent did not allege age or disability discrimination arising from

Osorio's actions. "While [Sargent] has alleged that Osorio attempted to curry favor from [him] that he felt was inappropriate, none of those actions can be considered to be based on age or disability . . . [and] there are no facts or legal authority to indicate that Osorio had any authority to unilaterally implement changes to the Resolution."

The court further sustained the demurrer to the harassment cause of action, concluding none of Sargent's allegations regarding Osorio's conduct—"including attempting to obtain favors and agreeing to change the [R]esolution and then not changing the [R]esolution—were based on [Sargent's] age or disability." As to the retaliation claim, the court observed Sargent alleged "no facts that he engaged in a protected activity" or "a causal link between the protected activity and the employer's action." The court also sustained the demurrer as to the failure to prevent harassment or discrimination as no "actionable harassment or discrimination has been properly pled."

Sargent timely appealed.

DISCUSSION

A. *Demurrer and Standard of Review*

"The rules by which the sufficiency of a complaint is tested against a general demurrer are well settled. ' "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their

context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. . . .”’ Our examination of the complaint is de novo.” (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) We review the trial court’s ruling, not its reasoning, and we may affirm the trial court’s decision on any ground supported by the record. (*Wentworth v. Regents of University of California* (2024) 105 Cal.App.5th 580, 597; *Doe v. Roman Catholic Archbishop of Los Angeles* (2016) 247 Cal.App.4th 953, 960.)

“To the extent the trial court’s ruling on a demurrer presents a question of statutory interpretation, we will interpret the statute de novo as well.” (*Doe 3, Family Services Organization v. Superior Court* (2025) 110 Cal.App.5th 571, 582; *Doe v. Marysville Joint Unified School Dist.* (2023) 89 Cal.App.5th 910, 915.) When interpreting a statute, our fundamental task “ “ ‘is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.’ ” ’ ” (*Weiss v. City of Del Mar* (2019) 39 Cal.App.5th 609, 618; accord, *Hernandez v. Department of Motor Vehicles* (2020) 49 Cal.App.5th 928, 935.) We “begin by examining the statutory language, giving it a plain and commonsense meaning. [Citation.] We do not, however, consider the statutory language in isolation; rather, we look to the statute’s entire substance in order to determine its scope and purposes. [Citation.] That is, we construe the words in question in context, keeping in mind the statute’s nature and obvious purposes.” (*Los Angeles County Metropolitan Transportation Authority v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1106-1107.) The same principles apply to the

interpretation of a city resolution. (*County of Humboldt v. McKee* (2008) 165 Cal.App.4th 1476, 1489 [“[t]he interpretation of local ordinances and resolutions is subject to ordinary rules of statutory construction”]; *City of Vista v. Sutro & Co.* (1997) 52 Cal.App.4th 401, 409 [interpretation of a city resolution is a question of law].)

B. *Age and Disability Discrimination Under FEHA*

“FEHA prohibits employment discrimination based on a physical disability.” (*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 310 (*Sandell*); see § 12940, subd. (a).)

“Under FEHA, a person is ‘physically disabled’ when he or she has a physiological condition that ‘*limits* a major life activity.’” (*Sandell*, at p. 311; see *Bagatti v. Department of Rehabilitation* (2002) 97 Cal.App.4th 344, 354.) Broadly speaking, “FEHA proscribes two types of disability discrimination:

(1) discrimination arising from an employer’s intentionally discriminatory act against an employee because of his or her disability (referred to as disparate treatment discrimination) and (2) discrimination resulting from an employer’s facially neutral practice or policy that has a disproportionate effect on employees suffering from a disability (referred to as disparate impact discrimination).” (*Brown v. Los Angeles Unified School Dist.* (2021) 60 Cal.App.5th 1092, 1106 (*Brown I*).)

FEHA similarly proscribes employment discrimination based on age. (*Carroll v. City and County of San Francisco* (2019) 41 Cal.App.5th 805, 812; see § 12940, subd. (a).) “For purposes of an age discrimination claim, the protected class is persons over 40 years of age.” (*McCaskey v. California State Automobile Assn.* (2010) 189 Cal.App.4th 947, 978 (*McCaskey*);

see § 12926, subd. (b).) As with disability discrimination, “[a]ge discrimination claims can be advanced under a disparate treatment or disparate impact theory.” (*Carroll v. City and County of San Francisco* (2025) 115 Cal.App.5th 1192, 1204 (*Carroll*); accord, *Mahler v. Judicial Council of California* (2021) 67 Cal.App.5th 82, 112 (*Mahler*).)

To interpret FEHA, California courts often look to analogous federal law, including the Americans with Disabilities Act of 1990 (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), and the Age Discrimination in Employment Act (ADEA). (See *Mahler, supra*, 67 Cal.App.5th at p. 112 [construing FEHA in tandem with the ADEA]; *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, 1040 [same, with ADA]; *Linsley v. Twentieth Century Fox Film Corp.* (1999) 75 Cal.App.4th 762, 766 [same, with ADEA and Title VII].)

C. *Age and Disability Claims Based on Resolution No. 6475*

We first address Sargent’s claims arising from the Resolution.

1. *Disparate Treatment*

Sargent argues the Resolution is “discriminatory in violation of FEHA because it conditions an employment benefit on two protected characteristics”: disability and age.

a. *Age Discrimination*

As to age, Sargent contends the Resolution “discriminates against police officers between the age[s of] 40-49 solely because of their age.” We conclude Sargent did not state a claim for

disparate treatment age discrimination based on the Resolution because he fails to demonstrate FEHA prohibits the City from conditioning eligibility for retirement benefits based on the age of the retiring employee.

FEHA prohibits employers from “discriminat[ing] against [a] person in compensation or in terms, conditions, or privileges of employment” “because of the . . . age . . . of any person.” (§ 12940, subd. (a).) FEHA defines “age” as “the chronological age of any individual who has reached a 40th birthday.” (§ 12926, subd. (b).) Sargent argues this language is “unambiguous and clear” that he has “standing to bring an age discrimination case” because he was over 40 years old and discriminated against in favor of workers 50 and over.

Although Sargent argues we need not consider FEHA’s statutory purpose because its meaning is unambiguous, to interpret FEHA we must also consider its statutory purpose. Addressing FEHA, the California Supreme Court explained that “age discrimination (or ‘ageism,’ as it is sometimes called) has been defined as ‘a systematic stereotyping of and discrimination against people because they are old, just as racism and sexism accomplish this with skin color and gender.’ ” (*Stevenson v. Superior Court* (1997) 16 Cal.4th 880, 895-896 [discussing “FEHA’s express policy condemning employment discrimination against older workers”].) The high court has identified prima facie evidence of age discrimination in violation of FEHA where an age-protected worker (i.e., over 40) is replaced by or treated less favorably than a similarly situated “significantly younger” worker. (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 366-367 (*Guz*) [analyzing discrimination claim based on alleged “favoritism of younger workers”].) Sargent does not cite any

California authority recognizing a FEHA claim by comparatively younger workers (age 40 to 49) based on purported favoritism of comparatively older workers (age 50 years and over).

Federal courts have rejected similar ADEA claims of age discrimination in favor of older workers. In *Gen. Dynamics Land Systems, Inc. v. Cline* (2004) 540 U.S. 581 (*Cline*), the U.S. Supreme Court considered and rejected an age discrimination claim nearly identical to Sargent's. Cline and other employees between 40 and 50 years old sued their employer under the ADEA for eliminating health benefits for retired employees, except for current employees who were at least 50 years old. (*Id.* at pp. 584-585.) While the plain language of the ADEA protected employees over 40 years old and prohibited discrimination based on age, the Court concluded the ADEA "forbid[s] only discrimination preferring young to old" and "the 40-year threshold makes sense as identifying a class requiring protection against preference for their juniors, not as defining a class that might be threatened by favoritism toward seniors." (*Id.* at pp. 586, 591, 593.) The Court therefore affirmed dismissal of Cline's ADEA claim.

Sargent argues *Cline* was wrongly decided and the purpose of age discrimination laws, including FEHA, is "to remove age as a factor for consideration when making employment decisions for any worker over the age of 40." Sargent asserts FEHA and ADEA are different because FEHA also addresses racial and sex discrimination and applying *Cline*'s reasoning in the FEHA context would "frustrate" race and sex anti-discrimination provisions. Sargent does not, however, meaningfully engage with the text of FEHA or ADEA, their respective legislative histories or statutory purposes, or otherwise provide a reasoned argument

why we should reject the reasoning of *Cline*.

Accordingly, as to Sargent's age discrimination claim, we conclude *Cline* is persuasive. Like the ADEA, FEHA prohibits age discrimination against employees over 40 years of age. (See 29 U.S.C. § 631(a); §§ 12940, subd. (a), 12926, subd. (b).) The statutes share the same objective: to prevent age discrimination against this group of employees. (See *Mahler, supra*, 67 Cal.App.5th at p. 112; *Rosenfeld v. Abraham Joshua Heschel Day School, Inc.* (2014) 226 Cal.App.4th 886, 894, fn. 4.) In light of the shared statutory purpose between the ADEA and FEHA, as well as the longstanding interpretation of FEHA protecting against preferential treatment for younger employees, Sargent has not persuaded us that, unlike the ADEA, FEHA authorizes a claim of age discrimination in favor of comparatively older employees brought by a comparatively younger employee. (Cf. *Guz, supra*, 24 Cal.4th at pp. 361-362 [applying U.S. Supreme Court decision on ADEA to interpret FEHA].)

Sargent contends other states have interpreted their state age discrimination laws to allow discrimination claims by younger workers on the basis of preferential treatment in favor of older workers. (See, e.g., *Zanni v. Medaphis Physician Services Corp.* (Mich. Ct. App. 2000) 240 Mich.App. 472, 476 [Civil Rights Act, unlike ADEA, prohibited discrimination based on “‘chronological age,’ without limiting its reach to any particular age group”]; *Bergen Commercial Bank v. Sisler* (N.J. 1999) 157 N.J. 188, 196, 201-202 [New Jersey Law Against Discrimination, unlike ADEA, did not include minimum age limit but protected “[a]ll persons” from age discrimination]; *Ogden v. Bureau of Labor* (Or. 1985) 299 Or. 98, 100 [anti-discrimination provision applied to individuals “‘18 years of age or older and

under 70 years of age’ ”].) But Sargent does not engage with the statutory text of any of these other states’ laws or their legislative history or purpose, let alone explain how these different age discrimination provisions compare to FEHA or to the ADEA. In the absence of a reasoned argument from Sargent grounded in statutory and legislative history analysis, under the circumstances presented we follow *Cline*.⁴

b. Disability Discrimination

As stated, to qualify for a service retirement with paid health care benefits under the Resolution, an employee must be at least 50 years old. The Resolution also provides for unpaid health benefits for “all regular full-time employees who retire from the City on industrial disability with less than the minimum requirements specified [for service retirement, i.e., less than 50 years of age].”

Sargent argues the Resolution discriminates on the basis of disability because it “does not offer medical benefits for [an employee] that disability retires” and thus, “on its face, grant[s] more favorable benefits to officers without a disability.”

Defendants respond that the Resolution “offers a different benefit to employees ‘who retire from the City on industrial disability with less than the minimum requirements’ which is the opportunity to continue in the City’s health plan as a retiree at their own cost. . . . This is a benefit that is only available to officers who have a disability to the exclusion of those officers

⁴ As Defendants note, recognizing Sargent’s theory of age discrimination would also undermine traditional retirement schemes with minimum age requirements for retirement benefits.

who do not.”

We conclude Sargent did not state a claim for disparate treatment disability discrimination based on the Resolution. The Resolution does not expressly exclude disabled employees from qualifying for a service retirement based on their disability because to qualify for Tier 1 paid health benefits is conditioned on age and years of service at retirement. Under the text of the Resolution, Sargent was ineligible for such benefits after retirement not because he had a disability retirement or because he was disabled, but because he was not at least 50 years old at the time of his retirement. If Sargent had met this age requirement, along with the 15-year service requirement, he would have been eligible for paid health benefits even if the reason for his retirement was disability-related. Sargent concedes he “was not eligible” for a service retirement.

The trial court reached the same conclusion, relying on *Brown v. City of Los Angeles* (9th Cir. 2008) 521 F.3d 1238 (*Brown II*). There, the relevant city pension law authorized a “disability retirement pension” as well as a “seniority-based service pension,” and “[o]fficers who qualify for disability pensions may elect to receive service pensions if they are eligible.” (*Id.* at pp. 1240-1241.) *Brown II* determined the city’s law did not discriminate on the basis of disability in violation of FEHA because “the City provides two separate pension programs to officers with disabilities” and “[t]he two programs need not provide identical benefits.” (*Id.* at pp. 1241-1242; cf. *Castellano v. City of New York* (2d Cir. 1998) 142 F.3d 58, 70 (*Castellano*) [“The ADA requires only that persons with disabilities have the opportunity to receive the same benefits as non-disabled officers who have given an equivalent amount of service.”].)

Sargent argues *Brown II* and *Castellano* are distinguishable because “the only retirement option available to him was the disability retirement, and therefore he was not afforded the same benefits as those non-disabled officers.” In Sargent’s view, “disabled retirees are losing out on benefits that are only afforded to members that service retire and specifically exclude[] members based on disability and age.” Sargent does not allege or argue, however, that he received lesser benefits than a similarly situated non-disabled retiree, i.e., an employee who retires before the age of 50. Indeed, under the terms of the Resolution, only employees who retire because of disability are awarded health benefits (albeit unpaid) if they do not meet the criteria for a service retirement. The Resolution therefore provides the same opportunity for disabled and non-disabled employees to qualify for a service retirement and receive paid health benefits, and greater opportunity for disabled employees who do not meet the criteria of a service retirement.

2. *Disparate Impact on the Basis of Age*⁵

Sargent argues he sufficiently pleaded that the Resolution has a “disparate impact on officers aged 40-49.”

“To establish a disparate impact claim, a plaintiff need not prove intent to discriminate, but must prove that “regardless of

⁵ Although Sargent’s complaint alleged a claim of disparate impact disability discrimination, Sargent did not raise any argument regarding this claim in opposition to the demurrer or in his appellate briefing. The claim is thus forfeited. (See *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1192 [appellant forfeited arguments which were not raised in opposition to demurrer]; *Wall Street Network, Ltd. v. New York Times Co.*

motive, a *facially neutral* employer practice or policy, bearing no manifest relationship to job requirements, *in fact* had a disproportionate adverse effect on members of the protected class.” ’ ’ ” (*Carroll*, *supra*, 115 Cal.App.5th at p. 1213; accord, *McCaskey*, *supra*, 189 Cal.App.4th at p. 978.)

For the reasons discussed with respect to his disparate treatment age discrimination claim, Sargent does not state a cognizable claim for age discrimination by alleging the Resolution has a disparate impact on younger employees by allegedly favoring comparatively older workers. (See *Cline*, *supra*, 540 U.S. at pp. 586, 592-593.)

D. *Disability Claims Based on Osorio’s Conduct*

We now address Sargent’s claims arising from Osorio’s alleged actions. As stated, Sargent disavowed any age-based claims based on Osorio’s conduct.

1. *Discrimination*

Sargent argues he sufficiently pleaded that Osorio subjected him to disparate treatment discrimination based on disability. Sargent contends he established discriminatory animus by alleging that “Osorio knew [he] was vulnerable and in need of retiree medical benefits because of his Parkinson’s disease and then proceeded to extort [Sargent] by using his influence to receive illegal personal favors.”

(2008) 164 Cal.App.4th 1171, 1177 [“Generally, appellants forfeit or abandon contentions of error regarding the dismissal of a cause of action by failing to raise or address the contentions in their briefs on appeal.”].)

Under FEHA, the elements of a prima facie case of discrimination are that the employee plaintiff: “(1) was a member of a protected class; (2) was qualified for the position sought or was performing competently in the position already held; (3) suffered an adverse employment action, such as termination, demotion, or denial of an available job; and (4) some other circumstance suggests discriminatory motive.” (*Brown I, supra*, 60 Cal.App.5th at p. 1105; see *Prue v. Brady Co./San Diego, Inc.* (2015) 242 Cal.App.4th 1367, 1378 [elements of disability discrimination]; accord, *Guz, supra*, 24 Cal.4th at p. 355.)

Here, Sargent adequately alleged he had a disability within the meaning of FEHA because he had a stress-related condition preventing him from working and he was diagnosed with Parkinson’s disease. (See § 12926.1, subd. (c) [defining physical and mental disabilities under FEHA as those that limit “a major life activity,” including “‘working’ ”]; *id.*, subd. (b) [FEHA protects against “discrimination due to an actual or perceived physical or mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially disabling”]; cf. *Ross v. County of Riverside* (2019) 36 Cal.App.5th 580, 594-595 [employee produced triable issue of fact as to whether he had physical disability under FEHA where he had “symptoms of . . . a potentially disabling neurological disease”].)

Based on these disabilities, Sargent argues he suffered an adverse employment action because Osorio did not provide him with retiree paid health benefits. Sargent argues he was a qualified individual for these benefits because he alleged “Osorio granted retiree medical benefits to other [employees] that did not meet all the requirements of Resolution 6475.” Even assuming Sargent adequately pleaded an adverse employment action and

that he was a qualified individual, we conclude Sargent did not allege facts or circumstances suggesting a discriminatory motive, i.e., that the denial of paid retirement health benefits occurred because of Osorio's bias against his disability.

Brown I, supra, 60 Cal.App.5th 1092 is instructive. In *Brown I*, the plaintiff sued for disability discrimination, alleging she suffered electromagnetic hypersensitivity due to her employer's new Wi-Fi system, and her employer initially agreed to accommodate her, but later denied her requested accommodations. (*Id.* at pp. 1099-1101.) The Court of Appeal affirmed the order sustaining the demurrer because the complaint "alleged no facts from which discriminatory intent [can] be inferred." (*Id.* at p. 1107.) *Brown I* reasoned the plaintiff "alleged no facts from which we can infer [the employer] clung to its belief that the campus was safe and refused to accommodate her because it was biased against her as a person with a disability. At most, the [complaint] alleged facts showing a disagreement between the parties as to whether the Wi-Fi was causing her disability." (*Ibid.*)

Similarly here, Sargent did not allege facts from which we may infer that Osorio denied him paid retirement health benefits because he was biased against or wanted to exploit him as a person with disabilities. Rather, Sargent alleged that Osorio purportedly agreed to help him obtain paid retirement health benefits even though he was unqualified for them (by agreeing to amend the Resolution and/or granting him an exemption) and that Osorio subsequently reneged on this agreement, not because of Sargent's disabilities, but because Sargent would not perform certain personal favors. Whether or not Osorio's alleged conduct was fair or warranted, "FEHA prohibits discrimination based on

an employee's disability or perceived disability, but it 'does "not guarantee employees 'a stress-free working environment' " ' " and " " " 'is not a shield against harsh treatment at the workplace.' " ' " (Doe v. Department of Corrections & Rehabilitation (2019) 43 Cal.App.5th 721, 735 (Doe); accord, Arteaga v. Brink's, Inc. (2008) 163 Cal.App.4th 327, 344.)

In Sargent's view, "[h]ad Osorio requested illegal personal favors and conditioned some other employment benefit that [Sargent] was not particularly vulnerable to because of his disability, then this would not be actionable under FEHA." Sargent argues that "Osorio's conduct, in part, relied on Osorio's knowledge that [Sargent] had a disability which put him in a particularly vulnerable position to obtain retiree medical benefits." But Osorio's knowledge of Sargent's disabilities alone does not support a reasonable inference that Osorio acted with discriminatory intent. (See *Brown I*, supra, 60 Cal.App.5th at p. 1107 [employer knew of employee's disability but employee did not state a claim for disability discrimination].)

2. Harassment

As to his harassment claim, Sargent argues that "he raised concerns about the discriminatory effect of the [Resolution], entered into a verbal agreement with [Osorio] to negate the discriminatory provisions, then was abruptly denied the benefit based on the reported discriminatory criteria." According to Sargent, Osorio also "harassed [him] by knowingly rescinding an agreement that would severely hinder [Sargent's] ability to access medical care knowing he had a life-long condition."

Section 12940, subdivision (j)(1) "makes it unlawful . . . '[f]or an employer . . . or any other person, because of . . . physical disability, mental disability, [or] medical condition . . . to harass

an employee’ ” (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 705-706, italics omitted (*Roby*).) Unlike disability discrimination, “harassment often does not involve any official exercise of delegated power on behalf of the employer” and “focuses on situations in which the *social environment* of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee.” (*Id.* at p. 706.)

“To prevail on a claim that a workplace is [] hostile under FEHA, an employee must show [he] was subjected to harassing conduct that was (1) unwelcome; (2) because of [a protected characteristic, including disability]; and (3) sufficiently severe or pervasive to alter the conditions of [his] employment and create an abusive work environment.” (*Bailey v. San Francisco Dist. Attorney’s Office* (2024) 16 Cal.5th 611, 627 [addressing racial harassment].) “The working environment must be evaluated in light of the totality of the circumstances: ‘[W]hether an environment is “hostile” or “abusive” can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.’ ” (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 462.)

Harassing conduct may include verbal slurs or other hostile or demeaning language, physical harassment such as assault or other “physical interference with normal work or movement,” or visual harassment such as “derogatory posters, cartoons, or drawings.” (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 280 [discussing sexual harassment]; see

Roby, supra, 47 Cal.4th at pp. 708-709 [employer’s “offensive” actions constituting disability harassment included “demeaning comments to [employee] about her body odor and arm sores . . . [and] demeaning facial expressions and gestures”]; *Cornell v. Berkeley Tennis Club* (2017) 18 Cal.App.5th 908, 940-941 [disability harassment claim based on “laughing and mockingly” commenting on employee’s weight, “ordering shirts that were significantly too small for her and reporting . . . that she was resisting the uniform policy by not wearing appropriate shirts”]. A claim of disability harassment can be supported by “official employment actions . . . [which] have a secondary effect of communicating a hostile message” by “establish[ing] a widespread pattern of bias.” (*Roby*, at p. 709.)

Sargent’s complaint did not sufficiently allege the harassing behavior by Osorio occurred because of his disability. According to the allegations in the complaint, Osorio began asking Sargent to run VIN numbers or help him with a concealed carry license several months before Osorio knew of Sargent’s disabilities. Sargent did not allege that Osorio used slurs or other demeaning language because of his disability, or that Osorio engaged in physical harassment or visual harassment on this basis. Without such allegations, Sargent failed to state a claim for disability harassment. (Cf. *Brown I, supra*, 60 Cal.App.5th at p. 1107 [demurrer properly sustained where plaintiff “alleged no facts from which discriminatory intent [can] be inferred”].)

Sargent argues that “Osorio engaged in [] quid-pro-quo style harassment, where he extorted [Sargent’s] disabilities and need for medical benefits in exchange for illegal personal favors.” FEHA, like Title VII, recognizes two theories of liability for

sexual harassment claims: “ ‘ ‘ ‘quid pro quo harassment, where a term of employment is conditioned upon submission to unwelcome sexual advances,’ ” ’ ” and “ ‘ ‘ ‘hostile work environment, where the harassment is sufficiently pervasive so as to alter the conditions of employment and create an abusive work environment.’ ” ’ ” (*Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 608; accord, *Herberg v. California Institute of the Arts* (2002) 101 Cal.App.4th 142, 149.) Although we do not condone Osorio’s alleged conduct (which on demurrer we presume is true), Sargent provides no authority supporting a quid pro quo harassment claim under FEHA in the context of disability discrimination, and the argument is forfeited. (See *Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277 [“ ‘When an appellant raises an issue “but fails to support it with . . . citations to authority, we treat the point as [forfeited].” ’ ” . . . [¶] . . . “We may and do ‘disregard conclusory arguments that are not supported by pertinent legal authority’ ”]; see also *Doe, supra*, 43 Cal.App.5th at p. 737 [“FEHA was not designed to make workplaces more collegial; its purpose is to eliminate more insidious behavior like discrimination and harassment based on protected characteristics.”].)

3. *Retaliation*

Sargent also contends he stated a claim for retaliation. He argues he engaged in protected activity because he “raised concerns about the discriminatory effect of the [Resolution],” and Osorio retaliated against him by reneging on their “verbal agreement” to amend the Resolution and denying him paid retirement health insurance benefits.

“The elements of a cause of action for retaliation in violation of section 12940, subdivision (h) are: ‘(1) the employee’s engagement in a protected activity . . . ; (2) retaliatory animus on the part of the employer; (3) an adverse action by the employer; (4) a causal link between the retaliatory animus and the adverse action; (5) damages; and (6) causation.’” (*Brown I, supra*, 60 Cal.App.5th at p. 1105; accord, *Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713.)

We determine Sargent’s allegations did not state a claim for retaliation. Even assuming Sargent engaged in protected activity by reporting the Resolution as discriminatory, Sargent did not allege any causal link between this report and the alleged adverse action, i.e., Osorio’s decision not to help him pursue paid retirement healthcare benefits. Rather, Sargent alleged Osorio was willing to help him pursue benefits when he raised issues with the Resolution and that Osorio stopped these discussions after Sargent reported to the police chief that Osorio contacted him about a concealed carry license.⁶ (See *Brown I, supra*, 60 Cal.App.5th at p. 1105 [plaintiff did not allege facts pertaining

⁶ Sargent did not argue in the trial court or on appeal that informing the police chief about Osorio’s attempt to “streamline” a concealed carry weapons license was protected activity under FEHA.

to retaliatory action or motive where she complained to employer “that the Wi-Fi system was adversely affecting her health” and “[employer] made promises to take certain actions to reasonably accommodate her complaints . . . [but] later reneged on its promises because it decided to rely on [other] findings . . . that the campus was ‘safe’ ”.) Sargent did not allege “retaliatory actions taken against [him] precisely because [he] engaged in protected activity, that is, because [he] made [his] initial complaint.” (*Ibid.* [demurrer properly sustained as to retaliation claim].) Sargent also did not allege any other facts suggesting that Osorio intended to retaliate against him for reporting discrimination regarding the Resolution. (See *Le Mere v. Los Angeles Unified School Dist.* (2019) 35 Cal.App.5th 237, 243-244 [demurrer properly sustained where complaint did not allege “direct evidence of retaliatory animus”].)

Sargent argues that “it is enough to allege [] close temporal proximity [between] the protected activity and adverse action.” (See *Glynn v. Superior Court* (2019) 42 Cal.App.5th 47, 56 [temporal proximity is sufficient for a prima facie case of FEHA retaliation].) Sargent does not identify how close in time these two events were, but construing his complaint liberally, it appears there were at least seven months between Sargent’s first discussions with Osorio about the Resolution (January 2022) and Osorio’s decision to stop helping Sargent obtain benefits (July 2022). Additionally, during this seven-month period, Sargent alleges Osorio was actively engaged in discussions to change the Resolution. (See *Loggins v. Kaiser Permanente Internat.* (2007) 151 Cal.App.4th 1102, 1110, fn. 6 [questioning whether nine-month gap between protected activity and adverse action “is sufficiently close in time to permit the inference of a

causal nexus . . . particularly when the protected conduct is first followed by ‘non-adverse’ actions . . . before a later adverse action occurs”].)

In sum, the trial court properly sustained the demurrer as to Sargent’s complaint, and Sargent does not argue that the trial court should have granted leave to amend, let alone what facts he would allege to cure the deficiencies in the third amended complaint. We therefore affirm.

DISPOSITION

The judgment is affirmed. Respondents may recover their costs on appeal.

MARTINEZ, P. J.

We concur:

FEUER, J.

STONE, J.