

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE GAVINA,

Plaintiff,

v.

AMAZON.COM SERVICES LLC and
DOES 1 through 10, inclusive,

Defendants.

Case No. 5:24-cv-00674-HDV-SHK

**ORDER DENYING AMAZON.COM
SERVICES LLC'S MOTION TO
DISMISS JOSE GAVINA'S
AMENDED COMPLAINT [23]**

1 **I. INTRODUCTION**

2 This action arises out of an alleged failure to accommodate a man living with cerebral palsy.
3 As alleged in his First Amended Complaint, Plaintiff Jose Gavina met with Amazon representatives
4 at a job fair, alerted them to his medical condition, and later received an offer letter for an
5 unspecified job. When Gavina showed up for work on his first day, he learned that he was assigned
6 to a warehousing position. After performing the job for a month, Gavina asserts that he was forced
7 to go on medical leave and was subsequently terminated for absence violations.

8 This action followed. Gavina asserts four claims, only three of which are in dispute: (1)
9 disability discrimination in violation of Cal. Gov't Code § 12940(a), (2) failure to engage in the
10 interactive process in violation of Cal. Gov't Code § 12940(n), and (3) failure to accommodate in
11 violation of Cal. Gov't Code § 12940(m).¹

12 Before the Court is Defendant Amazon.com Services, LLC's Notice of Motion and Motion
13 to Dismiss Jose Gavina's Amended Complaint ("Motion") [Dkt. No. 23]. Amazon argues in the
14 main that Mr. Gavina has not sufficiently alleged (and cannot allege) that he is a "qualified
15 individual" under California's Fair Employment and Housing Act ("FEHA"), which would negate
16 an element of all three causes of action. The Court disagrees. Mr. Gavina has adequately and
17 plausibly alleged that he performed the essential functions of the position for a month, and further
18 maintains that he can (and was willing to) perform the same position long term with appropriate
19 accommodations.

20 Amazon also avers that it did not fail to accommodate or fail to engage in the interactive
21 process, and further maintains that the Complaint does not state a claim for disability discrimination
22 since there are no specific allegations that he was fired *because* of his disability. Motion at 11–14.
23 Again, the Court disagrees. The circumstances surrounding the forced, prolonged leave of
24 absence—partly paid at approximately half his salary—are sufficient to sustain (at least for pleading
25 purposes) a claim for disability discrimination, and the remaining allegations amply support the
26 plausible inference that Amazon failed to accommodate or engage in the interactive process.

27 _____

28 ¹¹ Gavina has since withdrawn his fourth claim under the UCL.

1
2 Amazon's Motion is therefore denied.

3 **II. BACKGROUND**

4 Plaintiff Jose Gavina was born with cerebral palsy, a permanent condition that affects his
5 back and lower body such that he can only stand and/or walk for thirty-minute intervals and is
6 restricted from frequent lifting and bending. First Amended Complaint ("FAC") ¶ 20. Gavina
7 attended a job fair in September of 2020, where he interviewed with Defendant Amazon.com
8 Services, LLC ("Amazon") and asked whether it had positions for people with disabilities like his.
9 *Id.* ¶ 19. Amazon responded that it was a "big company" and that it had "many places where
10 [Plaintiff could] work." *Id.*

11 In a subsequent interview, an Amazon representative asked Gavina if he had any experience
12 in human resources ("HR"), and Plaintiff answered in the affirmative. *Id.* ¶ 21. Amazon's
13 representatives then informed Gavina that the company had a position for him. *Id.* Although Gavina
14 was not told what the specific position was or what it would involve, he alleges very clearly that he
15 was transparent about his disability throughout the hiring process, and that Amazon assured him that
16 there would not be any issues with his disability. *Id.* ¶ 22.

17 On September 21, 2020, Gavina received an employment offer via email. *Id.* ¶ 22. The offer
18 did not include details about the job, including instead only the descriptor "T1." *Id.* ¶ 23. The
19 onboarding process that followed did not contain any more specific information about the job. *Id.*

20 On October 7, 2020, Gavina arrived for his first day of work. *Id.* He purportedly was
21 informed—for the first time—that he would be stocking and sorting merchandise in a warehouse,
22 which required ten-hour shifts of walking, bending, and lifting. *Id.* In need of the income and
23 concerned about the job market during the COVID-19 pandemic, Gavina performed the job through
24 October 30, 2020. *Id.* ¶¶ 24, 30.

25 At that point, Gavina realized he could no longer do the work without an accommodation and
26 initiated the process to request one. *Id.* ¶ 27. His request to restructure his current position in a way
27 that would accommodate his disability was immediately denied without detailed reasoning. *Id.* ¶ 28.
28 Amazon's "Accommodation Team" instructed Gavina to update his resume, search for job postings

1 on Amazon’s public job board, and submit medical information as requested. *Id.* ¶¶ 28–29. During
2 this time, Gavina was given approximately 55% of his salary as “disability pay.” *Id.* ¶ 27. Amazon
3 told him it would also share his resume with other job sites, but warned that if another job was not
4 found by either Amazon or Plaintiff, Amazon would send Gavina a termination letter. *Id.* ¶ 30.

5 In April 2021, Amazon ended the disability payments. *Id.* ¶ 32. In July 2021, Amazon asked
6 Gavina if he had been able to identify any positions, as they were “coming to an end on the job
7 search.” *Id.* ¶ 32.

8 On April 15, 2022, Gavina received a disciplinary action notice from Amazon informing him
9 that his balance of “Unpaid Time Off” was in the negative, and he was warned that the termination
10 process would begin 48 hours after notice should he fail to respond. *Id.* ¶ 33. Two days later,
11 Gavina received a notice of an “absence violation” stating that he had collected three attendance
12 infractions that could lead to termination. *Id.* ¶ 34. Gavina was fired on April 21, 2022. *Id.*

13 **III. LEGAL STANDARD**

14 Federal Rule of Civil Procedure 12(b)(6) allows a party to seek to dismiss a complaint for
15 failure to state a claim. “To survive a motion to dismiss, a complaint must contain sufficient factual
16 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*,
17 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim
18 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
19 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.
20 Generally, a court must accept the factual allegations in the pleadings as true and view them in the
21 light most favorable to the plaintiff. *Park v. Thompson*, 851 F.3d 910, 918 (9th Cir. 2017); *Lee v.*
22 *City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001). But a court is “not bound to accept as true a legal
23 conclusion couched as a factual allegation.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
24 555). A properly pled complaint must “give the defendant fair notice of what the claim is and the
25 grounds upon which it rests.” *Twombly*, 550 U.S. at 555.

26 Only where a plaintiff fails to “nudge [] . . . [his or her] claims . . . across the line from
27 conceivable to plausible[,]” is the complaint properly dismissed. *Iqbal*, 556 U.S. at 680. While the
28 plausibility requirement is not a probability assessment, it demands more than “a sheer possibility

1 that a defendant has acted unlawfully.” *Id.* at 678. It is “a context-specific task that requires the
2 reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

3 **IV. DISCUSSION**

4 **A. First Claim: Failure to Accommodate**

5 Under California’s FEHA, it is “an unlawful employment practice...for an employer...to fail
6 to make a reasonable accommodation for the known physical and mental disability of an applicant or
7 employee [unless the accommodation would produce undue hardship on the employer].” Cal. Gov’t
8 Code § 12940(m)(1). A “failure to accommodate” claim has three elements: (1) the plaintiff has a
9 disability covered by FEHA; (2) the plaintiff is a “qualified individual”; and (3) the employer failed
10 to reasonably accommodate the plaintiff’s disability. *Moss v. City and County of S.F.*, 714 F. Supp.
11 3d 1167, 1176 (N.D. Cal. 2024) (citation omitted). Amazon argues that Gavina cannot state a claim
12 because the FAC fails to plead the second and third elements.

13 **1. Qualified individual**

14 A qualified individual is one that “is able to perform the essential duties of the position
15 [sought or held] with or without reasonable accommodation.” *Id.* (citing *Green v. State*, 42 Cal. 4th
16 254, 267 (2007)). Defendant contends that the FAC fails to plead this element by not identifying
17 what other job was available that Gavina could perform with or without reasonable accommodations.
18 Motion at 6. According to Amazon, the FAC merely asserts that Gavina is qualified for some
19 unspecified human resources work that he has not alleged was even available. *Id.*

20 This argument is a strawman that is easily knocked down for at least two reasons. Most
21 obviously, Gavina’s claim does not depend on a hypothetical HR position—Gavina alleges that he
22 was capable of performing the position he had as evidenced by the fact that he did so for over a
23 month. FAC ¶¶ 24–27. And second, the FAC alleges that he could perform the essential functions
24 long term with a reasonable accommodation to alleviate his physical limitations. *See, e.g.*, ¶ 23
25 (Plaintiff could no longer do the job of being “on his feet for ten-hour shifts walking, bending, and
26 lifting” *without a reasonable accommodation*, like providing sitting breaks); *see also* FAC ¶ 20
27 (“Mr. Gavina can only stand and/or walk for *thirty-minute intervals* and is restricted from *frequent*
28

1 lifting and bending”) (emphasis added).² That is more than enough to satisfy the low bar for this
2 element at this stage of litigation. *See* 2 Cal. Code Regs. tit. 2, § 10003 (“The department shall
3 liberally construe all complaints to effectuate the purpose of the laws the department enforces to
4 safeguard the civil right of all persons to seek, obtain and hold employment without
5 discrimination.”); *see also Davis v. Blazin Wings, Inc.*, No. EDCV-16-2167-JGB(KKx), 2016 WL
6 10966411, at *8 (C.D. Cal. Dec. 1, 2016) (“While Plaintiff’s pleading burden at this stage is light, he
7 must provide at least some minimal factual basis to support the conclusion that he can perform the
8 essential functions of the job with or without accommodation for the Court to determine whether his
9 entitlement to relief is plausible.”).

10 **2. Failure to reasonably accommodate**

11 The third element of this FEHA claim requires that an employer “make reasonable
12 accommodation[s] for the known disability of an employee unless doing so would produce undue
13 hardship to the employer’s operation.” *Miller v. Dep’t of Corrs. & Rehab.*, 105 Cal. App. 5th 261,
14 277 (2024). A “reasonable accommodation is a modification or adjustment to the work environment
15 that enables the employee to perform the essential functions of the job [] she holds,” *Ravel v.*
16 *Hewlett-Packard Enter., Inc.*, 228 F. Supp. 3d 1086, 1096 (E.D. Cal. 2017), and can include “[j]ob
17 restructuring, part-time or modified work schedules, reassignment to a vacant position, [] and other
18 similar accommodations” *Miller*, 105 Cal. App. 5th at 277.

19 Amazon does not affirmatively argue that it provided a reasonable accommodation, or that
20 any accommodation would have created an undue hardship. Instead, Amazon fends off Gavina’s
21 assertions that placement on disability leave and Amazon’s failure to find a different position for
22 him are examples of Amazon’s failure to accommodate. Motion at 9 (“Here, Plaintiff cannot base a
23 failure-to-accommodate claim purely on allegations that Amazon placed him on a leave of absence
24 after he reported that he could no longer safely perform his position.”); Motion at 10 (“[failing to
25 find a different position for him] may have been an understandably disappointing outcome for
26

27 ² To be sure, Amazon had (at least at one point) believed Plaintiff is a qualified individual, *i.e.*, could
28 perform the essential functions of the job he was hired for, given that they hired him after he disclosed
his disability. FAC ¶ 22.

1 Plaintiff, but without more, it doesn't support a claim that there was a breakdown in the
2 accommodation process.”) But once Amazon was made aware of Plaintiff's disability, it was
3 Amazon's burden to take *positive* steps to accommodate the employee's limitations. *Brown v. L.A.*
4 *Unified Sch. Dist.*, 60 Cal. App. 5th 1092, 1108 (2021).³

5 To the extent that Amazon argues that the leave of absence itself was a reasonable
6 accommodation, the law is against it. *Jensen v. Wells Fargo Bank*, 85 Cal.App.4th 245, 264 (2000)
7 (“A temporary position is not, however, a reasonable accommodation. It represents, like unpaid
8 leave, a way to put a disabled employee on hold while the attempt to locate a permanent position is
9 ongoing.”). Amazon correctly recites that providing a leave of absence may be a reasonable
10 accommodation where an employee can no longer perform the essential functions of the job, *but*
11 *only if* it is likely that the leave is effective in allowing the employee to return to work at the end of
12 the leave, with or without further reasonable accommodation. Cal. Code Regs. Tit.2 § 11068(c)
13 (emphasis added); *Shirvanyan v. Los Angeles Community College District*, 59 Cal. App. 5th 82, 88
14 (2020) (“A finite leave of absence also *may* be a reasonable accommodation [*if it*] allow[s] an
15 employee time to recover.”) (emphasis added) (citation omitted). And here, the FAC alleges that
16 Amazon made no efforts whatsoever to accommodate Gavina's work tasks to allow him to continue
17 in his position. FAC ¶ 28. Thus, on the facts as alleged, the Court cannot say as a matter of law that
18 the leave itself would allow Gavina to return to work.⁴

19
20 ³ Amazon also argues that it was relieved from the affirmative duty to search for a vacant position
21 because there were no vacant positions available. Motion at 10 (citing *Chisolm v. 7-Eleven, Inc.*,
22 814 F. App'x 194, 196 (9th Cir. 2020)). But both *Chisolm* and the case it relies on for this rule,
23 *Spitzer v. The Good Guys, Inc.*, 80 Cal. App. 4th 1376 (2000), are decisions based on the sufficiency
24 of the evidence produced by defendants on summary judgment. Amazon will have an opportunity to
25 introduce evidence that there were no vacant positions that Plaintiff was qualified for. But at this
26 stage, the allegations—analyzed in the light most favorable to the Plaintiff and drawing all favorable
inferences therefrom—demand the plausible inference that there *was* a vacant position for which
Plaintiff was qualified. Indeed, this is further supported by the allegation that Amazon made
representations to Gavina telling him they will “look into getting him a different position” and then
telling him not to worry and that “everything will get taken care of.” FAC ¶¶ 24–25.

27 ⁴ The cases Amazon cites on this point are inapposite. Motion at 9 (citing *Humphrey v. Mem'l*
28 *Hosps. Ass'n*, 239 F.3d 1128 (9th Cir. 2001) and *Hanson v. Lucky Stores, Inc.*, 74 Cal. App. 4th 215
(1999)). In *Humphrey*, the Ninth Circuit held a leave of absence could be a reasonable

1 **B. Second Claim: Failure to Engage in the Interactive Process**

2 Under FEHA, it is an “unlawful employment practice...for an employer...to fail to engage in
3 a timely, good faith, interactive process with the employee . . . to determine effective reasonable
4 accommodations, if any, in response to a request for a reasonable accommodation by an employee . .
5 . with a known physical or mental disability or known medical condition.” Cal. Gov’t Code
6 § 12940(n). FEHA obliges employers to continuously engage in “communication and good-faith
7 exploration of possible accommodations between employers and individual employees with the goal
8 of identifying an accommodation that allows the employee to perform his job effectively.” *Achal v.*
9 *Gate Gourmet, Inc.*, 114 F. Supp. 3d 781, 800 (N.D. Cal. 2015). At the pleading stage, Plaintiff is
10 not required to identify a specific reasonable accommodation “that would have been available at the
11 time the interactive process should have occurred,” *id.* (citing *Nealy v. City of Santa Monica*, 234
12 Cal. App. 4th 359, 379 (2015)), because “employees do not have at their disposal the extensive
13 information concerning possible alternative positions or possible accommodations which employers
14 have.” *Id.* (citing *Scotch v. Art Inst. of Cal.*, 173 Cal. App. 4th 986, 1018 (2009)). In cases where
15 some process is alleged, the Court’s ultimate role is to “isolate the cause of the breakdown in the
16 interactive process and then assign responsibility.” *Alejandro v. ST Micro Elecs., Inc.*, 178 F. Supp.
17 3d 850, 863 (N.D. Cal. 2016) (citation omitted).

18 Amazon argues that it did indeed—by Plaintiff’s own admission—participate in the
19 interactive process. Motion at 12–13.⁵ And Amazon is right that it did engage in some interactive

20
21
22 accommodation because a doctor opined that the plaintiff could get her condition under control after
23 time off. 239 F.3d at 1136. Similarly, in *Hanson*, the state court found that a leave of sixteen
24 months was a reasonable accommodation where the plaintiff was recuperating from a broken wrist
25 and injured hand. 74 Cal. App. 4th 215, 226–27 (1999). But Gavina’s cerebral palsy requires a
26 much different set of accommodations. The problem with the “ten-hour shifts walking, bending, and
27 lifting,” FAC ¶ 23, is that “Mr. Gavina can only stand and/or walk for thirty-minute intervals and is
28 restricted from frequent lifting and bending” due to the “permanent condition” of cerebral palsy.
FAC ¶ 20. Amazon cannot argue that time away from work will alleviate these issues. Some
accommodation is necessary.

⁵ Amazon also reasserts its argument that Plaintiff is not a qualified individual. The Court disagrees for the same reasons discussed *supra* Part IV.A.1.

1 process. See FAC ¶ 28–31. But whether Amazon fulfilled its duty is a factual question that requires
2 more than just box-checking. The duty to engage is a “continuing duty and the fact that the
3 employer took some steps to identify a reasonable accommodation does not absolve the employer of
4 liability for failure to engage in the interactive process if it is responsible for a later breakdown in the
5 process.” *Zamora v. Sec. Indus. Specialists, Inc.*, 71 Cal. App. 5th 1, 41 (2021). Therefore, on these
6 facts as alleged, the Court cannot say as a matter of law that Amazon complied with all of its
7 obligations. Gavina alleges that he kept Amazon apprised of his disability through regular notes
8 from his physician and—after months of no accommodation—asked that his request be elevated.
9 FAC ¶ 31. Gavina further asserts that, despite all of this communication on his end, Amazon
10 informed him that they were coming to an end on the job search despite little if no activity. *Id.* ¶ 32.
11 Indeed, this communication in July 2021 was the last communication made before he received a
12 notice of disciplinary action on April 15, 2022 advising him that he had overdrawn from his unpaid
13 time-off. *Id.* ¶¶ 32–33. Stated differently, Amazon is alleged to have broken the almost year-long
14 silence only to inform him that he was out of leave, and proceeded to fire him a week later. *Id.* ¶ 35.
15 Accepting the allegations of the FAC as true, as the Court must for purposes of this Motion,
16 dismissal of this claim is far from warranted.

17 **C. Third Claim: Disability Discrimination**

18 Under FEHA, it is an “unlawful employment practice . . . for an employer, because of
19 the...physical disability [or] mental disability . . . to bar or discharge the person from
20 employment...or to discriminate against the person in compensation or in terms, conditions, or
21 privileges of employment.” Cal. Gov’t Code § 12940(a). To establish a prima facie case of
22 disability discrimination, Plaintiff must satisfy three elements: (1) that Plaintiff suffers from a
23 disability; (2) that Plaintiff is a qualified individual; (3) and that Plaintiff suffered an adverse
24 employment action because of his disability. *Cable v. Starbucks Corp.*, 664 F. Supp. 3d 1014,
25 1022–23 (C.D. Cal. 2023). An adverse employment action is an action that “materially affected
26 terms and conditions of employment, with that term being construed liberally in order to afford
27 employees appropriate and generous protection against employment discrimination.” *Cervantes v.*
28 *Transdev Servs., Inc.*, No. 3:20-cv-02528-AJB-KSC, 2021 WL 5513512, at *3 (S.D. Cal. Oct. 4,

1 2021) (quotations omitted). The disability “need not be the but-for cause of the adverse employment
2 action, but must be a ‘substantial factor motivating’ it.” *Cable*, 664 F. Supp. 3d at 1023 (citing
3 *Harris v. City of Santa Monica*, 56 Cal. 4th 203, 225 (2013)).

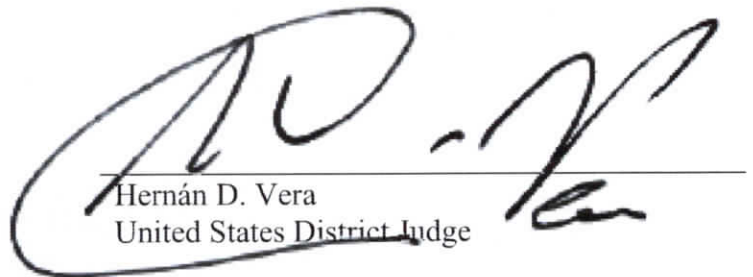
4 Amazon argues that Plaintiff did not sufficiently plead that he was terminated due to his
5 disability.⁶ Motion at 14. As a an initial matter, Plaintiff need only allege that he suffered a
6 cognizable “adverse employment action”—not necessarily termination—and the unpublished Ninth
7 Circuit decision cited by Amazon confirms its own misunderstanding. *Eshaya v. Boeing Co.*, 118
8 Fed. App’x. 159, 160 (9th Cir. 2004) (“Additionally, [plaintiff] did not suffer an adverse
9 employment action. Assuming, as [plaintiff] avers, that a threat to terminate would suffice to
10 establish an adverse employment action for purposes of disability discrimination, there is no
11 evidence that [defendant] threatened to terminate him.”). An unpaid leave of absence *can* constitute
12 an adverse employment action if it was unreasonable under the circumstances. *See Cervantes*, 2021
13 WL 5513512 at *5. And requiring an employee to take leave when he/she can work with a
14 reasonable accommodation constitutes an adverse employment action. *Rizvanovic v. Amazon.com*
15 *Servs., LLC*, 2024 WL 1886495, at *5 (E.D. Cal. Apr. 30, 2024).

16 In light of these authorities and the pleading in question, the Court concludes that Gavina has
17 sufficiently alleged that he could perform his job with a reasonable accommodation (like
18 restructuring the role, FAC ¶ 28), but was instead left on leave until his termination. FAC ¶¶ 27, 32–
19 34. The claim survives.

20 **IV. CONCLUSION**

21 For the foregoing reasons, Amazon’s Motion is denied.

22
23
24 Dated: December 4, 2024

25 
Hernán D. Vera
United States District Judge

26
27
28 ⁶ Amazon also reasserts its argument *supra* that Plaintiff is not a qualified individual. The Court disagrees for the same reasons discussed *supra* Part IV.A.1.