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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 **UNIFYSCC, et al.;**

19 Plaintiffs,

20 vs.

21 **SARA H. CODY, et al.;**

22 Defendants.
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Case No.: 22-cv-01019 BLF

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

DATE: No hearing scheduled
CTRM: 3, 5th Floor
JUDGE: The Hon. Beth Labson Freeman

1 **I. INTRODUCTION**

2 Plaintiffs Tom Davis, Maria Ramirez and Betsy Baluyut (collectively “Plaintiffs”) oppose
3 Defendant Santa Clara County’s (the “County”) motion for summary judgment. The County is not
4 being sued for its decisions to promote public health but for religious discrimination. California
5 Government Code section 855.4 (“Section 855.4”) therefore does not apply. Nor did Plaintiffs
6 Davis or Ramirez fail to timely exhaust their administrative remedies.

7 **II. STATEMENT OF FACTS**

8 On August 5, 2021, the County implemented a COVID-19 vaccination requirement for all
9 employees, with exemptions for, *inter alia*, sincerely held religious belief, practice or observance.
10 Declaration of Rachele R. Byrd (“Byrd Decl.”) Ex. 1. Plaintiffs work for the County and were
11 subject to its COVID-19 vaccine policies and orders. *Id.* Ex. 2, ¶ 2; *id.* Ex. 3, ¶ 2; *id.* Ex. 4, ¶ 2.
12 Each hold sincere religious beliefs that prevent them from taking the COVID-19 vaccine. *Id.* The
13 County granted Plaintiffs’ requests for religious exemptions, but it nonetheless did not permit them
14 to continue working and placed them on administrative leave. *Id.* Ex. 2, ¶¶ 2, 4, 5; *id.* Ex. 3, ¶¶ 2,
15 4, 5; *id.* Ex. 4, ¶¶ 2, 4, 5. The County did not offer Plaintiffs reasonable accommodations but
16 instead referred them to its public-facing website and told them to apply for new jobs. *Id.* Ex. 2,
17 ¶¶ 6-7; *id.* Ex. 3, ¶¶ 5-6; *id.* Ex. 4, ¶¶ 5-7.

18 On January 10, 2022, UnifySCC filed a charge with the DFEH on behalf of its members,
19 including Plaintiffs. *Id.* Ex. 5 at 7 (“employees who we represent in Unify SCC”); *id.* Ex. 6, 76:6-
20 14. On July 1, 2022, the DFEH was renamed the CRD. *Id.* Ex. 7. The EEOC and the CRD have a
21 work-sharing agreement that “automatically initiate[s] the proceedings of both the EEOC and the
22 [CRD].” *Id.* Ex. 8, at 2. On February 16, 2022, Plaintiff Ramirez filed a charge of religious
23 discrimination with the EEOC and received her right to sue letter on February 25, 2022, which
24 gave her 90 days (May 26) to file her lawsuit. *Id.* Ex. 9. UnifySCC and Plaintiffs Davis and
25 Ramirez filed a Complaint on February 18, 2022, that included a FEHA claim for religious
26 discrimination. Dkt. No. 1. UnifySCC and Plaintiffs Davis, Ramirez, and Baluyut filed an amended
27 complaint on August 23, 2022, which made the same substantive allegations but added a Title VII
28 claim and class allegations. Dkt. No. 55. The County lifted its vaccine mandate on September 27,

1 2022, and Plaintiff Davis was invited to return to his job thereafter. Byrd Decl. Exs. 10 & 11 at
 2 119:19-120:2. The Court certified the class on January 29, 2024 (Dkt. No. 125) and decertified it
 3 on May 21, 2025, also dismissing UnifySCC (Dkt. No. 194). Plaintiff Davis filed a charge with
 4 the EEOC on November 12, 2025, and the EEOC issued him a right to sue letter on November 26,
 5 2025. Byrd Decl. Ex. 12.

6 **III. ARGUMENT**

7 **A. Cal. Gov't Code Section 855.4 Does Not Immunize the County**

8 Section 855.4 does not apply here. Plaintiffs' FEHA claims are not based upon the
 9 County's discretionary decision to implement the vaccine mandate but rather its failure of a
 10 mandatory duty required by FEHA to accommodate Plaintiffs' religious beliefs. The County
 11 conspicuously omits from its quotation of Section 855.4 that it only applies "if the decision
 12 whether the act was or was not to be performed was the result of the exercise of discretion vested
 13 in the public entity" Cal. Gov't Code § 855.4(a). Section 855.4 only applies to exercises of
 14 discretion "on how to protect the 'public health of the community' or 'prevent[] disease or
 15 control[] the communication of disease within the community" *Greenwood v. City of L.A.*,
 16 89 Cal. App. 5th 851, 863 (2023) (alteration in original). It does not protect a "ministerial
 17 performance of a mandatory duty." *Id.* at 864. A duty is discretionary in "those areas of quasi-
 18 legislative policy-making which are sufficiently sensitive to justify a blanket rule that courts will
 19 not entertain a tort action alleging that careless conduct contributed to the governmental decision."
 20 *Johnson v. State*, 69 Cal. 2d 782, 794 (1968). But complying with anti-discrimination laws is not
 21 such an area of quasi-legislative policymaking. "The County has an 'affirmative and mandatory'
 22 duty to prevent discrimination . . . under the FEHA." *Yphantides v. Cnty. of S.D.*, 660 F. Supp. 3d
 23 935, 961–62 (S.D. Cal. 2023), *appeal dismissed*, No. 24-395, 2024 WL 3507758 (9th Cir. Mar. 7,
 24 2024) (quoting *Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.*, 103 Cal. App. 4th 1021,
 25 1035 (2002) ("The employer's duty to prevent harassment and discrimination is affirmative and
 26 mandatory.")). "[A]lthough a basic policy decision . . . may be discretionary and hence warrant
 27 governmental immunity, *subsequent ministerial actions in the implementation of that basic*
 28 *decision still must face case-by-case adjudication" Johnson*, 69 Cal.2d at 797 (emphasis

1 added). Therefore, the County’s actions in implementing the vaccine mandate and in the process
 2 of doing so failing to appropriately accommodate Plaintiffs’ religious beliefs were ministerial and
 3 not protected by Section 855.4.

4 The County’s cases are distinguishable. *Seaplane Adventures, LLC v. County of Marin*, 71
 5 F.4th 724 (9th Cir. 2023) did not concern immunity or the FEHA. And in *Allos v. Poway Unified*
 6 *School District*, 112 Cal. App. 5th 822 (2025), the plaintiff made “no reasoned argument to explain
 7 how her claims fell outside the immunity afforded by section 855.4” and failed to present any
 8 evidence that she had a qualifying disability under FEHA. *Id.* at 831, 834. The court held that the
 9 defendant’s “decisions to allow employees to work from home and subsequently to require their
 10 return to in-office work” and “concerning vaccine requirements” were “barred by the immunity
 11 afforded by section 855.4.” *Id.* at 834. In *Allos*, the court **did not** hold that every decision or act by
 12 a public entity, whether discretionary or mandatory, related **in any way** to public health measures
 13 is immune from liability. *See Brink v. Cnty. of S.D.*, No. 23-cv-1756, 2024 WL 3315992, at *10
 14 n.5 (S.D. Cal. July 3, 2024) (describing Section 855.4 as providing immunity for “failure to prevent
 15 disease”); *Schmidt v. City of Pasadena*, No. 21-cv-08769, 2024 WL 1640913, at *18 (C.D. Cal.
 16 Mar. 21, 2024), *reconsideration denied*, 2024 WL 3915097 (C.D. Cal. Aug. 6, 2024) (Section
 17 855.4 held not to apply to “non-discretionary act of ‘appl[ying]’ [policy decisions on tests and
 18 masks] to Plaintiff.”) (first alteration in original); *Barbour v. State*, No. 22-cv-00926, 2023 WL
 19 6369787, at *17 (C.D. Cal. Aug. 1, 2023) (Section 855.4 held not applicable to acts that were
 20 “deliberately indifferent to the rights and safety of inmates”). The County is not immune from
 21 liability for failure to reasonably accommodate Plaintiffs’ religious beliefs.

22 **B. Plaintiffs Davis and Ramirez Timely Exhausted Their Administrative Remedies**

23 Plaintiff Ramirez did not fail to exhaust her administrative remedies because she timely
 24 filed the Complaint containing a FEHA claim, and under Rule 15(c), her Title VII claim relates
 25 back to her FEHA claim. A later pleading “relates back” to the original pleading if the claims in
 26 the later pleading “arose out of the conduct, transaction, or occurrence set forth or attempted to be
 27 set forth in the original pleading.” *O’Donnell v. Vencor Inc.*, 466 F.3d 1104, 1112 (9th Cir. 2006).
 28 *See also ASARCO, LLC v. Union Pac. R. Co.*, 765 F.3d 999, 1004 (9th Cir. 2014) (same); *Abikar*

1 *v. Bristol Bay Native Corp.*, 300 F. Supp. 3d 1092, 1101 (S.D. Cal. 2018) (FEHA claim related
2 back to the timely filed Title VII claim); *Miranda v. Costco Wholesale Corp.*, No. 95-cv-1076,
3 1996 WL 571185, *3 (D. Or. May 7, 1996) (Title VII claim “relates back” to state law claim). An
4 amended claim arises out of the same conduct, transaction, or occurrence if it “will likely be proved
5 by the ‘same kind of evidence’ offered in support of the original pleading.” *Percy v. S.F. General*
6 *Hosp.*, 841 F.2d 975, 978 (9th Cir. 1988) (citation omitted). “The relation back doctrine of Rule
7 15(c) is ‘liberally applied.’” *ASARCO*, 765 F.3d at 1004 (citation omitted).

8 Plaintiff Ramirez timely filed a charge with the EEOC on February 16, 2022, and she
9 received a right-to-sue letter on February 25, 2022. She filed the original Complaint (with Plaintiff
10 Davis and UnifySCC) on February 18, 2022. Dkt. No. 1. While the original Complaint did not
11 contain a Title VII claim, it did contain a FEHA claim, and the Title VII claim, added to the
12 amended complaint on August 23, 2022, arose out of the same conduct alleged in the original
13 Complaint. *Compare* Dkt. No. 1 to Dkt. No. 55. Moreover, California courts rely on federal Title
14 VII law to interpret analogous portions of FEHA, and the *McDonnell Douglas* burden shifting
15 analysis applies to both claims. *Clark v. Claremont Univ. Ctr.*, 6 Cal. App. 4th 639, 662 (1992).
16 Accordingly, Plaintiff Ramirez’s Title VII claim will necessarily rely on the “same kind of
17 evidence” to be offered in support of her FEHA claim. *Percy*, 841 F.2d at 978. Therefore, the filing
18 of the Title VII claim relates back to the filing of the original Complaint and is timely. *See also*
19 *Santana v. Holiday Inns, Inc.*, 686 F.2d 736, 739 (9th Cir. 1982) (no prejudice “if another claim,
20 arising out of the same facts, is added.”).

21 Plaintiff Davis also timely exhausted his administrative remedies. First, under the single-
22 filing rule, Plaintiff Davis can “piggyback” off of the other Plaintiffs’ charges with the EEOC and
23 CRD because they were all timely filed as to all plaintiffs and their claims “arise out of similar
24 discriminatory treatment in the same timeframe.” *Berndt v. Cal. Dep’t of Corr.*, No. 3-cv-3174,
25 2013 WL 4554953, at *2 (N.D. Cal. Aug. 27, 2013). “Although the Ninth Circuit has not yet
26 applied the single filing rule outside of the class action context, it has not foreclosed the rule’s
27 application, and other circuits have applied the rule in non-class actions.” *Id.* (citing cases). *See*
28 *also Renati v. Wal-Mart Stores, Inc.*, No. 19-cv-02525, 2019 WL 5536206, at *11 (N.D. Cal. Oct.

1 25, 2019) (“the [single-filing] rule applies . . . to plaintiffs with joined claims.”) (citation omitted).
 2 Plaintiff Davis was placed on administrative leave on November 1, 2021. Therefore, he
 3 had *at least* until August 28, 2022, to file a charge with the EEOC. Plaintiff Davis is a member of
 4 UnifySCC, and UnifySCC filed a charge with the CRD on behalf of its members on January 10,
 5 2022. The CRD/EEOC Worksharing Agreement provides that initiating a proceeding with CRD
 6 automatically initiates proceedings with the EEOC as well. *Green v. L.A. Cnty. Superintendent of*
 7 *Schs.*, 883 F.2d 1472, 1476 (9th Cir. 1989) (“under the worksharing agreement the [CRD] was an
 8 agent of the EEOC”). Plaintiff Ramirez also filed a charge with the EEOC on February 16, 2022.
 9 On February 18, 2022, Plaintiffs UnifySCC, Davis, and Ramirez filed the original Complaint
 10 together and their claims “arise out of similar discriminatory treatment in the same timeframe.”
 11 *Berndt*, 2013 WL 4554953, at *2; Dkt. No. 1. Under the single-filing rule, Plaintiff Davis therefore
 12 timely exhausted his administrative remedies and, as explained above, the filing of the Title VII
 13 claim relates back to the filing of the original Complaint.

14 Second, although unnecessary, Plaintiff Davis filed a timely charge with the EEOC on
 15 November 12, 2025. Plaintiff Davis was on leave from November 1, 2021 until at least the day the
 16 County lifted the vaccine mandate on September 27, 2022. Therefore, the last unlawful act
 17 occurred at the earliest on September 26, 2022. Courts consider “activity that would otherwise be
 18 time-barred” “if at least one unlawful act actually did occur within the filing period.” *Berndt*, 2013
 19 WL 4554953, at *2. The 300-days claim filing period was tolled by the filing of the class complaint
 20 from August 23, 2022 to May 21, 2025, and will therefore not run until March 17, 2026. *See*
 21 *Crown, Cork & Seal Co. v. Parker*, 462 U.S. 345, 353–54 (1983) (“commencement of a class
 22 action suspends the applicable statute of limitations as to all asserted members of the class”)
 23 (citation omitted). Therefore, Plaintiff Davis’s filing of his claim with the EEOC was timely.

24 **IV. CONCLUSION**

25 The Court should deny Defendant’s motion for summary judgment.

26 DATED: December 8, 2025

**WOLF HALDENSTEIN ADLER
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By: /s/ Rachele R. Byrd
 RACHELE R. BYRD

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