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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

CARI-ANN P. BURGESS,

Case No. 3:25-cv-00065-MMD-CLB

Plaintiff,

vs.

MOTION TO DISMISS

WASHOE COUNTY,

(ECF No. 10)

Defendant.

Defendant Washoe County ("County") hereby moves pursuant to FRCP 12(b)(6) to dismiss Plaintiff Cari Ann Burgess's ("Burgess") First Amended Complaint ("FAC") (ECF No. 10). This motion is based on the following Memorandum of Points and Authorities, attached exhibits, and all pleadings and papers on file.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In January 2024, Burgess was granted acting authority of the Washoe County Registrar of Voters ("ROV") and appointed interim ROV effective March 2024. When she was hired in September 2023 as a Deputy ROV and later appointed ROV, Burgess led the County to believe that she possessed the skills, knowledge, and qualifications to administer elections in Washoe County. Over the short course of her employment, Burgess demonstrated gross incompetence. Among other failures, she violated federal and state law requiring deactivations for the County's voter list, she issued a defective sample ballot, she attempted to execute an illegal plan for "unofficial" ballot drop boxes at designated churches, she fraudulently charged overtime for non-mandatory social events, and she demonstrated extremely deficient election law knowledge. When the County questioned

1 Burgess's mismanagement and expressed concerns for her ability to administer elections
 2 leading up to the 2024 General Election, Burgess blamed stress and anxiety. The County
 3 accommodated her by permitting sick leave in September 2024. In October 2024, Burgess
 4 was placed on paid administrative leave pending an investigation into her incompetence.

5 A third-party investigation, attached hereto as Exhibit 1, found the following:

- 6 • Burgess violated the County's Honesty policy through misrepresentations to
 7 the public and to the County, and through inaccurate timecard reporting;
- 8 • Burgess violated the County's Respect and Positive Work Environment poli-
 9 cies by refusing to recognize employee contributions, making inappropriate
 10 remarks with employees and generally making them uncomfortable, and
 11 making threats to employees such as "I'm going to punch you in the
 throat," (which she dismissed as joking); and
- Burgess lacked competency to serve in her position, demonstrating a lack of
 knowledge regarding the applications of laws, regulations, and procedures
 governing elections and of budgeting for the ROV department.

12 In February 2025, after completing the investigation and appointing a permanent
 13 ROV, the County terminated Burgess's employment. Now, Burgess has filed a baseless
 14 lawsuit against the County, alleging disability discrimination, retaliation, emotional
 15 distress, fraud, defamation, and conspiracy. Burgess continues to misapprehend the
 16 seriousness of her performance deficits. She also displays her incompetence in the FAC,
 17 citing incorrect election law and misstates federally mandated deadlines. Moreover, as set
 18 forth below, her claims fall short of stating any claim upon which relief can be granted.
 19 Dismissal with prejudice is warranted because amendment would be futile.

20 **II. BACKGROUND**

21 In September 2023, Burgess was hired as a Deputy ROV. (ECF No. 10 at ¶5). In
 22 January 2024, after the prior ROV's resignation, the Washoe County Board of Commis-
 23 sioners ("BCC") appointed Burgess as the interim, or "acting" ROV. *Id.* at ¶12. The ROV is
 24 a "top election official" tasked with administering elections in Washoe County in accord-
 25 ance with applicable state and federal law. *See id.* at ¶145; Nev. Rev. Stat. ("NRS")
 26 244.164(1); NRS Ch. 293. As a matter of law, the ROV "shall serve in such office solely at
 27 the pleasure of the board of county commissioners." Washoe County Code ("WCC")

1 5.451(2).

2 Burgess displayed significant deficiencies during her tenure as interim ROV.¹ In
3 February 2024, for the presidential preference primary, Burgess was unaware that Nevada
4 law requires ROVs to “canvas” the vote before the BCC. Ex. 1 at p. 7. There were
5 inaccuracies in County voters’ data after a system transfer—an issue that occurred on her
6 watch and that she did not discover until an “operative” informed her. (ECF No. 10 at ¶77);
7 *see also* Ex. 1 at p. 7. For the June 2024 primary election, Burgess, as ROV, distributed a
8 Republican sample ballot missing an entire race for state senate. *See Ribar v. Washoe Cnty.*,
9 no. 88901, 2024 WL 3665320, at *2 (Nev. Aug. 4, 2024) (“...we acknowledge that the
10 sample ballot provided to Republican voters was defective...”).

11 Burgess attempted to assist with the setup of illegal unofficial ballot drop boxes with
12 a few local churches. *See* (ECF No. 10 at ¶¶22–24); Ex. 1 at pp. 7–8. Although Nevada law
13 permits a voter to authorize another *person* to return their ballot via mail, personal delivery,
14 or by placing it in an *official* drop box, there is nothing in Nevada law permitting a County
15 ROV to assist a third party entity in establishing “unofficial” drop boxes for the private
16 entity to collect ballots, wherein an unknown person affiliated with the entity delivers those
17 ballots directly to the ROV and then completes chain of custody paperwork developed by
18 the ROV specifically for this purpose. NRS 293.269923(1); *see also* Ex. 1 at p. 8. Drop boxes
19 are official secure receptacles for ballots that are carefully regulated under Nevada law,
20 including requirements on box construction, locations, security, accessibility, chain of
21 custody, collection methods with an ROV “retrieval team,” reports to the State, etc. *See*
22 NRS 293.269921(4), 293.3572; Nev. Admin. C. (“NAC”) 293.347–293.354. Only a ROV
23 may establish a drop box for ballots. NRS 293.269921(4). Burgess also fails to consider
24 Constitutional Establishment Clause issues presented by her plan to arrange “unofficial”
25 ballot drop boxes for Christian-based “parishes” without any similar arrangement or

26
27 ¹ The deficits of Burgess’s performance extend far beyond the description set forth herein. However, for this Rule 12(b)(6) Motion, the descriptions are limited to the FAC and exhibits incorporated by reference.

1 consideration for other local religions such as Buddhists centers, Reno Satanic, Islamic
2 Mosques, the Hindu temple, etc. *See* U.S. CONST. FIRST AMEND. **Burgess’s attempts, while**
3 **acting in her official capacity as the Washoe County ROV, to assist in the creation of**
4 **illegal drop boxes at specific churches ran afoul of Nevada and Constitutional law.**
5 Burgess’s plan and belief of its lawfulness demonstrate her disqualification for ROV.

6 As ROV, **Burgess missed the federal deadline to deactivate voters from the**
7 **County’s voter list.** *See* (ECF No. 10 at ¶¶84, ¶88); Ex. 1 at pp. 8–9. Burgess’s FAC again
8 reflects a fundamental lack of understanding of election law, citing the incorrect deadline
9 and applicable law regarding voter list deactivation. (ECF No. 10 at ¶¶84, 88). Burgess al-
10 leges that a UOCAVA deadline applies to deactivating voters, and that it was set on
11 September 17, 2024. *Id.* at ¶¶84, 88. That law is unrelated to voter deactivation, and instead
12 mandates that ballots to overseas voters be transmitted 45 days before a federal election—
13 *September 21, 2024, not September 17, 2024*, for the General Election. 52 U.S.C. §
14 20302(a)(8). The deadline to deactivate voters is set in the National Voter Registration Act
15 (“NVRA”), mandating deactivations and completion “not later than 90 days” prior to a
16 federal election—August 7th for the 2024 General Election. 52 U.S.C § 20507(c)(2)(A); *see*
17 *also* NRS 293.503(4). Burgess failed to complete this, leaving what she estimates as “rough-
18 ly 14,000 people who should have been marked as inactive... not marked as inactive” on
19 the County’s voter list and who would therefore receive mail ballots.² (ECF No. 10 at ¶84).

20 Assistant County Manager Kate Thomas (“ACM Thomas”) questioned Burgess’s
21 use of overtime. (ECF No. 10 at ¶51). Of the ROV department’s annual \$63,000 overtime
22 budget, Burgess alone used \$54,000 by September 2024, including for social dinners and
23 non-required activities at conferences. Ex. 1 at pp. 9–10. In “early September 2024,”
24 Burgess requested “decreased communication with ACM Thomas,” as an accommodation
25 for “the increase in her stress and anxiety caused by the job.” (ECF No. 10 at ¶61).

26
27 ² The County estimates the number was over 28,000 voters, and that Burgess’s failure to remove those voters
cost the County between \$80,000 to \$100,000 in having to mail ballot material to those people. Ex. 1 at p. 9.

1 On September 17, 2024, Burgess alleges a person at the BCC meeting claimed the
2 ROV missed the deadline to deactivate voters. (ECF No. 10 at ¶84). Burgess also allegedly
3 learned that there were significant errors in the voter list, including listing some addresses
4 twice or erroneously identifying apartment complexes as commercial properties thus
5 rendering them ineligible to receive mail ballots. *Id.* at ¶¶85–86. Burgess informed Manager
6 Brown. *Id.* at ¶87. On September 18, 2024, the Nevada Secretary of State informed ACM
7 Thomas that the County missed the voter deactivation deadline. *Id.* at ¶90. Notably, this
8 notification did not come from Burgess who, as ROV, was tasked with overseeing and
9 completing the deactivations. *See id.* The next day, “a meeting was scheduled” between
10 Manager Brown and Burgess but rescheduled due to Manager Brown’s illness. *Id.* at ¶92.

11 On September 20, 2024, Burgess allegedly informed Manager Brown that her stress
12 and anxiety “spiked resulting in very high blood pressure.” (ECF No. 10 at ¶84). Manager
13 Brown told her that ACM Thomas was upset about the missed voter deactivation deadline,
14 the County was upset about Burgess spending time at conferences, that she did not get
15 along with other departments, and did not take suggestions from others. *Id.* at ¶110–11. On
16 September 21, 2024, Manager Brown checked in with Burgess, who requested to step down
17 from ROV to Deputy ROV due to stress and anxiety. *Id.* at ¶114. On September 22, 2024,
18 Burgess again requested to step down. *Id.* at ¶115. The BCC Chair subsequently directed
19 ACM Thomas to oversee the ROV department, and Manager Brown expressed concern
20 regarding Burgess’s paid overtime. *Id.* at ¶¶50, 80, 117.

21 On September 24, 2024, Manager Brown explained to Burgess that her “best
22 option” was to go on leave. (ECF No. 10 at ¶¶118, 120). Burgess apparently described her
23 conversation with Brown to the ROV “team” as she cleaned out her desk and left the office.
24 *Id.* Manager Brown later informed BCC members that Burgess’s account of their
25 conversation to her staff was inaccurate but was “emblematic of recent behavior we have
26 seen from her.” *Id.* at ¶122.

27 //

1 On September 25, 2024, Burgess attended a meeting with County H.R. and legal
2 staff. (ECF No. 10 at ¶124–26). The County instructed Burgess to take personal leave, and
3 informed her that stepping down to the role of Deputy ROV was not possible. *Id.* The
4 County explicitly instructed Burgess not to discuss the matter, or any work-related matter,
5 with anyone inside or outside the organization to avoid any disruption to operations and to
6 avoid having a detrimental impact on fellow employees. *Id.* at ¶130; Ex. 2 at p. 1. After
7 media inquiries regarding Burgess’s leave, the County provided a statement that Burgess
8 was experiencing stress, was on a leave of absence for “self-care,” and “running a smooth
9 and fair election is a top priority for the County.” (ECF No. 10 at ¶132); Ex. 3.

10 On September 30, 2024, Burgess obtained and shared with the County a “medical
11 clearance,” stating she was “cleared to work without restrictions on October 7, 2024.”
12 (ECF No. 10 at ¶133); Ex. 4 at pp. 1–2. On October 4, 2024, the County provided her a
13 letter stating that she would be placed on administrative leave, she was insubordinate in
14 ignoring instruction not to speak with ROV staff regarding her leave, and that her
15 competence to carry out duties was in question. (ECF No. 10 at ¶138); Ex. 4 at pp. 3–4. It
16 also expressed the following concerns regarding her performance: Burgess’s unlawful plan
17 for “unofficial drop boxes,” failure to complete voter deactivations by the statutory deadline
18 and Burgess’s misrepresentations of that fact to management, Burgess claiming she “had
19 no idea” about voter signature mailings when she approved via email the mailing’s draft
20 and timing, and that Burgess’s overtime appeared excessive. *Id.*

21 On October 23, 2024, the Associated Press AP published an article with statements
22 from Burgess wherein she omitted her own failures as ROV. *See* Ex. 5; (ECF No. 10 at
23 ¶148). She publicly cast doubt on the stability of election administration in claiming to be
24 forced out and referencing the instruction not to speak with others about her position. Ex. 2
25 at p. 1; Ex. 4 at p. 4; Ex. 5 at p. 6. The County provided a limited media statement that
26 Burgess was on administrative leave pending investigation into her job performance. Ex. 6.

27 //

1 Burgess's decision to speak with media was insubordinate, as it violated the express
 2 instructions provided with her sick leave. *See* Ex. 2 at p. 1; Ex. 4 at p. 4; (ECF No. 10 at
 3 ¶139). More importantly, Burgess's decision to speak with media prior to the General Elec-
 4 tion cast doubt, drama, and uncertainty on the employees in the ROV department and on
 5 voter confidence in the election at the worst possible time.

6 On January 15, 2025, a third-party neutral investigator issued a report finding
 7 several violations of the Code of Conduct and election law. Ex. 1. On February 11, 2025,
 8 the County appointed a permanent ROV, Andrew McDonald. (ECF No. 10 at ¶162). On
 9 February 12, 2025, the County terminated Burgess's employment. *Id.* at ¶163.

10 **III. STANDARD OF REVIEW**

11 To withstand Rule 12(b)(6), a complaint must contain enough facts to "nudge[] their
 12 claims across the line from conceivable to plausible." *Bell Atlantic Corp. v. Twombly*, 550 U.S.
 13 544, 570 (2007). It must consist of "more than labels and conclusions," and "[t]hreadbare
 14 recitals of the elements of a cause of action, supported by mere conclusory statements, do
 15 not suffice." *Iqbal v. Ashcroft*, 556 U.S. 662, 678 (2009). When a complaint contains facts
 16 that are "merely consistent with" liability, it "stops short of the line between possibility and
 17 plausibility of 'entitlement to relief.'" *Twombly*, 550 U.S. at 557. Further, when allegations
 18 do not establish "all material elements necessary to sustain recovery under some viable le-
 19 gal theory," dismissal is appropriate. *Stevo Design, Inc. v. SBR Marketing Ltd.*, 2013 WL
 20 308996, at *4 (D. Nev. Jan. 25, 2013) (quoting *Twombly*, 550 U.S. at 562).

21 The rule preventing consideration of material outside the pleading does not apply
 22 where material is incorporated by reference. *Ferris v. Wynn Resorts Ltd.*, 462 F. Supp. 3d
 23 1101, 1117 (D. Nev. 2020). Incorporation by reference treats certain documents as though
 24 they are part of the complaint itself where the complaint "necessarily relies" upon a docu-
 25 ment or where the complaint alleges the contents of the document and the document's au-
 26 thenticity and relevance is not disputed. *Id.* A document may be incorporated "if the plain-
 27 tiff refers extensively to the document or the document forms the basis of the plaintiff's

claim.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018).³

IV. LEGAL ANALYSIS

A. BURGESS FAILED TO ALLEGE VIABLE CLAIMS UNDER THE ADA, THE REHABILITATION ACT, AND NEVADA LAW. DISMISSAL IS WARRANTED.

Burgess’s First, Second, Third, Fourth and Fifth Claims for Relief assert discrimination claims under the ADA, the Rehabilitation Act, 42 U.S.C. §12131, and Nevada state law, NRS 613.330 (collectively, the “Disability Claims”). District courts in the Ninth Circuit, and Nevada courts, use the federal ADA standard to evaluate disability discrimination claims brought under Nev. Rev. Stat. § 613.330.” *Dooley v. Nevada Gold Mines, LLC*, 2023 WL 7279993, at *3 (D. Nev. Nov. 3, 2023). There “is no significant difference in analysis of the rights and obligations created by the...(ADA) and the Rehabilitation Act.” *Mattioda v. Nelson*, 98 F.4th 1164, 1173 (9th Cir. 2024).

To establish a prima facie case of discrimination under the ADA, the Rehabilitation Act, and Nevada state law, Burgess must plead facts to support that (1) she is a qualified individual with a disability, (2) she is otherwise qualified for the position, and (3) she suffered adverse employment action because of her disability. *Dooley*, 2023 WL 7279993, at *4. Here, Burgess’s claims fail under all three prima facie prongs.

1. Burgess is Not “Disabled.”

To establish a “disability,” plaintiff must plausibly allege: “(A) a physical or mental impairment that substantially limits one or more major life activities; (B) a record of such an impairment; or (C) being regarded as having such an impairment.” 42 U.S.C. § 12102(1). “With respect to the first part of the “disability” definition, temporary, non-chronic impairments of short duration, that have minimal residual effects are insufficient to consti-

³ The County respectfully requests that this Court find that following exhibits are incorporated into the FAC by reference: **Exhibit 1** is workplace investigation, referenced in FAC paragraphs 155–60, 164, and 166–67. **Exhibit 2** is email correspondence referenced in FAC paragraphs 125, 130, and 209. **Exhibit 3** are the County’s September 25, 2024 media responses referenced in FAC paragraphs 132, 208, 223, and 228. **Exhibit 4** is the September 30, 2024 and October 4, 2024 correspondence between the County and Burgess referenced in FAC paragraphs 133, 138–39. **Exhibit 5** is the AP article referenced in FAC paragraph 148; **Exhibit 6** is the County’s October 31, 2024 media statement referenced at FAC paragraphs 149, 176, 235, and 246.

1 tute disabilities.” *Baker v. Cnty. of Merced*, 1:10-CV-2377-AWI-SMS, 2011 WL 2708936, at
 2 *4 (E.D. Cal. July 12, 2011). A plaintiff cannot be “regarded” as having a disability if the
 3 actual or perceived impairment is “transitory and minor.” 42 U.S.C. § 12102(3)(B). A
 4 “transitory” impairment is defined as one “with an actual or expected duration of 6
 5 months or less.” *Id.* “Temporary, non-chronic impairments of short duration, with little or
 6 no long term or permanent impact, are usually not disabilities.” *Ravel v. Hewlett-Packard*
 7 *Enter., Inc.*, 228 F. Supp. 3d 1086, 1092 (E.C. Cal. 2017).

8 Workplace stress or anxiety, stress-induced temporary conditions, or personality
 9 conflicts with supervisors are not “disabilities” under the ADA. *See Hosea v. Donley*, 584 F.
 10 Appx. 608, 611 (9th Cir. 2014) (affirming finding that plaintiff failed to establish a disability
 11 when his work-related stress rendered him temporarily unable to work for around nine
 12 weeks); *Palmer v. Circuit Ct. of Cook Cnty., Social Service Dep’t*, 905 F. Supp. 499, 507 (N.D. Ill.
 13 1995) (finding personality conflict with supervisors causing anxiety and stress was not a
 14 disability); *see also Adams v. Alderson*, 723 F. Supp. 1531, 1531–32 (D.D.C. 1989) (personality
 15 conflict with an “antagonizing supervisor” not a disability under the ADA). “[S]tress and
 16 high blood pressure” are not disabilities under the ADA. *Baker*, 2011 WL 2708936, at *5.

17 Additionally, “[t]he inability to perform a single, particular job does not constitute a
 18 substantial limitation in the major life activity of working” under the ADA’s “disability”
 19 definition. *Broussard v. Univ. of California, Berkeley*, 192 F.3d 1252, 1256 (9th Cir. 1999). “If
 20 the symptoms of an impairment are brought on by a single workplace, such an impairment
 21 is not substantially limiting” within the meaning of the ADA. *Haynes v. Williams*, 392 F.3d
 22 478, 482–83 (D.C. Cir. 2004) (Garland, J.). When a company CEO requested to step down
 23 to a former role due to stress and stress-related heart issues with no other accommodations,
 24 he was not “disabled.” *Alley v. Anduril Indus., Inc.*, 8:23-cv-01793-JWH-KES, 2024 WL
 25 4552139, at *4–5 (C.D. Cal. Sept. 9, 2024)(dismissing ADA claim with prejudice).

26 Here, Burgess’s Disability Claims fail because she was not “disabled.” Burgess alleg-
 27 es work-related stress and anxiety issues induced by interactions with ACM Thomas. (ECF

No. 10 at ¶¶35–37, 45–65, 107). She alleges nothing more than generally experiencing anxiety, work-related stress, “emotional distress,” stress-induced increased blood pressure, and then taking temporary paid leave. *Id.* at ¶¶61, 94, 108, 114–15, 128, 130, 147. Burgess fails to plead any facts demonstrating any specific, substantial limitation of major life activities. *See id.* She further demonstrates that the conditions were temporary, providing medical documentation that Burgess was “cleared” to work less than two weeks after she went on leave. *Id.* at ¶133; Ex. 4 at p. 2. This shows that Burgess’s symptoms were brought on by her ROV position at the County and not a “disability.” *See Haynes*, 392 F.3d at 482–8. Additionally, like in *Alley*, Burgess’s request to step down to Deputy ROV without accommodation shows she is not “disabled,” and dismissal with prejudice is appropriate. 2024 WL 4552139, at *4–5. With no “disability,” Burgess’s Disability Claims fail.

The Court should dismiss the Disability Claims with prejudice because Burgess’s own medical opinion demonstrates she was not disabled and instead experiencing a temporary condition that did not “substantially” limit major life activities. Additionally, her requests to step down to Deputy ROV, without anything more, show she was not “disabled” and instead her stress was brought on by the particularly stressful ROV position in a presidential election year. Any amendment would be futile because Burgess cannot overcome the barriers of her own facts. Dismissal with prejudice is warranted.

2. Burgess Is Not Qualified For the ROV Position.

Even if Burgess could viably allege a “disability,” she was not qualified to perform the job of the ROV with or without accommodation. A “qualified individual” is “an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” 42 U.S.C. § 12111(8); *see also* 29 C.F.R. § 1630.2(m). “If a disabled person cannot perform a job’s ‘essential functions’ (even with a reasonable accommodation), then the ADA’s employment protections do not apply.” *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 989 (9th Cir. 2007) quoting *Cripe v. City of San Jose*, 261 F.3d 877, 889 (9th Cir. 2001). To be

1 qualified for a job, a plaintiff must prove she “was doing [her] job well enough to rule out
2 the possibility that [she] was fired for inadequate job performance.” *Sengupta v. Morrison-*
3 *Knudson Co., Inc.*, 804 F.2d 1072, 1075 (9th Cir. 1986).

4 Here, Burgess’s FAC and applicable law, even without the incorporated exhibits,
5 demonstrate that **Burgess was and is unqualified to perform the ROV position**. Most
6 ROV “essential functions” are duties prescribed by state and federal law. Duties relevant to
7 the instant Motion are as follows: ROVs are required to maintain the County’s voter list,
8 collect and transmit accurate voter registration records and remove deceased, inactive, and
9 duplicate voters (NRS 293.503, 293.530, 293.675(4); NAC 293.456–458, 293.466–468);
10 ROVs must prepare and distribute accurate sample ballots (NRS 293.565; NAC
11 293.120–130); and ROVs must establish permanent and temporary polling places, ensure
12 any ballot drop boxes and their locations comply with applicable law, establish and main-
13 tain security, ballot retrieval, and chain of custody protocols for ballot drop boxes
14 (293.269921(3)–(5), 293.3561–3564, 293.3572(4); NAC 293.347–352).⁴

15 Burgess demonstrated she was unable to carry out voter list maintenance, which
16 was a violation of Nevada and federal law and a failure to carry out an essential ROV
17 function. Under both Nevada and federal law, ROVs must complete activities to remove
18 inactive or ineligible voters “not later than 90 days” before a general election—August 7,
19 2024 for the 2024 General Election. NRS 293.503(4), 293.530; 52 U.S.C. § 20507(c)(2)(A).
20 Burgess failed to do so. (ECF No. 10 at ¶84) She further displays her deficient performance
21 by failing to allege the correct source of law for this deadline or the correct date in her
22 FAC, erroneously claiming that it arises out of UOCAVA and was set on September 17,
23 2024. *Id.* at ¶¶84, 88; *see also* 52 U.S.C. § 20507(a)(4)–(c) (setting the NVRA voter deactiva-
24 tion mandates and deadline). Burgess failed to complete mandatory removals, violating law

25
26 ⁴ Appointed ROVs “assume all powers and duties vested in and imported upon the county clerk... with
27 respect to elections.” NRS 244.164(2). Under Nevada’s election law, the term “county clerk” means
“registrar of voters” for counties with appointed ROVs. NRS 293.042. The legal duties referenced herein
refer to a “county clerk,” but are proscribed upon the County’s ROV. *See id.*

1 and causing the County to incur costs of distributing voting material to thousands of people
2 unentitled to mail ballots. (ECF No. 10 at ¶84); Ex. 1 at p. 9. This alone shows that Burgess
3 was unqualified for the position, with or without reasonable accommodation.

4 Burgess also violated election law during the 2024 Primary Election when she
5 distributed a deficient sample ballot to Republican voters in the County. *See Ribar*, 2024
6 WL 3665320, at *2. The sample ballot distributed by Burgess omitted an entire state senate
7 race. *Id.* The Nevada Supreme Court was presented with the issue and opined that the
8 sample ballot was “defective.” *Id.* This fact alone would form a legitimate basis for termina-
9 tion of an at-will employee who serves at the pleasure of the BCC.

10 Third, Burgess attempted to circumvent the law and ROV duties by facilitating un-
11 authorized ad hoc drop boxes at local Christian churches. *See* (ECF No. 10 at ¶¶22–24); Ex.
12 1 at pp. 7–8. “No person other than a clerk may establish a drop box for mail ballots.” NRS
13 293.269921(3). Yet, Burgess alleges she “worked diligently” with a local pastor to circum-
14 vent and undermine Nevada election law with a third-party organization’s proxy drop box
15 “ballot collection and drop off” to the ROV. *See* (ECF No. 10 at ¶24). In addition to
16 violating election law, Burgess demonstrates her lack of acumen by failing to even consider
17 Establishment Clause issues presented by a government official favoring one religious
18 organization while making no consideration for all other faiths. *See* U.S. CONST. FIRST
19 AMEND. Such abdication of legal control over ballot drop boxes creates unacceptable risks
20 of tampering, delay, or ballot rejection, reflects a failure to uphold the Constitution with
21 respect to impartiality and avoiding preferential treatment based on religious affiliation,
22 and reflects a fundamental misunderstanding of the ROV’s statutory obligations.

23 Burgess is not qualified to serve as ROV or any high-level election position, as
24 shown through her critical errors and failures to adhere to state and federal election law. In
25 a naïve and misguided attempt to allege she was qualified for ROV, Burgess references gift-
26 ing staff homemade meals, gifting holiday candy, purchasing staff souvenirs from her
27 Hawaii vacation, carrying out an “Olympic Party” for staff, and planning “rock painting

1 team building events” for staff. (ECF No. 10 at ¶16). These acts, while potentially helpful
 2 for morale, have nothing to do with carrying out a fair and accurate election for Washoe
 3 County and the State of Nevada. Burgess fails to grasp the critical nature of the ROV’s role
 4 and the seriousness of her errors while interim ROV. Burgess’s incompetence as ROV
 5 necessitated putting her on leave to ensure the County administered an election in accord-
 6 ance with State and Federal law.

7 Dismissal with prejudice of the Disability Claims is appropriate because Burgess
 8 cannot viably allege she was qualified for the ROV position. Even if she had a disability
 9 that could be reasonably accommodated, Burgess’s significant errors and demonstrated
 10 lack of understanding of the applicable laws that occurred during her short-lived ROV
 11 appointment show that she is unqualified for the job.

12 **3. The Failure to Accommodate Theory Fails.**

13 In the Disability Claims, Burgess conclusively alleges that the County failed to
 14 accommodate her, failed to offer any meaningful accommodation, and failed to engage in
 15 the interactive process. (ECF No. 10 at ¶¶173, 185, 209). As an initial matter, there “exists
 16 no stand-alone claim for failing to engage in the interactive process.” *Snapp v. United*
 17 *Transp. Union*, 889 F.3d 1088, 1095 (9th Cir. 2018). “Rather, discrimination results from
 18 denying an available and reasonable accommodation.” *Id.*

19 For discrimination based on failure to accommodate, a plaintiff must allege that dis-
 20 crimination resulted from denial of “available and reasonable accommodations.” *Snapp*,
 21 889 F.3d at 1095. Plaintiff has the “burden of showing the existence of a reasonable
 22 accommodation that would have enabled him to perform the essential functions of an
 23 available job.” *Id.* at 1102. “An employer is not obligated to provide an employee the
 24 accommodation [she] requests or prefers, the employer need only provide some reasonable
 25 accommodation.” *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1089 (9th Cir. 2002).

26 Where an employer offers at least one reasonable accommodation, plaintiff fails to
 27 state an ADA claim for discrimination based on failure to accommodate. *Ravel*, 228 F.

Supp. 3d at 1094. “Job-protected leave for a fixed period can be an accommodation” *Makor v. Burlington N. Santa Fe Ry. Co.*, 680 F. App’x 542, 544 (9th Cir. 2017) (analyzing claim under California’s Fair Employment and Housing Act). “Leave need not be paid to be reasonable under the ADA.” *Ravel*, 228 F. Supp. 3d at 1094. On the other hand, “an employer is not required to provide an aggravation-free or stress-free environment, or to re-assign an employee away from any supervisor or coworker who may cause stress or conflict.” *Newby v. Whitman*, 340 F.Supp.2d 637, 657 (M.D.N.C. 2004). It is unreasonable to demand that employers provide stress-free workplaces as an accommodation for employees. *Coleman-Adebayo v. Leavitt*, 326 F. Supp. 2d 132, 141 (D.D.C. 2004), *amended on reconsideration in part*, 400 F. Supp. 2d 257 (D.D.C. 2005); *Pesterfield v. Tennessee Valley Auth.*, 941 F.2d 437, 442 (6th Cir. 1991) (finding request to be free from stress-producing work situations is unreasonable); *Vandever v. Fort James Corp.*, 192 F.Supp.2d 918, 940 (E.D. Wis. 2002) (“Asking an employer to reduce the stress of the workplace is an ambiguous, perhaps unattainable goal, and is not a reasonable accommodation.”); *Gonzagowski v. Widnall*, 115 F.3d 744, 746–47 (10th Cir. 1997) (“An impairment [limited to and arising from stress at work] does not qualify as a disability.”).

Here, the County offered Burgess the reasonable accommodation of paid sick leave. (ECF No. 10 at ¶¶118, 122, 125, 176, 185, 187, 210); *Ravel*, 228 F. Supp. 3d at 1094. While Burgess takes issue with the fact that she was required to use paid sick or personal leave balances during this leave, it actually would have been reasonable for the County to offer only unpaid leave. *See Ravel*, 228 F. Supp. 3d at 1094. Burgess also made a per se unreasonable request to exclude ACM Thomas from her chain-of-command, but even so, Manager Brown reasonably addressed this and clarified that ACM Thomas was not her direct supervisor at that time. *See* (ECF No. 10 at ¶61). Burgess’s requests to return to the Deputy ROV position were unreasonable for many reasons. Based on the failure to complete voter list deactivations, Burgess was demonstrably unqualified to serve as a top election official when she made this request. *See* (ECF No. 10 at ¶84, 88). Moreover, the

1 County's offer of paid sick leave for Burgess to address her stress and anxiety was
2 reasonable and precludes any discrimination claim of failure to accommodate. *See Ravel*,
3 228 F. Supp. 3d at 1094.

4 In sum, even if Burgess had a disability and was qualified for the job, her
5 accommodation requests were unreasonable. The County offered her a reasonable
6 accommodation of paid sick leave, which she exercised. Burgess is not entitled to the
7 accommodation of her choosing, or to unreasonable accommodations. The Disability
8 Claims fail on the failure to accommodate theory and should be dismissed with prejudice.

9 **4. Burgess Fails To Allege That She Suffered an Adverse Employment Action**
10 **Because of Her Disability.**

11 Even if Burgess could allege a disability and that she is qualified for the ROV
12 position, she must also plausibly allege that she suffered an adverse employment action
13 *because of* her disability. *Samper*, 675 F.3d at 1237; *see also Murray v. Mayo Clinic*, 934 F.3d
14 1101, 1107 (9th Cir. 2019) ("ADA discrimination claims under Title I must be evaluated
15 under a but-for causation standard"). Temporal proximity is a particularly unconvincing
16 means of proving causation where the employer's rationale underlying the adverse action
17 or plan to undertake the adverse action predates the plaintiff's protected activity. *See Clark*
18 *County School Dist. v. Breeden*, 532 U.S. 268, 272 (2001).

19 The County's media statements are not disability discrimination. *See* (ECF No.
20 ¶¶176, 184, 193, 209); Ex. 3; Ex. 6. Public relations is a legitimate nondiscriminatory rea-
21 son to issue a press release. *See Williams v. Fla. Atl. Univ.*, 15-CV-60621, 2017 WL 1881676,
22 at *7 (S.D. Fla May 9, 2017). The statements were issued weeks and days before the 2024
23 General Election, and addressed the County's ability to administer the election in light of
24 Burgess's leave statuses. *See* (ECF No. ¶¶176, 184, 193, 209); Ex. 3; Ex. 6. Even if she was
25 disabled, that was not the but-for cause of the statements.

26 Likewise, Burgess's claims of stress, anxiety and high blood pressure were not the
27 but-for cause of the County's instruction to Burgess that she not speak to ROV staff or third

1 parties about her circumstance. *See* (ECF No. 10 ¶209). ROV staff was preparing to
2 administer the General Election. Burgess’s departure invited attention, and her statements
3 unnecessarily brought more attention, drama, and uncertainty to both ROV staff and to the
4 voting public. The County’s instruction was not motivated by Burgess’s “disability.” Rather,
5 it was an attempt to avoid interference with County election operations.

6 Next, when the County placed Burgess on administrative leave, refused to allow her
7 to return, rendered her unable to earn overtime pay while on leave, and subjected her to
8 investigation, its decisions were based on Burgess’s deficient performance rather than her
9 “disability.” *See* (ECF No. 10 ¶¶22–24, 27, 80, 84–88, 90–91, 149, 153, 175–76 187, 207,
10 210); Ex. 4 at pp. 3–4. Likewise, the alleged refusal to give her a “fair chance” at the per-
11 manent ROV position, even if true, was based on her poor performance and not any
12 disability status. *See id.* The February 2025 appointment of a permanent ROV also occurred
13 months after her September 2024 conduct, belying any claim of temporal proximity. An
14 employee who commits an act of misconduct may be fired, regardless of whether he or she
15 is disabled within the meaning of the ADA. *Newland v. Dalton*, 81 F.3d 904, 906 (9th Cir.
16 1996). But-for causation does not exist here.

17 Burgess includes an allegation that occurred a year prior to her alleged anxiety,
18 stress and high blood pressure—alleging that the County discriminated based on disability
19 by “misrepresenting terms of employment to terminate... without due process.” (ECF No.
20 10 at ¶210). Burgess believes this representation was made when she was hired in
21 September 2023, but she did not assert any alleged disability until September 2024. *See id.* at
22 ¶¶6, 61, 108, 115). There is no causation as this predated Burgess’s alleged disability.

23 Burgess also includes retaliation allegations that are contradictory to her other
24 allegations. *See* (ECF No. 10 at ¶176) She claims she lacked notice of the investigation but
25 simultaneously alleges that the County provided her a letter prior to her interview which
26 provided “a list of items...that needed to be discussed prior to any consideration of her
27 return to the office.” *Id.* at ¶¶138, 176; Ex. 4 at pp. 3–4. She also appears to believe she was

1 constructively discharged, but accurately alleges that she was placed on paid leave, and
2 terminated after the investigation. (ECF No. 10 ¶¶141, 163, 176). Similarly, Burgess’s vague
3 conclusory allegation regarding discrimination in her Fifth Claim does not plausibly
4 establish anything. *Id.* at ¶217. The Discrimination Claims fail on these allegations, which
5 Burgess herself contradicts and for which legitimate nondiscriminatory reasons exist.
6 Additionally, as set forth above, forced use of paid sick leave is a reasonable
7 accommodation and therefore not discriminatory or an adverse act.

8 In sum, Burgess does not allege, plausibly or otherwise, that her alleged anxiety,
9 stress, or high blood pressure was the but-for cause of *any* alleged adverse action, nor any
10 acts demonstrating discriminatory intent. Even if Burgess had a disability and was qualified
11 for the ROV position, her Disability Claims fail based on lack of but-for causation.
12 Dismissal with prejudice is warranted.

13 **5. The Retaliation Claims Lack Requisite Causation.**

14 A *prima facie* case of ADA retaliation requires a plaintiff to show: “(1) involvement
15 in a protected activity, (2) an adverse employment action and (3) a causal link between the
16 two.” *Coons v. Sec’y of U.S. Dept. of Treasury*, 383 F.3d 879, 887 (9th Cir. 2004) citing *Brown*
17 *v. City of Tucson*, 336 F.3d 1181, 1187 (9th Cir. 2003). The Ninth Circuit held that *Nassar’s*
18 but-for causation standard applies to ADA retaliation claims. *See T.B. ex rel. Brenneise v. San*
19 *Diego Unified Sch. Dist.*, 806 F.3d 451, 473 (9th Cir. 2015).

20 Burgess alleges broad discrimination and coercion to take leave in the Third Claim,
21 and vaguely alleges retaliation in the Fifth Claim. (ECF No. 10 at ¶¶193, 217). Notably, in
22 the Third Claim, she pleads herself out of the claim, alleging causation based on her
23 “voicing her concern” with the voting system, not following protocol for election matters,
24 and ACM Thomas’s interference based thereon. *Id.* ¶193. In addition to the legitimate
25 bases for the County’s acts set forth in the above section, Burgess herself provides an
26 additional reason—a personality conflict with ACM Thomas. *See id.* She thus does not and
27 cannot allege but-for causation, thereby warranting dismissal with prejudice.

Moreover, even if Burgess's ADA retaliation claim was viable, her claim still fails. Neither compensatory nor punitive damages are available for ADA retaliation claims. *Alvarado v. Cajun Operating Co.*, 588 F.3d 1261, 1268–69 (9th Cir. 2009). "ADA retaliation claims are redressable *only by equitable relief*." *Id.* at 1269. Burgess impermissibly seeks to recover compensatory and punitive damages, and therefore her claim should be dismissed on that basis as well. (ECF No. 10 at ¶199 & Prayer for Relief ¶¶2–4; *see Fee v. Management & Training Corp.*, 2012 WL 4792920, at *4 (D. Nev. 2012) (dismissing ADA retaliation claim with prejudice "to the extent Plaintiff seeks damages thereunder").

6. Burgess Fails to Otherwise Allege Pretext.

"[I]f the employer disclaims any reliance on the employee's disability in having taken the employment action" the *McDonnell Douglas* Test "should be used to determine if the employer's reason is pretextual." *Mustafa v. Clark Cnty. Sch. Dist.*, 157 F.3d 1169, 1175–76 (9th Cir. 1998). Here, Burgess pleads herself out of Court with the allegations in her FAC and exhibits incorporated by reference thereto. "[A] plaintiff can plead himself out of court by alleging particulars that contradict the plaintiff's legal theory." *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1065 (9th Cir. 2008) (quot. and cit. omitted). Further, "a complaint should be dismissed where the factual allegations contained therein establish a bar to the relief the plaintiff seeks. *See, e.g., Weisbuch v. County of Los Angeles*, 119 F.3d 778, 783 n.1 (9th Cir. 1997).

Burgess's incompetence and misconduct may not be ignored or forgiven simply because she experienced stress and anxiety. *See Newland*, 81 F.3d at 906. Even if this Court accepted Burgess's threadbare allegations of causation, she utterly fails to sufficiently allege pretext in response to the County's numerous legitimate non-discriminatory reasons for its acts. Therefore, this Court should dismiss the Disability Claims with prejudice.

B. BURGESS CANNOT PLAUSIBLY ALLEGE AN IIED CLAIM.

1. The IIED Claim Fails on the Merits.

For an intentional infliction of emotional distress ("IIED") claim, plaintiff must show "(1) extreme and outrageous conduct on the part of the defendant; (2) intent to cause

1 emotional distress or reckless disregard for causing emotional distress; (3) that the plaintiff
 2 actually suffered extreme or severe emotional distress; and (4) causation.” *Miller v. Jones*,
 3 970 P.2d 571 (Nev. 1998). “[E]xtreme and outrageous conduct is that which is ‘outside all
 4 possible bounds of decency’ and is regarded as ‘utterly intolerable in a civilized
 5 community.’” *Maduikie v. Agency Rent-A-Car*, 953 P.2d 24 (Nev. 1998). To establish severe
 6 emotional distress, the plaintiff must demonstrate that “the stress [is] so severe and of such
 7 intensity that no reasonable person could be expected to endure it.” *Alam v. Reno Hilton*
 8 *Corp.*, 819 F. Supp. 905, 911 (D. Nev. 1993) (cit. omitted). General physical or emotional
 9 discomfort is insufficient—a plaintiff must allege such “serious emotional distress” that it
 10 “results in physical symptoms.” *Chowdhry v. NLVH Inc.*, 851 P.2d 459, 482 (Nev. 1993).

11 Here, Burgess’s IIED claim fails on all levels. She does not allege extreme and out-
 12 rageous conduct—she alleges general employment decisions, operational decisions,
 13 “disparagement,” “defamation to vendors,” and “unauthorized” disclosure of Plaintiff’s
 14 stress and anxiety. (ECF No. 10 at ¶221). None of this conduct is severe, extreme, or outra-
 15 geous. *See id.* Second, Burgess only provides a conclusory allegation that the County acted
 16 with “reckless disregard,” which is insufficient to state a plausible claim. *Id.* Moreover,
 17 there is no physical impact of the County’s statements alleged.

18 The Court should dismiss the IIED claim with prejudice. Burgess does not and
 19 cannot plead a viable IIED claim. The County’s conduct was neither extreme nor outra-
 20 geous. Amendment would be futile and thus dismissal with prejudice is warranted.

21 **2. Discretionary Act Immunity Otherwise Prevents the IIED Claim.**

22 In Nevada, no action may be brought against a political subdivision “[b]ased upon
 23 the exercise or performance or the failure to exercise or perform a discretionary function or
 24 duty...whether or not the discretion involved is abused.” NRS 41.032(2). There is “a two-
 25 part test” for determining whether a discretionary-function immunity applies, “which looks
 26 to whether “the decision (1) involves an ‘element of individual judgment or choice,’ and (2)
 27 is ‘based on considerations of social, economic, or political policy.’” *Clark Cnty. Sch. Dist. v.*

1 *Payo*, 403 P.3d 1270, 1276 (Nev. 2017) (cit. omitted). Personnel decisions typically satisfy
 2 both elements. *Paulos v. FCHI, LLC*, 456 P.3d 589, 595 (Nev. 2020). Termination of an
 3 employee is a discretionary act protected by NRS 41.032(2). *Wayment*, 912 P.2d at 819–20.

4 Here, each of the alleged acts involved an element of judgment. Moreover, they
 5 involved political considerations because they addressed the County’s top elections official,
 6 the ROV, and the ROV department in the weeks leading up to the highly politicized 2024
 7 General Election. Regarding the IIED claim, the County is entitled to immunity.

8 **C. THE COUNTY’S STATEMENTS ARE TRUE, PRECLUDING DEFAMATION AND FALSE**
 9 **LIGHT CLAIMS.**

10 **1. The Statements Were True and Made without Malice.**

11 For defamation, plaintiff must prove: “(1) a false and defamatory statement by [a]
 12 defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3)
 13 fault ...; and (4) actual or presumed damages.” *Pegasus v. Reno Newspapers, Inc.*, 57 P.3d 82,
 14 90 (Nev. 2002) (quot. omitted). If it involves a public official, a plaintiff must allege “actual
 15 malice,” “knowledge that [the statement] was false or with reckless disregard of whether it
 16 was false.” *Id.* For defamation per se, plaintiff need not show actual damages if the state-
 17 ment imputes that (1) plaintiff committed a crime, (2) “would injure plaintiff’s trade,
 18 business or office,” (3) plaintiff contracted a loathsome disease, (4) plaintiff is an unchaste
 19 woman. *Branda v. Sanford*, 637 P.2d 1223, 1225 (Nev. 1981). Whether a statement is
 20 susceptible to a defamation claim is a question of law. *Id.* A statement is not defamatory if
 it is true or substantially true. *Pegasus*, 57 P.3d at 88.

21 Here, Burgess’s Seventh, Eighth, and Tenth Claims for defamation, defamation per
 22 se, and false light, fail because they are based on true statements. Burgess alleges that the
 23 County issued a statement to the media that Burgess “took personal leave due to her
 24 disability.” (ECF No. 10 at ¶228) The County responded to media requests on September
 25 25, 2024, stating that Burgess reported she was stressed, and at Manager Brown’s recom-
 26 mendation, Burgess requested a leave of absence for self-care. *Id.* at ¶135; Ex. 3. Each of
 27 these points are accurate. (ECF No. 10 at ¶¶108, 114–5, 118, 120, 125); Ex. 2. Likewise, the

County's statement that Burgess was on administrative leave pending investigation was accurate. (ECF No. 10 at ¶235). In October 2024, after Burgess publicly spoke for the AP article, the County responded to media requests stating that Burgess was placed on administrative leave pending an investigation regarding her job performance. *Id.* at ¶¶148–49, 246; Ex. 3. Like the prior statement, each point in the October statement is accurate. (ECF No. 10 at ¶¶138); Ex. 4 at pp. 3–4. The defamation claims should be dismissed with prejudice as to these allegations, based on truthful statements concerning Burgess's leave. *See Torres v. White*, 46 Fed. Appx. 738, 748–49 (6th Cir. 2002) (affirming dismissal of libel claim arising out of press release with true statements of plaintiff's discharge and related investigation).

Next, any statements regarding Burgess's inability to enter contracts as the ROV are truthful or substantially true as a matter of law. *See* (ECF No. 10 at ¶229) Under Nevada law, the BCC possesses authority to enter into contracts on behalf of the County. NRS. 244.143(2)(e); NRS 244.146. Under Washoe County Code, the BCC delegated to the "purchasing and contracts manager" certain contracting authority. WCC 15.490. The purchasing manager may enter into contracts with vendors for up to \$300,000 in annual amount of aggregate spend per vendor. WCC 15.490(4)(a). Amounts beyond that must go to the BCC for approval. *Id.* Concerningly, Burgess asserts in the FAC that she had authority to enter into contracts, and alleges defamation based on County staff allegedly informing vendors that she lacked authority. (ECF No. 10 at ¶¶27, 229). In doing so, Burgess further demonstrates her incompetence and lack of understanding of law applicable to the ROV position. If Burgess executed contracts as ROV without authorization from the purchasing manager or the BCC, she indeed lacked authority.

2. The False Light Claim, Based on Truthful Statements, Fails.

The tort of false light/invasion of privacy is "an odd hybrid of defamation and intentional infliction of emotional distress." *See Flowers v. Carville*, 310 F.3d 1118, 1132 (9th Cir. 2002). It "requires at least an implicit false statement of objected fact." *Id.* Like with defamation, for public figures, "it requires actual malice." *Id.*

Burgess claims she is entitled to damages because the County's statement that Burgess was on administrative leave pending investigation "created a false and misleading impression" that she was being investigated, "insinuating that she was not competent." (ECF No. 10 at ¶246–47). The published statement was true, as set forth above, Burgess was placed on administrative leave pending investigation into her job performance. Ex. 1; Ex. 4; Ex. 6. Moreover, to the extent it implied that Burgess was not competent, this was also true. *See* Ex. 1; (ECF No. 10 at ¶¶22–24, 27, 80, 84–88, 90–91, 149, 153, 175–76 187, 207, 210). Dismissal with prejudice is warranted because the False Light claim is based entirely on true statements and no amendment would be viable.

3. The County's Statements are Subject to the Official and Reply Privileges, and Discretionary Act Immunity.

The state official privilege immunizes statements from a superior government officer in the official capacity. *Restatement (Second) of Torts* § 591 (1977); *see also Jones v. State*, 426 S.W.3d 50, 58 (Tenn. 2013) (holding that defamation claims based on state official's media statements with reasons for plaintiff's demotion are privileged). Additionally, the reply privilege "grants those who are attacked with defamatory statements a limited right to reply." *State v. Eighth Judicial Dist. Court (Anzalone)*, 42 P.3d 233, 239 (2002).

Here, the County's two media statements are subject to the state official privilege because they were made by government officers in the performance of their duties. The October 2024 statement is also subject to the reply privilege because they responded to Burgess's defamatory public statements regarding the County.

Moreover, discretionary act immunity is appropriate because whether and how to respond to media requests about the ROV and to Burgess's subsequent public statements involved judgment and is susceptible to political policy consideration. Dismissal is warranted with prejudice because even if she could state a claim, the County is immune.

D. BURGESS FAILS TO STATE A FRAUDULENT MISREPRESENTATION CLAIM.

In Nevada, the failure to fulfill a promise to perform in the future may give rise to a fraud claim if the promisor "had no intention to perform at the time the promise was

1 made.” *Bulbman, Inc. v. Nev. Bell*, 825 P.2d 588, 592 (Nev. 1992). Plaintiff must prove: (1) a
2 false representation made by the defendant; (2) the defendant’s knowledge or belief that the
3 representation is false (or insufficient basis for making the representation); (3) the
4 defendant’s intention to induce the plaintiff to act or to refrain from acting in reliance upon
5 the misrepresentation; (4) the plaintiff’s justifiable reliance upon the misrepresentation; and
6 (5) damage to the plaintiff resulting from such reliance. *Cundiff v. Dollar Loan Ctr. LLC*, 726
7 F. Supp. 2d 1232, 1241 (D. Nev. 2010). It must be plead with particularity. *Id.*

8 Here, Burgess’s claim is implausible, illogical, and not plead with any particularity.
9 *See* (ECF No. 10 at ¶¶237–44). She alleges that the County fraudulently represented that
10 she would be hired as a “due process” employee, and that the Deputy ROV position would
11 be held for her return if she accepted appointment as interim ROV. *Id.* First, any
12 representations regarding ability to return to Deputy ROV were true when they were made.
13 Implications otherwise are implausible. The County initially believed Burgess was qualified
14 for ROV and Deputy ROV when it made the alleged promise, but her actions subsequently
15 showed that she was not. Burgess’s subsequent grossly deficient performance removed any
16 ability to return to Deputy ROV, rather than plausibly alleging the statement was false when
17 made. *See id.* at ¶¶22–24, 80, 84–88, 149, 153, 175–76, 187, 207, 210; Ex. 1; Ex. 4 at pp. 3–4.

18 Next, while the County disputes allegations concerning “due process employee,” it
19 was not justifiable for Burgess to rely on such a representation and Burgess was not
20 damaged by the representation. As a matter of law, the ROV and Deputy ROV positions
21 are not subject to the “merit system” providing employees additional rights. *See* NRS
22 245.216. It is therefore unjustifiable for Burgess to have relied on some vague
23 representation of a “due process employee.” Moreover, Burgess was not damaged because
24 she was given due process in any adverse employment action, including her firing. Due
25 process would only require notice, paid leave pending action, and an opportunity to be
26 heard. *See Mustafa*, 157 F.3d at 1177–78. Burgess was provided with all three. *See* (ECF No.
27 10 at ¶¶138, 141, 156); Exs. 1–2; Ex. 4 at pp. 3–4. She therefore cannot have been damaged

1 by the representation, and thus her claim should be dismissed with prejudice.

2 Moreover, even if Burgess could plausibly allege fraudulent misrepresentation, the
3 County is immune based on discretionary act immunity. *See Paulos*, 456 P.3d at 595. Such a
4 representation involved judgment in employment and was subject to policy considerations.

5 **E. CIVIL CONSPIRACY FAILS—THE COUNTY CANNOT CONSPIRE WITH ITSELF.**

6 “Agents and employees of a corporation cannot conspire with their corporate
7 principal or employer where they act in their official capacities on behalf of the
8 corporation....” *Collins v. Union Federal Sav. & Loan Ass’n*, 662 P.2d 610, 622 (Nev. 1983).
9 The doctrine applies “with equal weight” to government entities. *S. Nevada Fire Prot. Inc. v.*
10 *Clark Cnty.*, 2:21-CV-1843J-CMDJA, 2022 WL 19795807, at *3 (D. Nev. Dec. 19, 2022).

11 Here, Burgess’s “civil conspiracy” claim against Washoe County alleges that
12 “Defendants...acted in concert with each other.” (ECF No. 10 at ¶253). Washoe County is
13 the only Defendant,⁵ and the alleged acts arise from County employees. *See id.* The County
14 cannot conspire with its own employees as a matter of law. Burgess’s civil conspiracy claim
15 is barred and should be dismissed with prejudice.

16 **V. CONCLUSION**

17 Washoe County respectfully requests that the FAC be dismissed with prejudice.
18 Due to Burgess’s extraordinary incompetence, she was put on leave and ultimately fired.
19 The County’s actions served to ensure the proper functioning of the ROV’s office was not
20 jeopardized by Burgess’s lack of knowledge and poor judgment, and do not form any viable
21 claim for relief in this case.

22 Dated this 31st day of July 2025.

23 By /s/ Lindsay L. Liddell
24 LINDSAY L. LIDDELL
25 Deputy District Attorney
26 ATTORNEY FOR WASHOE COUNTY

27 ⁵ Burgess improperly names “doe” defendants. “Doe” pleading is not permitted in federal court. *Avila v. Doe*, Case No. 2:16-cv-GMN-GWF, 2017 WL 448313 at *2–3 (D. Nev. Feb. 1, 2017).

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years and not a party to nor interested in the within action. I certify that on this date, the foregoing was electronically filed with the United States District Court. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

HAWAH SAFA AHMAD
AHMADLAW

Dated this 31st day of July, 2025.

/s/ S. Haldeman
S. Haldeman

EXHIBIT INDEX

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