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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES HALSEY,

Plaintiff,

No. C 08-01335 JSW

v.

JP MORGAN CHASE BANK,

Defendant.

**ORDER REGARDING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT**

Now before the Court is the motion for summary judgment filed by Defendant JP Morgan Chase Bank (“Chase”) and the cross-motion for partial summary judgment filed by Plaintiff James Halsey (“Halsey”). Having carefully considered the parties’ arguments and the relevant legal authority, the Court hereby grants in part and denies in part Chase’s motion and denies Halsey’s cross-motion.¹

BACKGROUND

In late May 2006, Chase hired Halsey as a northern California account executive within the Correspondent Division of Chase Home Equity, a division of Chase. (Supplemental Declaration of James Halsey in Opposition to Chase’s Motion (“Suppl. Halsey Decl.”), ¶¶ 3, 6.) Halsey began working for Chase on June 5, 2006. Richard Kradel (“Kradel”) was Halsey’s director supervisor during the entire time Halsey worked for Chase. (*Id.*, ¶ 6.) Kradel sent

¹ Both parties submitted evidentiary objections. To the extent the Court relied on evidence objected to in resolving the parties’ motions, the objections are overruled. To the extent the Court did not need to consider such evidence in order to resolve the cross-motions, the Court need not rule on the admissibility of such evidence at this time.

1 Halsey to Orange County to train with Victoria Firestone (“Firestone”), another Chase account
2 executive, from June 7 through June 9, 2006. (Declaration of Scott Bonagofsky in Support of
3 Halsey’s Motion (“Bonagofsky Decl.”), Ex. A (Deposition of Richard Kradel (“Kradel Depo.”)
4 at 89:14-22, 95:6-11.)

5 Hours after the training concluded, Firestone sent Kradel an email criticizing Halsey’s
6 behavior during the training session. (Bonagofsky Decl., Ex. A (Kradel Depo.) at 96:2-15 &
7 Ex. 36.) Kradel did not discuss Firestone’s negative feedback with Halsey because Kradel
8 wanted to make his own judgment about Halsey’s performance and did not want to jeopardize
9 his team’s relationship. (*Id.*, Ex. A at 98:19-99:12.)

10 Halsey attended the Western Secondary Conference in San Francisco on July 12 through
11 13, 2006. (Declaration of James Halsey in Support of Halsey’s Motion (“Halsey Decl.”), ¶ 6.)
12 At this conference, Chase conducts business meetings with its clients. (Bonagofsky Decl., Ex.
13 A (Kradel Depo.) at 124:16-24.) During the first day of the Conference, the only meeting
14 Halsey was scheduled to participate in was cancelled. When this meeting was cancelled,
15 Halsey left so he could work from home. The next day, Kradel asked where Halsey went the
16 prior afternoon. Halsey explained why he left the conference. Kradel expressed his expectation
17 that Halsey should have stayed at the Conference even though the meeting had been cancelled.
18 (Halsey Decl. ¶ 6)

19 Despite Firestone’s negative feedback and Halsey’s leaving the Conference early, in
20 mid-July, Kradel told Halsey that his performance was on track with Kradel’s expectations.
21 (*Id.*) At that point, Kradel was not thinking of terminating Halsey and was pleased with his
22 performance. (Bonagofsky Decl., Ex. A (Kradel Depo.) at 137:4-7, 138:9-139:5 & Ex. 42,
23 159:11-13.)

24 Kradel sent Halsey to the Dennis Black Training in Cleveland, Ohio from August 8
25 through August 10, 2006. (Hasley Decl., ¶ 7; Bonagofsky Decl., Ex. A (Kradel Depo.) at
26 140:18-24.) During the second day of the training, Halsey received positive feedback for his
27 performance during several role-playing exercises. (Halsey Decl., ¶ 7.) During the morning
28 break on that day, Kradel approached Halsey and said that he appeared to be nodding off during

1 the morning session. (*Id.*) Halsey responded that he may have been drowsy because he had
2 flown cross-country from San Francisco to New York and then from New York to Cleveland.
3 (*Id.*) Later that day on another break, it occurred to Halsey that his HIV medication was
4 probably the cause of his drowsiness. Halsey was taking the following medications daily: 300
5 mg of Reyataz, 100mg of Norvir, and Truvada tablets, which include 200mg of Emtriva and
6 300 mg of Viread. (*Id.*, ¶ 8.) Reyataz, Norvir, and Truvada, either singly or in combination,
7 can and often do cause fatigue in patients. (Declaration of Nelia Sarmiento, ¶ 3.)

8 Halsey had not yet disclosed to Kradel that he was HIV-positive. At 3:53 p.m. Eastern
9 Standard Time on August 9, 2006, Halsey emailed Kradel in which he explained that he is HIV-
10 positive and that he spoke to his doctor regarding the medications he recently switched to for
11 his HIV condition. (Suppl. Halsey Decl., Ex. A.) Halsey wrote that his doctor told him that his
12 new medications “absolutely could effect [his] energy levels and that is probably what [he had]
13 been experiencing.” (*Id.*)

14 Earlier that day, Kradel had invited Halsey and the three other account executives on
15 Kradel’s team out to dinner that evening at the Hard Rock Café. (Suppl. Halsey Decl., ¶ 13.)
16 Kradel said that they would meet at the elevator bank at 6:00 p.m. and then walk over to the
17 restaurant together. (*Id.*) However, when Halsey went to the elevator bank, none of the other
18 Chase employees were there. (*Id.*, ¶ 15.) Halsey called Kradel at 6:00 and again at 6:03 p.m.,
19 but Kradel did not answer his phone. (*Id.*) Halsey thought this was odd because Kradel had
20 answered his phone whenever Halsey had called him before. (*Id.*) Halsey went to the Hard
21 Rock Café and looked for Kradel and the other account executives for approximately ten
22 minutes, but could not find them. (*Id.*) Halsey returned to his hotel room and called Kradel
23 again. Halsey left Kradel three voice mail messages asking where everyone was. Kradel did
24 not return any of these messages or mention receiving them when Halsey saw Kradel the next
25 day. (*Id.*)

26 Halsey also called Andrew Ripp’s (“Ripp”) cell phone several times that evening, but he
27 did not answer. The next morning, Ripp told Halsey that Kradel had changed the location of the
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1 dinner and told everyone to turn off their cell phones. (*Id.*) Halsey was never told about the
2 change of location on August 9, 2009. (*Id.*)

3 After dinner on August 9, 2009, Kradel emailed Lisa Jelinski (“Jelinski”) in Human
4 Resources with Chase to discuss Halsey. (Bonagofsky Decl., Ex. A (Kradel Depo.) at 150:14-
5 151:6 & Ex. 23.) Kradel and Jelinski met at 10:00 a.m. on August 10, 2006. (*Id.* at 160:19-
6 161:21.) Kradel spoke to Jelinski about Halsey’s training with Firestone, the Western
7 Secondary Conference, and the Dennis Black training. (*Id.* at 161:23-162:5.) Jelinski
8 suggested that disciplinary action or termination would be appropriate courses of action. (*Id.* at
9 2-6.)

10 Kradel and Jelinski discussed that Halsey was HIV-positive and was taking medication
11 which he claimed caused his exhaustion. (Bonagofsky Decl., Ex. B (Deposition of Lisa Jelinski
12 (“Jelinski Depo.”) at 162:14-163:3 & Ex. 27, 175:9-24.) Jelinski wrote that she wanted to
13 determine whether or not HIV was considered a disability. (*Id.* at 175:3-8.) Jelinski asked Pat
14 Sutton (“Sutton”) if sleeping at work was some that needed to be accommodated, and Sutton
15 told her that it was not. (*Id.* at 92:1-14, 186:3-18.) Jelinsky did not explore with Halsey
16 whether Chase could accommodate his drowsiness. (*Id.* at 186:19-22.)

17 During the last day of the Dennis Black training on August 10, 2009, Kradel did not
18 give Halsey any feedback after he completed his role-playing exercises. During the entire day,
19 Kradel made conversation and eye contact with the other three account executives on his team,
20 but not with Halsey. (Suppl. Halsey Decl., ¶ 16.) Halsey would address Kradel, but Kradel
21 would not respond. (*Id.*)

22 The last in-person interaction Halsey had with Kradel was at an afternoon meal at the
23 end of the Dennis Black training on August 10, 2009. Halsey, Kradel, and the other three
24 account executives on Kradel’s team went out for an early dinner together. At the meal, Kradel
25 interacted with the other account executives but stopped interacting directly with Halsey. (*Id.*)

26 By August 11, 2006, Kradel decided to terminate Halsey’s employment. (Bonagofsky
27 Decl., Ex. A (Kradel Depo.) at 178:6-22 & Ex. 26.) Kradel stated in an email that he decided
28 on termination because Halsey demonstrated that he could not work independently. (*Id.*, Ex. 26

1 to Ex. A.) Kradel testified that Halsey’s sleeping or being drowsy at the Dennis Black training
2 was the reason he decided to terminate him. (*Id.*, Ex. A at 178:23-179:5.)

3 On August 15, 2006, Kradel and Jelinski called Halsey to inform him that he was being
4 terminated and read him the termination letter. (*Id.*, Ex. A at 187:19-188:7.) The reasons for
5 the termination stated in the letter were sleeping at work, departing early, being late for
6 meetings, and behavior during training. (*Id.*, Ex. A at 182:18-24 & Ex. 19.)

7 ANALYSIS

8 A. Legal Standard.

9 Summary judgment is proper when the “pleadings, depositions, answers to
10 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
11 genuine issue as to any material fact and that the moving party is entitled to judgment as a
12 matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” only if there is sufficient evidence
13 for a reasonable fact finder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*,
14 477 U.S. 242, 248-49 (1986). A fact is “material” if the fact may affect the outcome of the case.
15 *Id.* at 248. “In considering a motion for summary judgment, the court may not weigh the
16 evidence or make credibility determinations, and is required to draw all inferences in a light
17 most favorable to the non-moving party.” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir.
18 1997). A principal purpose of the summary judgment procedure is to identify and dispose of
19 factually unsupported claims. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). The
20 party moving for summary judgment bears the initial burden of identifying those portions of the
21 pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of
22 material fact. *Id.* at 323. Where the moving party will have the burden of proof on an issue at
23 trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for
24 the moving party. *Id.* Once the moving party meets this initial burden, the non-moving party
25 must go beyond the pleadings and by its own evidence “set forth specific facts showing that
26 there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The non-moving party must “identify
27 with reasonable particularity the evidence that precludes summary judgment.” *Keenan v. Allan*,
28 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251

1 (7th Cir. 1995)) (stating that it is not a district court’s task to “scour the record in search of a
2 genuine issue of triable fact”). If the non-moving party fails to make this showing, the moving
3 party is entitled to judgment as a matter of law. *Celotex*, 477 U.S. at 323.

4 **B. Chase’s Motion for Summary Judgment.**

5 **1. Halsey’s Claim of Disability Discrimination.**

6 Halsey contends that he was terminated because of his HIV status. In order to prevail on
7 his disability claims, Halsey first must establish a *prima facie* case of discrimination. *See, e.g.,*
8 *Raytheon Co. v. Hernandez*, 540 U.S. 44 (2003); *McDonnell Douglas Corp. v. Green*, 411 U.S.
9 792 (1973). To establish a *prima facie* case of disability discrimination, Halsey must show
10 that: (1) he is disabled; (2) he is “otherwise qualified” for the position, with or without a
11 reasonable accommodation; and (3) he suffered an adverse employment action because of his
12 disability. *Zukle v. Regents of Univ. of Calif.*, 166 F.3d 1041, 1045 (9th Cir. 1999); *Jenson v.*
13 *Wells Fargo Bank*, 85 Cal. App. 4th 245, 254 (2000). If Halsey establishes his *prima facie* case,
14 the burden shifts to Chase to offer a legitimate non-discriminatory reason for the adverse action.
15 If Chase proffers such a reason, the burden shifts back to Halsey to show that Chase’s reason is
16 actually a pretext for discrimination. *Lucero v. Hart*, 915 F.2d 1367, 1371 (9th Cir. 1990)
17 (citing *Reynolds v. Brock*, 815 F.2d 571, 574 (9th Cir. 1987)).

18 The parties do not dispute that being HIV-positive qualifies as having a disability under
19 California law. However, the parties do dispute whether being terminated for sleeping, if
20 sleeping or being drowsy was a side effect of Halsey’s HIV medication, constitutes
21 impermissible discrimination based on a disability. A disability may result from side-effects of
22 medication. *McAlindin v. County of San Diego*, 192 F.3d 1226, 1236 (9th Cir. 1999).
23 Moreover, an employer’s failure to accommodate drowsiness due to medication can constitute a
24 failure to accommodate. *Id.*, at 1236-37. In *McAlindin*, the plaintiff employee was given a
25 written warning by his supervisor for sleeping at work, despite the fact that he had informed his
26 supervisor that his doctor had prescribed medications that made him drowsy. *Id.* at 1231. The
27 court found that the employer failed to demonstrate that finding a way to accommodate the
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1 plaintiff's drowsiness due to his medication would have imposed an undue burden. *Id.* at 1236-37.

2 Chase argues that courts have repeatedly approved of ADA-challenged discharges for
3 falling asleep at work. However, the Court notes that none of the authorities Chase relies on are
4 from the Ninth Circuit. In fact, two of the cases on which Chase relies are from the Seventh and
5 Eighth Circuits. In *Dark v. Curry County*, the Ninth Circuit noted that its approach differs from
6 the more "unforgiving approach" exhibited by the Seventh and Eighth Circuit. *See id.*, 451 F.
7 3d 1078, 1090 n.9 (9th Cir. 2006). The court in *Dark* further explained that, although courts
8 have recognized a distinction between termination because of misconduct and termination
9 because of a disability, "[w]ith few exceptions, conduct resulting from a disability is considered
10 to be part of the disability, rather than a separate basis for termination." *Id.* at 1084 (quoting
11 *Humphrey v. Mem'l Hosps. Ass'n*, 239 F.3d 1128, 1139-40 (9th Cir. 2001)). Chase has not
12 shown that terminating Halsey for sleeping, a side-effect of his medication for HIV, would not
13 be considered to be a part of Halsey's disability.

14 Finally, the cases on which Chase relies are readily distinguishable based on their facts.
15 In *Leonberger v. Martin Marietta Materials, Inc.*, 231 F.3d 396, 399 (7th Cir. 2000), the
16 plaintiff was observed sleeping while operating large, and potentially dangerous, equipment.
17 The Court found that because an employee who is less than fully alert while operating such
18 equipment could harm himself or others, the employer justifiably terminated the employee
19 based on his performance on the job and not any discriminatory animus. *Id.*

20 In *Cannon v. Monsanto Co.*, 2008 WL 236922, *4 (E.D. La. Jan. 28, 2008), the
21 employer submitted evidence demonstrating that staying awake was an essential function of the
22 plaintiff's position, which involved performing electrical work and monitoring a plant reactor.
23 Therefore, the court found that due to his sleeping on the job, Plaintiff was not able to perform
24 the essential functions of his "safety-sensitive job" and, thus, was not a qualified individual with
25 a disability. *Id.* Similarly, in *Brown v. Triboro Coach Corp.*, 153 F. Supp. 2d 172, 185
26 (E.D.N.Y. 2001), the court found that the plaintiff was not able to perform the essential
27 functions of his job because the sleep apnea he suffered from rendered him unable to operate a
28 bus safely.

1 In *Hill v. Kansas City Area Transportation Authority*, 181 F.3d 891, 892-93 (8th Cir.
2 1999), the plaintiff was discharged as a bus driver for twice falling asleep while assigned to a
3 bus route. The employer had a work rule stating that two incidents of sleeping on the job would
4 result in discharge. Notably, the plaintiff did not tell her supervisor that medications had caused
5 her to fall asleep on the job. *Id.* at 893. In this context, the court found that the plaintiff was not
6 terminated on account of her disability. *Id.* at 894.

7 The Court finds that Halsey has submitted sufficient evidence to demonstrate both a
8 *prima facie* case of discrimination and of pretext. The evidence viewed in the light most
9 favorable to Halsey demonstrates that Kradel made the decision to terminate Halsey based on
10 his falling asleep or “nodding off” during the Dennis Black training and that Halsey told Kradel
11 that his medication could effect his energy levels.² Chase does not dispute that has a disability
12 or that Halsey was terminated. Chase only disputes whether Halsey has demonstrated that he
13 could perform the essential functions of his position. However, Chase has not demonstrated
14 that sleeping or nodding off during a training session rendered Halsey unable to perform the
15 essential functions of an account executive. Based on the positive feedback Halsey received
16 before he was terminated and the document demonstrating that Halsey out performed another
17 account executive hired at the same time he was, the Court finds that Halsey has satisfied his
18 burden to demonstrate a *prima facie* case.

19 The Court also finds that Halsey has submitted sufficient evidence to create a question
20 of fact regarding whether Chase’s proffered reason for termination was pretextual. Notably,
21 only a couple of hours after Halsey informed Kradel that he was HIV-positive, Kradel changed
22 the location of a dinner, did not tell Halsey of the change, and told the other account executives
23 to turn off their cell phones. The next day, Kradel would not interact with or make eye contact
24 with Halsey. The following day, Kradel made the decision to terminate Halsey. Such conduct
25 gives rise to an inference of discriminatory animus.

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27 ² Although the written recommendation for termination provides additional reasons
28 for discharging Halsey, the evidence viewed in the light most favorable to Halsey
demonstrates that Kradel did not find the other reasons sufficient cause for termination.
Halsey’s sleeping or nodding off at the Dennis Black training was the but for cause of
Halsey’s termination.

1 Moreover, the evidence creates a question of fact regarding whether Chase’s proffered
2 reasons for terminating Halsey are credible. Up until the Dennis Black training, during which
3 Halsey informed Kradel that he was HIV-positive, Kradel was not thinking of terminating
4 Halsey and was pleased with his performance. However, Kradel’s written recommendation for
5 termination includes alleged performance issues that occurred before the Dennis Black training.
6 Therefore, the Court finds that Halsey has demonstrated a question of fact regarding whether
7 Chase’s proffered reason is actually a pretext for discrimination. Accordingly, the Court denies
8 Chase’s motion for summary judgment on Halsey’s claims for disability discrimination.³

9 **2. Halsey’s Claim for Sexual Orientation Discrimination.**

10 Halsey contends that, in addition to terminating him because he is HIV-positive, Kradel
11 made the decision to terminate him because he is gay. However, Halsey did not tell Kradel that
12 he was gay until after he was terminated. Chase submits undisputed evidence that Kradel had
13 not been aware that Halsey was gay and was surprised by Halsey’s disclosure. (Declaration of
14 Robert E. Belshaw, Ex. C (Jelinski Depo.) at 251:11-21.) Based on such evidence, Halsey has
15 not demonstrated a question of fact regarding whether Kradel terminated him because he is gay.
16 Accordingly, the Court grants Chase’s motion on this claim.

17 **3. Halsey’s Failure to Accommodate and Failure to Engage in Interactive
18 Process Claims.**

19 It is an unlawful employment practice for “an employer to fail to engage in a timely,
20 good faith, interactive process with the employee or applicant to determine effective reasonable
21 accommodations, if any, in response to a request for reasonable accommodation by an
22 employee or applicant with a known physical or mental disability or known medical condition.”
23 Cal. Gov’t Code § 12940(n). FEHA requires that employers and employees engage in a good-
24 faith interactive process to explore reasonable accommodation. *Velente-Hook v. Easter Plumas
25 Health Care*, 368 F. Supp. 2d 1084, 1097 (E.D. Cal. 2005). The standard for FEHA violations

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27 ³ Because the Court finds that material questions of fact preclude summary judgment
28 on Halsey’s claim for disability discrimination, the Court similarly finds that summary
judgment is precluded on Halsey’s claims for failure to take reasonable steps to prevent
discrimination, failure to take corrective action, aiding or abetting discrimination, and
wrongful termination in violation of public policy.

1 for failure to engage in the interactive process tracks the standard for ADA violations. *Id.*
2 ““The interactive process is a mandatory rather than a permissive obligation on the part of
3 employers under the ADA.”” *Jensen v. Wells Fargo Bank*, 85 Cal. App. 4th 245, 261 (2000)
4 (quoting *Barnett v. U.S. Air, Inc.*, 228 F.3d 1105, 1114 (9th Cir. 2000)). This obligation is
5 ““triggered by an employee . . . giving notice of the employee’s disability and the desire for
6 accommodation.”” *Id.* (quoting *Barnett*, 228 F.3d at 1114). The process requires good faith
7 communication by both parties as a means of achieving the shared goal of identifying an
8 accommodation that would enable the employee to perform his job effectively. *Id.*
9 “Employers, who fail to engage in the interactive process in good faith, face liability for the
10 remedies imposed by the statute if a reasonable accommodation would have been possible.”
11 *Humphrey v. Mem’l Hosps. Ass’n*, 239 F.3d 1128, 1137-38 (9th Cir. 2001).

12 In order to prevail on his claim alleging a failure to accommodate, Halsey bears the
13 initial burden to show the existence of a reasonable accommodation. *See Zukle v. Regents of*
14 *University of California*, 166 F.3d 1041, 1046 (9th Cir. 1999). However, “[o]nce an employer
15 becomes aware of the need for accommodation, that employer has a mandatory obligation under
16 the ADA to engage in an interactive process with the employee to identify and implement
17 appropriate reasonable accommodations.” *Humphrey*, 239 F.3d at 1137. Although the
18 employee generally bears the burden of initiating the interactive process, the burden falls on the
19 employer “where the employer is aware of or recognizes the employee’s need for
20 accommodation.” *Stoll v. The Hartford*, 2006 WL 3955826, *5 (S.D. Cal. Nov. 7, 2006). If the
21 employer fails to engage in the interactive process, summary judgment is only available to the
22 employer “if a reasonable finder of fact *must* conclude that there would in any event have been
23 no reasonable accommodation available.” *Dark*, 451 F.3d at 1088 (emphasis in original)
24 (internal quotation marks and citation omitted).

25 Both Chase and Halsey move for summary judgment on Halsey’s failure to engage in
26 the interactive process claim. It is undisputed that after Kradel confronted Halsey about
27 sleeping during the Dennis Black training, Halsey sent Kradel an email informing Kradel that
28 he is HIV-positive and that his doctor told him that his HIV medication could affect his energy

1 levels. However, the parties dispute whether this email was sufficient to inform Chase of
2 Halsey's need for an accommodation. The Court finds that read in the light most favorable to
3 Halsey, that Chase was on notice of Halsey's need for an accommodation and failed to engage
4 in the interactive process. Although Chase argues ad nauseam about the distinction between the
5 words sleep, fatigue, drowsiness, and energy levels, the Court finds that Halsey's evidence
6 regarding his energy level and fatigue are sufficient to show that his medication could have
7 been the cause of his sleeping or "nodding off" during the Dennis Black training, or at least
8 appearing to be sleeping or "nodding off." However, read in the light most favorable to Chase,
9 the Court cannot find that a reasonable juror could not find that Halsey's email was equivocal
10 and that someone might have low energy but still be able to stay away at work. Therefore, the
11 Court denies both parties' motions on Halsey's failure to engage in the interactive process
12 claim.

13 Moreover, because the Court finds that viewing the evidence in the light most favorable
14 to Halsey, that Chase failed to engage in the interactive process, summary judgment is only
15 available to Chase on the failure to accommodate claim "if a reasonable finder of fact *must*
16 conclude that there would in any event have been no reasonable accommodation available."
17 *Dark*, 451 F.3d at 1088 (emphasis in original) (internal quotation marks and citation omitted).
18 Halsey argues that Chase could have modified his work schedule to allow for more frequent
19 breaks. Chase does not submit any evidence to dispute that this accommodation would have
20 been reasonable. Therefore, the Court cannot find that a reasonable juror *must* conclude that no
21 reasonable accommodation was available. Accordingly, the Court denies Chase's motion on
22 Halsey's failure to accommodate claim.

23 **4. Halsey's Intentional Infliction of Emotional Distress Claim.**

24 The elements of a claim for intentional infliction of emotional distress are: "(1)
25 outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the
26 probability of causing emotional distress, (3) severe emotional suffering and (4) actual and
27 proximate causation of the emotional distress." *Cole v. Fair Oaks Fire Dept.*, 43 Cal. 3d 148,
28 155 n.7 (1987); *see also Lee v. Aiu*, 85 Haw. 19, 34 & n.12 (1997). As the court noted in *Cole*,

1 this tort imposes liability for “conduct exceeding all bounds usually tolerated by a decent
2 society, of a nature which is especially calculated to cause, and does cause, mental distress.” *Id.*

3 Chase argue that Halsey’s claim for intentional infliction of emotional distress fails
4 because Halsey has not demonstrated that Chase engaged in outrageous conduct. In *Janken*, the
5 court found that “[m]anaging personnel is not outrageous conduct beyond the bounds of human
6 decency, but rather conduct essential to the welfare and prosperity of society.” 46 Cal. App. 4th
7 55, 80 (1996). Therefore, the court held that “[a] simple pleading of personnel management
8 activity is insufficient to support a claim of intentional infliction of emotional distress, even if
9 improper motivation is alleged. If personnel management decisions are improperly motivated,
10 the remedy is a suit against the employer for discrimination.” *Id.* Courts have followed the
11 holding in *Janken* and dismissed intentional infliction of emotional distress claims premised on
12 personnel management decisions. *See e.g. Walker v. Boeing Corp*, 218 F. Supp. 2d 1177, 1190
13 (C.D. Cal. 2002) (“Terminating an employee for improper or discriminatory reasons, like many
14 adverse personnel management decisions, is insufficiently extreme or outrageous to give rise to
15 a claim for intentional infliction of emotional distress.”); *see also Helgeson v. Amer. Intern.*
16 *Group, Inc.*, 44 F. Supp. 2d 1091, 1097 (S.D. Cal. 1999); *Bradshaw v. Glatfelter Ins. Group*,
17 2009 WL 1438265, *4 (E.D. Cal. May 20, 2009); *Bragg v. East Bay Regional Park Dist.*, 2003
18 WL 23119278, *8-9 (N.D. Cal. Dec. 29, 2003); *but see Jelincic v. Xerox Corp*, 2004 WL
19 2217643, *6 (N.D. Cal. Oct. 1, 2004) (limiting the holding in *Janken* to IIED claims against
20 supervisory employees and finding *Janken* inapposite to IIED claim against an employer).
21 Chase’s alleged conduct merely constitutes personnel management decisions. Therefore,
22 Halsey has not submitted any evidence demonstrating the existence of a question of fact
23 regarding whether Chase engaged in outrageous conduct necessary for his claim of intentional
24 infliction of emotional distress. The Court therefore grants Chase’s motion for summary
25 judgment on this claim.

26 CONCLUSION

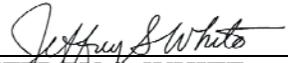
27 For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART
28 Chase’s motion for summary judgment as follows: The Court GRANTS Chase’s motion as to

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Halsey’s claim for sexual orientation discrimination and claim for intentional infliction of emotional distress and DENIES the remainder of Chase’s motion. The Court DENIES Halsey’s motion for partial summary judgment. .

IT IS SO ORDERED.

Dated: October 16, 2009



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE