

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA

3  
4 MICHAEL MENDOZA,

5 Plaintiff,

6 v.

7 MV TRANSPORTATION, INC.,

8 Defendant.

Case No. 16-cv-04005-TEH

**ORDER RE: MOTIONS FOR  
SUMMARY JUDGMENT**

9  
10 Currently pending before the Court in this disability discrimination case are  
11 Defendant MV Transportation, Inc.'s motion for summary judgment and Plaintiff Michael  
12 Mendoza's motion for partial summary judgment.

13 The following facts are undisputed: MV Transportation, Inc. hired Michael  
14 Mendoza as a bus driver in training but terminated him, before training was completed, for  
15 failing to pass a physical. Mendoza has Type 2 diabetes, which he controls by giving  
16 himself insulin shots several times a day. Under federal Department of Transportation  
17 ("DOT") regulations, a person with an "established medical history or clinical diagnosis of  
18 diabetes mellitus currently requiring insulin for control" is not qualified to drive  
19 commercial motor vehicles. 49 C.F.R. § 391.41(b)(3). However, individuals with diabetes  
20 who wish to drive commercial vehicles may do so if they obtain an exemption through the  
21 Federal Motor Carrier Safety Administration's Federal Diabetes Exemption Program.  
22 Mendoza has never sought or obtained such an exemption.

23 It is further undisputed that: California has adopted the medical requirements in the  
24 DOT regulations as the "minimum medical requirements" for receiving a California  
25 commercial driver license ("CDL"). Cal. Code Regs. tit. 13, § 28.18. An individual who  
26 does not meet these medical requirements but who seeks a CDL "for purposes other than  
27 engaging in interstate commerce, may submit a completed medical examination form to  
28 the department [of motor vehicles] for consideration of obtaining a state approved medical

1 certificate.” Cal. Code Regs. tit. 13, § 28.19. Mendoza applied for and obtained a  
2 California permit to drive commercial vehicles. As part of the application process, he  
3 completed a medical examination and obtained a certificate stating that the medical  
4 examiner “examined Mendoza, Michael E. in accordance with the Federal Motor Carrier  
5 Safety Regulations (49 CFR 391.41-391.49) and with knowledge of the driving duties, I  
6 find this person is qualified, and, if applicable, only when . . . accompanied by a Diabetes  
7 waiver/exemption.” Ex.3 to Rogers Decl. at MENDOZA 000010 (ECF No. 31).<sup>1</sup>

8 Mendoza contends that this medical certificate is the “state approved medical  
9 certificate” that allows him to drive intrastate pursuant to California Code of Regulations  
10 title 13, section 28.19, and that he did not need a federal DOT waiver because the job for  
11 which he was hired did not involve interstate commerce. On its face, however, the  
12 certificate states that Mendoza is qualified to drive only when accompanied by a diabetes  
13 waiver or exemption, and Mendoza testified at his deposition that he does not have any  
14 such waiver or exemption from any state or federal agency. Mendoza Dep. at 208:14-22  
15 (Ex. A to Wenter Decl. (ECF No. 33-3)). Without such a waiver, the certificate on which  
16 Mendoza relies does not qualify him to drive commercial vehicles.

17 Mendoza also testified at his deposition that he spoke with a person, whose name he  
18 does not recall, at his local California Department of Motor Vehicles (“DMV”) office who  
19 told him that he would not have gotten a permit if he did not have the necessary medical  
20 paperwork on file. Id. at 157:3-158:14. Mendoza further testified that the DMV  
21 representative told him that the representative could not provide a copy of the paperwork  
22 because it was on file in Sacramento. Id. at 154:14-16. These statements are hearsay to  
23 the extent they are offered as evidence that Mendoza had a diabetes waiver or exemption.  
24 Moreover, MV subpoenaed Mendoza’s DMV file during the course of this litigation, and –

25  
26  
27 <sup>1</sup> The cited version of the medical examiner’s certificate was notarized after the fact  
28 and produced by Mendoza during discovery. MV produced an un-notarized version of the  
certificate at D00146. Ex. 4 to Otten Declaration (ECF No. 33-5). Aside from the  
notarization, the two versions of the document are identical, and the parties do not dispute  
its content.

1 as Mendoza does not dispute – that file contains no diabetes waiver or exemption. Wenter  
2 Reply Decl. ¶ 5 & Exs. D & E (ECF No. 38-2).

3 Based on the evidence presented, no reasonable juror could conclude that Mendoza  
4 had a state medical certificate finding him qualified to drive commercial vehicles in the  
5 absence of a diabetes waiver or exemption. Thus, even if Mendoza is correct that he did  
6 not require a DOT exemption and only required a state approved medical certificate to be  
7 qualified to drive for MV, there is no triable issue of fact as to his qualifications. Mendoza  
8 does not argue that he can prevail on his claims without being qualified to drive  
9 commercial vehicles, and granting summary judgment to MV therefore appears to be  
10 appropriate. Fed. R. Civ. P. 56(a) (“The court shall grant summary judgment if the movant  
11 shows that there is no genuine dispute as to any material fact and the movant is entitled to  
12 judgment as a matter of law.”).

13 However, out of an abundance of caution, the Court will provide Mendoza with one  
14 final opportunity to present evidence that he had a medical certificate finding him qualified  
15 to drive commercial vehicles even without a diabetes waiver or exemption, or evidence  
16 that he actually obtained such a waiver or exemption. Any such evidence shall be filed on  
17 or before **June 8, 2017**. If no evidence is timely submitted, the Court will grant MV’s  
18 motion for summary judgment and deny Mendoza’s motion for partial summary judgment  
19 for the reasons stated in this order.

20 The Court finds the pending motions suitable for resolution without oral argument.  
21 However, if either party files a request for a hearing on or before **June 9, 2017**, then the  
22 Court will hear argument on **June 26, 2017, at 10:00 AM**; otherwise, the matter will be  
23 deemed submitted on the papers. The June 12, 2017 hearing is VACATED.

24  
25 **IT IS SO ORDERED.**

26  
27 Dated: 06/01/17

  
\_\_\_\_\_  
THELTON E. HENDERSON  
United States District Judge