

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRUCE DOYLE,  
Plaintiff,  
v.  
GALDERMA, INC.,  
Defendant.

Case No. [19-cv-05678](#) (TSH)

**ORDER RE: MOTION FOR  
SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, PARTIAL SUMMARY  
ADJUDICATION**

Re: Dkt. Nos. 26

**I. INTRODUCTION**

Pending before the Court is Defendant Galderma Laboratories, L.P.’s (“Galderma’s”) February 4, 2021 Motion for Summary Judgment, or, in the Alternative, Partial Summary Adjudication (“Summary Judgment Motion”). ECF No. 26.

Plaintiff Bruce Ian Doyle (“Doyle”) sued Galderma in Alameda County Superior Court on July 5, 2019. Doyle asserts three causes of action: (1) Age Discrimination in violation of California’s Fair Employment and Housing Act (“FEHA”); (2) Wrongful Termination in Violation of Public Policy; (3) Breach of Implied Contract Not to Terminate Without Good Cause. ECF No. 1, Galderma’s Notice to Federal Court of Removal of Civil Action (“Removal Notice”), Ex. A, Complaint (“Complaint”). Doyle also seeks an award of punitive damages. Id.

On September 9, 2019, Galderma removed to federal court based on diversity jurisdiction pursuant to 28 U.S.C. 1332(a).

Having considered the parties’ positions, relevant legal authority, and the record in this case, the Court GRANTS Galderma’s Summary Judgment Motion.

**II. BACKGROUND**

The following facts are taken from the Summary Judgment Motion, the Opposition to

1 Summary Judgment Motion (“Opposition” or “Opp.”), ECF No. 29, and the Reply to the Opposition  
2 (“Reply”), ECF No. 32, and are set forth for purposes of background.

3 **A. Doyle’s Employment History With Galderma**

4 Doyle was hired by Owen Labs in April of 1989 as a district sales manager. Declaration of  
5 Demery Ryan in Support of the (“ISO”) Summary Judgment Motion (“Ryan Decl.”) ¶ 2, Ex. A,  
6 September 9, 2020 Deposition of Bruce Ian Doyle (“Doyle Dep.”) 13:8-16. In the early 1990s,  
7 Owen Labs was acquired by Galderma (Doyle Dep. 13:21-23), a pharmaceutical manufacturer of  
8 prescription and over-the-counter dermatological products. Declaration of Edith Flores ISO  
9 Summary Judgment Motion (“Flores Decl.”) ¶ 2.

10 Doyle became a Regional Sales Manager (“RSM”) for Galderma in 1999, which was  
11 equivalent to the current Area Director position. Doyle Dep. 14:4-6. Doyle returned to the district  
12 sales manager position in 2007. Doyle Dep. 15:1-9. In approximately 2014, Doyle’s position was  
13 renamed Senior Regional Sales Manager (“Senior RSM”) (Doyle Dep. 15:10-22), a position he  
14 held until his termination (Doyle Dep. 26:14-19) in April 2019 at age sixty-four. At all times from  
15 at least 1999 until his termination, Doyle was an at-will employee. As he himself admitted in his  
16 deposition, there was no employment contract. Doyle Dep. 18:16-23.

17 Doyle claims in his declaration, and supports with “a chronological sampling of the [sic]  
18 some of the awards, raises, and bonuses I received during the course of my career” that: between  
19 1989 and 2015, Doyle earned multiple awards including District Sales Manager of the Year  
20 awards in 1990 and 1994, RSM of the Year award in 2003, Five Inner Circle Awards (top 10% in  
21 sales), 13 President's Awards (top 20% in sales), over 15 merit salary increases, and received  
22 twenty-nine consecutive favorable annual performance reviews in which he was rated as meeting  
23 expectations or higher. Declaration of Bruce Ian Doyle in Opposition to Galderma’s Summary  
24 Judgment Motion (“Doyle Decl.”), ¶¶ 2-4.

25 From approximately 2014 to the end of his employment at Galderma, Doyle managed a  
26 sales team of prescription pharmaceutical sales representatives in the West and Northwest. Doyle  
27 Dep. 28:15-25. In the last two to three years of Doyle’s employment, the team Doyle managed  
28 focused on a portfolio of prescription products for acne and rosacea, which included Soolantra,  
Epiduo Forte, and Oracea. Doyle Dep. 29:1-30:5. Doyle’s supervisor from October 2016 until the

1 end of his employment was Ken Curley (“Curley”). Doyle Dep. 27:10-12; 27:21-28:3; Ryan Decl.  
2 ¶ 3, Ex. B, First Deposition of Ken Curley, September 14, 2020 (“Curley Dep. 1”) 59:2-22;  
3 Declaration of Ken Curley ISO Summary Judgment Motion (“Curley Decl.”) ¶ 2.

4 From 2016-2019, Curley was the Area Sales Director and the Senior Area Sales Director  
5 of the West Area, one of the three regions in the Galderma Prescription Sales Business Unit (“Rx  
6 Business Unit”) (Curley Decl. ¶¶ 2-3), the other two being the Central and East regions. Ryan  
7 Decl. ¶ 4, Ex. C, Deposition of Chad Collins December 2, 2020 (“Collins Dep.”) 12:4-21. One of  
8 the regions in the West Area was the San Francisco region, managed by Doyle in his role as  
9 Senior RSM in the Rx Business Unit. Curley Decl. ¶ 3. As of January 2019, Curley supervised  
10 six RSMs, who in turn supervised approximately fifty sales representatives. Declaration of Robert  
11 Wallace in Support of the Opposition (“Wallace Decl.”) ¶ 11, Ex. 10, Curley Dep. 1 63:4-17.  
12 During the time Curley supervised Doyle from October 2016 through May 1, 2019, Curley did not  
13 have power to manage high level corporate affairs and had no authority to influence or affect  
14 corporate policy. Curley Decl. ¶ 13. During all times relevant to this action, Curley was not an  
15 officer or director of Galderma. *Id.*

16 From approximately January 2016 to January 2020, Chad Collins (“Collins”) was Vice  
17 President of Sales of Galderma’s Rx Business Unit. Declaration of Chad Collins in Support of  
18 Galderma’s Summary Judgment Motion, (“Collins Decl.”) ¶ 1; Doyle Dep. 39:5-7. He was  
19 Curley’s direct supervisor from 2016 through Doyle’s termination. Doyle Dep. 38:11-15; Curley  
20 Dep. 1 58:23-59:1. As such, Collins supervised three Area Directors, over twenty RSMs,  
21 including Doyle, and between one hundred twenty-five to one hundred seventy-five sales  
22 representatives throughout the entire country. Wallace Decl. ¶13, Ex. 12, Collins Dep. 14:5-  
23 17:22. Collins had no power to manage high level corporate affairs nor authority to influence or  
24 affect corporate policy. Collins Decl. ¶ 2. Collins was not an officer or director of Galderma at  
25 any time. *Id.*

26 Doyle was an at-will employee throughout his employment at Galderma. Doyle Dep.  
27 17:18-18:11; 18:16-23. Doyle’s 1999 promotion letter, the applicable Galderma Employee  
28 Handbook, and the language of Doyle’s PIP demonstrate Doyle’s at-will status. Doyle Dep.  
16:23-19:14, Ex.1; 98:25-99:14, Ex. 15; Flores Decl., Ex. A. Nevertheless, Doyle asserts that,

1 “based upon Galderma’s conduct over his 30-year career, Mr. Doyle understood that Galderma  
2 needed good cause to fire him.” Doyle Decl. ¶ 24.

3 **B. Measurement of RSMs’ Performance, Setting Sales Quotas, and Sales Bonus**  
4 **Payments**

5 Doyle stated in his deposition the most important metric of job performance for RSMs is  
6 their sales results. Doyle Dep. 64:7-9. Galderma primarily measured Doyle’s performance as an  
7 RSM based on how his team performed compared to product quotas set for each of the products in  
8 his region’s portfolio. Doyle Dep. 30:6-13. During 2014-2019, RSMs were also measured by  
9 their success at deploying money Galderma allocated to them for Peer to Peer education programs  
10 and extended selling events, that is, informational events outside the health care providers’ places  
11 of business. Doyle Dep. 34:23-37:4. During the last couple of years of Doyle’s employment,  
12 Galderma also measured the performance of RSMs, including Doyle, by sales call cycle frequency  
13 and the quantity and quality of field coaching reports, collectively known as Management by  
14 Objectives (“MBOs”). Doyle Dep. 34:6-35:1. Call cycle frequency means that the team conducts  
15 a certain number of sales calls on a select group of doctors in a prescribed period of time, and field  
16 coaching reports are written feedback and suggestions drafted by an RSM to provide to direct  
17 reports (sales representatives whom the RSM supervises) after accompanying them on sales calls.  
18 Doyle Dep. 36:3-15.

19 In 2017, 2018, and 2019, Doyle worked with Galderma’s Sales Compensation Manager,  
20 Tonia Moseley (“Moseley”), on setting quotas in his region’s portfolio. Doyle Dep. 30:6-31:12;  
21 Ryan Decl., ¶ 5, Ex. D, December 16, 2020 Deposition of Tonia Moseley (“Moseley Dep.”)  
22 10:20-11:3. Moseley helped manage the process of developing commission plans and setting  
23 sales quotas. Moseley Dep. 12:9-14. In setting quotas, she worked with different levels of the  
24 Galderma sales organization, worked with data vendors, and verified sales professionals’  
25 performance against their quotas. Moseley Dep. 13:10-18; 17:3-22; 24:2-7; 25:16-19; 33:2-13.  
26 Galderma’s quotas are crafted carefully. Moseley Dep. 22:11-24:1; 46:4-12. Performing above  
27 goal with key brands and increasing share with promoting strategic topical products was a goal for  
28 Doyle every year. Doyle Dep. 64:2-6.

Moseley testified in her declaration that “bonus payments did not equate to excellence in

1 sales.” Supplemental Declaration of Tonia Moseley (“Supp. Moseley Decl.”) ¶ 2. She explained  
2 that “[a]ll Galderma sales professionals receive commission incentive payments (also known as  
3 bonus payments) based on the amount of units of product sold in their territory.” *Id.* An “RSM  
4 such as Doyle received a bonus payment for their direct reports; sales starting when that RSM  
5 reached [a certain percentage] of their quota,” meaning that “sales professionals, including Doyle,  
6 who did not meet their quota or were bottom performers could and did receive bonus payments.”  
7 *Id.*

8 **C. Doyle’s Mixed Performance History, Particularly in Sales**

9 Doyle received a rating of “developmental opportunity,” the lowest rating on a Galderma  
10 performance review for behavioral competencies (Doyle Dep., 40:18-41:13; 43:8-14; Ex. 4, p. 1),  
11 for sales results in four out of five years from 2014-2018. The relevant aspects of Doyle’s sales  
12 performance are as follows:

13 2014: Doyle received a rating of developmental opportunity from his prior manager (i.e.,  
14 not Curley) for achievement in sales results and was advised to “achieve or exceed national  
15 performance levels.” Doyle Dep. Ex. 4 at p. 5. Doyle himself identified sales results as a  
16 “primary shortcoming” (Doyle Dep. 45:21-46:2; Ex. 4) and acknowledged that his team needed  
17 further development. Doyle Dep. 44:4-10; Ex. 4.

18 2015: Doyle received a rating of “developmental opportunity” for sales achievement.  
19 Doyle Dep. 47:3-22; Ex. 5. Doyle grew market share of one product, Epiduo, by only .68 as  
20 compared to 1.4 growth nationally and did not hit the targets for either of the key products he was  
21 promoting, Epiduo and Soolantra, through August 2015. Doyle Dep. 47:23-48:8; Ex. 5. Doyle  
22 was also the subject of complaints from his subordinates, which were memorialized in a document  
23 called “Stop... Start... Continue for Ian Doyle.” Doyle Dep. 49:2-20; Ex. 6.

24 2016: Doyle received an “effective” rating in his Overall Contribution Assessment during  
25 his annual performance review, including a rating of “strength” for sales achievement from  
26 Curley. Doyle Dep. 59:23-63:10; Ex. 7; Doyle Decl. ¶ 4. Curley warned Doyle, though, that “to  
27 remain a strength, performance above goal with our key brands will need to occur as well as  
28 increasing share with the promoted strategic topical brands.” Doyle Dep. 63:12-64:1; Ex. 7.

1 In his declaration, Doyle also claims he achieved 98.19% of his sales quota, a \$59,243  
2 sales performance bonus, and received his sixth President’s Award. Doyle Decl. ¶ 4.

3 2017: In his declaration, Doyle states that he received an “effective” rating in his Overall  
4 Contribution Assessment in his annual performance review rating (Doyle Decl. ¶ 5), but a rating  
5 of “developmental opportunity” for sales achievement. Doyle Dep. 65:15-66:1; Ex. 8. Doyle  
6 claims that he achieved 99.68% of his sales quota and received a \$71,252 sales performance  
7 bonus. Doyle Decl. ¶ 5. However, Doyle performed below target at 85% of quota with the  
8 product Soolantra and below target with the other two products he promoted, Tri-Luma and  
9 Epiduo through May 2017. Doyle Dep. 66:20-67:6. Doyle admitted that his rating of  
10 “developmental opportunity” for sales achievement was not unfair and that he needed to improve  
11 as of 2017. Doyle Dep. 67:24-68:11; 69:1-6.

12 2018: In Doyle’s Mid-Year Review, Curley told him he was trending towards receiving an  
13 overall Needs Improvement rating on his Year-End Performance Review based on Doyle’s first  
14 half of 2018 performance. Doyle Dep. 69:7-72:1; Ex. 9. “Needs Improvement” is the lowest  
15 rating possible on Galderma’s assessment scale and means that Doyle did not meet the expected  
16 requirements of the position. Doyle Dep. 92:8-11; Ex. 13; Doyle Decl. ¶ 6, Ex. 2. Curley also  
17 told Doyle he had a shortfall in deploying resources for peer-to-peer programing. Doyle Dep.  
18 70:25-71:4. Doyle himself said he did not consider this review unfair. *Id.* 74:2-8.

19 Doyle and Curley had a one on one meeting in June 2018. *Id.* 76:1-17; Ex. 10. On June  
20 26, 2018, Curley followed up this meeting with an email (*id.* 75:13-20; Ex. 10) telling Doyle that  
21 he was falling short of the sales metrics (*id.* 77:16-22; Ex. 10) and “it was important to hit these  
22 metrics in Q3 ensuring both quality and effective spend, execution and deployment of resources.  
23 Failure to hit these metrics will result in a more formalized improvement plan being put in place.”  
24 *Id.* 79:16-23; 80:7-13; Ex. 10.

25 Notwithstanding these early warnings, his rating in 2018 for Overall Contribution  
26 Assessment was, in fact, “Needs Improvement” (Doyle Dep. 92:8-11; Ex. 13), despite receiving an  
27 annual performance rating of “Strength” or “Meets Expectations” for areas unrelated to his sales  
28 deficiencies – namely Courage and Integrity, Collaboration, Impact and Influence, Organizational

1 Sense, Innovation, Team Leadership, and Change Leadership. Doyle Decl. ¶ 6, Ex. 2. During his  
2 deposition, Doyle admitted that the overall “Needs Improvement” rating was fair. Doyle Dep.  
3 92:8-14.

4 By the end of 2018, Doyle had failed to meet his quota in any of the three products he  
5 promoted (Doyle Dep. 72:13-16; 87:15-88:20; 103:10-18; Ex. 13; Ex. 15), reaching only 94.22%  
6 of his sales quota. Doyle Decl. ¶ 6, Ex. 2. Doyle ranked last in the area for award (sales)  
7 performance, last in the nation for all Q4 prescription contests, his field coaching reports were  
8 below objective for all quarters, his call cycle attainment was below objective for all quarters, and  
9 he underinvested resources, facts admitted by Doyle. Doyle Dep. 103:10-104:25. Additionally,  
10 Doyle’s region came in last in sales performance attainment for all six regions of the West area,  
11 and last in sales attainment of all eighteen regions of the Rx Business Unit across the nation.  
12 Doyle Dep. 89:8-19; 89:23-90:3; Curley Depo 1, 118:2- 119:25; Curley Decl., ¶ 6.

13 2019: Based on his 2018 performance, Doyle was placed on a Performance Improvement  
14 Plan (“PIP”) in the first quarter of 2019 (“Q1 2019”), an action he did not think was unfair. Doyle  
15 Dep. 91:4-18. When Curley was asked in his deposition why he recommended Doyle be placed  
16 on a PIP, he replied, “Sales performance, coaching of his team members, an increased need for  
17 investment of resources, specifically based on the first half of 2018, inability to keep call cycle  
18 attainment, ranked 18 of 18 for the year out of sales managers.” Curley Dep. 1, 118:2-9.

19 Human Resources Director Edith Flores (“Flores”), Curley and Collins were involved in  
20 the decision to place Doyle on a PIP. Collins Dep. 73:22-74:10; Curley Dep. 1, 115:22-116:2;  
21 Ryan Decl. ¶ 6, Ex. E, November 19, 2020 Deposition of Edith Flores (“Flores Dep.”) 14:8-12.  
22 Catherine King, Associate Human Resources Director, also reviewed and was part of the  
23 administration of the PIP. Ryan Decl. ¶ 7, Ex. F, November 20, 2020 Deposition of Catherine  
24 King (“King Dep.”) 28:9-18; 77:24-80:4; Flores Dep. 75:10-15.

25 Doyle received his PIP on February 1, 2019, about a week to ten days after receiving his  
26 2018 Performance Review. Doyle Dep. 93:5-8. Doyle asserts in his declaration that his PIP  
27 contained performance expectations that were not consistent with existing expectations for all  
28 RSMs and that he was not informed about the requirements of his PIP or that failure to meet them

1 could result in termination until he was given the PIP on February 1, 2019. Doyle Decl. ¶ 10. In  
2 declaring this, however, Doyle contradicts his own deposition testimony that he was aware  
3 Galderma would terminate him if he did not meet the PIP’s deliverables. When asked what his  
4 understanding was of the consequences if he did not meet the parameters laid out in his PIP, he  
5 answered, “Ultimately, termination.” Doyle Dep. 122:25-123:4.

6 Doyle was made aware in December 2018 and early January 2019 of most of the  
7 expectations that were later included in his PIP – expectations that were also shared with all other  
8 RSMs and Senior RSMs under Curley – via emails sent by Curley and RSM Pete Frey. On  
9 January 4, 2019, Doyle was provided with the call cycle attainment and field coaching reports  
10 objectives for Q1 2019 when Curley sent an email correspondence to all RSMs and Senior RSMs  
11 in the West region, including Doyle. Curley Decl. ¶ 7, Ex. A. This email provided objectives for  
12 call cycle attainment and field coaching reports: the target objective for all RSMs and Senior  
13 RSMs, including Doyle, for the quantity of field coaching reports in Q1 2019 was 10 field  
14 coaching reports; the objective for the call cycle attainment for all RSMs and Senior RSMs,  
15 including Doyle, 80%, remained the same from 2018 to 2019. *Id.* As part of Doyle’s Q1 2019  
16 PIP Curley asked Doyle to achieve the field coaching objective of quantity and quality for Q1  
17 2019 and to achieve a reduced amount of 75% call cycle attainment. *Id.* The PIP provided  
18 performance expectations that were consistent with existing expectations for all RSMs and Senior  
19 RSMs, except that in this area Doyle’s expectation was 5% less than other RSMs. *Id.*

20 In December 2018 and early 2019, RSMs and Senior RSMs in the West Area under  
21 Curley’s direction, including Doyle, also received notice of Galderma’s expectations for extended  
22 selling and execution of sales programs for Q1 2019. Curley Decl. ¶ 8. Extended selling means  
23 informational events outside of health care providers’ places of business. *Id.* In mid-December  
24 2018, Doyle and Curley discussed that Doyle’s 2019 Semester 1 Extended Selling Budget would  
25 be \$72,000 for the San Francisco region of the West Area, which conversation was memorialized  
26 in a December 13, 2018 email sent by RSM Pete Frey. *Id.*, Ex. B. On January 2, 2019, Frey sent  
27 an email to Curley and to all RSMs and Senior RSMs of the West Area, including Doyle,  
28 providing the expectations for the Extended Selling Budget for Q1 2019 for RSMs and Senior



1 RSMs of the West Area including Doyle. *Id.*, Ex. C.

2 On December 17, 2018, Frey sent email correspondence and an attachment to all RSMs  
3 and Senior RSMs of the West Area, including Doyle, on which Curley was copied, containing  
4 expectations for Peer to Peer events for 2019 including the expected number of each type of event  
5 per 2019 sales quarter and the average number of attendees expected per event for RSMs and  
6 Senior RSMs in each region in the West Area. Curley Decl. ¶ 9, Ex. D. Execution of sales  
7 programs refers to the three types of Peer to Peer educational events for Galderma’s prescription  
8 acne and rosacea medications: Local Community Discussions, Speaker Programs, and Expert on  
9 Demand. *Id.*

10 In addition, Moseley, who worked with Doyle to set his sales quota, testified that Doyle  
11 learned of his quota for Q1 2019 by mid-January of 2019, as she sent it to him on January 7 and  
12 followed up with a telephone conference on January 11, 2019. Moseley Decl. ¶ 2, Ex. A. Besides  
13 which, Doyle understood that performing above goal with key brands and increasing share with  
14 promoting strategic topical products was a goal for him every year. Doyle Dep. 64:2-6.

15 Doyle testified at his deposition that he knew about the PIP performance expectations  
16 before receiving the PIP because Curley had counseled him on the subjects listed as concerns  
17 therein. Doyle Dep. 102:19-105:11, Ex. 15. The PIP prefaces the deliverables by saying, “As  
18 previously discussed during one on ones, your year-end performance assessment, and follow up  
19 feedback discussion, there are a number of areas where you need to immediately improve your  
20 performance.” Doyle Dep. 103:1-9; Ex. 15. When the PIP preface was read to him verbatim at  
21 his deposition, he responded that he did recall that these were all subjects about which he had  
22 previously been counseled. Doyle Dep. 103:1-9. Furthermore, Doyle himself was involved in the  
23 drafting of the PIP, as he asked Curley to change two things in the PIP, which Curley did. Curley  
24 Dep. 1, 128:13-16.

25 Collins also confirmed that “a lot of the expectations . . . are things that he would have - -  
26 should have already started at the beginning of the quarter anyway.” Collins Dep. 88:16-19.  
27 Flores also testified that providing a PIP to an employee after the start of a PIP “is acceptable if  
28 you had expectations set and you’ve had conversations around performance already.” Flores Dep.

1 40:24-25.

2 **D. Content of the PIP (“PIP Deliverables”)**

3 As part of the PIP, Galderma asked Doyle to demonstrate improvement in five categories.  
4 (Doyle Dep., Ex. 15). The PIP Deliverables were as follows:

5 PIP Deliverable 1: Doyle was to perform at or above 100 percent of his Q1 2019 quota and  
6 the national average for total prescription attainment for Q1 2019. Doyle Dep., Ex. 15. Doyle  
7 understood this to mean he was to meet his personal sales quota for Q1 2019 and also be above the  
8 national average. Doyle Dep. 105:18-25. Curley did not modify Doyle’s individual Q1 2019  
9 quota allocation recommended by Moseley in early January 2019. Moseley Dep. 65:3-12.

10 PIP Deliverable 2: Doyle was to achieve 75% of call cycle attainment and achieve a field  
11 coaching objective of quantity and quality for Q1. Doyle Depo, Ex. 15; Curley Decl., ¶ 7, Ex. A.  
12 The 75% call cycle attainment in Doyle’s PIP was lower than the 80% call standard for all RSMs.  
13 Collins Dep. 88:2-19; Doyle Dep. Ex. 15; Curley Decl. ¶ 7, Ex. A.

14 PIP Deliverable 3: Doyle was to invest more than \$32,000 of his Semester 1 extended  
15 selling budget in Q1. Doyle Dep. Ex. 15; Curley Decl. ¶ 7, Ex. A.

16 PIP Deliverable 4: Doyle was to conduct three extended selling interactions outside of the  
17 office. Doyle Dep. 107:8-19, Ex. 15; Curley Decl. ¶ 7, Ex. A.

18 PIP Deliverable 5: Doyle was to execute sales programs (i.e. peer-to-peer programing)  
19 consistent with the expectations for all RSMs. Ryan Decl., 8, Ex. G, December 9, 2020  
20 Deposition of Ken Curley (“3rd Curley Depo”) 18:9-22:18; Curley Decl. ¶ 9, Ex. D. Specifically,  
21 Doyle was to conduct at least two acne and two rosacea LCDs (Local Community Discussions)  
22 and/or SPs (Speaker Programs), plus three acne and four rosacea EODs (Expert on Demand) in Q1  
23 (Doyle Dep. Ex. 15) with attendee targets of an average of at least four attendees per LCD, nine  
24 and a half attendees for any speaker program, and 1.6 attendees for EODs, in line with all RSMs.  
25 Doyle Dep. 109:13-19; Ex. 15; 3rd Curley Dep. 18:9-22:18; Curley Decl. ¶ 9, Ex. D.

26 Under the terms of the PIP, PIP Deliverables 2-5 were to be met by March 30, 2019, the  
27 last day of Q1. Doyle Dep. 110:12-15; Ex. 15. Whether PIP Deliverable 1 had been met was to  
28 be determined as of the “Release of the Q1 Integrated Report.” Doyle Dep. Ex. 15.

1     **E.     PIP Template, Timeframe, and Inclusion of National Average**

2             Though the specific PIP Deliverables were tailored to the issues that Doyle needed to  
3 correct, the overall format and language regarding ongoing expectations came from an existing  
4 Galderma performance improvement plan template utilized by Curley in drafting the PIP. Flores  
5 Dep. 83:4-84:9; Flores Decl. ¶¶ 3-4 Exs. B and C. Doyle doesn't contradict this fact when he  
6 asserts that "Curley drafted plaintiff's PIP and authored the five 'deliverables' included therein."  
7 Boilerplate language from the template was included in Doyle's PIP, including a sentence that  
8 these expectations are "permanent and to be maintained during the course of your employment  
9 with Galderma." Flores Dep. 83:4-84:9; Flores Decl. ¶¶ 3-4 Ex. B, Ex C. Flores testified that  
10 neither she, nor King, nor Curley drafted the statement (Flores Dep. 83:8-20) but that it came from  
11 "a general template for performance improvement plans [Curley used] as a guide." Flores Dep.  
12 83:22-25. She stated that managers were able "to use and customize" the PIP template to "suit  
13 each employee's situation." Flores Decl., ¶ 4. Galderma submitted both a copy of the template  
14 and another PIP containing the exact same "boilerplate" language that Doyle claims singled him  
15 out. *Id.*, Exs. B & C.

16             Doyle asserts that this language is unique and made his PIP a "Forever PIP." Doyle also  
17 claims that including the requirement that he meet or exceed the national average for sales in PIP  
18 Deliverable 1 was unique to him and therefore discriminatory. He asserts that other RSMs who  
19 did not attain this level of sales were not disciplined or terminated.

20             However, all Galderma employees asked about this language testified that it merely  
21 indicated that Galderma expected Doyle's sales performance to remain at a high level for as long  
22 as he was employed there. In his deposition, Collins agreed that Mr. Doyle had to meet the  
23 national sales average permanently "or at least until some unspecified time in the future." Collins  
24 depo 97:15 - 99:12. King denied that this language imposed a unique and onerous requirement  
25 with which Doyle alone had been burdened. She testified, "I interpret it as [requiring] sustained  
26 performance throughout the rest of the time he was at Galderma" and indicated that we "needed to  
27 see sustained improvement and "[a]gain, this is a template that was utilized." Wallace Decl., King  
28 Dep. 92:15- 19; 93:1-4. King acknowledged that, in her opinion, it was "good human resources

1 practice based on [her] experience and training to have very identifiable performance goals” and  
2 “good and important to have a clearly articulated start and end date for the PIP.” *Id.* 55:24-56:5.  
3 She did not, as Doyle asserts, articulate this as Galderma company policy that Doyle’s PIP had  
4 therefore violated.

5 Flores testified that “[t]he national average is a common key performance indicator that we  
6 do use when it comes to evaluating performance for rankings and awards and as we look at just in  
7 terms of where people fall. For several business reasons, we do look at national average and we  
8 look at targets.” Flores Dep. 86:19-25. Curley testified that he included the national sales metric  
9 to take into account Doyle’s performance relative to his peers, to ensure that he was performing at  
10 or above average. Curley Dep. 1, 133:14-22. Specifically, Curley said, “The concern would be,  
11 should we have a significant market event where the overall company performed way above 100  
12 percent or for some reason deductibles didn’t hit as high as they were planning in Q1 or an unseen  
13 market event that pushed all the others up, with [Doyle] ranking 18 of 18 in 2018 from a growth  
14 standpoint in both contests, I wanted to make sure he was performing at or above average of his  
15 peers in addition to being 100 percent” of his own sales quota. *Id.*

16 Collins, too, saw the national average as an important benchmark for performance.  
17 Specifically, Collins testified that “The whole reason [the national average] is in there of having  
18 any specificity is the fact that we have been underperforming for the last couple of years relative  
19 to the nation, relative to “X”, right? So for me, as I look at this, I look at this and say, yeah, I  
20 mean, we’re trying to get you [Doyle] to a new level, a level that should be at a minimum  
21 expected. And yes, you [Doyle] should continue permanently staying at that level. Now, does it  
22 mean exactly at the national average and all that forever and forever? I’m sure that we would re-  
23 evaluate that after the PIP, see where we were originally and then afterwards, right? So it’s  
24 speculative to think, you know two quarters from this point forward, what would the conversation  
25 be? The conversation really is built on . . . what happened in the quarter.” Wallace Decl., Collins  
26 Dep. 98:11- 99:12.

27 **F. Galderma Tried to Help Doyle Meet PIP Deliverables**

28 Curley testified that if Doyle had met these five deliverables and performed satisfactorily,

1 and there were no other “extenuating circumstances,” he would not have been fired. Curley depo  
2 176:6-17. During Doyle’s PIP, Curley met with Doyle on a bi-weekly basis and received bi-  
3 weekly updates from Doyle. Doyle Dep. 111:2-112:12. Curley told Doyle he was “here to  
4 support you and your efforts to succeed in Q1.” Doyle Dep. 148:3-19, Ex. 16. What’s more,  
5 throughout his PIP, Doyle had access to weekly data showing his sales for the quarter through at  
6 least April 12, 2019. Doyle Dep. 169:3-6. Doyle acknowledges that he had access to his sales  
7 numbers but complains that they were only estimates. Moseley Dep. 37:13-15. As noted above,  
8 Curley reduced Doyle’s PIP Deliverable 2 by 5% relative to other RSMs.

9 **G. During the PIP, Curley Learned of Doyle’s Behavioral Issues**

10 During Q1 2019, the period covered by the PIP, Curley learned of two customer  
11 complaints about Doyle’s behavior, the first from Dr. Lui, the second from Ada West, as well as  
12 several complaints from Doyle’s direct reports.

13 **1. First Customer Complaint: Dr. Liu**

14 In January 2019, Curley was told of a complaint about Doyle from a customer, Dr. Clive  
15 Liu in Seattle, stemming from an office visit Doyle made in November 2018 to Dr. Liu with one  
16 of his sales representatives, Tom Gonzales. Ryan Decl., ¶ 9, Ex. H, Second Deposition of Ken  
17 Curley, October 9, 2020, Vol. II (“Curley Dep. 2”) 199:1-22; Ryan Decl., ¶ 10, Ex. I, September  
18 16, 2020 Deposition of Tom Gonzales (“Gonzales Dep.”); 38:8-19; Ryan Decl., ¶ 11, Ex. J,  
19 November 17, 2020 Deposition of Brandon Boyd (“Boyd Dep.”) 44:2-8. Dr. Liu reported to  
20 Brandon Boyd, Gonzales’ counterpart in Seattle, that Galderma was banned from his practice due  
21 to Doyle’s behavior. Boyd Dep. 48:19-49:15.

22 In January 2019, Boyd notified Curley of this complaint from Dr. Lui’s office concerning  
23 Doyle’s behavior during the office visit. Boyd Dep. 44:2-45:5. He relayed his conversation with  
24 Dr. Liu and told Curley that Dr. Liu wanted Curley to travel to Seattle and meet him face-to-face  
25 to have him apologize to himself and his wife because of his perception of the severity of Doyle’s  
26 poor behavior. *Id.* He said that he had told Doyle about Dr. Liu’s complaint in November 2018  
27 and that he “did not think [Doyle] was taking it seriously.” Boyd Decl. 46:1-10.

28 Curley investigated Dr. Lui’s complaint, speaking with Boyd, Gonzales, and Doyle – but

1 not yet to Dr. Liu. Doyle submits as an undisputed fact his own self-serving opinion testimony  
2 from his declaration that indicates his view that “nothing had happened” during the visit. Doyle  
3 Dec. ¶ 9. On January 10, 2019, Curley wrote an email about the incident recording these  
4 conversations, including his own view that it was “out of character” for Doyle to act as Dr. Liu  
5 said he had. Curley Dep. 2 Ex. 12.

6 Curley called Dr. Liu in January 2019 but did not actually talk with him until March 2019,  
7 when Dr. Liu reported to Curley that Galderma was not allowed in his office as a result of the  
8 incident with Doyle, that he did not want Doyle in the office ever, and that he threatened to inform  
9 all dermatologists of the “bad behavior that Galderma management exhibited in his practice” if  
10 Curley did not make an in-person apology to him and his wife for Doyle’s behavior. Curley Dep.  
11 2, 204:3-16, 207:10-208:9, Ex. 13. In April 2019, Curley flew from Texas to Seattle to apologize  
12 personally to Dr. Liu and his wife, a condition Dr. Liu required in order to repair Galderma’s  
13 relationship with him. Doyle Depo 97:5-12; Curley Dep. 2, 204:3-9, 205:2-24; Curley Decl., ¶ 10.

14 **2. Second Customer Complaint: Ada West**

15 After the complaint from Dr. Liu, Curley became aware in February and March 2019 of a  
16 second complaint about Doyle from a different medical provider, Ada West, Galderma’s largest  
17 dermatology practice client in the Boise metro area. Doyle Dep. 177:25-178:12; Curley Dep. 2,  
18 210:18- 212:1. Multiple Ada West staff had complained to their office manager, Mart, about  
19 Doyle’s overbearing behavior and invasion of office staff’s personal space. Ryan Decl. ¶ 13, Ex.  
20 L, December 4, 2020 Deposition of Joshua Jack (“Jack Dep.”) 46:10-7:24; Curley Dep. 2, 213:9-  
21 22.

22 Mart raised these concerns to Jack, Doyle’s direct report, who notified Doyle and Curley.  
23 Doyle Dep. 178:13-180:10; Jack Dep. 13:5-8; 46:10-47:24. Jack told Curley that Mart might ban  
24 Galderma from the Ada West office. Jack Dep. 48:24-49:15. Doyle admitted that Mart asked that  
25 Doyle no longer go into the office (Ryan Decl., Curley Dep. 2, 212:21-4), indicating it was not  
26 Curley who suggested that Doyle no longer accompany Jack on his ADA West visits. Doyle  
27 understood that Ada West no longer wanted him to come to their offices. Doyle Dep. 178:13-  
28 180:10. Curley spoke to Mart on the phone in early March 2019. Curley Dep. 2, 213:6-13; Ryan

1 Decl., ¶ 8, Ex. G, Third Deposition of Ken Curley, December 9, 2020, Vol. I (“Curley Dep. 3”)  
2 49:4-53:7; Ex. 20, 21.

3 During Curley’s call with Mart concerning the Ada West staff concerns, Mart conveyed  
4 that the complaints were based on Doyle’s behavior and that Jack did not present an issue. Curley  
5 Dep. 2, 212:15- 213:5; Curley Dep. 3, 55:1-6; 56:22-57:3; Jack Dep. 51:3-20. During that call,  
6 Mart asked that Doyle no longer go into the Ada West office (Curley Dep. 2, 212:21-5) and  
7 Curley agreed. Jack Dep. 51:3-20.

8 Doyle testified in his deposition that Curley told him during his PIP about the complaint by  
9 Ada West and that Ada West did not want him to come to their offices. Doyle Dep. 177:25-  
10 178:15. Doyle said he’d already known about it because Jack had told him the day after their visit  
11 to Ada West. *Id.* 178:13-180:10.

12 **3. Doyle’s Reports Issue Complaints Against Him.**

13 Beginning in 2015 and continuing through Doyle’s PIP, a number of Doyle’s direct reports  
14 raised complaints about him. In 2015, Doyle received feedback from his subordinates that he  
15 memorialized in a document called “Stop...Start...Continue...For Ian Doyle.” Doyle Dep. 49:2-  
16 20; 53:24-54:17; Ex. 6. The feedback included, *inter alia*, that Doyle needed to stop “aggressive  
17 office behavior (leaning forward into personal space),” to “stop being condescending,” to stop  
18 smoking on ride-a-longs, and to stop cancelling field rides the day before. *Id.*, Ex. 6. As early as  
19 2016 and 2017, Doyle had a reputation “of not working or routinely canceling field rides with his  
20 representatives” and one of his direct reports wondered “how long can somebody continue to fail  
21 to ride with his sales representatives and get away with it.” Ryan Decl., ¶ 14, Ex. M, Declaration  
22 of Mark Reynolds (“Reynolds Decl.”), ¶ 4. Doyle also objects that Reynolds never complained  
23 orally or in writing to Curley about any alleged poor work performance by Doyle.

24 In April 2018, Eric Olsen, who reported to Doyle for four years, told Curley during his exit  
25 interview that Doyle did not give him any reason to stay, that he could “count on [his] hands the  
26 times he had ridden with [him] in the field,” that clients did not respond well to Doyle’s style and  
27 that certain places “didn’t want him there because he would smell like smoke, talk too close, and  
28 be too assertive.” Ryan Decl., ¶ 15, Ex. N, Declaration of Eric Olsen (“Olsen Decl.”), ¶¶ 6-7;

1 Ryan Decl. ¶ 16, Ex. O, January 27, 2021 Deposition of Eric Olsen (“Olsen Dep.”) 16:15-17:5;  
2 19:19-20:14; 23:20-24:18; 30:15-21; 31:2-14; 31:8-32:7; 32:16-33:2; 33:9-23. Olsen stated that  
3 this reflected his own feelings and his overall interaction with Doyle over the course of his  
4 employment. *Id.* Doyle objects that he performed satisfactorily as Mr. Olsen’s supervisor. He  
5 dismisses the feedback from two former supervisees because they didn’t report the problematic  
6 behavior to human resources.

7 In early 2019, Boyd shared with Curley that Doyle was not respecting his team. Boyd  
8 Decl., ¶ 10. Boyd brought this up to Curley as they were speaking about the morale of the team  
9 and “how [they were] not allowed to have ownership of [their] territories.” Boyd Dep. 73:7-16.  
10 Boyd said he believed that Doyle’s termination was overdue. Boyd Decl., ¶ 14. Doyle discounts  
11 the declarations of Olsen and Boyd because they weren’t written until later.

12 More complaints regarding Doyle’s behavior reached Curley in January 2019. One of  
13 Doyle’s direct reports, Bianca Palomino (“Palomino”), complained to Curley about Doyle’s lack  
14 of coaching, canceled field rides, and the fact that it was difficult to take Doyle into customers  
15 based on feedback she received from customers and Doyle’s assertiveness. Curley Dep. 1, 122:5-  
16 123:11. Doyle admits this fact, but again discounts the complaints because he was never informed  
17 about this complaint, and never received any discipline related to it. Curley shared Palomino’s  
18 concerns with Collins and Flores when recommending the PIP. Curley Dep. 1, 122:5-123:11.

19 Nevertheless, Flores was so concerned about it that she flew to California to meet with  
20 Palomino and discussed her concerns about the time Doyle required her to spend on projects that  
21 did not support her development, Doyle’s unavailability and constantly canceling field rides with  
22 her, and how Doyle interacted with client accounts. Flores Decl., ¶ 7. Doyle denies “that he  
23 supervised Ms. Palomino poorly” and asserts that “Ms. Flores never informed him of Ms.  
24 Palomino’s concerns, nor did she provide any discipline to him.” Doyle Decl. ¶ 13; Flores Dep.  
25 91:7-10.

26 In March 2019, during the pendency of Doyle’s PIP, another of Doyle’s direct reports,  
27 Cheri Waddell-Zornes, emailed Flores to raise concerns about Doyle’s leadership, pointing out  
28 several instances in which she felt Doyle did not provide proper leadership. Flores Decl., ¶ 8 Ex.



1 E; Flores Dep. 98:17-100:4. Doyle responds again by denial, disagreement, and discounting the  
2 complaints. Doyle Decl. ¶ 14; Curley depo Ex. 7.

3 **H. Doyle Failed to Achieve All PIP Deliverables**

4 Doyle failed to meet two of the five deliverables in his PIP and needed help to reach  
5 others. For PIP Deliverable 2, Doyle was only able to achieve call cycle attainment of 75%,  
6 reduced from the 80% standard for all other RSMs, with Curley's intervention. On April 5, 2019,  
7 Curley sent an email to Doyle informing him that he had reached PIP Deliverable 2, 75% call  
8 cycle coverage in Q1 2019. Supplemental Declaration of Ken Curley ISO Reply ("Supp. Curley  
9 Decl."), ¶3, Ex. A. Doyle only reached 75% call cycle coverage after Curley removed the  
10 remaining call cycle targets for Palo Alto Medical Foundation ("PAMF") from his San Francisco  
11 region. *Id.* If Curley had not removed the remaining PAMF targets, Doyle's call cycle coverage  
12 would have been 72%. *Id.* At 75%, Doyle was behind the average for the West Area, which was  
13 78% call cycle coverage. *Id.*

14 For Doyle's sales program executions, PIP Deliverable 5, Doyle completed part of the  
15 requirements but failed to meet the average number of 1.6 attendees for Expert On Demand  
16 programming in Q1 2019. Doyle Dep. 162:8-16.

17 For PIP Deliverable 1, Doyle failed to meet his sales attainment quota for any of the three  
18 products he sold in Q1 2019. Flores Dep. 105:6-110:1. In fact, Doyle's sales performance against  
19 quota for each of the three months of the PIP and for the entire Q1 2019 was the worst in the  
20 nation when compared to all other RSMs and Senior RSMs in the Rx Business Unit. Doyle  
21 himself calculated his own average sales attainment for all three products he sold at only 94.53%,  
22 while the national sales average for Q1 2019 was 104.95%.

23 Throughout his PIP and until at least April 12, 2019, Doyle had access to weekly sales  
24 results showing his progress towards his sales deliverable for the quarter. Doyle Depo 168:15-  
25 169:6. Doyle himself made use of this data to communicate to Curley in two different written  
26 progress reports, first on March 1, 2019, second on March 22, 2019, a week before the end of the  
27 measurement quarter, that his San Francisco region would miss the total prescription goal in Q1.  
28 Doyle Dep. 154:11-155:18; 156:4-157:6; 157:23-158:7; Ex. 19, Ex. 20. So, as early as a week

1 before the end of the Doyle’s PIP, Doyle knew that he would not meet the sales deliverables of his  
2 PIP – and Curley knew because Doyle himself had made that clear. Based on this same weekly  
3 sales data, Moseley also knew that Doyle failed to meet his Q1 sales quota deliverable.

4 **I. Decision to Terminate Doyle and Timing of the Final Q1 2019 Integrated Report**

5 Because the date to determine whether Doyle met PIP Deliverable 1 is the release of the  
6 Final Q1 2019 Integrated Report, Doyle goes to great lengths to describe the carefully monitored,  
7 step-by-step process completed by Moseley. Moseley depo 38:6-41:11; 65:13-67:15. Step 1 is to  
8 receive the company-wide sales information from Beghou, an outside vendor, which happens  
9 approximately two weeks after the last day of the month. Step 2 is for Moseley to personally  
10 validate this information using Galderma’s Access Database to review the sales information in the  
11 company’s data warehouse. Moseley “pulls” the data units for each Galderma territory using the  
12 same “frozen alignment” to “make sure that the number of units that Beghou has in their  
13 attainments is the correct number of units.” *Id.* Moseley does this territory by territory for the  
14 entire country. Step 3 is to send the draft report to the Vice President of Sales, in this case Collins,  
15 for “approval” and “to see if [he has] any questions.” *Id.* Step 4 is the report is finalized and  
16 provided to Area Directors, such as Curley. *Id.*

17 This process makes it clear, then, that the final release of the Integrated Report confirms  
18 sales data already known to Galderma. The report formalizes and finalizes this data into a report  
19 used to pay sales commissions. The data for the Integrated Report is received at Step 1 so the  
20 final report is not required to determine where sales representatives fall in meeting their quota.

21 Nevertheless, Moseley testified at her deposition that by the final work day of Q1 2019,  
22 Friday, March 29, “the normal weekly report would have been available, and since those numbers  
23 don’t increase over a weekend that I have ever seen, then we would have known - - at the time of  
24 my meeting with [Flores], we would have had the information March 29, 2019, so we would have  
25 had a really good estimate at that point.” Moseley Dep. 77:12-18.

26 Flores took over management of Doyle’s PIP from King in April 2019. Flores Dep.  
27 121:18-122:16; King Dep. 118:15-119:19, Ex. 14. In transitioning the handling of Doyle’s PIP to  
28 Flores, King noted the plan to confirm Doyle’s final sales numbers with Moseley. King Dep.

1 113:5-114:22, Ex. 13. Flores indicated that, as of April 9, 2019, Curley had not made the decision  
2 to terminate Doyle and that they were planning a close out of the performance improvement plan.  
3 Wallace Decl., ¶12, Ex. 11, November 19, 2020 Deposition of Edith Flores (“Flores Dep.”)  
4 119:17-25.

5 On April 17, 2019, Flores reviewed the Q1 sales results data with Moseley. Flores Dep.  
6 105:6-110:1. By then, Moseley testified, the numbers would still have been estimates but, she  
7 added, “Neither one of the numbers would have gone up. The national attainment would not go  
8 up and individual attainments would not go up after my meeting with [Flores] on April 17th.”  
9 Moseley Dep. 77:20-23.)

10 At this meeting, Moseley confirmed to Flores what Doyle had already told Curley on  
11 March 1 and 22, 2019 would be the case: that his San Francisco region would miss the total  
12 prescription goal in Q1. Doyle Dep. 154:11-155:18; 156:4-157:6; 157:23-158:7; Ex. 19, Ex. 20.  
13 Indeed, Doyle failed to reach 100% of his sales quota for Q1 2019 (Doyle Dep. 185:14-17) and  
14 failed to meet the sales attainment deliverable for all three products he sold in Q1 2019. Flores  
15 Dep. 105:6-110:1. Moreover, he had the lowest quota attainment in the nation for each month of  
16 Q1 2019 and for the entire Q1 2019 when compared against all other RSMs and Senior RSMs in  
17 the Rx Business Unit: “Overall he was ranked six of six as it compares to the area sales managers  
18 for January, February, and March. And he was behind the goal between - - once again, as stated  
19 previously around 10 or 11 percent of forte [sic], around 10 percent with cilantro [sic] and around  
20 8 percent with aracea [sic].” Curley Dep. 1, 158:6-16; Curley Decl., ¶12. Doyle’s sales  
21 performance against quota got worse from January to February 2019 – after Galderma placed  
22 Doyle on a PIP. Curley Decl., ¶11, Ex. F.

23 Doyle’s overall attainment for Q1 2019 was either 95.14%, as calculated by Galderma  
24 (Curley Decl., ¶ 12) or the lower figure 94.53% asserted by Doyle<sup>1</sup> (Wallace Decl. ¶ 4), while the  
25 national sales average for Q1 2019 was 104.95%. Ryan Decl., ¶ 17, Ex. P, Galderma’s Responses  
26

27 <sup>1</sup> Galderma stipulates to the lower figure put forward by Doyle but points out that this number,  
28 like most of the other sales percentages used by Doyle in his Opposition, come from his attorney’s  
calculations. See Reply to Opp. to UMF #124.

1 to Request for Production, Set Five. Doyle tries to create a “dispute” by saying that he can’t  
2 confirm the national sales average, but he presents no evidence to contradict it. In addition,  
3 Galderma, in its Reply, confirmed that he actually does have this data as part of the final Q1 2019  
4 Integrated Report, which was produced during discovery. Supp. Ryan Decl., ¶ 8.

5 After confirming with Moseley that Doyle had fallen short of both his quota and the  
6 national sales average, Flores reported that information to Curley. Flores Dep. 110:15-19. On or  
7 about April 17, 2019 – after Flores confirmed with Moseley Doyle’s sub-quota sales results and  
8 reported this information to Curley – Curley made the decision to terminate Doyle. Supp. Ryan  
9 Decl. ¶ 5, Ex. C. Def’s Supplemental Response to First Set of Special Interrogatories No. 4.  
10 Curley asked Human Resources to verify all metrics and “it was verified that he missed his quota  
11 of 100% at national average.” Wallace Decl., Curley Dep. 1, 154: 8-15.

12 The decision to fire Mr. Doyle was made by Mr. Curley, with approval from Mr. Collins,  
13 his direct superior, and Flores. Curley depo 34:12 - 35:6. Collins testified that he approved  
14 Doyle’s termination after Curley recommended it. Collins Dep. 77:6-22; Curley Dep. 1, 34:6-16.  
15 Prior to terminating Doyle, then, Galderma confirmed that Doyle had not meet his sales quota for  
16 Q1 based on sales data it had received prior to the release of the Integrated Report. Flores Dep.  
17 102:2-106:22; Flores Decl. ¶ 9; 3rd Curley Dep. 81:5- 16.

18 On or about April 17-18, 2019, Flores and Curley prepared talking points to discuss with  
19 Doyle at his termination meeting. Flores Dep. 124:6-19. The talking points for Doyle’s  
20 termination indicate that Doyle did not meet two of his PIP deliverables. Supp. Ryan Decl., ¶ 6,  
21 Ex. D, December 9, 2020 Deposition of Ken Curley (“Curley Dep. 3”) 82:7-88:13, Ex. 26.

22 Doyle contends that since the due date for PIP Deliverable 1 was “Release of Q1  
23 Integrated Report” and the report was not released April 23, 2019, the day after he was fired,  
24 Galderma could not have determined whether Doyle met this PIP goal before firing him. But  
25 Moseley specifically testified that the Integrated Report was the final report that “sales  
26 commissions are based off of,” that Galderma makes “payments based off of their final  
27 attainments, final confirmed attainments, which is what the integrated report is,” and the  
28 “integrated report is used to determine what the commission payments need to be.” Wallace

1 Decl., Moseley Dep. 37:9-12; 44:14-18; 44:25-45:8. Nevertheless, Moseley was firm that,  
2 although the Q1 2019 Integrated Report had not been verified for purposes of calculating  
3 commissions, Galderma had access to the data needed for purposes of seeing whether Doyle met  
4 his quota. Supplemental Declaration of Ryan ISO Reply (“Supp. Ryan Decl.”), ¶ 4, Ex. B,  
5 Moseley Dep. 67:16-69:1; 69:12-21; 72:4-74:3; 77:10-78:7.

6 Galderma terminated Doyle’s employment on April 22, 2019. Doyle Dep. 182:19-183:3.  
7 Flores attended the April 22, 2019 termination meeting with Doyle and Curley over the phone.  
8 Doyle Dep. 183:13-16.

9 Doyle complains that “no one at Galderma, not Mr. Curley, not Mr. Collins, not Ms.  
10 Flores, ever informed Mr. Doyle before he was fired whether or not he actually met the PIP  
11 deliverables.” However, Galderma produced an email Curley wrote to Doyle prior to his  
12 termination indicating to Doyle that he met his call cycle attainment of his PIP. Supplemental  
13 Declaration of Ken Curley, ¶ 3, Ex. A. Curley testified that he told Doyle that he did not meet the  
14 deliverable of executing at least two acne LCD speaker programs. Wallace Decl., Curley Dep.  
15 331:19-23. And, as stated above, Doyle himself informed Curley that he had not met his sales  
16 performance deliverable.

17 During the meeting, Curley informed Doyle that he was being terminated because had not  
18 met 100% of his sales performance quota or the national average, PIP Deliverable 1, and the Peer  
19 to Peer requirement, PIP Deliverable 5, and because of recent customer complaints and the fact  
20 that he had lost the trust and confidence of his team. Supp. Ryan Decl., ¶ 3, Ex. A, Deposition of  
21 Ken Curley Vol. I 155:13-156:3.

22 **J. Termination Form Lists “Retirement” not “Released for Cause”**

23 Galderma completed a termination form, signed by Flores, Curley and Collins, listing  
24 “retirement” not “terminated for cause” as the reason for Mr. Doyle’s dismissal. Flores depo  
25 134:25-135:21, Ex. 18. Flores stated that Galderma classified Doyle as a retiree in his separation  
26 documentation solely to facilitate the processing of the retiree medical benefits and reserve leave  
27 to which he was entitled. Flores Dep. 133:12-136:21. King stated that Doyle “was terminated for  
28 performance. I don’t know why it shows voluntarily resignation – retirement, maybe for benefits

1 eligibility.” Ryan Decl, ¶ 7, Ex. F, King Dep. 138-5-9; Errata. Doyle contends that he “cannot  
2 speculate why Mr. Curley, Mr. Collins and Ms. Flores all signed their names on a Termination  
3 Form which indicates that Mr. Doyle retired” (citing King Dep. 136:16-138:9).

4 **K. A 27-Year-Old Is Hired to Take The RSM Position Vacated By Doyle**

5 On June 6, 2019, Ms. Jordan Miller, age 27, took over Doyle’s former position as RSM for  
6 the San Francisco region. Wallace Decl. ¶ 6; Defendant’s Suppl. Resp. To Sp. Interrog. Nos. 7-9.

7 **L. Doyle’s Comparables**

8 Doyle asserts that younger Galderma employees who performed below expectations were  
9 not disciplined or terminated. He argues that the Q1 2019 Integrated Report shows that Ms. Kelly  
10 Adams, age 33 at the time, Doyle’s colleague who worked as an RSM for the Los Angeles  
11 territory and also reported directly to Curley, failed to meet her Q1 2019 sales quota, achieving a  
12 99.25% rate out of 100%. Doyle cites to Curley’s deposition to assert that Adams “received no  
13 discipline of any kind,” but actually Curley said only that Adams was not put on a PIP. Wallace  
14 Decl. ¶ 4, Curley Dep. 340:6-8. Doyle provides no other evidence that he and Adams were  
15 similarly situated, *i.e.*, that there were customer and team complaints about Adams, nor evidence  
16 that she was not otherwise disciplined.

17 Doyle asserts that “his far-younger peers in the West region, working for the same  
18 manager during the preceding 12 months” performed worse in Q2 and Q3 2018 – Ruben  
19 Gonzalez, Holly Fitzhenry, Peterson Frey, and Kelly Adams – than he did in Q1 2019. Doyle  
20 asserts that he “personally know[s] that none of these individuals received any discipline for their  
21 quarterly scores.” Doyle Decl. ¶ 21.

22 Doyle also claims that two Galderma employees had a full year of performance below  
23 Doyle’s Q1 2019 results – Jeff Paulson (36), 94.06% in 2017 and Jonathan Brisson (35) 93.15% in  
24 2016. Wallace Decl. ¶ 4. Ironically, the evidence Doyle himself submits further distinguishes  
25 Brisson as a comparator because Brisson was not managed by Curley at that time and he worked  
26 in the CentralSouth region, a different area from Doyle. In addition, he attained 99.68% of quota  
27 by the end of the following year. Wallace Decl., ¶ 4, Galderma’s Integrated Reports for 2016-  
28 2019.

1 Doyle points to three RSM he characterizes as “bottom-performers” in prior years who  
2 were significantly younger than Doyle whom he claims received no discipline at all: “Jeff Paulson  
3 (36) Rank 7th out of 7 – 2017; Brenda DeHart (45) Rank 9th out of 9 – 2015; Pete Julian (33)  
4 Rank 8th out of 8 – 2012.” Wallace Decl. ¶¶ 2-4, 10; Defendant’s Responses to Second Set of  
5 Requests for Admission Nos. 12, 17, 18. However, Galderma submitted evidence that, though not  
6 placed on a PIP, Paulson’s role was terminated as part of a reorganization where performance was  
7 a factor in selecting employees for elimination. Wallace Decl., ¶ 10, Ex. 9 Defendant’s Responses  
8 to Request For Admissions, Set Two, No. 18. Galderma only indicated that Julian was not put on  
9 a PIP or terminated in 2012, not that he received no discipline at all. Wallace Decl., ¶ 10, Ex. 9  
10 Defendant’s Responses to Request For Admissions, Set Two, No.12. Galderma points out that  
11 Doyle’s assertion that DeHart was 9 out of 9 in 2015 is not supported because the document used  
12 does not include year-end rankings (Wallace Decl. ¶ 3, Ex. 2) and he does not provide a cite to  
13 DeHart receiving “no discipline at all.”

14 Doyle also asserts that two of his younger peers were also under quota for 2018 and neither  
15 of them was disciplined: “Matt Chierchie (36 yrs. old) 95.00 in 2018; Kelly Adams (32 yrs. old)  
16 94.99 in 2018.” Wallace Decl. ¶¶ 4, 10; Defendant’s Responses to Second Set of Requests for  
17 Admission No. 20, 22. Doyle’s counsel admits that he made the quota calculations himself based  
18 on information provided to him by Galderma, but he states no expertise or other basis on which he  
19 can substantiate the results he came up with. Again, Doyle does not provide a cite to the ages of  
20 Chierchie or Adams and again he misstates the evidence to which he cites. Though Chirechie was  
21 not put on a Performance Improvement Plan or terminated in 2018, Chierchie was never managed  
22 by Curley (Wallace Dec., ¶ 10, Ex. 9 Defendant’s Responses to Second Set of Request for  
23 Admission No. 20), but worked instead in the East Area of the Galderma Rx Business Unit.  
24 Wallace Decl., ¶ 4, Ex. 3.

25 **M. Doyle Has Provided No Direct Evidence of Discriminatory Motive**

26 Doyle admits all of the following in his deposition: that Curley never said anything to  
27 Doyle that would cause Doyle to have a reason to believe that Curley wanted him terminated  
28 because of his age (Doyle Dep. 138:7-9), that Curley never made a comment about Doyle’s age or

1 anyone else’s age (Doyle Dep. 140:1-9), and that Curley never asked when Doyle might retire.  
2 Doyle Dep. 142:6-9. Doyle also admits that he never raised any concerns to anyone at Galderma  
3 about his performance management or termination until retaining counsel, after his termination.

### 4 III. LEGAL STANDARD

5 Summary judgment is proper where the pleadings, discovery and affidavits demonstrate  
6 that there is “no genuine dispute as to any material fact and [that] the movant is entitled to  
7 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A party opposing summary judgment must,  
8 in a manner “as would be admissible in evidence,” set forth “specific facts showing that there is a  
9 genuine issue for trial.” Federal Rule of Civil Procedure 56(e). A fact is material if it might affect  
10 the outcome of the lawsuit under governing law, and a dispute about such a material fact is  
11 genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving  
12 party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Factual disputes that are  
13 irrelevant or unnecessary will not be counted.” *Id.* All reasonable inferences must be drawn in the  
14 light most favorable to the nonmoving party. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 922  
15 (9th Cir. 2004).

16 “One of the principal purposes of the summary judgment rule is to isolate and dispose of  
17 factually unsupported claims or defenses, and we think it should be interpreted in a way that  
18 allows it to accomplish this purpose.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).  
19 Hence, a court will grant summary judgment “against a party who fails to make a showing  
20 sufficient to establish the existence of an element essential to that party’s case, and on which that  
21 party will bear the burden of proof at trial . . . since a complete failure of proof concerning an  
22 essential element of the nonmoving party’s case necessarily renders all other facts immaterial.”  
23 *Id.* at 322–23. Where the moving party will have the burden of persuasion on an issue at trial, it  
24 must “support its motion with credible evidence . . . that would entitle it to a directed verdict if not  
25 controverted at trial.” *Id.* at 331. On an issue for which the opposing party will have the burden  
26 of proof at trial, however, the moving party need only point out “that there is an absence of  
27 evidence to support the nonmoving party’s case.” *Id.* at 325.

28 It is not the task of the Court to scour the record in search of a genuine issue of triable fact.



1 *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). Rather, the Court relies on the nonmoving  
2 party “to identify with reasonable particularity the evidence that precludes summary judgment.”  
3 *Id.* Thus, “[t]he district court need not examine the entire file for evidence establishing a genuine  
4 issue of fact, where the evidence is not set forth in the opposing papers with adequate references  
5 so that it could conveniently be found.” *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d  
6 1026, 1031 (9th Cir. 2001). “Judges are not like pigs, hunting for truffles buried in briefs.”  
7 *Christian Legal Soc. v. Wu*, 626 F.3d 483, 488 (9th Cir. 2010). If the nonmoving party fails to  
8 identify such evidence, or if it offers evidence that is “merely colorable, or is not significantly  
9 probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249-50 (citations omitted).

#### 10 IV. DISCUSSION

##### 11 A. First Cause of Action: Age Discrimination in Violation of FEHA

12 California has adopted the three-stage burden-shifting test for trying claims of  
13 discrimination, including age discrimination established by the United States Supreme Court in  
14 *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Guz v. Betchel Nat’l, Inc.*, 24 Cal. 4th  
15 317, 354-56 (2000); *see also Earl v. Nielsen Media Research, Inc.*, 658 F.3d 1108, 1112, 1118  
16 (9th Cir. 2011) (applying burden-shifting analysis to wrongful termination claim based on age  
17 discrimination in violation of FEHA and public policy). Under this test, the plaintiff bears the  
18 initial burden of establishing a *prima facie* case of discrimination; the employer then must offer a  
19 legitimate, nondiscriminatory reason for the adverse employment decision; finally, the plaintiff  
20 must prove, by specific and substantial evidence, that the employer’s proffered reason was  
21 pretextual. *McDonnell Douglas*, 411 U.S. at 802-03; *Horn v. Cushman & Wakefield Western,*  
22 *Inc.*, 72 Cal. App. 4th 798, 806-807 (1999) (“a plaintiff alleging discriminatory termination under  
23 California’s anti-discrimination statutory scheme must be able to survive the burden-shifting  
24 analysis set forth by the Supreme Court in *McDonnell Douglas*”).

25 “[T]he plaintiff in an employment discrimination action need produce very little evidence  
26 in order to overcome an employer’s motion for summary judgment.” *Santillan v. USA Waste of*  
27 *Cal., Inc.*, 853 F.3d 1035, 1042 (9th Cir. 2017). However, “[t]he ultimate burden of persuading  
28 the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all

1 times with the plaintiff.” *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

2 “To prevail on summary judgment, an employer must show either that (1) plaintiff could  
3 not establish one of the elements of [the] FEHA claim or (2) there was a legitimate,  
4 nondiscriminatory reason for its decision to terminate plaintiff’s employment.” *Lawler v.*  
5 *Montblanc N. Am., LLC*, 704 F.3d 1235, 1242 (9th Cir. 2013).

6 In the instant case, summary judgment is warranted for two reasons: (1) Doyle has not  
7 presented sufficient evidence to establish a *prima facie* case and (2) Galderma has presented  
8 legitimate, nondiscriminatory reasons for the termination and Doyle has not demonstrated that  
9 those reasons were pretextual. Doyle has demonstrated no genuine dispute of material fact  
10 requiring trial on any of these issues.

11 **1. Step One: Doyle Cannot Establish a *Prima Facie* Case of Age Discrimination**

12 To avoid summary judgment, Doyle must first establish a *prima facie* case of age  
13 discrimination in violation of FEHA by proving that: (1) he belongs to a protected class; (2) he  
14 was performing satisfactorily in the position held; (3) he suffered an adverse employment action;  
15 and (4) some other circumstances suggesting a discriminatory motive. *Guz*, 24 Cal. 4th at 355.

16 The requirement to establish a *prima facie* case is “designed to eliminate at the outset the  
17 most patently meritless claims, as where the plaintiff is not a member of the protected class or was  
18 clearly unqualified . . .” *Id.* at 354. This initial burden is not an insubstantial one – the *prima*  
19 *facie* case must be supported by evidence that gives rise to an inference of unlawful  
20 discrimination. *Phipps v. Gary Drilling Co.*, 722 F. Supp. 615, 619 (E.D. Cal. 1989). “While the  
21 plaintiff’s *prima facie* burden is not onerous, he must at least show actions taken by the employer  
22 from which one can infer, if such actions remain unexplained, that it is more likely than not that  
23 such actions were based on a prohibited discriminatory criterion . . .” *Guz*, 24 Cal. 4th at 355  
24 (citations omitted).

25 Doyle easily satisfies the first and third prongs of his *prima facie* case in that (1) he was  
26 sixty-four years old and therefore part of a protected class of people over forty, when (3) he was  
27 terminated from his job. However, he is unable to satisfy either of the other two prongs.

28

1                   **a.       Second Prong: Doyle Does Not Carry His Burden to Show He Was**  
2                   **Performing His Job Satisfactorily<sup>2</sup>**

3                   Doyle’s *prima facie* case fails first because he cannot show he was “performing  
4                   satisfactorily in the position held.” To be considered qualified for a job, a plaintiff must prove he  
5                   “was doing [his] job well enough to rule out the possibility that [he] was fired for inadequate job  
6                   performance.” *Sengupta v. Morrison-Knudsen Co., Inc.*, 804 F.2d 1072, 1075 (9th Cir. 1986).  
7                   This Doyle has not done.

8                   Doyle makes only the most cursory attempt to establish this crucial element of his *prima*  
9                   *facie* case, He blandly comments, “Plaintiff submits that he has also presented evidence sufficient  
10                  to raise a triable issue of fact that he was performing his job competently (See detailed Timeline  
11                  and Statement of Facts above).” Opp. p. 19. But in this, he is mistaken.

12                  With respect to the relevant time period, Doyle has not proved – nor, again, does it seem  
13                  he’s tried hard to prove – that he was doing his job well enough to rule out the possibility that he  
14                  was fired for inadequate job performance. He attaches to his deposition a smattering of awards  
15                  and a history of raises throughout his time at Galderma and commission payments up to his  
16                  termination in 2019. Doyle spends only a single paragraph to list the more positive aspects of his  
17                  performance. See Opp. p. 19. But this litany ignores the very components about which Galderma  
18                  warned him and for which he was eventually fired. See IV.A.i.a(i)-(iii) *infra*. Doyle cannot  
19                  simply ignore facts he finds not to his liking and claim to be performing well.

20                  The Court will not generate material disputes *sua sponte*. As colorfully articulated by the  
21                  9<sup>th</sup> Circuit, “Judges are not like pigs, hunting for truffles buried in briefs.” *Wu*, 626 F.3d at 488  
22                  (9th Cir. 2010). Despite bearing the burden of proof at this stage, Doyle has submitted evidence  
23                  that is at best “merely colorable,” not probative.

24                  Although Doyle’s failure in this respect could end the analysis here, the Court will  
25                  nevertheless examine the ample record evidence that Doyle manifestly failed to perform his job  
26                  satisfactorily. Doyle’s poor performance included: (i) inadequate sales results in 2018 that

---

27                  <sup>2</sup> As will be evident below, the *McDonnell Douglas* requirement that plaintiff perform the job in a  
28                  satisfactory manner “ties in to the express statutory ‘good cause’ defense and defendant’s business  
                        justification for its decision.” *Phipps*, 722 F. Supp. at 620.

1 culminated in his being put on a PIP in Q1 of 2019 and that did not improve during his PIP, (ii)  
2 complaints about his behavior from customers during the course of his PIP, and (iii) complaints  
3 about his behavior lodged both during and before his PIP by Galderma employees whom he was  
4 supposed to supervise. Doyle’s performance issues are detailed above, but certain facts bear  
5 reiteration.

6 **i. Doyle’s History of Poor Sales Performance and Failure to Meet**  
7 **PIP Deliverables**

8 The single most salient undisputed fact, supported by Doyle’s own testimony and  
9 evidence, is that Doyle’s sales performance dropped measurably during his final three to five years  
10 and then it fell ever more precipitously during the last fifteen months of his employment. The fact  
11 that Doyle included in his Timeline and Statement of Facts performance results and awards since  
12 he was hired in 1989 indicates that he believes this information is relevant to this lawsuit. It is not.

13 As Doyle himself stated in his deposition, the most important metric of job performance  
14 for RSMs is their sales results. He also acknowledged that performing above goal with key brands  
15 and increasing share with promoting strategic topical products was a goal for him every year.

16 In the years 2014, 2015, 2017, and 2018, Doyle received a rating of “developmental  
17 opportunity” for sales achievement and, in 2018, for Overall Contribution he received a rating of  
18 “Needs Improvement,” the lowest rating possible on Galderma’s assessment scale, which means  
19 that Doyle did not meet the expected requirements of the position. Specifically, Doyle admitted in  
20 his deposition that, through May 2017, he performed at only 85% of quota with the product  
21 Soolantra and below target with the other two products he promoted, Tri-Luma and Epiduo, and  
22 he acknowledged that his sales rating as a “developmental opportunity” was not unfair and that he  
23 needed to improve his results.

24 It appears, however, that 2018 was an even worse year for Doyle’s sales performance. In  
25 Doyle’s Mid-Year Review, Curley warned him that, based on the first half, he could end the year  
26 with an overall “Needs Improvement” rating, the lowest rating possible on Galderma’s assessment  
27 scale and one that meant he was not meeting the expected requirements of his position. Doyle  
28 confessed that he also did not consider this mid-year review unfair. In June 2018, Doyle met with

1 Curley one-on-one, after which Curley sent him an email reiterating that “[f]ailure to hit these  
2 [sales] metrics will result in a more formalized improvement plan being put in place.” As Doyle  
3 understood this message, he’d be put on a PIP if he didn’t improve.

4 Despite Curley’s clear early warnings, Doyle’s 2018 rating for Overall Contribution  
5 Assessment was, in fact, the lowest possible rating of “Needs Improvement,” which Doyle also  
6 admitted in his deposition was fair. Doyle backpedals from this admission in his declaration in an  
7 attempt to create a factual dispute, claiming that he was unaware of other Galderma employees’  
8 performances at the time of his deposition. This attempt to create a dispute fails in light of  
9 Galderma’s evidence showing that, before his deposition, Doyle had access to his area’s records  
10 for 2014 through February 2019.

11 Doyle points to his 2018 ratings of “Strength” or “Meets Expectations” for areas unrelated  
12 to sales – namely Courage and Integrity, Collaboration, Impact and Influence, Organizational  
13 Sense, Innovation, Team Leadership, and Change Leadership – to show that he was performing  
14 satisfactorily in the position held. But these non-sales results, even when rated as “Strength,” do  
15 not negate evidence of poor sales performance. They also did not prevent him from being placed  
16 on a PIP, as Galderma sought satisfactory sales performance from Doyle as a sales professional.

17 At the end of 2018, Doyle’s region ranked last in sales performance attainment for all six  
18 regions of the West area, last of all eighteen regions of the Rx Business Unit across the United  
19 States, and last in the nation for all Q4 prescription contests. Doyle had failed to meet his sales  
20 quota in any of the three products he promoted, reaching only 94.22%, a quota he testified he had  
21 helped set with Moseley and that he felt was fair.

22 Doyle disputes Galderma’s assertion that his region performed the worst in the country for  
23 performance on the MBO metrics – the fact that his field coaching reports were below objective  
24 for all quarters, his call cycle attainment was below objective for all quarters, and he  
25 underinvested resources – arguing that there is no evidence of MBO metrics rankings nationwide.  
26 Viewing evidence in terms most favorable to the nonmoving party, the Court will disregard  
27 commentary about ranking of MBO metrics, finding that even if Doyle’s results in this area were  
28 disputed, it is not material to Galderma’s assertion that Doyle was terminated in large part for his

1 failure to meet other metrics, most prominently sales results, in his position as RSM.

2 Also despite Curley's June 2018 warnings, Doyle's poor performance earned him a PIP for  
3 the first quarter of 2019, an action Doyle admitted at his deposition he did not think was unfair.  
4 Doyle understood, too, that failure to meet his PIP goals could result in termination. Curley was  
5 unequivocal about his reasons for placing Doyle on a PIP: sales performance, coaching of his team  
6 members, an increased need for investment of resources, specifically based on the first half of  
7 2018, inability to keep call cycle attainment, ranked 18 of 18 for the year out of sales managers.

8 Though Doyle contends the opposite, email correspondence between Curley, Doyle and  
9 other RSMs that was produced by Galderma demonstrates that (1) Doyle knew about most of the  
10 expectations that were included in his PIP no later than December 2018 and early January 2019  
11 and (2) the performance expectations contained in Doyle's PIP were consistent with existing  
12 expectations for all other RSMs and Senior RSMs under Curley. This includes PIP Deliverables  
13 for MBO goals, extended selling and execution of sales programs, and Peer to Peer educational  
14 events. He was already aware of his sales attainment quota, which he and Moseley worked on  
15 together. Plus, Doyle admits that Curley had previously counseled Doyle on many issues  
16 contained in the PIP.

17 Despite all this, by the end of Q1 2019, Doyle failed to meet two of the five deliverables in  
18 his PIP. Besides failing to meet his sales program executions, PIP Deliverable 5, for Galderma's  
19 acne product line, Doyle crucially failed to meet his sales attainment quota, PIP Deliverable 1, for  
20 *any* of the three products he sold in Q1 2019. In fact, Doyle's sales performance against quota for  
21 each of the three months of the PIP and for the entire Q1 2019 was *once again* the worst in the  
22 nation when compared to *all* other RSMs and Senior RSMs in the Rx Business Unit. Doyle  
23 himself calculated his own average sales attainment for all three products he sold at only 94.53%,  
24 while the national sales average for Q1 2019 was 104.95%. Doyle "disputes" the national sales  
25 average because he says he can't confirm it, but he presents no evidence to contradict it. Also,  
26 Galderma confirmed that Doyle does have the data as part of the Q1 2019 Integrated Report,  
27 produced during discovery.

28 In the face of overwhelming evidence of unsatisfactory job performance, Doyle advances

1 two main arguments to try to create factual disputes: that in the past he received positive  
2 evaluations, promotions, pay raises, and awards, and that he received sales performance  
3 commissions, also called bonuses, during the period Galderma found his sales performance  
4 lacking.

5 **(a) A History of Positive Evaluations Does Not Insulate Doyle**  
6 **From Subsequent Findings of Poor Performance**

7 Although, as noted above, demonstrating that a *prima facie* case has been made is a  
8 minimal burden, “plaintiff must come forward with some showing that his work was being  
9 performed in a competent manner.” *Sneddon v. ABF Freight Systems*, 489 F. Supp. 2d 1124, 1129  
10 (S.D. Cal. 2007). Previous good to average performance evaluations do not insulate an employee  
11 from later poor evaluations. *Id.*

12 Doyle appears to think that past good performance evaluations serve as a defense against  
13 current bad performance. However, in *Sneddon*, the Court found that ratings of “meets or exceeds  
14 expectations” in some categories even as recently as one or two years “does not demonstrate that  
15 plaintiff’s performance was necessarily adequate or competent” in the present. *Id.*

16 Despite Doyle’s apparently laudable past performance and awards during his employment  
17 with Galderma, he is still subject to termination for poor performance later in his career. Viewing  
18 Doyle’s work history and construing all inferences in the light most favorable to Doyle, positive  
19 performance reviews in the past are insufficient to prove that Doyle was doing his job well enough  
20 to rule out the possibility that he was fired for inadequate job performance.

21 **(b) Galderma Presented Undisputed Evidence That Sales**  
22 **Performance Commissions, Also Called Bonuses, Do Not**  
23 **Equate to an Endorsement of His Performance**

24 Whereas Doyle has failed to produce evidence that sales commission (or bonus) payments  
25 demonstrate satisfactory work performance, Galderma has shown that such payments do not serve  
26 as an endorsement of sales results.

27 Doyle repeatedly asserts that his sales bonuses of \$59,243 in 2016, \$71,252 in 2017,  
28 \$78,580 in 2018, and \$11,500 in Q1 of 2019 prove he was not a poor performer. However,

1 Moseley’s uncontroverted testimony established that such payments are “based on the amount of  
2 units sold and are made even when a sales employee does not meet their quota or is a bottom  
3 performer” and do “not equate to excellence in sales.” Even if this were not true, Doyle’s receipt  
4 of sales commissions does not negate undisputed evidence of his poor performance against quota  
5 and the fact of his last-place ranking in the nation in the Rx Business Unit in 2018 and Q1 2019.  
6 Thus, payment of a sales commission does not create a dispute of material fact as to his  
7 performance.<sup>3</sup>

8 Doyle failed to demonstrate any genuine issue of material fact that he was performing  
9 satisfactorily in his position as RSM. Undisputed evidence of over two years of poor *sales*  
10 performance as a Regional *Sales* Manager prevents Doyle from establishing a prima facie case of  
11 discrimination. Hence, Doyle failed to show that he was performing his job well enough to rule  
12 out the possibility that he was fired for inadequate job performance.

13 **ii. Customer Complaints**

14 Courts in the Ninth Circuit have regularly found that terminating an employee’s  
15 employment because of customer complaints is in itself a legitimate nondiscriminatory reason for  
16 terminating employment. *See, e.g., Parks v. Bd. of Trs. of Cal. State Univ.*, 813 F. Supp. 2d 1182,  
17 1194–95 (E.D. Cal. 2011) (granting defendant’s summary judgment motion for plaintiff  
18 professor’s claims for, *inter alia*, age discrimination under FEHA where disciplinary action was  
19 based on complaints by students).

20 During Doyle’s PIP, Galderma received two complaints from customers who found  
21 Doyle’s behavior so egregious that they did not want him ever to return to their facilities. In  
22 January 2019, Curley learned of the first complaint that Seattle-area dermatologist Dr. Liu had  
23 barred not just Doyle, but Galderma as a company, from his office because he was so angry about  
24 Doyle’s behavior during a November 2018 visit to Dr. Liu’s office. In March 2019, Dr. Liu  
25 demanded that Curley make an in-person apology to him and his wife for Doyle’s behavior and, in  
26

---

27 <sup>3</sup> Doyle also argues that receipt of sales commission payments is proof that his termination was  
28 pretext for discrimination. This argument is equally unavailing in that context so the Court will  
not repeat its analysis below.



1 April 2019, Curley flew from Texas to Seattle to apologize in person for Doyle’s behavior.

2 Doyle dismisses the complaint against him by Dr. Liu in November 2018 by saying that  
3 neither he nor his colleague Gonzales thought Doyle was being aggressive. Doyle’s testimony  
4 that “nothing had happened” during the visit to Dr. Liu’s office and that he was “flabbergasted” by  
5 Ada West’s complaint does not change the fact that Doyle engaged in behavior that was extremely  
6 inappropriate in the eyes of important Galderma clients resulting in customer complaints so  
7 serious that they disrupted Galderma’s relationship with important sources of product sales and  
8 necessitated a personal trip by Curley from Texas to Seattle to apologize to Dr. Liu for Doyle’s  
9 behavior.

10 In February 2019, Curley learned of a second complaint about Doyle’s behavior from  
11 another customer, Ada West, Galderma’s largest customer in Boise, Idaho. Multiple Ada West  
12 staff had complained to their office manager, Mart, about Doyle’s overbearing behavior and  
13 invasion of office staff’s personal space. Mart conveyed these complaints to Doyle’s direct report,  
14 Jack, who notified Doyle and Curley about the situation and that Ada West was considering  
15 banning Galderma from its office because of Doyle’s behavior. In early March 2019, Curley  
16 called Mart, who asked that Doyle no longer come to the Ada West office.

17 It should go without saying that it’s irrelevant that Doyle disagrees with how the  
18 interaction was characterized but since Doyle argues that his subjective opinion somehow disputes  
19 the facts, the Court feels obligated to make this point. What’s relevant here is the undisputed fact  
20 that two complaints were lodged against Doyle by Galderma customers – during the pendency of  
21 his PIP, no less – and that Doyle’s behavior had serious consequences for Galderma’s business.  
22 Both complaints involved Doyle, the manager in charge of the company’s sales in an entire region,  
23 being barred from entry to the offices of Galderma’s customers, one of which, Ada West, was  
24 Galderma’s largest dermatology practice client in the Boise metro area. These complaints were of  
25 a serious enough nature for the reputation of Galderma and its ongoing relationship with and  
26 access to its customers that they necessitated personal intervention by Doyle’s supervisor, Curley.  
27 Curley had to spend time to investigate the complaints and to get the customer relationships back  
28 on track, and Curley had to make a special trip from Texas to Seattle to deliver an in-person

1 apology demanded by the aggrieved customer in order to allow Galderma to return to these offices  
2 at all. Thus, the complaints impacted both Galderma employee time and its financial resources.

3 Similarly, Doyle’s assertion that he received no written discipline for either incident does  
4 not constitute evidence that Galderma considered these minor matters, as written discipline is not  
5 required in order to demonstrate that an employer considers a customer complaint serious. In any  
6 event, Doyle’s timeframe for recognizing causality is remarkably short, as his termination at the  
7 end of the very quarter in which these complaints came to light could easily be read – as indeed  
8 Galderma contends it was – as “discipline” for alienating its customers. There is no question that  
9 Galderma is entitled to discipline Doyle for the fall-out of his interaction with clients and such  
10 complaints are in themselves a legitimate nondiscriminatory reason for terminating employment.

11 Doyle has not created triable issues of fact as to whether he was performing his job in a  
12 satisfactory manner. Indeed, during a time when Doyle was already underperforming at his job,  
13 he was the subject of two separate and serious customer complaints.

14 This development changed the balance of factors in the evaluation of Doyle’s performance.  
15 It bears repeating that two times in the three months of the PIP, Doyle’s supervisor had to step in  
16 to repair a client relationship Doyle was on the verge of ruining for Galderma. Regardless of  
17 Doyle’s opinion about his behavior, both customers found it so egregious that they never wanted  
18 Doyle to set foot in their offices again.

19 It is undisputed that customer complaints affected Galderma’s perception of Doyle’s  
20 ability to perform his job. Galderma considered Doyle’s behavior part of his poor performance  
21 and was one of the reasons given for his termination.

22 **iii. Employee Complaints**

23 During and before Doyle’s PIP, multiple Galderma employees who reported directly to  
24 Doyle lodged complaints against him for, *inter alia*, his lack of supervision and unprofessional  
25 behavior. Beginning in 2015, continuing up to and through Doyle’s PIP, a number of Doyle’s  
26 direct reports raised complaints about him.<sup>4</sup> In 2015, a list of positive and negative behaviors

27 \_\_\_\_\_  
28 <sup>4</sup> Yet again, Doyle “disputes” these and other complaints against him by disagreeing with them.  
As with the customer complaints, it is immaterial whether Doyle agrees with the complaints by his

1 raised by his subordinates was compiled and memorialized by Doyle in a report called “Stop...  
2 Start... Continue for Ian Doyle.” The feedback included, *inter alia*, that Doyle needed to stop  
3 “aggressive office behavior,” to “stop being condescending,” to stop smoking on ride-a-longs, and  
4 to stop cancelling field rides the day before.

5 Many of his current and former reports had significant complaints about Doyle and  
6 included them in their deposition testimony. Mark Reynolds, one of his direct reports, testified  
7 that, as early as 2016 and 2017, Doyle had a reputation “of not working or routinely canceling  
8 field rides with his representatives” and stated that he wondered “how long can somebody  
9 continue to fail to ride with his sales representatives and get away with it.” In April 2018, Eric  
10 Olsen, who reported to Doyle for four years, told Curley during his exit interview that Doyle  
11 “didn’t give him any reason to stay at Galderma,” that he could “count on [his] hands the times  
12 [Doyle] had ridden with [him] in the field,” that clients did not respond well to Doyle’s style and  
13 that certain places “didn’t want him there because he would smell like smoke, talk too close, and  
14 be too assertive.” Olsen stated that this reflected his own feelings and his overall interaction with  
15 Doyle over the course of his employment.

16 Even more employee complaints regarding Doyle’s behavior reached Curley in January  
17 2019. In early 2019, another of Doyle’s direct reports, Brandon Boyd, shared with Curley that  
18 Doyle was not respecting his team. Boyd brought this up to Curley as they were speaking about  
19 the morale of the team and “how [they were] not allowed to have ownership of [their] territories.”  
20 Boyd stated he believed that Doyle’s termination was overdue. Bianca Palomino, who also  
21 reported directly to Doyle, complained to Curley about Doyle’s lack of coaching, canceled field  
22 rides, and the fact that it was difficult to take Doyle into customers based on feedback she received  
23 from customers about Doyle’s assertiveness. Curley shared Palomino’s concerns with Collins and  
24 Flores when recommending the PIP.<sup>5</sup> Flores took these complaints seriously enough to fly to

25 \_\_\_\_\_  
26 subordinates, was informed of them, or was immediately disciplined in a manner he sees is linked  
27 to them.

28 <sup>5</sup> Doyle “disputes” this fact by asserting that “Curley never included mention of Palomino’s  
complaint or any other complaint of any kind in the PIP.” As with Doyle’s response to other  
complaints about him, this assertion does not serve to dispute the facts as stated.

1 California to discuss Palomino’s additional concerns about the time Doyle required her to spend  
2 on projects that did not support her development, Doyle’s unavailability and the fact that he  
3 constantly canceled field rides with her, and how Doyle interacted with client accounts. Also,  
4 during Doyle’s PIP, in March 2019, yet another of Doyle’s direct reports, Cheri Waddell-Zornes,  
5 emailed Flores to raise concerns about Doyle’s leadership, pointing out several instances in which  
6 she felt Doyle did not provide proper leadership.

7 Doyle contends that he has created disputes of material fact because he disagrees with the  
8 complaints made by Olsen, Boyd, Reynolds, Palomino, and Waddell-Zornes, he was not informed  
9 of the complaints by the complainants or HR, and/or formal complaints were not made to HR. As  
10 with the customer complaints, he claims that he was not disciplined in a timeframe he recognized,  
11 adding that the complaints weren’t mentioned in the PIP.

12 The fact that “Doyle vehemently denies all the insulting, untimely, inaccurate and  
13 irrelevant accusations included in the declarations of Mr. Boyd, Mr. Olsen, and Mr. Reynolds”  
14 does not, as he asserts, “thereby rais[e] a triable issues of fact.” Doyle’s opinion in a self-serving  
15 declaration asserting that he was a good supervisor is irrelevant. Subjectively disagreeing with the  
16 complaints and denying their veracity does not negate the fact that they were made and does not  
17 create a dispute warranting trial.

18 Doyle attempts to create a “dispute” about the complaints by Olsen, Boyd, Reynolds,  
19 Palomino, and Waddell-Zornes because they were not reported to him or to Human Resources.  
20 But Palomino did report her complaint to Flores. Doyle’s dismissal of the complaints of Boyd and  
21 Olsen because they weren’t formalized fails to take into account the fact that they both still  
22 worked for him at the time and that, in any event, they complained to Doyle’s supervisor, Curley.  
23 It does not take much imagination to understand why it would be difficult to make a formal  
24 complaint about a person who has supervisory authority over you and that has used his “physical  
25 size aggressively,” has made “vulgar and explicit” descriptions of women, and that “every medical  
26 facility in my territory did not want [Doyle] there.” As for Olsen, as soon as it was safe to do so,  
27 *i.e.*, at his exit interview, Olsen gave feedback to Curley about the ways that Doyle’s behavior  
28 made it difficult to continue his employment at Galderma.

1 Doyle further objects to the declarations of Olsen and Boyd because they weren't written  
2 until later in response to this lawsuit. However, this objection does not negate the facts testified to  
3 therein. Furthermore, Doyle does not state why this is a problem nor discuss what the declarants  
4 had to gain by spending their time writing declarations and being deposed. Olsen had already left  
5 Galderma, and Boyd was simply repeating the complaints he'd already made to Curley in early  
6 2019.

7 Doyle's arguments are irrelevant to the fact that the complaints occurred and whether or  
8 not Doyle was notified about them is of no moment. The undisputed fact remains that Curley,  
9 Flores, and Collins became aware of multiple complaints from Doyle's reports before and during  
10 his PIP in Q1 2019. Doyle appears to believe that these complaints by the people with whom he  
11 presumably worked with most closely should not be taken into account when assessing his  
12 performance. But, as just one example, Flores considered Palomino's complaint serious enough to  
13 warrant her flying to California to interview her.

14 Learning of new complaints during Doyle's PIP compounded the previous complaints  
15 against him, all of which could and did affect the balance of factors in the Doyle's performance  
16 evaluation and the decision to terminate his employment. In fact, Curley told Doyle at his  
17 termination meeting that Galderma terminated his employment in part because of concerns about  
18 the recent customer complaints and the fact that Doyle had lost the trust and confidence of his  
19 team.

20 In sum, Doyle fails to demonstrate genuine issues of material facts as to whether he was  
21 "was performing competently in the position he held." The overwhelming, undisputed evidence  
22 of Doyle's poor sales performance in the last years of his employment with Galderma is not  
23 ameliorated either by Doyle's historical sales performance in years long past nor by the fact that  
24 Doyle was paid sales bonuses in accordance with Galderma's commission structure for the sales  
25 he did make. In contrast, Galderma presents overwhelming evidence that Doyle was not, in fact,  
26 performing competently when he failed to meet two out of five PIP deliverables, most saliently his  
27 sales quota, and was the subject of two customer complaints and complaints from his direct  
28 reports before and during his PIP – any one of which could constitute poor performance and

1 preclude Doyle from establishing a *prima facie* case.

2 **b. Prong 4: Some Other Circumstances Suggesting A Discriminatory**  
3 **Motive**

4 The Ninth Circuit has stated that the fourth element should be evaluated “with some  
5 flexibility.” *Santillan*, 853 F.3d at 1043 (quoting *Nidds v. Schindler Elevator Corp.*, 113 F.3d 912,  
6 917 (9th Cir. 1996)). In claims for age discrimination, plaintiff may satisfy the fourth element *in*  
7 *part* by demonstrating that he was replaced by a substantially younger employee with equal or  
8 inferior qualifications. *Id.* (emphasis added). However, replacement by a younger person alone  
9 “does not prove age discrimination or even create a strong presumption of discrimination,” as  
10 discharged employees more often than not will be replaced by younger employees. *Phipps*, 722 F.  
11 Supp. at 622. In granting defendant’s motion for summary judgment, the *Phipps* Court noted that  
12 “[t]he progression of age is a universal human process. In the very nature of the problem, it is  
13 apparent that in the usual case, absent any discriminatory intent, discharged employees will more  
14 often than not be replaced by those younger than they, for older employees are constantly moving  
15 out of the labor market, while younger ones move in.” *Id.*

16 In *Santillan*, the Ninth Circuit relied on two pieces of evidence to overturn the district  
17 court’s finding that plaintiff could not establish the fourth element of his *prima facie* age  
18 discrimination case. First, the plaintiff testified that he was one of five older Spanish-speaking  
19 employees who were fired or suspended once a specific person was assigned as defendant’s route  
20 manager. Second, there was a potential thirteen-year age gap between the plaintiff and his  
21 replacement, who also had 21 fewer years of experience as a garbage truck driver.

22 In the instant case, in June 2019, Jordan Miller (“Miller”) became the RSM of the San  
23 Francisco region at age 27. Doyle claims that the fact that he was replaced by a younger person is,  
24 by itself, evidence of some other circumstance that suggests a discriminatory motive. However,  
25 unlike in *Santillan*, where two pieces of evidence – language *and* age – suggested discrimination,  
26 Doyle provides no additional evidence of circumstances that would suggest Galderma had a  
27 discriminatory motive in terminating him. Furthermore, as noted by the *Phipps* Court, given that  
28 age is mutable characteristic over time, replacement by a younger person is not, standing alone,

1 indicative of discrimination.

2 Doyle also asserts that because Galderma “does not argue that the 27-year-old individual  
3 (Ms. Miller) promoted to fill Mr. Doyle's position was more or less qualified than plaintiff....  
4 [Galderma’s] admission that a 27-year-old individual took over plaintiff’s job shortly after his  
5 firing is sufficient to satisfy the fourth element of an age discrimination claim.” Doyle appears to  
6 believe that because Galderma presented no evidence regarding the qualifications of his younger  
7 replacement, the Court should assume she has equal or inferior qualifications to him. However,  
8 Doyle is mistaken regarding the burden of proof at this stage, as it is *his* burden to produce  
9 evidence that demonstrates a genuine issue of material fact on this – and every other – prong of the  
10 *prima facie* case. Doyle does not, for example, indicate that Miller, like him, had at least two  
11 years of sales results that placed her last in the nation among her Galderma peers. Nor does he  
12 allege that she is equal to him in having two customer complaints that threatened Galderma’s sales  
13 or numerous complaints from subordinates lodged against her. The Court is not required to – and  
14 will not – fill in facts where Doyle fails to present evidence. On this matter, there are no  
15 inferences to be drawn in Doyle’s favor where no evidence has been provided.

16 Notwithstanding the Ninth Circuit’s admonition to evaluate the fourth element “with some  
17 flexibility,” and even construing the evidence in the light most favorable to Doyle as the  
18 nonmoving party, Doyle’s single assertion of replacement by a younger employee, without more,  
19 falls short of demonstrating “other circumstances suggesting a discriminatory motive.” Perhaps if  
20 all other circumstances supported a *prima facie* case – most importantly, if Doyle’s termination  
21 had come out of the blue when he was performing well in his job – such a scanty assertion might  
22 colorably suggest the existence of “some other circumstances suggesting a discriminatory motive.”  
23 However, in the absence of actual evidence, Doyle cannot establish the fourth prong of his *prima*  
24 *facie* case.

25 In conclusion, drawing all reasonable inferences in the light most favorable to Doyle, the  
26 Court concludes that Doyle has failed to establish two of the four prongs required for a *prima facie*  
27 case of age discrimination. As a result, there is no presumption that Galderma unlawfully  
28 discriminated against Doyle and the burden of proof does not shift back to Galderma to provide a

1 legitimate, non-discriminatory reason for his termination.

2 **2. Step Two: Galderma Offered A Legitimate, Non-Discriminatory Reason for**  
3 **Terminating Doyle’s Employment**

4 Had Doyle’s *prima facie* case not suffered from the shortcomings described above, he  
5 would have created a presumption of unlawful discrimination and the burden would then have  
6 shifted to Galderma to offer a legitimate, non-discriminatory reason for terminating his  
7 employment.

8 “Establishment of the *prima facie* case in effect creates a presumption that the employer  
9 unlawfully discriminated against the employee.” *Burdine*, 450 U.S. at 254. The burden that shifts  
10 to the defendant is to rebut the presumption of discrimination by producing evidence that the  
11 negative employment decision was made for a legitimate, nondiscriminatory reason. *See id.* “The  
12 defendant need not persuade the court that it was actually motivated by the proffered reasons . . .  
13 The explanation provided must be legally sufficient to justify a judgment for the defendant.” *Id.* at  
14 254-55. “[T]he employer’s burden is satisfied if he simply ‘explains what he has done’ or  
15 ‘produc[es] evidence of legitimate nondiscriminatory reasons.’” *Id.* at 256 (citations omitted). A  
16 reason is “legitimate” if it is “facially unrelated to a prohibited bias, and which if true, would  
17 preclude a finding of discrimination.” *Guz*, 24 Cal. 4th at 358. The reason for termination need  
18 not have been wise or even correct, so long as it was nondiscriminatory. *Id.*; *Clarke v. Claremont*  
19 *Univ. Ctr.*, 6 Cal. App. 4th 639, 664 (1992). If the defendant meets this burden, any presumption  
20 of unlawful discrimination “simply drops out of the picture.” *St. Mary’s Honor Ctr. v. Hicks*, 509  
21 U.S. 502, 511 (1993).

22 The *McDonnell Douglas* requirement that plaintiff perform the job in a satisfactory manner  
23 “ties in to the express statutory ‘good cause’ defense and defendant’s business justification for its  
24 decision.” *Phipps*, 722 F. Supp. at 620. As mentioned above, courts in the Ninth Circuit have  
25 regularly found that terminating an employee’s employment because of customer complaints is in  
26 itself a legitimate nondiscriminatory reason for terminating employment. In *Parks*, for example,  
27 the Court granted defendant’s summary judgment motion against a professor’s claim of age  
28 discrimination under FEHA where the disciplinary action was based on complaints by students.



1     *See Parks*, 813 F. Supp. 2d at 1194-95.

2             Assuming *arguendo*, then, that Doyle had established a prima facie case, the burden would  
3 shift back to Galderma to offer a legitimate, non-discriminatory reason for the adverse  
4 employment decision. As discussed at length above, Galderma has proven three distinct  
5 components of Doyle’s poor performance: (1) poor sales performance for over two years  
6 preceding his termination, including failure to meet two out of five PIP Deliverables, one for sales  
7 results and the other for sales program execution, (2) two complaints during his PIP about his  
8 behavior from customers which threatened to damage Galderma’s business, and (3) a history of  
9 complaints about his behavior from subordinates stretching back at least four years prior to his  
10 termination, plus additional complaints that came to light during his PIP.

11             Given that the Court has determined Galderma’s reasons for terminating Doyle were  
12 nondiscriminatory, the Court need not determine if this decision was wise or even correct. Any or  
13 all of the components that resulted in Doyle’s inability to state a *prima facie* case also constitute a  
14 legitimate, non-discriminatory reason to terminate him.

15             Thus, even if Doyle had established a *prima facie* case, Galderma amply satisfied its  
16 burden to produce evidence of poor performance that is, on its face, unrelated to age  
17 discrimination.

18             **3. Step Three: Doyle Did Not Demonstrate Pretext.**

19             Having met its burden, Galderma has rebutted the presumption of discrimination that  
20 would have been created had Doyle established a *prima facie* case. The burden would now shift  
21 back to Doyle, and the factual inquiry must proceed to a new level of specificity. *Burdine*, 450  
22 U.S. at 255. “To avoid summary judgment, [the nonmoving party] ‘must do more than establish a  
23 prima facie case and deny the credibility of the [the moving party’s] witnesses. [He] must  
24 “produce ‘substantial responsive evidence’ that the employer’s showing was untrue or pretextual,”  
25 *Martin v. Lockheed Missiles & Space Co.*, 29 Cal. App. 4th 1718, 1735 (1994), “or evidence the  
26 employer acted with a discriminatory animus, or a combination of the two, such that a reasonable  
27 trier of fact could conclude the employer engaged in intentional discrimination.” *Horn*, 72 Cal.  
28 App. 4th 798, 806-07 (citing *Hersant v. Dep’t of Soc. Servs.*, 57 Cal. App. 4th 997, 1004-1005

1 (1997)).

2 Even when the plaintiff relies on circumstantial evidence, that evidence must be “specific  
3 and substantial” to defeat the employer's motion for summary judgment. *Coghlan v. Am. Seafoods*  
4 *Co. LLC.*, 413 F.3d 1090, 1095-96 (9th Cir. 2005); *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217,  
5 1222 (9th Cir. 1998), as amended (Aug. 11, 1998) (requiring “specific, substantial evidence of  
6 pretext”).

7 A plaintiff can prove pretext “(1) directly, by showing that unlawful discrimination more  
8 likely than not motivated the employer; or (2) indirectly, by showing that the employer’s proffered  
9 explanation is unworthy of credence because it is internally inconsistent or otherwise not  
10 believable.” *Earl*, 658 F.3d at 1112-13 (assessing age and disability discrimination claims under  
11 FEHA). Ninth Circuit law is clear that the plaintiff’s burden at this stage is “minimal.” *Nicholson*  
12 *v. Hyannis Air Serv., Inc.*, 580 F.3d 1116, 1127 (9th Cir. 2009). “[V]ery little evidence is  
13 necessary to raise a genuine issue of fact regarding an employer’s motive; and any indication of  
14 discriminatory motive may suffice to raise a question that can only be resolved by a fact-finder.”  
15 *Id.* (internal quotation marks omitted). And, “[i]f a rational trier of fact could, on all the evidence,  
16 find that the employer’s action was taken for impermissibly discriminatory reasons, summary  
17 judgment for the defense is inappropriate.” *Wallis v. J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir.  
18 1994).

19 However, the *Horn* court “emphasize[d] that an issue of fact can only be created by a  
20 conflict of evidence. It is not created by speculation or conjecture.” *Horn*, 72 Cal. App. 4th at 807  
21 (citing *Compton v. City of Santee*, 12 Cal. App. 4th 591, 595-596 (1993). Speculation of possible  
22 discrimination “cannot be regarded as substantial responsive evidence.” *Martin*, 29 Cal. App. 4th  
23 at 1735. Nor, as stated above, can the employee simply show the employer’s decision was wrong,  
24 mistaken, or unwise. *Horn*, 72 Cal. App. 4th at 806. Rather, the employee must demonstrate such  
25 weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s  
26 proffered legitimate reasons for its action that a reasonable factfinder could rationally find them  
27 unworthy of credence and hence infer “that the employer did not act for the asserted non-  
28 discriminatory reasons.” *Id.* (citations omitted).

1           Hence, assuming for the sake of argument that Doyle established a *prima facie* case of age  
2 discrimination, he must still prove by specific and substantial evidence that Galderma’s stated  
3 reasons were pretextual, that Galderma acted with discriminatory animus, or both, such that the  
4 evidence would permit a reasonable trier of fact to conclude the Galderma intentionally  
5 discriminated against him. *Id.* at 806-807; *Hersant*, 57 Cal. App. 4th 997, 1009 (1997) (“what a  
6 trier of fact could not reasonably conclude, however, was that [defendant’s] stated reasons were  
7 implausible, or inconsistent or baseless; it would not be reasonable to conclude that they were  
8 pretextual and used merely to veil an act of age discrimination.”). Doyle cannot meet this  
9 standard.

10                   **a.       Doyle Has Not Produced Specific and Substantial Evidence That**  
11                   **Reason Given for Termination Was Pretextual**

12                           **i.       There Is No Direct Evidence of Discriminatory Motive**

13           Direct evidence “is evidence which, if believed, proves the fact of discriminatory animus  
14 without inference or presumption” and it “typically consists of clearly sexist, racist, or similarly  
15 discriminatory statements or actions by the employer.” *Coghlan*, 413 F.3d at 1095 (citing  
16 *Godwin*, 150 F.3d at 1221 (supervisor stated he “did not want to deal with [a] female.”)). Because  
17 direct evidence is so probative, the plaintiff need offer “very little” direct evidence to raise a  
18 genuine issue of material fact. *Id.* Nevertheless, courts have found even occasional direct  
19 comments regarding age do not rise to indicating discriminatory animus. *See Nesbit v. Pepsico,*  
20 *Inc.*, 994 F.2d 703, 705 (9th Cir. 1993).

21           Doyle has presented no direct evidence that Curley held discriminatory views or was  
22 motivated by discriminatory animus based on age either generally or against Doyle. To the  
23 contrary, Doyle himself testified in his deposition that Curley never said anything to Doyle that  
24 would cause him to believe that Curley wanted him terminated because of his age and that Curley  
25 never made a comment about Doyle’s age or anyone else’s age. Nor did Curley ever ask when  
26 Doyle might retire. Hence, here, there is no evidence of a single comment, let alone occasional  
27 direct comments regarding age, that would give rise to a finding of discriminatory animus.  
28

**ii. There Is No Indirect Evidence of Discriminatory Motive**

Circumstantial evidence, in contrast, is “evidence that requires an additional inferential step to demonstrate discrimination.” *Coghlan*, 413 F.3d at 1095. Such evidence can take two forms: “First, the plaintiff can make an affirmative case that the employer is biased. For example, statistical evidence is circumstantial evidence that could, if sufficiently probative, point to bias. Second, the plaintiff can make his case negatively, by showing that the employer’s proffered explanation for the adverse action is “unworthy of credence.” *Id.* (citing *Burdine*, 450 U.S. at 256). Again, the evidence must be “specific and substantial” to defeat the employer’s motion for summary judgment. *Coghlan*, 413 F.3d at 1095-96 (citing, *inter alia*, *Nidds*, 113 F.3d at 918 (evidence must be “sufficiently probative”).

Doyle engages in scattershot argumentation in an apparent attempt to see whether the Court will accept any of his attenuated articulations of possible pretext in the termination of an underperforming sales professional who is also the subject of complaints about inappropriate behaviors from customers and subordinates alike. Doyle also appears to believe that simply listing these possibilities is sufficient without the need to make cogent legal arguments as to why they raise triable issues of material fact.

Doyle refers generally to his “Statement of Facts” to assert that he has presented “a plethora of detailed evidence to show pretext.” When boiled down, Doyle appears to make two basic arguments: performance – his was not so bad as to warrant a PIP and termination – and comparables – other similarly-situated employees were treated better than he was. The Court will deal with each of these in turn.

**(a) The Performance Argument**

Doyle argues that Galderma’s actions demonstrated discriminatory pretext consistent with a pattern of discrimination against him because (i) placing Doyle on the PIP in the first place was not justified, (ii) giving Doyle the PIP on February 1, 2019 demonstrates discriminatory pretext, (iii) the content of the PIP was discriminatory: language creating a “forever PIP” and inclusion of a national average as a performance benchmark, (iv) Galderma fired him before release of final Q1 2019 Integrated Report so that the determination that he had not met PIP Deliverable 1, sales

1 results, was premature and therefore discriminatory, and (v) listing Doyle’s reason for termination  
2 as “Retired” not “Terminated for Cause” is evidence of discrimination.

3 **(i) Placing Doyle on a PIP Was Not Evidence of Discriminatory**  
4 **Animus**

5 Doyle argues that discriminatory animus can be shown in placing him on a PIP to begin  
6 with. The Court has dealt at length with the low level of Doyle’s sales results and will not address  
7 it further here. Suffice it to say that there are no disputed facts as to the quality of Doyle’s sales  
8 performance which resulted in Galderma placing Doyle on a PIP.

9 Nevertheless, Galderma presented evidence that, once placed on a PIP, Curley tried to help  
10 Doyle succeed. During Doyle’s PIP, Curley met with Doyle on a bi-weekly basis and received bi-  
11 weekly updates from Doyle. Curley told Doyle he was “here to support you and your efforts to  
12 succeed in Q1.” Doyle was given tools to track his progress throughout his PIP via weekly data  
13 showing his sales results for the quarter through at least April 12, 2019. Doyle does not refute this  
14 fact but complains that they were only estimates.

15 In addition to this general help, Doyle was also given specific help. For PIP Deliverable 2,  
16 for example, Curley reduced the expectation of call cycle attainment from the 80% standard for all  
17 other RSMs to 75%, which Doyle was only able to achieve with Curley’s further intervention.  
18 Prior to the end of the PIP, Curley removed the remaining PAMF targets from Doyle’s San  
19 Francisco region, raising Doyle’s call cycle coverage from 72% to the reduced 75%. Even so, at  
20 75%, Doyle was behind the average for the West Area, which was 78% call cycle coverage.

21 Thus, contrary to Doyle’s assertions that the PIP was a pretext for discrimination, certain  
22 aspects of the PIP actually decreased the results Galderma expected of Doyle and his supervisor  
23 went out of his way to help him meet even those reduced expectations.

24 **(ii) Giving Doyle the PIP on February 1, 2019 Does Not**  
25 **Demonstrate Discriminatory Pretext**

26 Doyle argues that Galderma purposefully placed him on an unfair footing by giving him  
27 the PIP on February 1, 2019, not on the first day of Q1, in order to create grounds to terminate him  
28 based on unlawful age bias. However, as discussed in detail above, Doyle admits that he was

1 aware of the likelihood of a PIP as early as six months before it was put in place because, on June  
2 26, 2018, Curley explicitly and unequivocally warned him that failure to hit his sales metrics “will  
3 result in a more formalized improvement plan being put in place.” Doyle testified that he was  
4 aware of the PIP performance expectations before receiving the PIP because Curley had  
5 previously counseled him on them. Doyle also admitted that an important goal for him every year  
6 was to perform above goal with key brands.

7 Doyle’s assertion in his declaration that he was unaware of standards in his PIP prior to  
8 February 1, 2019 is further belied by undisputed evidence that, in meetings with Curley and in  
9 multiple emails to Doyle and his fellow RSMs, Doyle was informed of his call cycle attainment,  
10 field coaching, extended selling budget, peer to peer (“sales events”) and his sales quota in early  
11 January 2019. Plus, the PIP expectations were things that, as an RSM, Doyle should already have  
12 been working on since the beginning of the quarter anyway.

13 In contrast, Doyle produced no evidence that his PIP contained expectations that went  
14 beyond what Doyle already knew was expected of him before he received the PIP. Thus, Doyle  
15 has created no triable issues of fact that would enable a reasonable juror to conclude that Galderma  
16 treated him in a discriminatory manner by providing him with a PIP on February 1, 2019 that  
17 memorialized previously known expectations.

18 **(iii) The Content of The PIP Was Not Discriminatory: So-Called**  
19 **“Forever PIP” Language and Use of National Sales Average**

20 Doyle argues Galderma’s discriminatory intent is shown by (1) including in his PIP  
21 language that its performance expectations were to be considered as ongoing, which he claims  
22 makes his PIP uniquely a “forever PIP,” and (2) using the national average as a benchmark for his  
23 sales performance. Nothing Doyle presents, however, creates triable issues of material fact.

24 Undisputed evidence shows that language in Doyle’s PIP that these expectations are  
25 “permanent and to be maintained during the course of your employment with Galderma” came  
26 from an existing Galderma PIP template. Flores testified that neither she, King, nor Curley  
27 drafted the language but that it came from “a general template for [PIPs] as a guide.” Galderma  
28 submitted both a copy of this template and another PIP containing the exact same “boilerplate”

1 language that Doyle claims singled him out. The fact that managers were able “to use and  
2 customize” the PIP template to “suit each employee’s situation” is not, as Doyle contends,  
3 evidence of discriminatory intent in drafting Doyle’s PIP.

4 Doyle asserts that Galderma’s contention that Curley was using a template that included  
5 so-called forever language is “not believable in light of the sworn deposition testimony” of Flores  
6 who said “you can’t have an open-ended time” period, Collins who said he never saw “open  
7 ended” PIP, and King who agreed that it was “good human resources practice based on [her]  
8 experience and training to have very identifiable performance goals” and “good and important to  
9 have a clearly articulated start and end date for the PIP.”

10 At a minimum, Doyle asserts, a triable issue of fact exists as to whether or not he was  
11 singled out and presented with a “forever PIP” in violation of Galderma’s human resources  
12 policies and practices. But Doyle’s attempts to interpret selected testimony of Galderma  
13 employees to support his arguments are to no avail. Their testimony was consistent that the cited  
14 language intended only to communicate that Galderma expected Doyle to deliver, as Moseley  
15 stated, “sustained performance for the rest of the time he was employed at Galderma.” Collins  
16 agreed that Doyle had to meet the national sales average “at least until some unspecified time in  
17 the future.” As Galderma argues, it is neither an unusual nor an unreasonable expectation for a  
18 sales professional to sustain at least average sales results.

19 Moreover, the plain language of Doyle’s Q1 2019 PIP makes it clear that Galderma was  
20 measuring Doyle’s performance solely for Q1 2019. The PIP included a chart of expectations  
21 with deliverable dates in Q1 2019 and results tied to Q1 2019 performance. As Galderma points  
22 out, it makes no sense to expect Doyle to meet his Q1 2019 sales quota permanently when  
23 quarterly quotas are, by definition, issued every quarter. Doyle’s assertion that he was “singled  
24 out” is contrary to the evidence that his deliverables were, by definition, solely for Q1 2019 and  
25 that the so-called “forever” language came from a PIP template Curley used. The Court notes that  
26 Doyle attempts to play it both ways when he emphasizes that the precise language of the five  
27 deliverables reference Q1 five times when he argues that Doyle should have received the PIP at  
28 the start of the quarter. This argument is especially ironic given that Doyle argues in the very next

1 section that language in the PIP made it a “forever PIP.”

2 Doyle next argues that the requirement of PIP Deliverable 1 to meet his sales quota and to  
3 perform at or above 100% of the national average for total prescription attainment for Q1 is  
4 evidence of pretext, despite his acknowledgement that the goal was to perform above quota every  
5 year. He points to the testimony of King and Moseley, who indicated they weren’t familiar with  
6 the use of the national standard to measure sales success.

7 However, Galderma presented uncontradicted testimony from Flores that Galderma uses  
8 the national sales average as “a common key performance indicator” to evaluate the performance  
9 of its sales professionals for several business reasons, including “rankings and awards and . . . in  
10 terms of where people fall.” Collins testified about including the national average as a benchmark  
11 for Doyle because he had been “underperforming for the last couple of years relative to the  
12 nation.” Collins was also clear about the need to reassess the standard based on Doyle’s  
13 performance: “Now, does it mean [performing] exactly at the national average and all that forever  
14 and forever? I’m sure that we would re-evaluate that after the PIP, see where we were originally  
15 and then afterwards. . .”

16 Doyle also attempts – and fails – to manufacture a dispute about Galderma’s use of the  
17 national average by making a perplexing, unwarranted, and factually unsupported accusation.  
18 Curley testified that he included the national sales metric to ensure that Doyle was performing at  
19 or above average relative to his peers to take into account any unforeseen market condition that  
20 might affect national sales numbers. Doyle twists this testimony to argue that “Curley included  
21 this metric so that even if ‘a significant market event’ occurred and the overall company  
22 performed at ‘way above 100%’ he would still have a way to fire Mr. Doyle.” With no support in  
23 evidence presented to the Court, the Court declines to equate a spurious accusation with a factual  
24 dispute.

25 **(iv) Doyle’s Termination Before the Release of Final Q1 2019**  
26 **Integrated Report Was Not Discriminatory**

27 Under the terms of the PIP, whether PIP Deliverable 1 had been met was to be determined  
28 as of the “Release of the Q1 Integrated Report,” which shows final, verified sales data for Q1



1 2019, including Doyle’s sales performance and Galderma’s national sales average. Doyle asserts  
2 that, because the final Integrated Report for Q1 2019 was released on April 23, 2019, a day after  
3 he was fired, his performance could not have been the true motive for his termination. He argues  
4 that Galderma’s decision-makers did not know whether Mr. Doyle met the sales performance  
5 standards in his PIP, that they were “unaware” of his final sales numbers, yet they fired him  
6 anyway. Doyle argues that “[a] reasonable juror could conclude that Galderma’s first reason for  
7 plaintiffs termination, that he failed to meet his Q1 2019 quota, is not believable since the  
8 decision-makers did not have access to the required data to determine if this performance metric  
9 had been met yet, fired him anyway.”

10 In his Opposition, Doyle painstakingly lays out the steps taken to compile the Integrated  
11 Report. Moseley receives and evaluates the sales information approximately two weeks after the  
12 last day of the month, here by April 14, 2019. She then sends the information to Collins for his  
13 review, which had to have happened well before the report was finalized on April 23, 2019. Thus,  
14 the evidence provided by Doyle himself proves that at least two of the Galderma employees  
15 involved in Doyle’s termination had to have seen and analyzed the sales results for Doyle and all  
16 other RSMs.

17 Counsel for Doyle appears to have spent a good deal of time in depositions to obtain  
18 testimony that the Integrated Report shows final, verified sales data for Q1 2019 and that this  
19 report is used to calculate sales commissions. He went to great lengths to establish that Galderma  
20 employees, including Flores, Moseley, Collins, Curley, Boyd, and Jack, understood that sales  
21 commissions were paid out only on finalized data contained in Integrated Report. None of these  
22 facts are disputed – and none are relevant to the issue at hand. Yes, the report confirms sales data  
23 already known, formalizes and finalizes it into a report used to pay sales commissions, but there is  
24 no dispute that the report itself is not required to see where Galderma sales professionals fall in  
25 meeting their quota.

26 Doyle’s vociferous argument that Galderma should have waited for the report’s release  
27 before firing him may be technically true, but it is also irrelevant. Undisputed evidence shows that  
28 Galderma had access to what they needed to make the determination to fire Doyle. Although the

1 due date for PIP Deliverable 1 was the release of the Integrated Report, the sales data available  
2 before the final report was released demonstrated that Doyle had failed to meet his sales  
3 performance quota.

4 Galderma also presented evidence that it had sufficient information prior to the release of  
5 the final Q1 2019 Integrated Report to determine that Doyle had not met the sales deliverable of  
6 his PIP – both because Galderma had the necessary sales numbers and because Doyle himself had  
7 told Curley this was the case. Moseley, whose job as Galderma Sales Compensation Manager was  
8 to determine whether employees had met sales quotas, testified that she calculated that Doyle had  
9 fallen short of his Q1 2019 sales quota using the data through Friday, March 29, 2019, the last  
10 workday of the quarter, extrapolated for the final two days of the quarter (a Saturday and Sunday).  
11 Thus, sales data available through the last workday of the quarter was sufficient to verify that  
12 Doyle did not meet the deliverables of his PIP, as the numbers needed were not related to sales  
13 commissions, for which the final report was officially used. Once Doyle’s failure was clear,  
14 Moseley then confirmed this fact to Human Resources Director, Edith Flores, who then reported it  
15 to Doyle’s supervisor, Curley – all prior to the release of the final report

16 Doyle himself, despite complaining that weekly sales data to which he had access during  
17 his PIP were estimates only, had enough confidence in its accuracy to notify Curley in written  
18 progress reports on March 1 and March 22, 2019 that his region would miss the Q1 prescription  
19 sales target required by his PIP. As early as a week before the end of the Doyle’s PIP, then, both  
20 Doyle and Curley knew that Doyle would not achieve his sales quota, *i.e.*, he would not meet his  
21 PIP Deliverable 1, because Doyle himself had made that clear. Hence, Galderma confirmed at the  
22 end of Q1 exactly what Doyle had told them all along would be the case: he fell short of his Q1  
23 sales quota.

24 Doyle makes much of the timing of the release of the IR, which hadn’t yet happened when  
25 they decided to terminate him. Doyle attempts to manufacture a factual dispute by arguing that  
26 there is conflicting testimony regarding who saw the Final Q1 Integrated Report and when, but the  
27 bottom line is that the data used to compile the report was available to Galderma decision-makers  
28 before they made the decision to terminate Doyle. Regardless of when the Integrated Report was

1 finalized, the undisputed evidence clearly shows that Galderma confirmed that Doyle did not meet  
2 all the deliverables on his PIP prior to finalizing the termination decision. The decision was made  
3 only after Flores confirmed with Moseley and then communicated to Curley that Doyle had not  
4 attained 100% of his Q1 2019 quota.

5 The true bottom line is that none of Doyle’s arguments serve to dispute the fundamental,  
6 material fact of his poor performance. At either 95.14% or 94.53%, his overall attainment for Q1  
7 2019 was almost 10% below the national sales average of 104.95%, which gave him the lowest  
8 quota attainment in the nation for each month of Q1 2019 and for the Q1 2019 quarter for any  
9 RSM or Senior RSM in the Rx Business Unit. Doyle fails to offer any evidence that Galderma’s  
10 process with respect to confirming his poor sales performance or the details he was provided about  
11 his performance show that his termination was pretextual.

12 **(v) Listing Doyle’s Reason for Termination As “Retired” Not**  
13 **“Terminated For Cause” Is Not Evidence of Discrimination**

14 Doyle argues that his Termination Notice is evidence of pretext because it lists the reason  
15 for his dismissal as “Retirement” not “Released for Cause.” However, Doyle presents no evidence  
16 to support this claim, instead “disputing” this fact by saying he “cannot speculate why Mr. Curley,  
17 Mr. Collins and Ms. Flores all signed their names on a Termination Form which indicates that Mr.  
18 Doyle retired.”

19 For its part, Galderma presents Flores’ testimony that Galderma classified Doyle as a  
20 retiree in his separation documentation “solely to facilitate the processing of the retiree medical  
21 benefits and reserve leave to which he was entitled.” King confirmed that Doyle was terminated  
22 for performance. As someone who is not a human resources specialist, she could only speculate,  
23 saying, “I don’t know why it shows voluntarily resignation – retirement, maybe for benefits  
24 eligibility.”

25 Galderma’s undisputed testimony establishes that Doyle’s termination was internally  
26 characterized as a voluntary resignation solely for administrative convenience to process benefits  
27 and leave to which he was entitled. Thus, Doyle fails to demonstrate that his termination form  
28 raises any disputes of material fact concerning pretextual termination.

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

**(b) The Comparables Argument**

Doyle’s arguments that he was treated worse than comparable employees suffer from a fatal flaw: the calculations on which they are based were performed by his attorney. In his Declaration in Support of the Opposition, Attorney Robert Wallace admits that he “personally calculated the sales performance scores referenced in plaintiff’s opposition brief” from documents produced by Galderma. He describes his “system of computation,” but makes no claims regarding his skills or training to make such calculations. Accordingly, this comparison data lacks foundation and no comparisons based on sales results calculated in this way can form the basis of meaningful analysis.

Also, at various points during his arguments that he was treated worse than comparable employees, Doyle confuses the burden of proof. For example, he argues that Galderma failed to produce evidence that any other “bottom-performer” like Mr. Doyle was ever placed on a PIP. Doyle must meet the burden of proof to demonstrate pretext, as indeed the burden remains fundamentally his to prove age discrimination.

Despite these shortcomings, the Court will address Doyle’s arguments that Galderma treated him differently than similarly situated employees because of his age and that Galderma’s explanations for his termination are no more than pretext for the discriminatory animus by which it was motivated.

In employment discrimination cases, employees are similarly situated to a plaintiff if they perform similar work responsibilities or are guilty of similar misconduct. *Meaux v. Northwest Airlines, Inc.*, 718 F. Supp. 2d 1081, 1090-91 (N.D. Cal. 2010) (rejecting plaintiff’s argument that he was treated differently than a similarly situated employee because differences in their misconduct rendered them not comparable).<sup>6</sup> “Courts require the quantity and quality of the comparator’s misconduct be nearly identical to prevent courts from second-guessing employers’ reasonable decisions and confusing apples with oranges.” *Day v. Sears Holdings Corp.*, 930 F. Supp. 2d 1146, 1162 (C.D. Cal. 2013) (different misconduct precludes finding that employees

---

<sup>6</sup> The Court follows 9th Circuit precedent for assessing comparable employees in discrimination cases rather than the 8th Circuit cases relied upon by Doyle.

1 were comparable). “Two employees are not similarly situated when one is a supervisor and the  
2 other is not.” *Day*, 930 F. Supp. 2d at 1162 (finding employee and her supervisor not  
3 comparable).

4 The deadly substantive deficiency common to Doyle’s comparables arguments is that he  
5 has submitted no evidence that any of the people to whom he compares himself were, in fact,  
6 similarly situated. Doyle produced no evidence showing that the employees to whom he compares  
7 himself have a comparable performance history or conduct, specifically the actual or equivalent  
8 history of sales achievement that earned them a rating of “Development Opportunity” as Doyle  
9 received in 2014, 2015, 2017, and 2018, plus the lowest possible “Needs Improvement” overall  
10 annual rating as Doyle received in 2018, plus ranking last in national sales in 2018, a position only  
11 one person, Doyle, could have occupied, not to mention two complaints from customers who  
12 found their behavior so problematic that they requested that they not return to their offices as  
13 Doyle did and multiple complaints from direct reports who, among other things, found their  
14 behavior overbearing and their supervision inadequate as Doyle did. In addition, some of the  
15 employees he compares himself to are facially not comparable, either people who supervise him,  
16 like Curley, or people he supervises.

17 Doyle’s counsel claims that the ages of all “comparable” workers included in plaintiff’s  
18 opposition brief were provided by defense counsel in verified discovery responses, but he fails to  
19 provide a cite for this most crucial piece of information in an age discrimination case. *See* Doyle’s  
20 “Additional Undisputed Materials Facts” 216: “Wallace Decl. Para. \_\_\_” where Doyle’s counsel  
21 left the paragraph number blank.

22 Despite these fundamental flaws shared by Doyle’s “Comparable Arguments,” the Court  
23 will respond briefly to each one made. Doyle rails against the idea that he would be held to a  
24 different standard because he was on a PIP: “A PIP cannot be a shield for intentional  
25 discrimination.” However, the Court finds no evidence that the sales results to which Doyle was  
26 held in the PIP were based on “patently discriminatory standards.” Furthermore, the performance  
27 issues Doyle had were, in themselves, justification for treating him differently from other  
28 employees without such issues.

1           Doyle reboots his argument that that discriminatory animus motivated Galderma to include  
2 the national sales average expectation as part of his PIP Deliverable 1 when such a requirement  
3 was not applied uniformly to comparable employees. The legitimate reasons Galderma explained  
4 for the including the national average in Doyle’s PIP are dealt with extensively above.  
5 Nevertheless, Doyle disputes that he was held to expectations standard to all RSMs by referring to  
6 other RSMs whom he claims did not meet the national average and were not disciplined.  
7 However, the evidence Doyle cites fails to show that other RSMs were not expected to meet the  
8 national standard, only that some of them did not attain it and some of them were not disciplined.

9           Doyle’s *opinion* that Galderma treated him unfairly compared to other employees is  
10 irrelevant and inadmissible. In the absence of credible evidence that any similarly situated  
11 employee was treated differently, Galderma’s business decision to set an expectation as part of  
12 Doyle’s PIP that he deliver an average performance compared to his peers does not demonstrate  
13 pretext. *Douglas v. Anderson*, 656 F.2d 528, 534 (9th Cir. 1981) (business decision need not meet  
14 the approval of a judge or jury, as long as the decision was not discriminatory.); *Dale v. Chicago*  
15 *Tribune Co.*, 797 F.2d 458, 464 (7th Cir. 1986) (“This Court does not sit as a super-personnel  
16 department that reexamines an entity’s business decisions.”). Hence, including the national  
17 average standard in Doyle’s PIP is not evidence of pretext for discrimination.

18           Doyle also argues that no one else in the Western Region met the national average in Q1  
19 2019 either, but his evidence to demonstrate this fact is damning on its face. The national average  
20 in Q1 2019 was 104.95. Doyle earned 94.53%, while every person to whom he compares himself  
21 earned above 100% except for Kelly Adams, who met 99.25% of her quota. Plus, as mentioned,  
22 Curley is not a comparable to Doyle because he is Doyle’s supervisor.

23           Doyle argues that additional discriminatory evidence concerning his PIP Deliverable 1 lies  
24 in the fact that younger Galderma employees who performed below expectations were not  
25 disciplined or terminated. He argues that the Q1 2019 Integrated Report shows that Kelly Adams,  
26 age 33 at the time, Doyle’s colleague who worked as a RSM for the Los Angeles territory<sup>7</sup> and

27 \_\_\_\_\_  
28 <sup>7</sup> The two-line deposition cite Doyle uses does not supply Adams’ age or that she worked in the  
West region (*see* Wallace Decl., Curley Dep. 340:6-8), but the Court has read more of the

1 reported directly to Curley, also failed to meet her Q1 2019 sales quota, achieving 99.25% out of  
2 100%. Doyle cites to Curley’s deposition to assert that Adams “received no discipline of any  
3 kind,” but Curley said only that Adams was not put on a PIP.

4 These assertions, without more, do not demonstrate discrimination as Doyle provides no  
5 other evidence showing that he and Adams were similarly situated. Besides the basic differences  
6 described above, Adams fell below her quota by only .75%, while Doyle fell at least 5.47% below  
7 his. In addition, Doyle did not submit evidence that Adams was not disciplined, only that she was  
8 not put on a PIP for missing her quota by less than 1%. Without evidence that Adams and Doyle  
9 were otherwise similarly situated, there is no triable issue of material fact so as to avoid summary  
10 judgment.

11 Doyle attempts to bolster his argument about discrimination by comparing his Q1 2019  
12 sales results with those of “his far-younger peers in the West region, working for the same  
13 manager during the preceding 12 months” – based again on his attorney’s calculations. He cherry-  
14 picks the results most convenient to him from among the 2018 Q2 and Q3 sales figures of Ruben  
15 Gonzalez, Holly Fitzhenry, Peterson Frey, and Kelly Adams that fall below his own Q1 2019  
16 result. Doyle asserts that he “personally know[s]” that none of these individuals received any  
17 discipline for their quarterly scores” but, as with Adams, he has presented no actual evidence to  
18 this effect.

19 Doyle also claims that two Galderma employees had a full year of performance below  
20 Doyle’s Q1 2019 results. These were: Jeff Paulson (36), 94.06% in 2017 and Jonathan Brisson  
21 (35) 93.15% in 2016. Ironically, the evidence Doyle himself submits further distinguishes Brisson  
22 as a comparator because Brisson was not managed by Curley at that time and he worked in the  
23 CentralSouth region not the West region where Doyle worked. In addition, Brisson attained

24 \_\_\_\_\_  
25 deposition excerpt that states Adams’ age was 33 years old. Whether she worked in the West  
26 region was not established by the testimony cited either. The Court agrees with Galderma that  
27 Doyle’s failure to provide pincites supporting a number of the facts he asserts renders them  
28 unsupported and therefore inadmissible. The Court is willing to look to surrounding evidence to  
see if the information is readily found, but it is not the Court’s task to seek out evidence in support  
of a party’s argument. *See generally Wu*, 626 F.3d at 488 (“Judges are not like pigs, hunting for  
truffles buried in briefs.”)

1 99.68% of quota by the end of the following year.

2 Doyle classifies as “bottom-performers” in prior years three significantly younger RSMs  
3 whom he claims received no discipline at all. He identified “Jeff Paulson (36) Rank 7th out of 7 –  
4 2017; Brenda DeHart (45) Rank 9th out of 9 – 2015; Pete Julien (33) Rank 8th out of 8 – 2012.”  
5 Doyle’s assertions, however, are based on partial and/or misstated evidence. Galderma presented  
6 evidence that, though not placed on a Performance Improvement Plan, Paulson’s role was  
7 terminated as part of a reorganization where performance was a factor in selecting employees for  
8 elimination. Contrary to Doyle’s statement, Galderma only indicated that Julian was not put on a  
9 Performance Improvement Plan or terminated in 2012, not that he received no discipline at all. In  
10 addition, the document Doyle attempts to introduce in support of the statement that DeHart was 9  
11 out of 9 in 2015, does not include year-end rankings and is thus unsupported, plus he fails to  
12 include a cite to his assertion that DeHart received “no discipline at all.” He also fails to provide a  
13 cite to the ages of Paulson, Julian, or DeHart.

14 Doyle also asserts that two of his younger peers were under quota for 2018 as well and  
15 neither of them was disciplined: Matt Chierchie (36 yrs. old) 95.00 in 2018 and Kelly Adams (32  
16 yrs. old) 94.99 in 2018. Galderma admitted that Adams was not put on a Performance  
17 Improvement Plan or terminated in 2018 but also pointed out that she was promoted to an RSM  
18 position in July 2018, unlike Doyle who was not transferred in the middle of the year. Though  
19 Chierchie was not put on a Performance Improvement Plan or terminated in 2018, there’s no  
20 evidence that he was not otherwise disciplined. In addition to all the other reasons Chierchie is  
21 not comparable to Doyle, Chierchie was never managed by Curley and worked in the East Area of  
22 the Prescription Business Unit. Once more, Doyle does not provide a cite to the ages of Chierchie  
23 or Adams.

24 Finally, Doyle also complains that “three other far-younger RSMs” – again, Ruben  
25 Gonzalez, Holly Fitzhenry, Peterson Frey – failed to complete their Peer to Peer sales  
26 programming requirement, as did he when he failed to complete part of his PIP Deliverable 5. He  
27 provides no foundation for his assertion that none of these individuals was disciplined. More to  
28 the point, Doyle submits no evidence regarding the rest of their performance so as to permit the



1 Court to assess whether they are at all “comparable” to him.

2 Based on the undisputed evidence, then, none of the employees Doyle discusses is  
3 comparable to Doyle with respect to Galderma’s decision to put him on a PIP, with respect to the  
4 content of the PIP, or with respect to evaluating his performance while on a PIP. Doyle offers no  
5 admissible, relevant evidence to show pretext. Doyle has not shown that Galderma’s stated  
6 reasons were pretextual or that Galderma acted with discriminatory animus, nor has he provided  
7 evidence of either that would permit a reasonable trier of fact to conclude the Galderma  
8 intentionally discriminated against him. *Horn*, 72 Cal. App. 4th at 806-07; *Hersant*, 57 Cal. App.  
9 4th at 1009 (“what a trier of fact could *not* reasonably conclude, however, was that [defendant’s]  
10 stated reasons were implausible, or inconsistent or baseless; it would not be reasonable to  
11 conclude that they were pretextual and used merely to veil an act of age discrimination”)  
12 (emphasis added). In the absence of “specific substantial evidence” that Galderma’s proffered  
13 reasons for terminating Doyle, namely his poor performance in sales and engendering complaints  
14 from customers and subordinates alike, were pretextual, Doyle’s discrimination claim must fail.

15 None of the soft evidence or loud protestations demonstrate such weaknesses,  
16 implausibilities, inconsistencies, incoherencies, or contradictions in Galderma’s proffered  
17 legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of  
18 credence and hence infer “that the employer did not act for the asserted non-discriminatory  
19 reasons.”

20 Assessing the evidence as a whole and in the light most favorable to Doyle, Doyle has not  
21 met his burden of showing that triable issues of fact exist that Galderma’s stated reasons for  
22 terminating Doyle were based on pretext. Doyle asserts many theories but, in the end, offers no  
23 credible evidence of discriminatory motive.

24 In conclusion, the Court finds that Doyle has failed to carry his initial burden of  
25 establishing a *prima facie* case of age discrimination because he clearly failed to meet Galderma’s  
26 job expectations due to his poor work performance and multiple complaints lodged against him.  
27 He was also unable to demonstrate other circumstances that suggest discriminatory motive. Next,  
28 Galderma put forward legitimate, nondiscriminatory reasons to terminate Doyle’s employment.

1 Finally, Doyle failed to prove that defendant’s proffered reasons were in any way pretextual or  
2 discriminatory, either through direct or implied evidence. No facts have been shown otherwise  
3 which would give rise to an inference of discriminatory conduct. As a result, Doyle has failed to  
4 present any genuine issue of material fact as to his age discrimination claims.

5 Accordingly, Galderma’s Motion for Summary Judgment on Doyle’s first cause of action  
6 for age discrimination pursuant to FEHA is **GRANTED**.

7 **B. Doyle’s Second Cause of Action for Wrongful Termination in Violation of Public**  
8 **Policy Fails for the Same Reasons as his FEHA Claim**

9 Doyle’s second cause of action, the common law claim for wrongful termination in  
10 violation of public policy, asserts the same theory of liability as his discrimination claim and is  
11 properly analyzed under the same legal framework. *Hanson v. Lucky Stores, Inc.*, 74 Cal. App.  
12 4th 215, 229 (1999) (“because plaintiff’s FEHA claim fails, his claim for wrongful termination in  
13 violation of public policy fails”); *Reno v. Baird*, 18 Cal. 4th 640, 663 (1998) (applying ruling on  
14 discrimination cause of action to wrongful discharge cause of action based on FEHA).

15 Because Doyle failed to provide evidence that raises any triable issues of material fact with  
16 respect to his FEHA claim, his derivative claim for wrongful termination in violation of public  
17 policy fails as a matter of law.

18 Accordingly, Galderma’s Motion for Summary Judgment on Doyle’s second cause of  
19 action for wrongful termination in violation of public policy is **GRANTED**.

20 **C. Doyle’s Claim for Breach of Implied Contract Not to Terminate Without Good Cause**  
21 **Fails as a Matter of Law**

22 The undisputed evidence shows that Doyle was – and knew he was – an at-will employee.  
23 Section 2922 of the California Labor Code provides that, “[a]n employment, having no specified  
24 term, may be terminated at the will of either party on notice of the other.” Cal. Lab. Code § 2922.  
25 In California, employment of an unspecified term is presumptively at-will and absent proof of a  
26 contrary agreement or limitation, an employer may effectively terminate an employee at any time  
27 and for any reason, without application of just cause, and without providing warning or fair  
28 procedures. *Guz*, 24 Cal. 4th at 335-36, 350. A plaintiff’s own unspecified, conclusory statements

1 and interpretation of an employer’s conduct are insufficient as a matter of law to negate the  
2 statutory presumption and the employer’s actual practice of at-will employment. *Eisenberg v.*  
3 *Alameda Newspapers, Inc.*, 74 Cal. App. 4th 1359, 1389 (1999) (affirming grant of summary  
4 judgment for employer where convincing evidence reinforced the statutory presumption of at-will  
5 employment). “[L]ong duration of service, regular promotions, favorable performance reviews,  
6 praise from supervisors, and salary increases do not, without more, imply an employer’s  
7 contractual intent to relinquish its at-will rights.” *Guz*, 24 Cal. 4th at 341.

8 Although normally a question of fact, whether an employer’s conduct implies an  
9 agreement to terminate an employee only for cause may be determined by a court on summary  
10 judgment where the facts are undisputed and support only a single conclusion. *See Foley v.*  
11 *Interactive Data Corp.*, 47 Cal. 3d 654, 682 (1998); *Eisenberg*, 74 Cal. App. 4th at 1386. To raise  
12 a triable issue of material fact, a plaintiff must produce evidence of an agreement that he could not  
13 be discharged without good cause. *Gould v. Maryland Sound Indus., Inc.*, 31 Cal. App. 4th 1137,  
14 1151-53 (1995).

15 Galderma reiterated Doyle’s at-will employment status multiple times: in his 1999  
16 promotion letter, in the applicable Galderma Employee Handbook and, most recently, in his PIP.  
17 Doyle was put on notice as early as the middle of 2018 that he had to perform better or face an  
18 unsatisfactory rating, which could well result in him being placed on a PIP. His actual placement  
19 on a PIP after he failed to meet his sales metrics communicated to Doyle that his job was at risk.  
20 When he was put on the PIP, he had the opportunity to cure the issues – but he did not. The most  
21 direct indication of his continued long-term at-will status is his own testimony to that effect in his  
22 deposition, where he explicitly admitted that there was no employment contract. Furthermore,  
23 Doyle admitted at his deposition that he knew if he did not improve his performance during the  
24 PIP that the result would be termination.

25 Doyle says that Galderma acted as if he could only be fired for cause. He asserts that,  
26 “based upon Galderma’s conduct over his 30-year career, Mr. Doyle understood that Galderma  
27 needed good cause to fire him.” However, Doyle fails to supply evidence of an agreement that he  
28 could not be discharged without good cause that contradicts the at-will employment status

1 Galderma repeatedly reaffirmed. Doyle’s interpretation – his hope – of an agreement to overturn  
2 that presumption does not change the at-will status of his employment. Doyle failed to submit  
3 evidence that Galderma’s conduct imputed an intent to establish an implied contract for continued  
4 employment. Hence there is nothing that contradicts the statutory presumption of Doyle’s at-will  
5 employment status so as to defeat summary judgment.

6 Further, even assuming *arguendo* that Doyle could establish that he was party to an implied  
7 contract for employment, Galderma has proffered ample undisputed evidence that Galderma had  
8 good cause to terminate Doyle’s employment based on his poor performance. As there is no  
9 dispute of material fact on this issue, Doyle’s claim for implied breach of contract fails as a matter  
10 of law.

11 Accordingly, Galderma’s Motion for Summary Judgment on Doyle’s third cause of action  
12 for breach of implied contract is **GRANTED**.

13 **D. Doyle’s Prayer for Punitive Damages Fails**

14 Under California law, an employer may be held liable for punitive damages only for the  
15 malicious acts or omissions of employees who possess sufficient discretion to determine corporate  
16 policy, such as officers, directors or managing agents. Cal. Civ. Code § 3294(b); *see also Weeks*  
17 *v. Baker & McKenzie*, 63 Cal. App. 4th 1128, 1147-48 (1998) (Civil Code § 3294 applies to  
18 actions brought under the FEHA). Pursuant to California Civil Code § 3294, “malice” means  
19 conduct intended to cause injury or “despicable conduct” which is carried out with “willful and  
20 conscious disregard of the rights and safety of others.” Cal. Civ. Code § 3294(c)(1).  
21 “Oppression” is defined as “conduct that subjects a person to cruel and unjust hardship in  
22 conscious disregard of that person’s rights.” Cal. Civ. Code § 3294(c)(2).

23 The standard for awarding punitive damages requires “the evidence [to] be so clear as to  
24 leave no substantial doubt” and “sufficiently strong to command the unhesitating assent of every  
25 reasonable mind.” *Mock v. Michigan Millers Mutual Ins. Co.*, 4 Cal. App. 4th 306, 332-33 (1992).  
26 Thus, mere establishment of discrimination or retaliation is not enough; there must be some  
27 “extreme” conduct that is above and beyond the pale.

28 Doyle’s claim for punitive damages fails because he has presented no evidence Galderma

1 engaged in “despicable conduct” with “willful and conscious disregard of the rights and safety of  
2 others.” Even if absolutely everything Doyle alleges was one hundred percent as he alleges it –  
3 even if Galderma placed him on a PIP but not younger co-workers who also spent several years at  
4 the bottom of the national sales ranks, even if Galderma gave him the PIP a month late with  
5 deliverables that were entirely new to him, even if Galderma intended that the PIP last for as long  
6 as Doyle worked at Galderma, even if Galderma expected that he would meet or exceed both his  
7 own sales quota and the national sales average – even if all of this were true, or if Doyle produced  
8 evidence that suggested it could be true, which he has not demonstrated by a long shot, even then  
9 punitive damages would not be warranted.

10 Doyle has not even established discrimination, let alone some “extreme” conduct that is  
11 above and beyond the pale. When Doyle failed to meet two of the five deliverables and when  
12 Galderma became aware of both customer and direct report complaints during the same time  
13 frame, Galderma fired him. But being fired because you no longer can or want to do a particular  
14 job is in no way comparable to malicious conduct that threatens your rights and safety.

15 Constantly lagging behind your colleagues must be frustrating – but it is not oppressive.  
16 Losing a job is painful, maybe embarrassing and economically stressful – but it is not being the  
17 victim of despicable conduct carried out with willful and conscious disregard of the rights and  
18 safety of others.

19 Doyle lists off the number of people Collins and Curley supervise, but these facts fail to  
20 establish that that Curley, Collins, or Flores had power to manage high level corporate affairs or  
21 that they had authority to influence or affect corporate policy to the degree required for punitive  
22 damages. Doyle does not even allege that Curley, Collins, or Flores were officers or directors.

23 Doyle’s prayer for punitive damages fails, as a matter of law, because he cannot establish  
24 that an officer, director or managing agent engaged or ratified any malicious, oppressive, or  
25 fraudulent conduct against him. Doyle has presented an insufficient quantum of evidence as to  
26 both position and power of the Galderma employees involved with his termination and that shows  
27 conduct strong enough “to command the unhesitating assent of every reasonable mind.” His claim  
28 for punitive damages therefore fails as a matter of law.

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

Accordingly, Galderma’s Motion for Summary Judgment on Doyle’s prayer for punitive damages is **GRANTED**.

**CONCLUSION**

Based on the analysis above, Galderma’s Motion for Summary Judgment is **GRANTED** in its entirety.

**IT IS SO ORDERED.**

Dated: April 30, 2021

  
THOMAS S. HIXSON  
United States Magistrate Judge