WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ANTHONY COPPOLA, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, Legally Uninsured; Adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ10845616
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCUR NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 8, 2021

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

ANTHONY COPPOLA
THE LAW OFFICE OF NADEEM H. MAKADA
STATE COMPENSATION INSURANCE FUND

PAG/*pc*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. o.o

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Terri Ellen Gordon, Workers' Compensation Judge, hereby submits her Report and Recommendation on the Petition for Reconsideration filed herein.

INTRODUCTION

Defendant, California Department of Corrections and Rehabilitation, legally uninsured and adjusted by State Compensation Insurance Fund, (hereinafter referred to as "defendant") petitions for reconsideration of the Findings, Order and Award that issued in this case on 08/18/2021. In the Findings, Order and Award that issued on 08/18/2021 I found applicant Anthony Coppola (hereinafter referred to as "applicant") sustained psychiatric injury during the cumulative period 10/21/2015 to 10/21/2016 arising out of and in the course of employment with defendant and that his claim is not barred by Labor Code section 3208.3(h). I also found applicant's injury caused total temporary disability from 10/26/2016 to mid-May 2017 and partial temporary disability from mid-May 2017 to 12/13/2017 and that applicant became permanent and stationary on 12/13/2017. In the Findings, Order and Award that issued on 08/18/2021 I also found applicant's injury caused permanent party disability of 29 percent after adjustment for age and occupation and apportionment and a need for future medical treatment. I further found counsel for applicant earned a reasonable attorney's fee and that there is no presumed compensability for failure to deny within 90 days. Defendant contends I acted without or in excess of my powers, that the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision or award. Defendant specifically takes issue with my finding applicant's industrial psychiatric injury is not barred by Labor Code section 3208.3(h) and that applicant's injury caused permanent partial disability of 29 percent after adjustment for age, and occupation and apportionment. Defendant also contends my finding of temporary disability does not accurately address the correct time periods. Defendant's Petition for Reconsideration was timely filed and is accompanied by the verification required under Labor Code section 5902. Applicant has not filed an Answer as of 09/22/2021.

DISCUSSION
DEFENDANT'S CONTENTIONS
I

The Findings That Applicant Sustained Psychiatric Injury during the Cumulative Period 10/21/2015 to 10/21/2016 Arising out of and in the Course of Employment with Defendant

and that his Claim is not Barred by Labor Code section 3208.3(h) are supported by the Testimony and Evidence received at Trial and the Relevant Law

In its Petition for Reconsideration, defendant contends it was denied due process without notice and opportunity to discuss the issues presented and that I opined defendant acted in an unlawful and discriminatory manner without justifying such determinations, to defendant's detriment. Insofar as defendant contends it was denied due process because it was denied notice and opportunity to discuss the issues presented, that contention is without merit. Defendant's witnesses all testified, some in person and, after COVID, via Lifesize without objection. Defendant had the opportunity to cross-examine applicant's witnesses. All of defendant's Exhibits were received into evidence. The parties' respective requests for continuances were granted and both parties were allowed great flexibility in calling witnesses. Defendant submitted a trial brief and has now filed a Petition for Reconsideration.

Defendant's contention that it was denied due process, in that I opined that defendant acted in an unlawful and discriminatory manner without justifying such determinations, is also without merit. I explained, as follows in my Opinion on Decision, the rationale for my finding:

"INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT AND GOOD FAITH PERSONNEL ACTION DEFENSE"

The Evidence

Applicant Anthony Coppola, M.D. (hereinafter referred to as "applicant") testified at trial and his testimony is summarized in detail in Minutes of Hearing dated 08/09/2018, 02/13/2019, 06/26/2019, 12/18/2019, 02/21/2020, and 03/04/2021. He began working at Duel Vocational Institute ("DVI"), California Department of Corrections and Rehabilitation, legally uninsured and adjusted by State Compensation Insurance Fund (hereinafter referred to as "defendant") in 1998 as a psychiatrist and was responsible for providing medical care to prison inmates. Sometime after he began working for defendant, he became by default DVI's chief of mental health care in charge of the entire mental health program and the liaison with the regional headquarters. That position went away by attrition due to downsizing in October 2013. Most recently, he was a senior psychiatrist supervisor. In the early part of his career with defendant, he reported to the warden. Early on, he also reported to a Mr. Duncan who had been DVI's CEO. Later, he reported to Larry Fong, a more recent CEO for DVI whose responsibilities included the entire mental health program. At this time, applicant also reported to Reba White, PhD., who was chief of mental health and chief psychologist for DVI. Elaine Force PhD. was defendant's regional administrator

of mental health for Region II. Michael Hutchinson was defendant's regional health care executive for California correctional health care services. Carrie Anaforian PhD. worked as a psychologist for defendant in different locations for over eleven years before she was took over a chief of mental health at DVI on or about 09/21/2016. During that time applicant also reported to Dr. Anaforian. (Dr. Anaforian changed her last name to Ortiz in February 2020. However, because all of the trial exhibits and most if not all of the trial testimony refer to her as Dr. Anaforian, and in an effort to issue an opinion reflecting accuracy and clarity, she is referred to as Dr. Anaforian in this Opinion.) Pam Cantelmi was an attorney III for California Correctional Health Care Services Office of Legal Affairs.

Applicant's psychiatric claim arises out of events that generally took place between August and October 2016. In either late 2015 or early 2016, Mr. Fong (DVI's CEO) called applicant into his office and asked him to take over as chief of mental health from Dr. White. Mr. Fong explained that Dr. Force (defendant's regional administrator of mental health for Region II) and Mr. Hutchinson (defendant's regional health care executive for California correctional health care services) had directed him to get rid of three people, one of whom was Dr. White. Mr. Fong told applicant that he had been asked to start laying papers on Dr. White because she was old and frail and had fallen asleep in a meeting. Applicant was very upset after learning this. He felt Dr. White was very active, probably in better shape than most, and had done nothing wrong; he did not think it was right to push her out and he did not want to be a part of it. After that initial conversation, Mr. Fong again summoned applicant to his office in either late August or early September 2016. Mr. Fong, with even more heightened agitation, told applicant he had to take the chief of mental health position temporarily, that he (Mr. Fong) was being pressured because Dr. White needed to go, and that his (Mr. Fong's) job depended on it. Applicant got along well with Mr. Fong but felt Mr. Fong was putting him in a very tough position in that he was asking applicant to do something he was very uncomfortable with and telling him that his job depended on applicant taking the position. After reviewing Applicant's Exhibit D (emails dated May 2016 between Mr. Fong and Dr. Force), applicant explained he read the emails as Mr. Fong trying to find criteria to justify some type of action against Dr. White. When shown Applicant's Exhibit E (September 2016 email between Mr. Fong and Dr. Franceschi) applicant further explained that the statements contained therein are consistent with the second conversation he had with Mr. Fong about an expedited removal of Dr. White. After August of 2016, Dr. Franceschi told applicant that Mr. Fong had

also asked her to take the position of chief of mental health and to help with removing Dr. White from the position, but that Dr. Force told her she was not a candidate for the position. Mr. Fong then called applicant and Dr. Franceschi into his office; Mr. Fong showed them an email from Dr. Force that said "You leave me no choice, Larry." After reviewing Applicant's Exhibit F (a September 2016 email between Dr. Force and Mr. Hutchinson) he reads the email as Dr. Force and Mr. Hutchinson agreeing that applicant was the only choice until Dr. White retired. Shortly thereafter, Dr. Anaforian came to DVI and took over as chief of mental health. Things started to escalate for applicant. Initially, applicant noticed a pattern of Dr. Anaforian seeking information from select individuals, including Dr. Dhaliwal, a senior psychologist supervisor, Dr. Bun and Dr. Katz, staff psychiatrists or psychologists, causing a divided staff.

During his first meeting with Dr. Anaforian, applicant told her he was burning time on Mondays and Wednesdays and that his prior supervisors and the CEO had approved his burning his time. She said she understood and had no problem with that. Based on that conversation, Dr. Anaforian knew applicant was off on Mondays and Wednesdays. After twenty years of state employment, applicant had accumulated well over one thousand hours of vacation or leave time. Because DVI had been short on psychiatrists, applicant was accumulating even more time off from being on call. The state is supposed to pay employees out when they exceed 640 hours of annual leave and 480 hours of on-call, but applicant did not want to retire and cash in with 3,000 hours and was trying to work on a plan to help reduce or burn down his leave balance. Because of his job, his dilemma was how to burn his accrued time down. Once he was no longer chief of mental health, he had more ability to burn down his leave balance. When Dr. Chaffen from Santa Rita Jail offered him extra days to work at a psychiatrist at the Santa Rita jail, he started to burn his time off by working there. Applicant had planned, with Mr. Duncan, to burn his hours. Mr. Fong and Dr. White, his supervisors, both encouraged him to burn his vacation days. No manager or supervisor told him he could not do it. Initially, applicant took off Mondays and Wednesdays. Once he became senior supervisor in October 2013 and Dr. White became chief of mental health, applicant, who now had more flexibility, started to burn more days, adding another day, until eventually he was not at DVI on Monday, Wednesday or Thursday. At that point in time, he had been regularly taking Mondays and Wednesdays off for more than six months. As chief of mental health, Dr. White was aware applicant was burning days on Mondays and Wednesday and had approved it. When shown Applicant's Exhibit J (email dated 10/06/2016 between Dr. Anaforian

and Mr. Fong), applicant testified that it shows Dr. White had approved his taking days off at that point from October through December 2016. Defendant had allowed applicant to burn his time for several years. He was always reachable during those times. He would submit time sheets on a monthly basis and would take off a day for either vacation, annual leave, or CTO (clinical time off). Most of the time, as directed by Regina in personnel sometime in 2013, he would put down eight hours for the days that he took off. After reviewing Defendant's Exhibit 25 (09/21/2016 email to and from Dr. Anaforian), he testified Dr. Anaforian understood from this first meeting that he was burning time on Mondays and Wednesday and only at DVI on Tuesdays and Fridays and that she understood why and was okay with that. After reviewing Defendant's Exhibit 30 (10/03/2016 email to and from Dr. Anaforian) he testified that he did not work from home.

Dr. Anaforian called applicant on 10/05/2016, a Wednesday, his day off, on his personal phone. In a tone he took as quite condescending, Dr. Anaforian said "Dr. Coppola, where are you? I have you scheduled to be at work today." Applicant told her "No, I'm off. Remember it's Wednesday. I'm burning those days," to which she said "Yeah, I know. You told me that. But I don't have an approval form." Applicant told her "Well, I've done that. I have that. Check with the clerical." Then Dr. Anaforian said "Well, if I can't find it, you're going to have to complete another one and submit it to me for approval." He felt the call was insulting, humiliating, and that defendant was selectively going after him. Applicant followed up and Rene (personnel) who is in charge of outlook showing days off, told him Dr. Anaforian had his paperwork and knew he was scheduled to be off that day.

A week or two later, Dr. Anaforian mentioned to him that he working an outside job. He told her yes, that he had been doing it for years, and that he had approval to do that. When asked if he got annual approval to do that, he said no it was not required. Dr. Anaforian smiled and said, "We're checking on that". He felt it was an accusatory conversation. He already knew that Dr. Anaforian had asked personnel if he had a form on file, and knew that he did, and thought she already knew the answer when she asked him. He had learned from personnel that Dr. Anaforian had told personnel to contact headquarters to see if she could use that against him because it was not done every year. He also learned that Dr. Anaforian had asked personnel about his date of birth and date of employment and requested they pull his performance reports.

He came to work on Friday, 10/07/2016 and found the office he had occupied for the last five years no longer had his things in it, and that a clerical person had set up in his old office. Dr.

Anaforian was off on Fridays so he could not talk to her that day. He had had no knowledge that this was going to happen before he walked in that day. He had had HIPAA-protected files and personal items in his office and on 10/07/2016, some of his stuff was in the hallway and some in his new office. He was very upset and in shock. It felt surreal, and he thought about what he could do to rectify it and to get his old office back. Earlier, his initial office had been small and he had felt claustrophobic. He had documented his claustrophobia, but his supervisor never asked for a doctor's note. Mr. Duncan had allowed him to have a different office located in the dental section; he had been in that office for five years and was the only psychiatric personnel person in the dental section at that time. Others in the mental health team had actually migrated to that office location, and the dental staff had migrated out about two years later. He dealt with the stress of his things being boxed up. The following Tuesday, he approached Dr. Anaforian to see what had happened. He explained the background of why he was in that office to begin with, and, given his seniority and his position, asked why his office had been moved, and told Dr. Anaforian she would not have done this to others. Dr. Anaforian said that it was a HIPPA issue with a clerk. Applicant understands HIPPA and thought putting his files in boxes in the hallway violated HIPPA. Dr. Anaforian told him another reason his office was moved was because the Coleman report reflected staff was spread out and consolidation of offices was necessary. However, his old office was with other mental health offices, Dr. Anaforian's office, and the mental health clerical staff. His new office was not near Dr. Anaforian's office or any mental health clerical or other staff. His new office was further away from the mental health staff, down a stairway, behind locked doors, and essentially was a prison in a prison. Dr. Anaforian told him the third reason was that Mr. Fong and Nancy Guadagna had requested it. He did speak with Mr. Fong about the HIPPA violation of the clerical office and how to resolve it but Mr. Fong did not mention moving applicant's office. Applicant also talked with Ms. Guadagna about how the clerical person should not have been handling those records. Both of his conversations with Mr. Fong and Ms. Guadagna about the Hippa violation and clerical staff happened about a month before Dr. Anaforian came into the unit. After reviewing Defendant's Exhibit 4, applicant testified that he does not view it as Dr. Anaforian apologizing but rather that she got caught and was trying to cover.

On 10/20/2016, a day when applicant was not at DVI, Dr. Raniseski, a senior psychologist specialist, called and told applicant that at a meeting, Dr. Force was insisting that there had to be a write up or an adverse action against applicant for not having annual approval to do outside work.

Dr. Raniseski told him that after Dr. Force demanded that applicant be written up for secondary employment, Mr. Fong refused to do so, and that Dr. Force then told Mr. Fong to write him up for not submitting the annual form. He is familiar with defendant's process for a progressive counseling, including informal dialogue, counselling, letters of instruction, and adverse actions. Applicant identified Applicant's Exhibit A as the state's procedure for employee discipline and administering adverse actions. It is consistent with his understanding as to basis of and the steps to be followed with an adverse action. If this process is not successful, by more training or other things, an adverse action is the final process. Defendant prepared an adverse action against him after he went out on workers' compensation and family leave. He believes that delivering the adverse action to the employee is part of the process. He had had no idea it was happening behind the scenes. He does not believe defendant followed the state's required procedure. As to his working at Santa Rita jail, defendant never prepared or developed corrective measures, or a corrective counseling memo, or had any kind of corrective independent interview with him.

On 10/21/2016, he went to talk with Mr. Fong due to his unsuccessful attempts to talk with Dr. Anaforian about his office. Mr. Fong told him an attorney named Pam Cantelmi in headquarters was investigating applicant, that Dr. Force was not letting this go, and because defendant could not get him on his outside work, they were investigating him. Mr. Fong told applicant he had not done anything wrong. After hearing what Mr. Fong told him, applicant was stunned, felt dizzy and that he was being hunted, that defendant was violating him, "weaponizing" policies and procedures, and selectively treating him differently. He knew defendant was going to keep on trying to find something to use against him. Applicant's Exhibit AA is an email from Mr. Hutchinson to Mr. Fong, copied to Dr. Force and Dr. Anaforian, dated 10/03/2016; in the email, Mr. Hutchinson states that areas that need cleaning up include an 1123 for applicant for insubordination in refusing hours of work as directed. Applicant explained the term "1123" is one of the defendant's phases for preventive or corrective counseling records. Applicant never received any counseling or any memo stating that he was acting in an insubordinate manner. Applicant's Exhibit BB is a series of emails referencing applicant and between Mr. Fong, Dr. Anaforian, Dr. Force and Mr. Hutchinson dated 10/04/2016. Part of the email reflects Dr. Anaforian's concern that applicant may have secondary employment and failed to attend a 7:15 am meeting that morning even though he was scheduled for training. Another part of the email reflects Dr. Force's statement that if his secondary employment can be verified, they need to loop

in the medical ERO and his failure to report at the meeting is at the least an LOI. The last part of the email is Mr. Hutchinson stating, “lets skip to home plate, work with Freddie on a 989”. The term “989” refers to an adverse action. Mr. Hutchinson and Dr. Anaforian never came to him, nor did anyone else, advising that he needed to take corrective or preventive action after 10/04/2016. During the time he was burning days, applicant was often working at Santa Rita Jail. Before he left his employment with defendant, sometime between 10/07/2016 and 10/21/2016, Dr. Chaffin, the lead psychiatrist at Santa Rita Jail, told him that an attorney named Pam Cantelmi was calling all over the jail trying to find out information about applicant. On 10/25/2021 or 10/26/2021, he learned that defendant had contacted Santa Rita Jail and asked about his work there and for his time sheets. At that time, he was terrified and felt that was negatively affecting his other employment. Over time, he found out about other investigations of him that defendant did. One was defendant looking at his time sheets and about his using eight hours versus ten hours when he would burn a day. Defendant was looking at his clinical notes to see if there was anything amiss with them. Defendant did a time study for the date of September 30 to see if he was actually at work. Defendant set up some type of emergency peer review on his time sheets and clinical documentation. Defendant had referred him to a PPEC committee that looks at troubled doctors with respect to referral to the Medical Board. The Medical Board never contacted him and his license has never been suspended. He also learned that defendant had conducted an investigation with Mr. Duncan with respect to his working at Sierra and that defendant had contacted Wasco Prison and reviewed the peer review notes about him. He also learned that Ms. Cantelmi had reached out to Alameda County in Oakland to learn about the days he worked at Santa Rita Jail. He thinks that defendant audited his personnel file, but he is not certain. Applicant testified that Mr. Fong told him Dr. Force was investigating him, not the particular course of investigation, that Nancy asked him why he had not gotten an attorney, and that he could not handle it anymore and he handed in paperwork on 10/25/2016. He does not recall when he first learned they were investigating him, he knew before this that they were looking at his time sheets. He does remember having conversations around 10/21/2016 with Lisa Connolly, maybe by phone, telling him the attorney had decided that his time sheets were inaccurate, she was planning to go back three years to recoup it, four years if it went into criminal charges, and have his pension modified; the attorney had called up and yelled "We need to set up a no-fault accounts receivable.” After reviewing Applicant’s Exhibit II (an email dated 10/24/2016 from Ms. Cantelmi to Dr. Anaforian and copied

to Mr. Hutchinson), applicant testified that it reflects Ms. Cantelmi was trying to set up an accounts receivable to get back three years of back pay, four years if this went criminal, and to contact CALPERS about his pension. Around the time he spoke with Mr. Fong on 10/21/2016, applicant had learned from others that defendant was looking into his time at Santa Rita Jail and that defendant was asking questions about whom he worked for, his hours, and his weekly schedule, which are not things you ask on a re-credentialing application. Applicant's Exhibit T is form reflecting a request from defendant's credentials verification unit to Jennifer Chaffin MD at the Santa Rita jail dated 10/27/2016 asking for applicant's work history at Santa Rita Jail. Part of Applicant's Exhibit T is an authorization and release digitally signed by applicant on 12/08/2014. He thinks he was off work on medical leave when the 10/27/2016 request went to Santa Rita Jail. He has seen this document because Dr. Chaffin showed it to him in late October of 2016. He did not put his name or a date on it, did not type his name, and did not electronically sign it. He never digitally signed an authorization and release form during the time he worked for defendant. He believes the forms were fraudulent as falsely representing things. He understands that Dr. Chaffin and others at Santa Rita Jail refused to respond to it. After being shown Defendant's Exhibit 3, applicant explained those authorization forms are done online by him. The re-credentialing is actually done electronically through CredentialSmart and is done online every few years. His credentialing was not due until November. Sometime between 10/05 through 10/21/2016, he and Dr. Chaffen communicated about an attorney calling the Santa Rita Jail about him. Dr. Chaffen told applicant an attorney called and demanded to speak with the program head at that time, Joan Cairns, and then she forwarded the 11/02/2016 e-mail of Joan's conversation. (Applicant's Exhibit V) Applicant further explained that according to Dr. Chaffen and Ms. Cairns, the attorney called Santa Rita Jail because the Jail was not honoring the forms because the forms were not valid releases. Defendant sent two forms, one dated 2012 and one dated 2014, and both dates were a problem. He believes defendant sent the forms to Santa Rita Jail and Ms. Cairns at the jail.

Between September and October of 2016, he was a senior psychiatrist supervisor. Defendant's Exhibit 8 is a duty statement of a senior psychiatrist supervisor. His job responsibilities included being responsible for between four to six contract and employee psychiatrists. He also met face to face with those that he supervised over weekends and holidays. If he took off two days per week, he could effectively communicate with them via email or telephone so there were no gaps in coverage. He personally interacted with his staff by going

around to the different areas in which they worked. He saw inmate patients, about 135 at the time, in or on the main line, every 90 days and at team meetings. With his burning two days each week, he would schedule meetings with patients in hourly segments on other days. He has been seeing patients for years at defendant even though as a supervisor he probably should not have been seeing patients. He never fell behind.

He went out on leave due to a number of factors including defendant questioning him about outside employment, moving his office, investigating him about his time, reprimanding him for his outside job, and Dr. Anaforian trying to get him over his time because she could not get him over his outside work. After working for defendant for twenty years, his world had gone upside down in thirty days. He felt devastated, that he was being hunted, and that the situation was surreal. He experienced skyrocketing blood pressure and anxiety panic attacks. He had had a good career and never had any problems. Some of the things he has testified about happened after he stopped working for defendant but in his mind he saw it one continuing thread, a continuing escalation of defendant looking for things he did wrong that they could get him on. He believes he went to personnel to do his paperwork to leave on a Friday but does not remember if he actually worked the following Monday. He believes his last day or work was on 10/21/2016, a Friday, and that he turned in his paperwork on 10/25/2016. He filed a claim form on 10/25/2016 (Defendant's Exhibit 67). Defendant issued a notice of denial on 01/12/2017 relying on lack of medical evidence and indicated it would review the reporting of Dr. Bokarius, the medical-legal evaluator. (Joint Exhibit 108) Based on his treating doctor's reporting, applicant went off work at both locations. Defendant issued another denial on 04/20/2017 stating Dr. Bokarius did not have the complete report left the issue of good faith personnel actions to the trier of fact (Applicant's Exhibit 88) and a 01/03/2018 denial raising the good faith personnel defense. (Applicant's Exhibit 89) He received non-industrial disability that was about half of his earnings. He returned to work with Santa Rita Jail in early May. Defendant had removed his time from the books so he had to go back to work. When he returned to work at Santa Rita Jail, he started at one day a week, then two. His treating doctor, Dr. Malani, told him he should give it a try at Santa Rita Jail but it was not easy. Now, generally he feels he is being hunted because he has exposed defendant and now they are going after him. He experiences nocturnal attacks where he sometimes awakes screaming, has pervasive depression, anxiety, and has difficulty eating. With respect to how he feels about future employment, he feels compromised. After the attorney called at Santa Rita Jail, and the article

went out, inmates have approached him. He had plans to retire from defendant but sometime in the future. He does not feel that defendant acted in good faith regarding him. (Amended Minutes of Hearing (hereinafter referred to as "A.M.O.H."), dated 08/09/2018, at pages 5 – 10; Minutes of Hearing (hereinafter referred to as "M.O.H."), dated 02/13/2019 at pages 5 – 13; M.O.H. dated 06/26/2019 at pages 2 – 25; M.O.H. dated 12/18/2019 at pages 4 –11; M.O.H., dated 02/21/2020 at pages 1 – 10; M.O.H., dated 03/04/2021 at pages 8 –16)

Vladimir Bokarius, MD, PhD is the parties' panel qualified medical evaluator (hereinafter referred to as "PQME") in this matter. Dr. Bokarius evaluated applicant on 02/03/2017 and 12/26/2017, reviewed medical records and psychological testing, submitted three reports dated 03/05/2017, 05/13/2017 and 12/26/2017, and sat for deposition on 10/14/2017 and 03/19/2018. In his 03/05/2017 report, Dr. Bokarius sets forth applicant's relevant employment history and recites applicant's reported symptoms of unstable blood pressure, severe anxiety, panic symptoms, depression, sleep disturbance, a feeling of dread like something is looming, decreased sex drive and activity, decreased appetite and weight loss, fatigue, a feeling of suffocation, decreased attention and concentration, headaches, and diarrhea, and that thoughts or reminders of work and work-related events trigger anxiety and depressed mood for applicant. Dr. Bokarius's report also reflects that in the past, applicant had experienced hypertension, sleep apnea, obesity, asthma, claustrophobia, and a previous pattern of developing anxiety in response to stress at work. Dr. Bokarius further notes the history of employment events as described by applicant wherein his supervisor called him to question his day off, when he returned to work to learn his office had been given to someone else, his supervisor questioning him about his outside work, another individual accusing him of double dipping, chastising him in a meeting, and initiating an investigation of his outside work, defendant contacting his other employer about him, and that an attorney was pushing for release of his personal and employment information that was unsubstantiated. Dr. Bokarius opined applicant meets criteria for a psychiatric injury and as to causation states:

> "I find the examinee's psychiatric injury meets the 51% predominant cause threshold for occurring in the course of and being the consequence of events of employment. Although Dr. Coppola has had previous episodes of work related anxiety, it never affected his ability to function at work and the symptoms were long resolved prior to the reported industrial injury of October 21, 2016. "

After noting applicant obtained psychopharmacological and psychotherapeutic treatment, Dr. Bokarius further opined that applicant has been psychiatrically totally temporarily disabled

since the date of his injury, is not permanent and stationary, is not released to his regular occupation, and that his current GAF score is 50. (Joint Exhibit 112 at pages 1, 2, 4, 10, 12) In his supplemental report dated 05/13/2017, after reviewing medical records, Dr. Bokarious stated applicant had provided a consistent and reliable history and that there is no indication in the medical file that he had suffered any ongoing impairment, other than claustrophobia, which was accommodated by his employer with a specific office assignment and did not impair applicant's daily functioning at work. Dr. Bokarious went on to provide a causation analysis as follows:

1. "Being called on his day off by new chief of mental health with a reprimand about lack of notification that he had the day off, even though it was part of a long-standing agreement for specific days off with prior management. **10%**
2. Examinee's assigned work office, which was part of his reasonable accommodation due to claustrophia, was abruptly taken away and assigned to another employee without notice or explanation. Examinee was also accused of threatening to resign to the office re-assignment (which he denies doing). **20%**
3. Being questioned in an accusatory fashion about his outside work activity during his days off and reprimanded in front of others for "double dipping" without any proof of such. 25%
4. Launching of an investigation into his "double dipping" – 15%
5. Finding out about CDCR's attempt to obtain information with an outdated authorization form and with a false representation of the reason for request (credentialing) **25%**
6. Feeling singled out, seemingly as a result of new management creating a hostile atmosphere in the department and splitting staff members into taking sides. **5%** (Joint Exhibit 113 at pages 1 – 2)

At his deposition on 10/04/2017, Dr. Bokarius did not change any of his previous opinions. (Joint Exhibit 106, at pages 1, 30) After evaluating applicant a second time on 12/13/2017, administering further psychological testing, and reviewing an additional 1000 pages of medical records and the transcript of applicant's 08/23/2017 deposition, Dr. Bokarious submitted a 12/26/2017 report. In that report, Dr. Bokarious noted applicant states since he was seen in February 2017, his mood has significantly improved although he still suffers setbacks with anxiety about what will defendant do now; applicant also stated that defendant did an alleged audit of his time, determined it had made an error and took away over 1,000 of his hours. This led to increased stress over having no money and a worsening of his symptoms and compelled him to return to work at Santa Rita jail before he felt fully able. Applicant felt good about returning to work at

Santa Rita Jail and would like to go back to work at defendant as well if that was possible even though it feels scary. Dr. Bokarious again determined that applicant's reporting was supported by the testing data, his observations of the applicant during the evaluation, his review of the medical file, and by the results of the mental status examination. After concluding applicant meets the criteria for a psychiatric injury and providing a GAF score of 61, Dr. Bokarious opined as to applicant being totally temporarily disabled from 10/21/2016 through the date in May when he returned to work at the Santa Rita Jail when he was partially temporarily disabled. He found applicant permanent and stationary as of the date of the evaluation. He stated that his opinions as to causation as set forth in his 05/13/2017 report remain unchanged and that 85 percent of his permanent psych disability is contributed to by the effects of the 10/21/2016 injury and 10% is contributed by his non industrial preexisting anxiety disorder which required prior treatment and a reasonable accommodation at defendant with an office space not triggering claustrophobic anxiety, and 5% due to the stress of financial loss he also considers non industrial. (Joint Exhibit 114 at pages 1, 12 - 15) The parties again deposed Dr. Bokarius on 03/19/2018 at which time Dr. Bokarius did not change any of his prior opinions. (Joint Exhibit 107)

Legal Analysis

Labor Code section 3208.3 governs the compensability of claims of psychiatric injury. Under that statute, a compensable psychiatric injury occurs where (1) the alleged psychiatric injury involves actual events of employment; (2) the actual employment events were the predominant cause of the psychiatric injury; and (3) if the actual employment events were personnel actions which were a substantial cause of the injury, such personnel actions were unlawful, discriminatory or not taken in good faith. (*Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal. Comp. Cases 241, 242, (Appeals board en banc decision)) The Legislature's intent in enacting Labor Code section 3208.3 was "to establish a new and higher threshold of compensability for psychiatric injury..." (Labor Code section 3208.3(c).) "In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of that psychiatric injury." (Labor Code section 3208.3(b) (1)) "Predominant as to all causes" means that 'the work related cause has greater than a 50 percent share of the entire set of causal factors.' (*Dept. of Corrections v. Workers' Comp. Appeals Bd. II, I* (*Garcia*) (1999) 76 Ca1. App. 4th 810, 816 [64 Ca1.Comp.Cases 1356, 1360];

Watts v. Workers' Comp. Appeals Bd. (2004) 69 Ca1. Comp. Cases 684, 688, writ denied; *Rolda v. Pitney Bowes, Inc.* (2001) 66 Ca1.Comp.Cases 241, 246 (Appeals Board en banc decision)). Even if events of employment cause a majority of an employee's psychiatric injury, the injury is not compensable if it is "substantially caused by a lawful, nondiscriminatory, good faith personnel action." (Labor Code section 3208.3(h)) The burden of proof is on the party asserting the issue. Substantial cause is defined as "at least 35 to 40 percent of the causation from all sources combined." (Labor Code section 3208.3(b) (3)) Personnel actions include "transfers, demotions, layoffs, performance evaluations and disciplinary actions such as warnings..." (*Watts*, supra, 69 Cal.Comp.Cases 684, 688, citing *Larch v. Contra Costa County* (1998) 63 Cal.Comp.Cases 831, 833 (Significant Panel Decision)) "[A] personnel action encompasses `conduct attributable to management in managing its business including such things as done by one in authority to review, criticize, demote, transfer or discipline an employee in good faith." (*Larch, supra*, 63 Ca1.Comp.Cases at p. 833.) "[E]ven if they are harsh," an employer's disciplinary actions are still personnel actions 'if the actions were not so clearly out of proportion to the employee's deficiencies so that no reasonable manager could have imposed such discipline." (Ibid.) "A personnel action protects an employer from a psychological injury claim only if made and carried out with subjective good faith and the conduct is objectively reasonable." (*Watts*, supra, 69 Ca1.Comp.Cases 684, 688, citing *City of Oakland v. Workers' Comp. Appeals Bd.* (*Gullet*) (2002) 99 Cal.App.4th 261 [67 Ca1.Comp.Cases 705]).

Based on the opinions of Dr. Bokarius, which I find to be substantial medical evidence, I conclude applicant sustained a psychiatric injury predominately caused by actual events of his employment. The actual events of employment include applicant's supervisor calling him to question his day off, when he returned to work to learn his office had been given to someone else, his supervisor questioning him about his outside work in an accusatory fashion, another individual accusing him of double dipping, learning he was chastised in a meeting, defendant initiating an investigation of his outside work, defendant contacting his other employer (Santa Rita Jail) about him and asking for documentation about him, an attorney pushing for release of his personal and employment information, and applicant feeling singled out, seemingly as a result of new management creating a hostile atmosphere in the department and splitting staff members into taking sides. Based on my review of the evidence at trial and the relevant law, I find applicant

sustained psychiatric injury arising out of and in the course of his employment during the cumulative period from 10/21/2015 to 10/21/2016.

Based on my review of the evidence and the relevant law, I also conclude the actual events of employment described above constitute personnel actions. The actions were conducted and attributable to defendant's management, who had the authority to criticize, demote, transfer, lay off, perform performance evaluations, and prepare disciplinary actions of progressive counseling including warnings, letters of instruction, suspensions, and adverse actions leading to termination.

Furthermore, based on my review of the evidence and the relevant law, I also find that that applicant's psychiatric injury is not barred by good faith personal actions pursuant to Labor Code section 3208.3.

Dr. Anaforian testified on 10/19/2020 and 10/29/2020 and her testimony is summarized in the Minutes of Hearing of those dates. Dr. Anaforian worked as a psychologist for defendant in different locations for over eleven years before she took over a chief of mental health at DVI on 09/21/2016. She did not receive any supervisory training before she started on 09/21/2016. Her subordinates were applicant, Dr. White, 5 office technicians, and 2 other doctors. Mr. Fong was her direct supervisor, but she did not trust his judgment. Dr. Force was her support person. Dr. Anaforian had visited DVI in January 2016; at that time, she had concerns about completion of job duties and patient care. She ultimately left working as chief of mental health for DVI, did not keep that title, and her last day was in February 2017. She does not believe Mr. Fong was there when she left but thinks Dr. White may have still been working at DVI at that time. Dr. Anaforian wanted to follow the rules and ensure compliance with the Coleman Tour. However, when she started working at DVI, the Coleman report had not yet come out. She was acting on information Dr. Dooley gave her. She had a meet and greet with DVI staff on 09/27/2016 and her first conversation with applicant was on that date. She knew applicant had worked for defendant for quite some time. Applicant told her he had a lot of time on the books, worked at DVI on Tuesdays and Fridays, wanted to burn a lot of his time, occasionally worked from home, and would sometimes take phone calls when on vacation. She knew he worked remotely but that he did not work at home. She was confused about his schedule. Although the master calendar did not reflect no time for applicant, he told her he worked Tuesdays and Friday. She asked Dr. Force if applicant had a formal okay for his schedule or if had just been informally accepted and approved. Mr. Fong

provided her with the approved forms for secondary employment on or about 10/04/2016 but applicant's form was thirteen years old.

Dr. Anaforian met with applicant a second time on 09/30/2016 in her office. She sent a Memo of Expectations (Defendant's Exhibit 29) to applicant and other supervisors. Applicant was the only supervisor who did not sign and return it to her. Applicant told her about his concerns about the memo, specifically as to how to cover his staff if he was out. She denied yelling at him. She memorialized that conversation in a 10/03/2016 email (Defendant's Exhibit 30) she sent herself one hour after Mr. Hutchinson emailed her on 10/03/2016 requesting the preparation of an adverse action against applicant. (Applicant's Exhibit AA) Dr. Anaforian and applicant were both at DVI on 10/04/2016 and she saw him but they did not talk. She attended a meeting at 7:15 am and applicant did not; others told her he was in an onsite training. She discussed office moves with others at the meeting. She sent herself an email dated 10/04/2016 to memorialize that she first saw applicant at about 4:00 pm and that he did not talk with her about not attending the morning meeting. She was documenting applicant's failure to attend morning meetings. She admitted that she knew applicant had been in an onsite training that meeting but documented it anyway. (Defendant's Exhibit 31) She sent herself the 10/04/2016 email ten minutes after receiving an email from Dr. Force on 10/04/2016 at 5:13 pm that reflects as to applicant's failure to report today, a LOL, a written document documenting lack of attendance in a formal rather than a training moment. (Defendant's Exhibit 33) Dr. Anaforian followed up with obtaining a current approved secondary employment form for applicant from Mr. Fong. She did obtain an approved form for applicant, cannot recall when that was, but that Mr. Fong provided it to her the day after she asked for it. Then it could not be found and then it was later located. She advised Dr. Force and Mr. Hutchinson that she had received applicant's current approved secondary employment form in an email dated 10/04/2016. (Defendant's Exhibit 33)

She sent an email to applicant on 10/04/2016 at about 5:17 pm (Defendant's Exhibit 32) asking if he was going to be at work the following day and to confirm his schedule. At 7:50 am on 10/05/2021, she emailed Dr. Force stating she might be doing her first wellness check. A wellness check is when an employee does not show up and the supervisor calls the employee to make sure the employee is okay and not dead or missing. She knew applicant worked at DVI on Tuesday and Friday, had reminded herself of this in an email dated 10/03/2016, knew he was burning his time on Wednesday, 10/05/2016 when she called him, but testified that she still was not 100

percent sure he was supposed to be working that day or not. The calendar people told her applicant normally took this day off. She wanted to verify this and felt she had exhausted all of her avenues. However, she did not ask Mr. Fong, who worked onsite at DVI, if applicant was supposed to be working on 10/05/2016. Instead, she emailed Dr. Force, who did not work onsite at DVI, stating that applicant had advised her that he had Wednesdays and Thursdays off. Dr. Force advised her that applicant had disobeyed a direct order although Dr. Anaforian had not ordered applicant to be at work. Dr. Anaforian decided to do a wellness check anyway because she had no documentation that applicant had the day off and called applicant at 8:30 am on 10/05/2106. Dr. Anaforian testified she did not intend to harass applicant but wanted to check on his well-being. Dr. Anaforian told him she knew he had the day off but that there was no documentation. Applicant told her he had completed the request and did not know why she did not have it. Dr. Anaforian did not talk to applicant about his office move during that call. When shown Defendant's Exhibit 24, Dr. Anaforian identified it as a leave request form for applicant to take numerous days off that he was burning, including 10/05/2016, signed by Dr. White and dated 09/20/2016. Several days later Ms. Rodriquez found applicant's request and provided to Dr. Anaforian. The master calendar was updated as well to show his days off.

After reviewing Defendant's Exhibits 27 and 28, Dr. Anaforian testified she knew about the office technician scanning medical records as of 09/27/2016 and knew it was an ongoing issue. She did not talk about the scanning issues or HIPPA violations when she met with applicant on 09/27/2016. She emailed Dr. Force 10/18/2016, indicating she would have told applicant about his office move at the Tuesday meeting but he was not present. (Applicant's Exhibit M) However, she did not talk about it with applicant when she called him at 8:30 am on 10/05/2106. She felt there was no other place to put the technician. She did not know when the office move would take place although when shown Defendant's Exhibit 41 (email Dr. Anaforian sent applicant on 10/06/2016 at 1:28 pm) she understood applicant's office was to be moved the next day and that he would not be there. Dr. Anaforian never talked to applicant about whether he needed any accommodations or if he preferred a corner office or an office with a window. At this time, Dr. Anaforian had been working at DVI for about two or three weeks and applicant had worked at DVI for twenty years. Dr. Anaforian testified that as a supervisor, she might want to give an employee who had worked there for twenty years, some input into a new space and even with limited availability she thinks that would have been important. She did not do that. When shown

Applicant's Exhibit B, defendant's reasonable accommodation policy development/assessment tool, Dr. Anaforian testified she looked at it but is not sure where in applicant's files an accommodation form might be found. The first time she contacted applicant about moving his office was on 10/05/2016 when she sent him an email at 11:59. (Defendant's Exhibit 38) Dr. Anaforian testified that she later apologized to applicant in an email in that she had not personally talked with him about it, the move was abrupt, and she would have preferred it happen on a day when applicant was in the office. She knew applicant was upset and could definitely understand how he felt about his office being moved so abruptly and how surprised he must have been. (Defendant's Exhibit 43) Applicant did not tell her about his office accommodation because of his claustrophobia. Applicant called in sick the next day and when she was unable to reach him, she emailed Fredrica Miller and Dr. Force on 10/11/2016 with concerns about applicant just calling in to say he was off, with his secondary employment, and that she knew applicant had concerns with her management style. She also testified that she thought applicant was sick but that he had not said so and she just assumed he was sick. Dr. Anaforian does not recall whether she reached out to Mr. Fong but she did not copy Mr. Fong with her emails to Ms. Miller and Dr. Force even though he was her direct supervisor. (Defendant's Exhibits 48, 49)

She finally met with applicant on 10/18/2016. They talked about the office move, applicant's secondary employment, the fact that he had to have a new office phone number, that his old number could not be transferred, that he did not have a printer or telephone in his new office, and that he had to submit an updated secondary employment form. He said he would if others had to do it as well. She understands applicant was upset after their conversation and that he personally submitted a secondary form to Mr. Fong, which Mr. Fong approved, that same day. As his supervisor, the issue of applicant's secondary employment was resolved as of 10/18/2016. As far as she knows, Mr. Fong never rescinded his approval.

She met with Mr. Fong, Mr. Hutchinson, and Dr. Force after 10/18/2016, maybe around 10/22/2016. They discussed Dr. White and applicant's secondary employment and agreed further inquiry would be made about applicant's secondary employment. She was instructed to complete a memo outlining what policies were violated for supporting evidence for a letter or an adverse action. She prepared that memo (Defendant's Exhibit 60) dated 10/20/2016 requesting an adverse action against applicant and sent it to Mr. Fong. She is generally familiar with Cal HR Handbook (Applicant's Exhibit A) and knows that as a supervisor, she must find a violation of section 91572

before bringing an adverse action. As to when she was pursuing the adverse action, she does not now recall what violations existed. Applicant's Exhibit U is an email string between Dr. Anaforian and Dr. White dated 10/28/2016. In response to Dr. Anaforian asking her about applicant's work performance, Dr. White responded by praising applicant for covering for other doctors and stated that applicant tries to ensure that days are covered when he has time off, is thoroughly involved in patient care, accounts for his time, is available for any difficult patient even if not on call, and that he does a good job. Dr. Anaforian does not think there is anything in Dr. White's email that would provide a basis for a violation of section 91572. Dr. Anaforian did not pursue any other adverse actions. In an email to Ms. Cantelmi, Dr. Anaforian, and Mr. Hutchinson dated 10/24/2016, Dr. Force stated that the prior approval of applicant's time off needed to be rescinded. Mr. Fong was not copied on Dr. Force's email. (Defendant's Exhibit II) Dr. Anaforian identified Applicant's Exhibit Q as a memo dated 10/24/2016 to applicant, that she authored but never sent, that retroactively rescinded Dr. White's previously approved requests for applicant's time off.

At the time applicant went off on medical leave, there was no longer an issue as to whether he had approval for secondary employment. However, Dr. Anaforian and others continued to investigate him and to prepare an adverse action. After reviewing Defendant's Exhibit XX, an email dated 11/17/2016 between Michael Golding, Ms. Cantelmi, and Dr. Anaforian, she testified applicant would have been out on medical leave for about three weeks and she and others at defendant were still investigating whether applicant engaged in any mismanagement, misconduct, or mismanagement of patients. She further testified that she had and has no knowledge of any incidents of applicant's mismanagement, misconduct, or mismanagement of patients or medication, but there was an issue with legacy charting. After again reviewing the Cal HR Handbook, Dr. Anaforian testified that the provisions addressing adverse action requires conditions, that a thorough investigation is required, rules have to be equitably enforced, and that the employee has to have a clear knowledge of the rules they are charged with violating. Dr. Anaforian testified that Ms. Miller, in an email dated 10/05/2016, had advised her to proceed with an adverse action against applicant based on applicant having secondary employment without prior approval. (Applicant's Exhibit S) In an email dated 10/20/2016, Ms. Miller had asked Dr. Anaforian to review the memo for an adverse action against applicant, to include the memos regarding secondary employment that went to all employees, the latest dated 2016, and if she can

find a copy of the 2003 and 2004 memos, that would be great because it will show applicant was made aware of his requirement to get approval before working secondary employment. (Applicant's Exhibit O) Defendant's Exhibit 60 is the adverse action dated 10/26/2016. Mr. Fong decided that applicant would not be reviewing the memo and management had ultimately decided not to pursue it because applicant went out on leave. However, it is possible to pursue adverse action while someone is on leave. (M.O.H., dated 10/19/2020 at pages 2 – 15; M.O.H. dated 10/29/2020 at pages 2 – 15)

Mr. Hutchinson testified on 10/29/2020 and 01/28/2021 and his testimony is summarized in detail in Minutes of Hearing from those dates. Mr. Hutchinson recognized Defendant's Exhibit F as an email dated 09/02 – 09/05/2016 he sent Mr. Fong reflecting his concerns about defendant being low on his scoreboard and due to the Coleman Tour referencing serious concerns about the mental health program at DVI and its leadership, specifically Dr. White. He also had issues with Mr. Fong's relaxed approach to supervision and not enforcing secondary employment and scheduling issues. He, Dr. Force, and Mr. Fong considered applicant as a replacement for Dr. White and knew he was not interested. Ultimately, they brought in Dr. Anaforian as temporary chief of mental health. Dr. Anaforian reported to Mr. Fong and Mr. Hutchinson was to be copied on emails as a courtesy. They were concerned about employees who had secondary employment getting approval and wanted to make sure the employment was not incompatible and that there was no conflict of interest. According to Mr. Hutchinson, it is acceptable under defendant's policy for an employee to have secondary employment. If an employee takes an authorized day off, there is no restriction as to what that employee does on that day off unless the employee works somewhere else on an authorized day off. When an employee has secondary employment, the employee is required to obtain approval of that secondary employment. The employee needs to complete a form and submit it to the CEO for approval. After approving the form and request for secondary employment, the CEO is required to forward it to him and he would review it and pass it up the ladder. Applicant's Exhibit AA is an email from him to Mr. Fong dated 10/03/2016; the basis of the claim of applicant's insubordination was Dr. Anaforian asking applicant for his work schedule and hours of secondary employment. Mr. Hutchinson was aware of applicant's secondary employment as of 10/03/2016 and he believes Mr. Fong became aware of applicant's secondary employment if he did not already know. Applicant's Exhibit EE is an email from Dr. Force to him dated 10/18/2016 that confirmed applicant had secondary employment. Dr. Force

refers to Dr. Anaforian who had discovered applicant had had secondary employment since 2013, and had not updated his form, and asked whether there should be an adverse action against applicant. Mr. Hutchinson acknowledged that applicant was to provide his secondary form to Mr. Fong who was applicant's CEO; he also acknowledged that Mr. Fong was not copied on this email and that no one suggested any contact with Mr. Fong for further information. Applicant's Exhibit BB is an 10/04/2016 email he sent to Dr. Force and Dr. Anaforian, with applicant in the subject line, reflecting he stated "Let's skip to home plate, work with Freddie on a 989". Mr. Hutchinson wanted to investigate applicant's employment records, his secondary employment, as well as schedules of different employees at DVI that the prior chief of mental health had allowed to continue. A 989 is a request for information that goes to the prison unit, then later to the office of internal affairs for review and action. In the normal course of events, an immediate supervisor follows a progressive counseling procedure to effect corrective conduct; an adverse action would be towards the end of that process and could result in suspension or termination. After he received the 10/18/2016 email from Dr. Anaforian, and applicant's secondary employment form, he felt management had been lax, was concerned about what had happened with applicant, and wanted to look at the schedule and entire mental health status at DVI; he flew in his own plane to meet with Dr. Force, Dr. Anaforian, and Mr. Fong in Mr. Fong's office. They discussed a number of things, including applicant's secondary employment. Mr. Fong advised them he had been aware of applicant's secondary employment, had signed applicant's secondary employment form, had approved applicant's secondary employment, and that applicant had overtime. At that meeting, Mr. Fong also provided Mr. Hutchinson with applicant's updated form for secondary employment. However, Mr. Hutchinson decided further diligence was needed and that he intended to contact

Pam Cantelmi at headquarters to investigate, follow up, research and review applicant's secondary employment and scheduling and provide a recommendation. Ms. Cantelmi is an attorney and legal reviewer and the go-to expert on issues of scheduling and secondary employment. During his meeting with Dr. Force, Dr. Anaforian, and Mr. Fong, he did not reprimand Mr. Fong for not requiring or providing secondary employment forms on an annual basis. Applicant's Exhibit MM is a 10/25/2016 email between Mr. Hutchinson, Dr. Force, Dr. Anaforian and Ms. Cantelmi with applicant's 998 as the subject line; in that email Mr. Hutchinson makes a reference to Hawaii 50 of "book'em Dano!" that he testified was not his insinuating that applicant's arrest was imminent. Mr. Hutchinson also testified that applicant went out on leave on

10/25/2016 and that Mr. Fong had a stroke at work on 11/01/2016, claimed it was industrial, and ultimately retired. Mr. Hutchinson admitted that applicant going out on leave, Dr. White no longer being in her position, and Mr. Fong having a stroke all had a negative effect on defendant operationally. Mr. Hutchinson, who had been regional CEO since April 2016, had been formally trained not to be involved in day-to-day situations in the prison and normally he would not be involved in DVI's day-to-day problems. However, when there were unaddressed issues, he would get involved; he involved himself with requesting Ms. Cantelmi do research on applicant, Mr. Fong, Dr. White and Mr. Duncan. (M.O.H., dated 10/29/2020 at pages 15 – 18; M.O.H. dated 01/28/2021 at pages 2 – 15)

Pam Cantelmi testified at trial on 02/22/2021 and her testimony is summarized in Minutes of Hearing dated 02/22/2021. Ms. Cantelmi worked as an attorney for defendant and her main assignments included writing regulations and policies and participating in health care peer reviews. She never worked as an investigator for defendant or for internal affairs. She did not participate in a peer review of applicant. Mr. Hutchinson contacted her by phone on 10/21/2016 and asked her to gather research into applicant, including his second job that would potentially be provided to internal affairs. He did not ask her to research anyone else at that time. She did not do an investigation in that she thinks an investigation would have been far more in depth and detailed and there would have been questions posed to other people. However, she thinks research and investigate may be used interchangeably. She also testified that she did not have authority to conduct an investigation against an employee for an adverse action and if she did so, that would be against defendant's policy. She contacted Human Resources, Dr. Force, Dr. Anaforian, and Mr. Fong and obtained documentation including applicant's current and past credentialing forms (Defendant's Exhibits 3, 16). Mr. Fong provided her with applicant's approved forms for secondary employment for 2013 and 2016. The warden had approved the 2013 form on 07/16/2013 and Mr. Fong approved the 2016 form, signed by applicant, on 10/18/2016. She asked defendant's credentialing department to send an inquiry letter to Santa Rita Jail to fill in the gaps. (Defendant's Exhibit T) Ms. Cantelmi then contacted Santa Rita Jail after the inquiry letter had been sent so she could fill in the gap, which she saw as the credentialing application not including applicant's secondary employment. She believes this is required because it allows the hiring entity to understand applicant's employment and to make sure he is safe to provide care for patients. Applicant was up for certification in November 2016 and she felt that she had a duty under case

law to remedy the gap ahead of time immediately. However, she was unable to identify any case law that required her to do so. After reviewing Defendant's Exhibit 3 (applicant's current and past credentialing forms), Ms. Cantelmi acknowledged that the forms do not have a place to list prior employment but do ask for prior affiliations, which she thinks mean affiliations with other hospitals. She also thinks it is important for the hiring employer to know what affiliations a particular employee might have in order to determine whether any conflicts of interest exist. However, the inquiry letter she had sent to Santa Rita Jail did not ask about applicant's patients, only about his shift and hours worked. She identified Applicant's Exhibit JJJ as her email reflecting her conclusions as of 11/09/2016. Ms. Cantelmi concluded that applicant's supervisors were all aware of his schedule and that he was burning time then qualified her testimony in that she knew Mr. Duncan and Mr. Fong knew applicant was working elsewhere but not that he was burning time. However, she never contacted Mr. Duncan or Mr. Fong during her research. Ms. Cantelmi concluded that Mr. Fong was not adequately supervising and did not forward secondary employment forms to HR. (M.O.H., dated 02/22/2021 at pages 2 – 10) Applicant's Exhibit JJJ is Ms. Cantelmi's email dated 11/09/2016 to Mr. Hutchinson, Dr. Anaforian, Dr. Force, and Ms. Guadagna that reflects Ms. Cantelmi's legal opinions as follows:

"Sadly, reality hits this afternoon on the Coppola case… Personnel provided me with a memo from CalHR regarding pay calculations for WWG SE employees who are supervisors and are excluded from bargaining units, such as Coppola. CDCR and CCHC operate from this CalHR memo.

Many of our VVWG SE employees are FLSA exempt, but are not excluded as they are still represented by a Union. For instance, our P&Ss and attorneys are WWG SE, FLSA exempt but are not excluded as they are represented by BU 16 (P&S) and BU 2 (attorneys). For them, they are salaried and have "core" work bases of an average of 40 hours a week, but can work part days if their word is done – and still collect a full day's pay. If they have an alternative work schedule, say a 4/10, they have to identify the AWS on their timesheet as a RDO and all leave and vacation claims are calculated on their daily basis, or, in the case of a 4/10 time base, a 10 hour day.

This is NOT the case for WWG SE employees who are supervisors that are excluded from/not covered by bargaining units, such as Coppola (and Chief P&S or CMEs). Even though the supervisor's duty statement requires them to work an average of 40 hours per week, they are allowed to have an informal, flexible work schedule if approved by a supervisor. WWG SE

supervisors DO NOT indicate any time off pursuant to their flexible work schedule on their timesheet. And, unless the flexible work schedule is specifically designated as a less than 100% time base, it is assumed they still work 100% and any leave taken or holiday time is calculated ona 100% time base – a 5/8 schedule, or 8 hour increments.

For Coppola – Several supervisors over the course of several years (since 2003) granted him a flexible work schedule of every Thursday off, allowing him to work at Santa Rita jail. It was never officially memorialized anywhere as to whether it was considered a 4/10 schedule or a 80% time base. However, we have emails from HPS I and Dr. White stating that their interpretation of Coppola's flexible schedule was that he worked 4/10. Going with the presumption that he worked a 100% time base of approximately 10 hour days, under the rules set forth by HR, Coppola was not required to indicate his Thursday absences on his timesheets (he didn't even indicate he was absent from DVI on Thursdays) AND it was appropriate for his leave claims to be 8 hours rather than 10 hours. (all of his leave claims are 8 hours). I can't find any legal authority that speaks to this exact situation, but our HR memo detailed it to the letter. This said, we are not able to recoup any of Coppola's apparent overpayment of approximately $200K over the least 36 months.

This may also be the reason that DVI supervisory staff did not disclose Coppola's flexible (alternate work schedule in either the 2014 DVI audit of MH leave balances or the 2015 statewide audit of secondary employment and alternative work schedules conducted by HQ HR.

The fact that Coppola never put in 40 hours a week and that his absence from the workplace prevented him from providing appropriate supervision to his staff is a separate issue that should have been dealt with by White, Fong and/or Duncan. However, they didn't do anything about it and let it continue unchecked. Moreover, aside from comments by the Coleman court regarding the deficient/lack of supervision for mental health staff, so long as the numbers are good, the Coleman court doesn't seem to care. I will be talking with Alameda County tomorrow to see if there are other issues with the Coppola situation and will let you know what I find. That conversation may put a new angle on this situation.

As you know, I was in the process of compiling a huge package of information for you on this matter, but sadly, I don't think it is necessary given the HR rules regarding WWG SE pay. Based on what we currently have:

* I don't see that you have grounds to recoup any money from Coppola.

> * The only grounds for discipline against Coppola are on his failure to disclose his secondary employment on an annual basis. However, this would be a weak case since his supervisors knew of the secondary employment and they didn't have him submit any updated disclosures until 10/18/2016. Moreover, CDCR rules go by Title 15, which only requires disclosure of the outside employment but, unlike CCHCS, it does not require the disclosures to be updated annually.
>
> *Coppola didn't disclose his Alameda County job on his credential applications. He is up for re-credentialing in December. If he doesn't disclose it on this next application, the Credentialing Unit will ask him about it and give him a chance to correct the application by disclosing it. If he does disclose, his credentials will be granted and the matter will go away. If he [doesn't] disclose, they will give him a second chance to do so. If he still refuses this, they may hold up granting his credentials. All you really have is grounds to write up Fong, Duncan and White for allowing this to happen.

This may change, and there may be something against Coppola based on information I get from Alameda County. But thus far, I think he has done everything within acceptable and allowable limits. I know this flies in the face of logic, but based on our practices and the agency's application/interpretation of FLSA laws, his manipulation of the system is allowable.

I will have my conversation with Alameda County tomorrow. If something comes of that, I will let you know and we can go from there. Otherwise, I don't know that there is any real reason to go any further. Please let me know what you think. (Applicant's Exhibit JJJ)

At trial, Mr. Hutchinson further testified he received Applicant's Exhibit JJJ, the 11/09/2016 email from Ms. Cantelmi in which she opined that applicant had done nothing wrong and did not violate defendant's FLSA procedures or defendant's policies and practices. He does not know whether that should have been the end of the investigation of applicant but there should not have been any further investigation as to applicant's secondary employment. He understands a later determination of the same was made. However, after reviewing Applicant's Exhibit W, identified as an email dated 11/16/2016 he sent to Ms. Cantelmi, Dr. Force, and a Ms. Stallcop, he agreed to further investigation into applicant and acknowledged that Ms. Stallcop would draft a 989. He is aware that Ms. Cantelmi continued her research, inquiry and review of applicant's time banks, time used, going to the Jail, and time accrued. He agrees that Ms. Cantelmi's actions are consistent with research and investigate. He ultimately learned that senior management felt an adjustment needed to be made as to applicant's leave bank but that no disciplinarian action would be taken against applicant. (M.O.H. dated 01/28/2021 at pages 2 – 15) Ms. Cantelmi further

testified at trial that she continued her research into applicant after she emailed her conclusions reflected in Defendant's Exhibit JJJ and even after applicant's last day of work on or about 10/24/2016. (M.O.H., dated 02/22/2021 at pages 2 – 10)

Dr. Force testified at trial on 02/22/2021 and 03/04/2021 and her testimony is summarized in detail in Minutes of Hearing of those dates. Dr. Force's responsibilities include general oversight of the facilities, meeting court requirements, and providing medical care. Back in 2016, she asked Mr. Fong if applicant was interested in taking over as chief of mental health at DVI and learned he was not. She then picked Dr. Anaforian, who she knew and who did not have any supervisorial experience at the time, to be chief of mental health at DVI, temporarily and, although Mr. Fong was Dr. Anaforian's direct report, supervised her. Dr. Anaforian told her she had concerns about applicant because as a supervisor he was not at the prison full time. Dr. Force understood that applicant was taking days off with his supervisor's approval. Dr. Force told Dr. Anaforian to do a welfare or wellness check on applicant and testified that there was nothing on the community calendar and it was defendant's obligation to do so and make sure employees are safe. She was concerned about applicant's patients. Defendant's Exhibit 39 is an email dated 10/05/2016 and 10/06/2016 between Dr. Force and Dr. Anaforian, about two weeks after Dr. Anaforian took over as chief of mental health. Dr. Force testified that that email reflects Dr. Anaforian was aware that applicant took off Wednesday and Thursday and that Dr. Force thought applicant had abandoned his patients, although she did not know how many patients he had or whom he had abandoned, and that she advised Dr. Anaforian to pursue an adverse action against applicant. Applicant's Exhibit EE is an email dated 10/18/2016 between Dr. Anaforian and Dr. Force, less than one month after Dr. Anaforian had taken her new position. Dr. Force testified that a letter of instruction is a formal memo issued to an employee in progressive counseling to help resolve a problem. She further testified that Applicant's Exhibit EE reflects she advised Dr. Anaforian against issuing a letter of instruction to applicant and to pursue an adverse action against applicant. Dr. Force did not have authority to pursue an adverse action against applicant, but Dr. Anaforian and Mr. Fong did. Mr. Fong was not included in either of these two emails. She identified Applicant's Exhibit HH as an email dated 10/24/2016 between Dr. Force and Dr. Anaforian that reflects she believes applicant was double dipping and that he "is going to be one shocked boy when this hits the fan". Double dipping is when an employee works at two places and does not tell defendant. She does not know if what he did was illegal but he did not have the

proper form submitted. However, she admitted that Mr. Fong had told her, Ms. Cantelmi, and Mr. Hutchnson that he, Mr. Fong had been aware for many years that applicant had secondary employment and that Mr. Duncan (former CEO) had also been aware of applicant's secondary employment. She agrees that there are emails reflecting Mr. Fong's awareness of applicant having secondary employment and of Mr. Fong's not requiring an annual form. When shown Applicant's Exhibit JJJ (Ms. Cantelmi's 11/09/2016 email), Dr. Force testified she does not remember it but that she believes Ms. Cantelmi was the final legal authority. She believes Mr. Fong and Mr. Duncan's conduct was not consistent with defendant's policy and led to lack of leadership at DVI and that defendant should have written up Mr. Fong and Mr. Duncan. Dr. Force does not see any emails in which anyone recommended an adverse action against Mr. Fong. She knows that applicant's matter was referred to the office of internal affairs and ultimately that office determined that applicant had done nothing wrong. She thought moving the office technician into applicant's office was a good plan. However, she agreed that a supervisor should talk with the person whose office was to be moved and it would have been a courtesy for Dr. Anaforian to tell applicant. (M.O.H., dated 02/22/2021 at pages 11 – 14; M.O.H. dated 03/04/2021 at pages 2 – 7)

Ricki Dooley, PhD testified on 02/13/2019 and 02/21/2020 and her testimony is summarized in detail in the Minutes of Hearing of those dates. Dr. Dooley is a senior psychologist specialist for defendant and participated in the Coleman Tour in August and September 2016. (M.O.H., dated 02/13/2019 at pages 5 – 19; M.O.H., dated 02/21/2020 at pages 10 – 15) I have reviewed the remaining exhibits received into evidence.

After considering the testimony and the documentary evidence at trial, and the relevant law, I am persuaded that the personnel actions defendant took with respect to applicant were unlawful, discriminatory and not taken in good faith.

When Dr. Anaforian called applicant on 10/05/2016, Wednesday, she was aware that he was burning time on Wednesdays and that he was working at Santa Rita Jail. Applicant testified he had told her during his first meeting with her and that she was okay with it. He further testified that when Dr. Anaforian called him on 10/05/2016, the conversation was accusatory and her tone was condescending. Dr. Anaforian acknowledged that she knew he burned Wednesdays. Dr. Anaforian testified that applicant told her at their first meeting on 09/27/2016, that Mr. Fong had provided her with applicant's current approved form on 10/04/2016, and that the calendar people had confirmed applicant took off Wednesdays. A number of emails establish she knew applicant

was burning Wednesdays and working at the Santa Rita Jail on Wednesdays. Rather than contact Mr. Fong, who worked at DVI and who could have confirmed applicant burned time on Wednesdays and worked at Santa Rita Jail, she contacted Dr. Force, who also knew applicant burned Wednesdays, and who essentially told her that because there was nothing on the calendar it was defendant's obligation to make sure he was safe. Although Dr. Anaforian described the business reason for a well check, she admitted that she called him because she had no documentation. That existing documentation was located several days later and the master calendar was updated. Dr. Anaforian's call to applicant on 10/0/2016 was not a wellness check to make sure applicant was okay, not dead or missing. She was not truly concerned with applicant's well-being and made the call because she had no documentation even though she knew he burned time on Wednesdays, she had applicant's approved form, and calendar had confirmed it was his day off.

Dr. Anaforian's relocating applicant's office on 10/07/2016 was also unlawful, discriminatory and not taken in good faith. Dr. Coppola had HIPPA protected files in his office and some of his office stuff had been left in the hallway outside his office. Although she was aware there were scanning issues of 09/27/2016, she was not aware of the locations of these scanning issues. (Defendant's Exhibits 26, 27, 28 and 42) Dr. Anaforian did not tell applicant about the move, or even ask him for feedback, even though she met with him on 09/27/2016 and called him on 10/05/2016. Applicant testified that his office was actually moved further away from Dr. Anaforian's office or any mental health clerical or other staff, down a stairway, behind locked doors, and essentially was a prison in a prison. Dr. Anaforian testified that in hindsight, she apologized in an email for not personally talking with him about the office move, that the move was abrupt, that she would have preferred it happen on a day when he was in the office, and that she knew he was upset and could definitely understand how surprised he was and how he felt about the abrupt move. Dr. Force testified that a supervisor should talk with the person whose office was going to be moved and that Dr. Anaforian should have extended that courtesy.

Defendant questioning applicant in an accusatory fashion about his secondary employment and launching an investigation and accusing and reprimanding applicant for double dipping without any evidence or proof of such was also unlawful, discriminatory and not taken in good faith. Defendant's formal rules and procedures allow an employee to burn vacation time and to have secondary employment. Mr. Hutchinson testified that the employee needs to complete a form

and submit it to the CEO for approval who after approving the form and request for secondary employment, is required to pass it to him (Mr. Hutchinson) so he could review it and pass it up the ladder. Applicant initially obtained approval from his supervisor for his secondary employment with Santa Rita Jail on 07/16/2003. He obtained approval from Mr. Fong for his secondary employment with Santa Rita Jail on 10/18/2016, one day after Dr. Anaforian requested a current approval. (Defendant's Exhibit 62) Applicant testified Mr. Fong and Dr. White were aware applicant continued to burn his days with employment at Santa Rita Jail and Dr. White had approved his time off on 09/20/2016. (Defendant's Exhibit 24) Nevertheless, Dr. Anaforian had an accusatory conversation with applicant about his secondary employment on 10/05/2016 and again a week or two later. Mr. Hutchinson was aware that applicant had secondary employment as of 10/03/2016 and that Mr. Fong knew about applicant working at Santa Rita Jail. (Applicant's Exhibit AA; Applicant's Exhibit EE) Rather than following up with Mr. Fong as to why he had not required annual approval, Mr. Hutchinson emailed Dr. Anaforian and Dr. Force on 10/04/2016 (and not Mr. Fong) stating they skip to home plate and do a 989 and request information that is later sent to the office of internal affairs for action. Dr. Anaforian testified that she met with applicant on 10/18/2016 and that he personally submitted a secondary form for approval to Mr. Fong and obtained approval on that same day. As his supervisor, the issue of applicant obtaining annual approval was resolved for her as of 10/18/2016. As far as she knows, Mr. Fong never rescinded his approval of applicant's secondary employment at Santa Rita Jail. Dr. Anaforian, Dr. Force, Mr. Hutchinson and Mr. Fong all met in person after 10/18/2016. Mr. Fong advised he had been aware of applicant's secondary employment, had approved it, and provided them with an approved current annual form. Despite this, Mr. Hutchinson decided that further investigation of applicant was necessary and asked Ms. Cantelmi to review applicant's secondary employment and scheduling and provide recommendations. Mr. Hutchinson did not ask Ms. Cantelmi to research any other employees at this time. Dr. Anaforian was asked to prepare a memo to support an adverse action against applicant. Dr. Anaforian testified that she had obtained a positive review of applicant from Dr. White that would not provide a basis for an adverse action and that, as of the time she was pursuing the adverse action, does not now recall what violations existed. On 10/11/2016, Dr. Anaforian asked HR for advice and then emailed herself reflecting she had been advised to not schedule a formal meeting with applicant but have an impromptu meeting with him as to a his lack of follow through on tasks, verbally counsel him, then provide a 1123 if he does

not improve. (Defendant's Exhibits 48 and 49) On 10/24/2016, Dr. Force emailed Dr. Anaforian, Mr. Hutchinson, and Ms. Cantelmi and requested that Dr. White's prior approval of applicant's time off be rescinded. She did not copy that email to Mr. Fong. (Defendant's Exhibit II) Mr. Hutchinson did not reprimand Mr. Fong for not requiring or providing annual approval of secondary employment and did not request an adverse action be prepared as to Mr. Fong. Applicant further testified that another psychologist from DVI called him on 10/20/2016 and told him that at a meeting with others, Dr. Force was insisting that there had to be a write up or adverse action against applicant for not having annual approval for his secondary employment. This was after Mr. Fong had approved applicant's secondary employment on 10/18/2016 and Dr. Force's trial testimony confirmed that she, Dr. Force, had advised Dr. Anaforian to forego a letter of instruction and pursue an adverse action against applicant on 10/18/2016. (Applicant's Exhibit EE) Applicant further testified that on 10/21/2016, Mr. Fong told him Ms. Cantelmi, an attorney in headquarters was investigating him, that Dr. Force was not letting this go, and because defendant could not get him on outside work, they were investigating him. At trial, Dr. Force described double dipping as when an employee works at two places and does not tell defendant and identified an email dated 10/24/2016 between Dr. Anaforian and herself that reflects she believed applicant was double dipping and that applicant "is going to be one shocked boy when this hits the fan". (Defendant's Exhibit HH) At the time she wrote that email, Dr. Force had knowledge that applicant had obtained the initial approval of his secondary employment on 07/16/2003, annual approval from Mr. Fong on 10/18/2016, approval of his time off from Dr. White on 09/20/2016, and that Mr. Fong had told her, Mr. Hutchinson and Ms. Cantelmi that he and Mr. Duncan (former CEO) had been aware for many years that applicant had secondary employment with Santa Rita Jail. On 10/25/2016, Mr. Hutchinson emailed with Dr. Anaforian, Dr. Force and Ms. Cantelmi in which applicant's 998 was the caption and that reflected his reference to Hawaii 50 of "book'em Dano" although he denied he was insinuating applicant's arrest was imminent. (Applicant's Exhibit MM) Applicant testified that sometime between 10/07/2016 and when he went off on medical leave, Dr. Chaffen told him that an attorney named Pam Cantelmi was calling all over the jail trying to find out information about him, about his work and schedule at the Jail and his time sheets. Ms. Cantelmi testified that pursuant to Mr. Hutchinson's request, she essentially investigated applicant, obtaining information from HR, Dr. Anaforian, and Dr. Force and attempted to obtain information from Santa Rita Jail, with knowledge that that her investigation would be provided to internal

affairs. It appears that she never contacted Mr. Fong or Mr. Duncan. She acknowledged she did not have authority to investigate applicant for an adverse action and that it would be against defendant's policy for her to conduct such an investigation. Applicant also learned from talking with Ms. Connolly that Ms. Cantelmi had decided his time sheets were inaccurate, she was going to go back three or four years to recoup monies, set up a no-fault accounts receivable, and contact CALPERS about his pension. Ms. Cantelmi sent a request for re-credentialing information to Santa Rita Jail; however, applicant denies ever signing or authorizing defendant to do that and claims the forms defendant sent were [fraudulent]. Applicant and Ms. Cantelmi both testified that applicant was not up for recredentialling until November of that year. Ms. Cantelmi testified that she felt case law required her to request the credentialing information early but could not provide any authority for that statement. The request to Santa Rita Jail did not request any information relevant to whether applicant's work there was incompatible or a conflict of interest with his work at DVI. Santa Rita Jail actually refused to honor the request. On 10/24/2016, defendant retroactively rescinded all of his previously days off. (Applicant's Exhibit GG) Defendant continued its investigation of applicant. Ms. Cantelmi continued her investigation, including an email dated 10/28/2016 soliciting information from other employees in an attempt to defend against applicant's worker's compensation claim, and an 12/15/2016 email asking for any disciplinary records of applicant. (Applicant's Exhibits P, X, FF, KK, NN, PP, RR, SS, and DD) Ms. Cantelmi ultimately determined that applicant's supervisors were aware of his schedule, that he was burning time, and working elsewhere. As set forth in some detail in her 11/09/2016 email to Mr. Hutchinson, Dr. Force, Dr. Anaforian, and Ms. Guadagna (Applicant's Exhibit JJJ), Ms. Cantelmi provided her legal opinion that applicant was not required to obtain annual approval of his secondary employment, was not yet up for re-credentialing, had done everything within acceptable and allowable limits, and had done nothing wrong.

Furthermore, Mr. Hutchinson's request that Ms. Cantelmi research and investigate applicant and Ms. Cantelmi's research and investigation of applicant, were in violation with defendant's HR policies and procedures. Per defendant's operational manual, if defendant believed applicant was engaging in fraud, it was required to refer him for investigation through defendant's internal affair unit or to an investigator approved by defendant's internal affairs. Mr. Hutchinson and Ms. Cantelmi both testified he requested her to review applicant and that review and investigation are interchangeable terms; they both also testified Ms. Cantelmi was not an

investigator approved by internal affairs and did not work in the internal affairs unit. Defendant's questioning applicant in an accusatory fashion about his secondary employment, launching an investigation and accusing and reprimanding applicant for double dipping without any evidence or proof of such was unlawful, discriminatory and not taken in good faith.

Defendant actions singling applicant out, seemingly as a result of new management creating a hostile atmosphere in the department and splitting staff members into taking sides was also was unlawful, discriminatory and not taken in good faith. Applicant testified that Dr. Anaforian appeared to seek information about him only from certain individuals and that her behavior further divided the staff. Dr. White confirmed this in an email to Dr. Anaforian. (Applicant's Exhibit U)

There is no dispute that defendant initially considered applicant as a replacement of Dr. White for chief of mental health at DVI, offered him that position, and that he turned it down. Mr. Hutchinson testified that he had concerns about defendant being low on the scoreboard and that due to the Coleman report he had serious concerns with Dr. White's leadership at DVI's mental health program; he also had issues with Mr. Fong's supervision, not enforcing annual approval of secondary employment, and scheduling issues. According to Dr. Anaforian, the Coleman report was not even out when she took over a chief of mental health at DVI. At trial, defendant called witnesses to testify about the Coleman Tour and Report and offered Exhibits relevant to the Coleman Tour. However, nothing in that testimony or in the exhibits provided any basis for defendant to proceed with any investigation or disciplinary action against applicant. In fact, Ms. Cantelmi's email dated 11/09/2016 reflects her conclusion that "[m]oreover, aside from comments by the Coleman court regarding the deficient/lack of supervision for mental health staff, so long as the numbers are good, the Coleman court doesn't seem to care." I am also not persuaded that applicant's failure to have annual approval of his secondary employment provided any basis for disciplinary action against applicant who had obtained initial approval and annual approval when requested to do so. Again, in her 11/09/2016 email, Ms. Cantelmi ultimately opined that he was not required to have annual approval. (Applicant's Exhibit JJJ) Dr. Force testified Mr. Fong and Mr. Duncan's conduct was not consistent with defendant's policy and led to a lack of leadership at DVI and that although defendant should have written them up, she does not see any emails reflecting anyone recommended an adverse action against Mr. Fong. On 11/09/2016, Mr. Hutchinson emailed HR his directive to proceed against Dr. White, Mr. Fong, and Mr. Duncan but

HR responded stating that they did not think there was enough to proceed against those three individuals. (Applicant's Exhibits UU and WW) On 12/06/2016, an email went out to Dr. White and others requesting that they make sure their staff statements re secondary employment are current. (Defendant's Exhibit 76) While Mr. Hutchinson testified he had concerns about employees with secondary employment and wanted to make sure that employment was not incompatible or a conflict of interest, there was no evidence at trial that applicant's secondary employment with Santa Rita Jail was incompatible or a conflict of interest with his work at DVI or that defendant ever had any basis to make that conclusion. An email dated 11/23/2016 between Ms. Cantelmi and Dr. Force reflect that peer reviews of applicant showed applicant did nothing wrong. (Applicant's Exhibit DDD)

Mr. Hutchinson testified that applicant going out on medical leave, Dr. White's demotion on 09/20/2016 (Defendant's Exhibit 23), and Mr. Fong having a stroke and retiring all had a negative effect on defendant operationally.

Accordingly, based on my review of the evidence, the relevant law, and the above analysis, I find applicant's psychiatric injury is not barred by good faith personal action defense pursuant to Labor Code section 3208.3 (h)." (Opinion on Decision served on 08/18/2021)

Insofar as defendant contends that its personnel actions were pursued in a lawful, non-discriminatory and good faith manner, that contention is without merit.

When Dr. Anaforian called applicant on 10/05/2016, Wednesday, she was aware that he was burning time on Wednesdays and that he was working at Santa Rita Jail because applicant had told her during their first meeting with her. Dr. Anaforian testified that applicant told her at their first meeting on 09/27/2016, that Mr. Fong had provided her with applicant's current approved form on 10/04/2016, and that the calendar people had confirmed applicant took off Wednesdays. A number of emails establish she knew applicant was burning Wednesdays and working at the Santa Rita Jail on Wednesdays. Rather than contact Mr. Fong, who worked at DVI and who could have confirmed applicant burned time on Wednesdays and worked at Santa Rita Jail, she contacted Dr. Force, who also knew applicant burned Wednesdays, and who essentially told her that because there was nothing on the calendar it was defendant's obligation to make sure he was safe. Although Dr. Anaforian described the business reason for a well check, she admitted that she called him because she had no documentation. The conversation was accusatory and her tone was condescending. That existing documentation was located several days later and the master

calendar was updated. Dr. Anaforian's call to applicant on 10/0/2016 was not a wellness check to make sure applicant was okay, not dead or missing. She was not truly concerned with applicant's well-being and made the call because she had no documentation even though she knew he burned time on Wednesdays, she had applicant's approved form, and calendar had confirmed it was his day off. Dr. Anaforian's relocating applicant's office on 10/07/2016 was also unlawful, discriminatory and not taken in good faith. Dr. Coppola had HIPPA protected files in his office and some of his office stuff had been left in the hallway outside his office. Although she was aware there were scanning issues of 09/27/2016, she was not aware of the locations of these scanning issues. (Defendant's Exhibits 26, 27, 28 and 42) Dr. Anaforian did not tell applicant about the move, or even ask him for feedback, even though she met with him on 09/27/2016 and called him on 10/05/2016. Applicant testified that his office was actually moved further away from Dr. Anaforian's office or any mental health clerical or other staff, down a stairway, behind locked doors, and essentially was a prison in a prison. Dr. Anaforian testified that in hindsight, she apologized in an email for not personally talking with him about the office move, that the move was abrupt, that she would have preferred it happen on a day when he was in the office, and that she knew he was upset and could definitely understand how surprised he was and how he felt about the abrupt move. Dr. Force testified that a supervisor should talk with the person whose office was going to be moved and that Dr. Anaforian should have extended that courtesy. Defendant questioning applicant in an accusatory fashion about his secondary employment and launching an investigation and accusing and reprimanding applicant for double dipping without any evidence or proof of such was also unlawful, discriminatory and not taken in good faith. Defendant's formal rules and procedures allow an employee to burn vacation time and to have secondary employment. Mr. Hutchinson testified that the employee needs to complete a form and submit it to the CEO for approval who after approving the form and request for secondary employment, is required to pass it to him (Mr. Hutchinson) so he could review it and pass it up the ladder. Applicant initially obtained approval from his supervisor for his secondary employment with Santa Rita Jail on 07/16/2003. He obtained approval from Mr. Fong for his secondary employment with Santa Rita Jail on 10/18/2016, one day after Dr. Anaforian requested a current approval. (Defendant's Exhibit 62) Applicant testified Mr. Fong and Dr. White were aware applicant continued to burn his days with employment at Santa Rita Jail and Dr. White had approved his time off on 09/20/2016. (Defendant's Exhibit 24) Nevertheless, Dr. Anaforian had an accusatory conversation with

applicant about his secondary employment on 10/05/2016 and again a week or two later. Mr. Hutchinson was aware that applicant had secondary employment as of 10/03/2016 and that Mr. Fong knew about applicant working at Santa Rita Jail. (Applicant's Exhibit AA; Applicant's Exhibit EE) Rather than following up with Mr. Fong as to why he had not required annual approval, Mr. Hutchinson emailed Dr. Anaforian and Dr. Force on 10/04/2016 (and not Mr. Fong) stating they skip to home plate and do a 989 and request information that is later sent to the office of internal affairs for action. Dr. Anaforian testified that she met with applicant on 10/18/2016 and that he personally submitted a secondary form for approval to Mr. Fong and obtained approval on that same day. As his supervisor, the issue of applicant obtaining annual approval was resolved for her as of 10/18/2016. As far as she knows, Mr. Fong never rescinded his approval of applicant's secondary employment at Santa Rita Jail. Dr. Anaforian, Dr. Force, Mr. Hutchinson and Mr. Fong all met in person after 10/18/2016. Mr. Fong advised he had been aware of applicant's secondary employment, had approved it, and provided them with an approved current annual form. Despite this, Mr. Hutchinson decided that further investigation of applicant was necessary and asked Ms. Cantelmi to review applicant's secondary employment and scheduling and provide recommendations. Mr. Hutchinson did not ask Ms. Cantelmi to research any other employees at this time. Dr. Anaforian was asked to prepare a memo to support an adverse action against applicant. Dr. Anaforian testified that she had obtained a positive review of applicant from Dr. White that would not provide a basis for an adverse action and that, as of the time she was pursuing the adverse action, does not now recall what violations existed. On 10/11/2016, Dr. Anaforian asked HR for advice and then emailed herself reflecting she had been advised to not schedule a formal meeting with applicant but have an impromptu meeting with him as to a his lack of follow through on tasks, verbally counsel him, then provide a 1123 if he does not improve. (Defendant's Exhibits 48 and 49) On 10/24/2016, Dr. Force emailed Dr. Anaforian, Mr. Hutchinson, and Ms. Cantelmi and [requested] that Dr. White's prior approval of applicant's time off be rescinded. She did not copy that email to Mr. Fong. (Defendant's Exhibit II) Mr. Hutchinson did not reprimand Mr. Fong for not requiring or providing annual approval of secondary employment and did not request an adverse action be prepared as to Mr. Fong. Applicant further testified that another psychologist from DVI called him on 10/20/2016 and told him that at a meeting with others, Dr. Force was insisting that there had to be a write up or adverse action against applicant for not having annual approval for his secondary employment. This was

after Mr. Fong had approved applicant's secondary employment on 10/18/2016 and Dr. Force's trial testimony confirmed that she, Dr. Force, had advised Dr. Anaforian to forego a letter of instruction and pursue an adverse action against applicant on 10/18/2016. (Applicant's Exhibit EE) Applicant further testified that on 10/21/2016, Mr. Fong told him Ms. Cantelmi, an attorney in headquarters was investigating him, that Dr. Force was not letting this go, and because defendant could not get him on outside work, they were investigating him. At trial, Dr. Force described double dipping as when an employee works at two places and does not tell defendant and identified an email dated 10/24/2016 between Dr. Anaforian and herself that reflects she believed applicant was double dipping and that applicant "is going to be one shocked boy when this hits the fan". (Defendant's Exhibit HH) At the time she wrote that email, Dr. Force had knowledge that applicant had obtained the initial approval of his secondary employment on 07/16/2003, annual approval from Mr. Fong on 10/18/2016, approval of his time off from Dr. White on 09/20/2016, and that Mr. Fong had told her, Mr. Hutchinson and Ms. Cantelmi that he and Mr. Duncan (former CEO) had been aware for many years that applicant had secondary employment with Santa Rita Jail. On 10/25/2016, Mr. Hutchinson emailed with Dr. Anaforian, Dr. Force and Ms. Cantelmi in which applicant's 998 was the caption and that reflected his reference to Hawaii 50 of "book'em Dano" although he denied he was insinuating applicant's arrest was imminent. (Applicant's Exhibit MM) Applicant testified that sometime between 10/07/2016 and when he went off on medical leave, Dr. Chaffen told him that an attorney named Pam Cantelmi was calling all over the jail trying to find out information about him, about his work and schedule at the Jail and his time sheets. Ms. Cantelmi testified that pursuant to Mr. Hutchinson's request, she essentially investigated applicant, obtaining information from HR, Dr. Anaforian, and Dr. Force and attempted to obtain information from Santa Rita Jail, with knowledge that that her investigation would be provided to internal affairs. It appears that she never contacted Mr. Fong or Mr. Duncan. She acknowledged she did not have authority to investigate applicant for an adverse action and that it would be against defendant's policy for her to conduct such an investigation. Applicant also learned from talking with Ms. Connolly that Ms. Cantelmi had decided his time sheets were inaccurate, she was going to go back three or four years to recoup monies, set up a no-fault accounts receivable, and contact CALPERS about his pension. Ms. Cantelmi sent a request for re-credentialing information to Santa Rita Jail; however, applicant denies ever signing or authorizing defendant to do that and claims the forms defendant sent were fraudulent. Applicant and Ms. Cantelmi both testified that

applicant was not up for recredentialling until November of that year. Ms. Cantelmi testified that she felt case law required her to request the credentialing information early but could not provide any authority for that statement. The request to Santa Rita Jail did not request any information relevant to whether applicant's work there was incompatible or a conflict of interest with his work at DVI. Santa Rita Jail actually refused to honor the request. On 10/24/2016, defendant retroactively rescinded all of his previously days off. (Applicant's Exhibit GG) Defendant continued its investigation of applicant. Ms. Cantelmi continued her investigation, including an email dated 10/28/2016 soliciting information from other employees in an attempt to defend against applicant's worker's compensation claim, and a 12/15/2016 email asking for any disciplinary records of applicant. (Applicant's Exhibits P, X, FF, KK, NN, PP, RR, SS, and DD) Ms. Cantelmi ultimately determined that applicant's supervisors were aware of his schedule, that he was burning time, and working elsewhere. As set forth in some detail in her 11/09/2016 email to Mr. Hutchinson, Dr. Force, Dr. Anaforian, and Ms. Guadagna (Applicant's Exhibit JJJ), Ms. Cantelmi provided her legal opinion that applicant was not required to obtain annual approval of his secondary employment, was not yet up for re-credentialing, had done everything within acceptable and allowable limits, and had done nothing wrong. Furthermore, Mr. Hutchinson's request that Ms. Cantelmi research and investigate applicant and Ms. Cantelmi's research and investigation of applicant, were in violation with defendant's HR policies and procedures. Per defendant's operational manual, if defendant believed applicant was engaging in fraud, it was required to refer him for investigation through defendant's internal affair unit or to an investigator approved by defendant's internal affairs. Mr. Hutchinson and Ms. Cantelmi both testified he requested her to review applicant and that review and investigation are interchangeable terms; they both also testified Ms. Cantelmi was not an investigator approved by internal affairs and did not work in the internal affairs unit. Defendant's questioning applicant in an accusatory fashion about his secondary employment, launching an investigation and accusing and reprimanding applicant for double dipping without any evidence or proof of such was unlawful, discriminatory and not taken in good faith. Defendant actions singling applicant out, seemingly as a result of new management creating a hostile atmosphere in the department and splitting staff members into taking sides was also was unlawful, discriminatory and not taken in good faith. Applicant testified that Dr. Anaforian appeared to seek information about him only from certain individuals and that

her behavior further divided the staff. Dr. White confirmed this in an email to Dr. Anaforian. (Applicant's Exhibit U)

II

The Finding that Applicant's Injury Caused Permanent Partial Disability of 29 Percent is supported by Testimony and Evidence received at Trial, and the Relevant Law

In my Opinion on Decision, I determined applicant's industrial psychiatric injury caused permanent disability of 29 percent (after adjustment for age and occupation and after apportionment) based on Dr. Bokarius's providing a GAF of 61 in his 12/26/2017 report. (Joint Exhibit 114 at pages 1, 12 – 15) Defendant does not argue that Dr. Bokarius's opinions are not substantial medical evidence nor does defendant take issue with my rating of the GAF of 61 or the fifteen percent non-industrial apportionment I found. Defendant does claim that I erred in not relying on Dr. Bokarius's later 03/09/2018 deposition testimony in which he opined to a GAF of 68 or 67 in response to a hypothetical question of applicant's work capacity as working full time with no work restrictions at Santa Rita Jail posed by defendant. Defendant's claim is without merit. When specifically asked whether applicant met the criteria for a GAF higher than 61 to 70, Dr. Bokaris testified in the negative, declined to answer a hypothetical he did not think was accurate, and did not change his impairment opinion of a GAF of 61. (Joint Exhibit 107 at pages 1, 64 - , 93 – 109)

III

The Finding that Applicant's Injury caused Total Temporary Disability from 10/26/2016 to mid-May 2017 and Partial Temporary Disability from mid-May 2017 to 12/13/2017 is supported by Testimony and Evidence received at Trial, and the Relevant Law

In his 03/05/2017 report, Dr. Bokarius opined applicant was totally temporarily disabled from the date of injury, was not permanent and stationary, and was not released to his regular occupation. (Joint Exhibit 112 at pages 1, 10 - 12) In his supplemental report dated 12/26/2017, Dr. Bokarius opined applicant was totally temporarily disabled from 10/21/2016 through the date in May when he returned to work at Santa Rita Jail when he was partially temporarily disabled, and that he was permanent and stationary as of 12/13/2017. (Joint Exhibit 114, at pages 1, 14) In my Opinion on Decision, I found applicant's injury caused total temporary disability from 10/26/2016 to mid-May 2017 and partial temporary disability from mid-May 2017 to 12/13/2017. I awarded total temporary disability from 10/26/2016 to mid-May 2017 at the stipulated to weekly amount of $1,128.43 and partial temporary disability from mid-May 2017 to 12/13/2017 in an

amount to be informally adjusted between the parties with WCAB jurisdiction reserved. Defendant appears to contend that as applicant returned to work at Santa Rita Jail as of 04/25/2017 initially working thirty hours a week and as of 05/21/2017 was working in a fulltime capacity, he is not entitled to temporary disability as of 04/25/2017. As I noted in my Opinion on Decision, it should be noted that for a number of years and prior to Dr. Anaforian taking over as chief of mental health at DVI, applicant worked at DVI and at Santa Rita Jail. His leaving work at DVI pursuant to his treating doctor's work restrictions, and based on the opinions of Dr. Bokarius, resulted in applicant having a substantial wage loss even after he returned to work at Santa Rita Jail. Furthermore, the Award allows the parties to informally adjust partial temporary disability from mid-May 2017 to 12/13/2017 with WCAB jurisdiction reserved.

RECOMMENDATION

For the foregoing reasons, I respectfully recommend that defendant's Petition for Reconsideration, filed 09/09/2021, be DENIED.

Terri Ellen Gordon
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE