

1 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

2 COUNCIL MEETING

3

4 Re: Public Hearing on the Proposed Employment

5 Regulations Regarding Religious Creed and Age

6 Discrimination.

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13 Meeting held at 1515 Clay Street, Elihu Harris

14 Building, Oakland, CA 94612 on July 31st, 2019, at

15 10:13 a.m.

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24 REPORTED BY: Jahmy Alvarez, CSR NO. 14094

25 FILE NO.: AD066C2

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<p style="text-align: center;">I N D E X</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 10%;"></td> <td style="width: 70%;">Speaker:</td> <td style="width: 20%; text-align: right;">PAGE</td> </tr> <tr> <td>1</td> <td>Bruce Wick</td> <td style="text-align: right;">7</td> </tr> <tr> <td>2</td> <td>Alan Reinach</td> <td style="text-align: right;">12</td> </tr> <tr> <td>3</td> <td>Noah Lebowitz</td> <td style="text-align: right;">15</td> </tr> </table> <p style="text-align: right;">Page 2</p>		Speaker:	PAGE	1	Bruce Wick	7	2	Alan Reinach	12	3	Noah Lebowitz	15	<p>1 Government Code section 12900 et seq.</p> <p>2 As it relates to employment, the FEHA</p> <p>3 prohibits harassment and discrimination because of race,</p> <p>4 religious creed, color, national origin, ancestry,</p> <p>5 physical disability, mental disability, medical</p> <p>6 condition, genetic information, marital status, sex,</p> <p>7 gender, gender identity, gender expression, age, sexual</p> <p>8 orientation, and military and/or veteran status.</p> <p>9 The proposed regulations are slated to appear</p> <p>10 in the California Code of Regulations, Title Two,</p> <p>11 sections 11016, 11063, 11075, 11076, 11078, and 11079.</p> <p>12 Copies of the proposed amendments to the FEHA</p> <p>13 regulations are available in the front of the room and</p> <p>14 are reflected in Attachment D to today's meeting</p> <p>15 materials. The notice and initial statement of reasons</p> <p>16 are Attachments B and C, respectively.</p> <p>17 The council also has the text of the proposed</p> <p>18 regulations available along with the supporting</p> <p>19 rule-making papers on its web page at</p> <p>20 WWW.DFEH.CA.GOV/FEHcouncil. We're holding this hearing</p> <p>21 as part of our formal rule-making process. The hearing</p> <p>22 was noticed through the California Regulatory Notice</p> <p>23 Register on June 14th, 2019, and also via email, blasted</p> <p>24 out to more than 7,500 individual stakeholders that are</p> <p>25 part of the council's email list.</p> <p style="text-align: right;">Page 4</p>
	Speaker:	PAGE											
1	Bruce Wick	7											
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<p>1 OAKLAND, CALIFORNIA</p> <p>2 WEDNESDAY, JULY 31, 2019</p> <p>3 10:13 A.M.</p> <p>4</p> <p>5 MR. MANDELBAUM: All right. We've come up to</p> <p>6 our public hearing on the proposed employment</p> <p>7 regulations regarding religious creed and age</p> <p>8 discrimination. So without further ado, we are on the</p> <p>9 record. It is about 10:15 on Wednesday, July 31st,</p> <p>10 2019. We are here in Oakland. My name is</p> <p>11 Chaya Mandelbaum, chairperson of the Fair Employment and</p> <p>12 Housing Council.</p> <p>13 Joining me today are members of the council,</p> <p>14 council members Dale Brodsky, Dara Schur, Tim Iglesias,</p> <p>15 and Joseph Ortiz, as well as ex-officio member and</p> <p>16 director of the department, Kevin Kish.</p> <p>17 Even though we have made initial</p> <p>18 introductions, let me, again, welcome you to the hearing</p> <p>19 portion of our meeting. The purpose of the hearing is</p> <p>20 to receive public comment regarding issuance of</p> <p>21 amendments to the Fair Employment and Housing Act --</p> <p>22 employment regulations regarding religious creed and age</p> <p>23 discrimination. This rule-making action clarifies,</p> <p>24 makes specific, and supplements existing state</p> <p>25 regulations interpreting the FEHA set forth in</p> <p style="text-align: right;">Page 3</p>	<p>1 So pursuant to the notice, we're taking</p> <p>2 testimony on the proposed regulations here today, and we</p> <p>3 will accept written comments on the proposed regulations</p> <p>4 until 5:00 p.m. today, July 31st. You may email written</p> <p>5 comments to the council at FEHcouncil@DFEH.CA.GOV, or if</p> <p>6 you prefer, you can mail them to the council care of</p> <p>7 Brian Sperber at the is DFEH's Los Angeles office, which</p> <p>8 is located at 320 West Fourth Street, Tenth Floor, in</p> <p>9 Los Angeles California 90013.</p> <p>10 So if you brought a written copy of your</p> <p>11 comments, and you do not plan on separately, or have not</p> <p>12 already separately submitted them via email, you can</p> <p>13 give a copy to Brian Sperber here today. If you don't</p> <p>14 have a written copy, you can still email a written copy</p> <p>15 or provide it in any other fashion as long as it is</p> <p>16 received by 5:00 o'clock this afternoon.</p> <p>17 Anyone who testifies here today or submits</p> <p>18 written comments will receive a copy of any changes or</p> <p>19 amendments that are made by the council and as will</p> <p>20 anyone else who so requests. Anyone who testifies will</p> <p>21 have a 15-day period -- as will anyone else who chooses</p> <p>22 to make it -- within which to make written comment if</p> <p>23 there are further changes made by the council to the</p> <p>24 proposed regulations.</p> <p>25 We'll consider each comment made here today as</p> <p style="text-align: right;">Page 5</p>												

<p>1 well as all written comments received. The council will 2 respond to each of the comments in its final statement 3 of reasons, which will become part of the council's 4 rule-making record.</p> <p>5 So the hearing is being transcribed by a 6 certified court reporter, and the transcript of the 7 hearing will be -- as well as all written comments 8 received will be part of the official rule-making 9 record. Because this hearing is being transcribed, it 10 is critical that anyone speaking does so clearly and 11 that only one person speaks at a time. So you will not 12 be sworn in today when you testify; however, we do ask 13 that you come to the front of the room and speak into 14 the microphone so that the court reporter can take down 15 your testimony and that the council members can hear it.</p> <p>16 Please begin by stating and spelling your name 17 and stating any affiliation you're here representing. 18 And also, if you are commenting on a specific 19 regulation, please identify the section and subsection 20 of the regulation so that we may refer to it while 21 you're providing your input. We will hear testimony 22 until all those wishing to testify today have had an 23 opportunity to do so.</p> <p>24 Does anyone have any questions on the ground 25 rules?</p> <p style="text-align: right;">Page 6</p>	<p>1 California, not within California." And this has impact 2 on what we're doing here today, because it's additional 3 regulations. If they're not vetted appropriately and 4 really accomplish what we're trying to accomplish, it 5 adds to that burden of someone saying "hiring people and 6 growing is a liability."</p> <p>7 And I'm going to speak maybe more about age 8 discrimination, because I'm well-past 40, and I need to 9 keep working, so I want to -- I appreciate, you know, 10 protection. I know friends and colleagues who are my 11 age and, you know, struggling to find positions, but 12 when businesses aren't growing, they don't typically 13 need experienced, knowledgeable, mature people who maybe 14 have managed folks in the past and have those kind of 15 skills and abilities.</p> <p>16 Because they're just replacing people that may 17 be retiring and usually hiring from within. So we don't 18 get that dynamism of growth that helps people, really, 19 of all ages. So I do appreciate, you know, our many 20 laws and regs, but I'm afraid some of this may be 21 counterproductive to people if we add too much, again, 22 more regulation, we just quell hiring of people.</p> <p>23 My employers compete with underground 24 employers. We know there are bad employers out there, 25 and we need enforcement. It's a real important thing,</p> <p style="text-align: right;">Page 8</p>
<p>1 All right. Hearing none, we're ready to 2 begin. So whoever wants to kick us off can just come to 3 the front and provide your comments.</p> <p>4 Don't make me call on you.</p> <p>5 MR. WICK: Hopefully I'm not the only 6 commentator.</p> <p>7 My name is Bruce Wick, W-I-C-K, with the 8 Californian Professional Association of Specialty 9 Contractors. Our members operate throughout California, 10 and I just want to thank you, Chairman Mandelbaum, 11 council members, Director Kish, for this opportunity.</p> <p>12 You will receive by email, I believe today, a 13 letter from Cal Chamber with some detailed information, 14 and we are a signee onto that letter, so I won't go into 15 any of that in detail. I did want to make a few general 16 comments and then a couple of specific comments 17 regarding the regulation.</p> <p>18 My members would be morally -- usually 19 considered medium employers, but I want to speak today 20 for small and medium employers. Google and Apple were 21 once small employers. They were encouraged to grow, and 22 right now, across California, employers, I mean, they 23 believe the liabilities from growth are greater than a 24 potential reward for growth.</p> <p>25 People say "I will grow my business outside</p> <p style="text-align: right;">Page 7</p>	<p>1 but there's a lot of good employers. But again, small 2 employers, if you have 7 or 23 or 50 employees, you 3 don't have general council on staff if your HR person is 4 maybe part-time.</p> <p>5 And trying to take more regulation on, 6 implement it, and do the right thing, well a lot of 7 employers want to do the right thing. It just gets more 8 confusing as we grow. So, you know, some parts of these 9 regs are good; some parts I think are, though, 10 counterproductive to the economic -- last sentence in 11 the economic impact analysis to reduce litigation. I 12 think they might add to that. And, you know, one of the 13 problems we have, the more complicated the regulation, 14 what a lot of employers face is in California.</p> <p>15 I know one employer that sets aside half a 16 million dollars for litigation, and they've never been 17 found wrong, but they get involved annually for 18 litigation just because you can get sued for something, 19 and there's not real clarity whether you were wrong or 20 not. So this is where vetting regs gets really 21 important.</p> <p>22 So a couple of examples, it appears in this 23 reg, we want to give guidance in the regulation itself 24 with examples of things, and that can be hard for a 25 part-time, even a full-time, you know, HR person who has</p> <p style="text-align: right;">Page 9</p>

1 all the other responsibilities they have. How do they  
2 sort through? Where Q and A is a way better opportunity  
3 to give even more examples and give education.  
4 I think we sometimes try to put too much into  
5 regs and don't balance how much education -- people that  
6 want to do the right thing, they can review an  
7 educational piece and say "okay, I see what you want me  
8 to do now." It's easier instead of trying to sort  
9 through the more complicated regulation.  
10 A couple other regulatory proposal spots,  
11 11016C3, things will be closely scrutinized, and it  
12 almost appears that there's a presumption that your --  
13 you've violated, and you have to un-prove. You're not  
14 innocent until proven guilty, and again, this is where  
15 you get litigation, and you wind up spending a lot of  
16 money just to get back to ground zero.  
17 11076A, the disparate impact, again, I mean,  
18 that's a very good educational piece for employers who  
19 don't understand they may be taking some action that  
20 seems innocent to them, seems fair to them, but maybe  
21 there's a disparate impact. Why don't we do more  
22 education instead of you as -- if you have 12 employees,  
23 and you're the part-time HR person, do you have the time  
24 to go through and identify every possible alternative  
25 practice? Maybe not, but that's what you're being held

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1 to in this litigation, it appears.  
2 And then 11079A talks about a reasonable  
3 person. The concern there is if I'm hiring someone, and  
4 again, I'm at a small business, I don't have that much  
5 time to go through it, I maybe want to narrow a pool and  
6 not get 500 resumes on my desk or on my computer and say  
7 "how do I non-discriminatorily work through this list of  
8 people to find the best qualified person?" So maybe I  
9 want to reasonably, from my perspective, narrow that  
10 list down.  
11 But someone who's never been in a hiring  
12 situation doesn't know that -- how do you sort through  
13 500 resumes? How can they understand that person; how  
14 does a reasonable person look at that? From which  
15 aspect, a person applying, or the person who's trying to  
16 figure out "how do I find the most qualified person in  
17 an efficient manner?"  
18 So I appreciate this opportunity and so forth.  
19 Please vet these well and look at the balance, if  
20 there's anything that's duplicative or adds more that  
21 doesn't really directly benefit what we're trying to  
22 accomplish, I'd ask you to scale that back. Thank you.  
23 MR. MANDELBAUM: Thank you. I appreciate your  
24 comments.  
25 Additional comments?

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1 MR. REINACH: Good morning, counsel. Alan  
2 Reinach, A-L-A-N R-E-I-N-A-C-H, and I'm executive  
3 director of the Church State Council, which is a  
4 Seventh Day Adventist Organization. Our legal services  
5 work has been representing -- to begin with, Sabbath  
6 observers, our own church members, but in recent years,  
7 people of all faiths.  
8 But we've represented so many, and had so many  
9 calls over the years, of people who were turned down in  
10 the application process, because even when I tell them  
11 that legally they have no obligation to disclose their  
12 need for religious accommodation at the application  
13 process, they feel duty-bound, morally-bound to be  
14 honest and to disclose, if they're asked, on an  
15 application, "when are you unavailable," and they'll  
16 say, you know, "Saturday," and they don't get to second  
17 base or an interview or a second interview or what have  
18 you.  
19 So my written comments have been submitted;  
20 Brian has those. And first of all, I just want to thank  
21 you, you know. We've addressed this a couple times over  
22 the years. I certainly feel like this council has not  
23 only heard what the problem is but really rolled up your  
24 sleeves and done a fantastic job of addressing it  
25 within -- you know, your purview, of course, is not to

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1 make law but to really clarify. And listening to the  
2 previous speaker, I would reiterate something I think  
3 that's in your statement of reasons, which is that by  
4 clarifying what needs to happen in the application  
5 process, it's going to provide guidance for companies to  
6 avoid conflicts. And it will actually be good both for  
7 business and of course for enhancing employment  
8 opportunities for, you know, hundreds or thousands of  
9 Californians who were being screened out.  
10 And I'm thankful that you added, you know -- I  
11 had testified about religion in particular about, but  
12 you added disability and medical condition. And  
13 frankly, you know, I was having a talk with someone  
14 close to me, you know, just recently about being  
15 screened out in the application process because of a  
16 disability without really, you know, any proper, you  
17 know, inquiry as to what really were the essential  
18 functions, which, of course, applies in disability but  
19 not directly in religion.  
20 So, you know, I'm very happy with the work  
21 that was done here on -- what's the number  
22 here -- 11063 -- here we go -- 11016 and then we've got  
23 the sub -- the big capital "B," dealing with the  
24 applications. And I also very much appreciate your  
25 having addressed the online application, and I think

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<p>1 that the balance that was drawn there, you know, if it's 2 followed, should be very helpful.</p> <p>3 Those problems are certainly, you know, 4 somewhat in anticipation. We've had some reports of 5 people getting bounced out from online applications. 6 Certainly not to the same extent that we do, you know, 7 from people just getting bounced out of the application 8 process, generally.</p> <p>9 When I say "bounced out," what I mean is, you 10 know, the application -- the online application will ask 11 are -- you know, "do you have any scheduling limitations 12 or are you available 24/7," and if you don't give the 13 right answer, the application basically terminates. And 14 I think what this would do is then trigger a second 15 question, at a minimum, that would require the question 16 about "well, do you need," -- you know, "accommodation," 17 and if so, then, presumably, the application process 18 would at least be completed and it wouldn't just 19 terminate, so someone would at least have a chance to 20 complete the application.</p> <p>21 There may be problems that arise in the 22 future. If that becomes a problem, of course, we'll be 23 happy, you know, to let you know and revisit what 24 refined it. And last but not least, you know, the prior 25 speaker said something about, you know, sort of a</p> <p style="text-align: right;">Page 14</p>	<p>1 Council's comments and the letter they've already 2 submitted to the council in regard to the regulations, 3 and we will actually be providing a written comment, a 4 more thorough written comment, about some of things I'm 5 going to talk about this morning, but we'll also include 6 a -- essentially -- sign on to what the Church State 7 Council has already submitted. So I just want to put 8 that in there.</p> <p>9 Again, we will be submitting a letter this 10 evening or before closing of the deadline today. I do 11 want to talk about a couple of different things, in a 12 little bit of particularity, in the reg -- in the 13 proposed regs, and we'll start with the general section 14 under -- the preemployment inquiries under 11016, and 15 the proposed new section, B1A.</p> <p>16 So this section, as explained in the statement 17 of reasons, is more or less a -- kind of pull out and 18 rewording of the preexisting language that was in the 19 regulations. So I think this is actually a really good 20 opportunity to take a look at this language and what 21 it's talking about. And as we read it, it 22 actually -- the continued -- essentially, maintenance of 23 this language in the regulations is actually a source of 24 confusion. Because there are at least four other very 25 specific regulations within the disability regulations</p> <p style="text-align: right;">Page 16</p>
<p>1 presumption based on the scrutiny that would be given. 2 And in paragraph C3, it mentions scrutinizing 3 applications. I don't see -- I don't see a problem with 4 that language or that that's somehow going to create a 5 legal presumption.</p> <p>6 I do think that applications should be 7 scrutinized. First by the employers themselves to make 8 sure, and, you know, there's some awfully good defense 9 attorneys who make a very good living making sure that 10 they educate their clients on how to stay out of 11 trouble. So, you know, I think that by putting this 12 focus on, you know, lawful applications, that they are 13 not screening people out based on protective activities, 14 I think it will be helpful to the employment climate 15 here in California.</p> <p>16 I'm very grateful for the work of this 17 council. Thank you very much.</p> <p>18 MR. MANDELBAUM: Thank you.</p> <p>19 MR. LEBOWITZ: Good morning. Noah Lebowitz, 20 it's spelled Noah, last name L-E-B- as in boy O-W-I-T-Z. 21 I'm here on behalf of the California Employment Lawyer's 22 Association, the Fair Employment and Housing Council 23 Regulations Committee. It's been a while. Nice to see 24 you all.</p> <p>25 So first, we fully endorse the Church State</p> <p style="text-align: right;">Page 15</p>	<p>1 that discuss and address all of the various permutations 2 of preemployment inquiries, medical inquiries, and 3 disability-related inquiries, and the timing of those 4 inquiries, what those inquiries -- the elements of those 5 inquiries can be or cannot be in pretty significant 6 detail, including the significant detail in the section 7 on defenses related to the health and safety of self or 8 others.</p> <p>9 So the source of confusion, as we read this 10 section as written, is that it doesn't -- it uses 11 different language, first of all, than the disability 12 regulations. So, for instance, the "directly pertinent 13 to the position" language is not found anywhere else in 14 the regulations. The "directly related to a 15 determination of whether the applicant would endanger 16 the health or safety of others," -- excuse me -- is not 17 reflected anywhere else in the regulations. So you're 18 using -- what's being reflected here is different 19 verbage, which, of course, leads to confusion, which, 20 typically, leads to litigation.</p> <p>21 So what we would propose is something that 22 would actually harmonize this section with the existing 23 disability regulation. And frankly -- and we'll give 24 you specific language on our letter, but generally 25 speaking, what we would propose is -- is in what's</p> <p style="text-align: right;">Page 17</p>

1 presently proposed, stop the language as written on the  
2 third line in about the middle where it says "if the  
3 inquiry or request." And then from there,  
4 cross-reference instead of -- basically delete the rest  
5 of it, and instead, incorporate by reference, and  
6 specific cross-reference to sections 11070, 11071, which  
7 are the preemployment -- 11070 is the preemployment  
8 practices regulation. The 11071 regulation is about  
9 medical and psychological examinations and inquiries,  
10 and then also, 11067 on defenses, which sets out all the  
11 details on the health and safety defense, and then also,  
12 11065, because it has the two pertinent definition  
13 sections related to medical inquiries under job-related  
14 and business necessity.  
15 And that's really the key language as opposed  
16 to the "directly pertinent to the position" language,  
17 which would cause confusion for someone trying to  
18 harmonize this section with the disability sections. So  
19 that's -- when you put those in there, I think it  
20 actually helps clarify and draw the reader to the more  
21 specific sections and it uses consistent language. So  
22 that would be our general proposal on that, and, again,  
23 we'll provide the specifics in our letter.  
24 The -- and then, I just want a few comments on  
25 the age discrimination revisions. So first of all, as

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1 similar to Mr. Reinach, we have been asking for this  
2 revision for a number of years. We first brought it up  
3 in December of 2014 in a letter when we were dealing  
4 with the general FEHA regs, and we were told that it was  
5 not part of the noticed regulations, so we couldn't  
6 address it then, and then we asked, specifically in  
7 2015, for the council to take it up specifically, and  
8 now we're here, so we're very pleased, so thank you for  
9 that.  
10 And essentially, what we were asking --  
11 because there was a gap in the regulations where the  
12 existing regulations do not specifically address the  
13 provisions of Government Code 12941, and the statement  
14 in that section that specifically deals with the Marks  
15 versus Laurel case, and the concept that use of  
16 facially-neutral criteria for an adverse job action --  
17 for instance, being able to pay someone less for doing  
18 the same job -- can be -- not always, but can be seen as  
19 a proxy for age discrimination. It's a general concept  
20 under 12941. It's stated differently in the law, but  
21 that's generally what the concept is.  
22 And so that was our proposal to address that,  
23 and we're pleased that the council has taken this up.  
24 We would propose, though, a couple of tweaks to the  
25 proposed language. So in particular, the way the

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1 proposed regulation reads gives the impression, at least  
2 at this point, that -- two things. One that this -- the  
3 question of -- and the proxy for -- the facially-neutral  
4 criteria being a proxy for age discrimination only  
5 applies in a disparate impact analysis when both the  
6 code section and the Marks versus Laurel case that  
7 were -- that was the cause of the revision to 12941,  
8 talked both in disparate impact and disparate treatment  
9 language.  
10 So -- and I don't know that it's intentional  
11 in the way that it's worded under the proposed language,  
12 but our reading of it gives the impression that it's  
13 exclusively reserved, that the analysis is exclusively  
14 reserved, for the disparate impact analysis. So we  
15 would propose some additional language, and we'll give  
16 that you later -- to address that.  
17 And then secondly, that the language as  
18 proposed speaks similar to the statute, but the  
19 statute's not exclusive to this in the plural. So in  
20 relation to groups of employees or the impact being  
21 on -- on multiple people, or at least the implication  
22 for the language as written, could be that this -- this  
23 regulation only applies when there are multiple  
24 plaintiffs or multiple employees who are impacted  
25 negatively by this criteria.

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1 I've certainly had clients and potential  
2 clients who have been the single person. They are not  
3 involved in a mass lay off; it is a single determination  
4 where, indeed, is very expressly stated that the reason  
5 they are being terminated is for the employer to save  
6 money because they can hire someone else do the same job  
7 for half the price as far as wages and cost of  
8 employment.  
9 Now, that doesn't win the case. We all know  
10 that. That's just one of the factors, but that is a  
11 viable claim, on an individual case, on an individual  
12 basis. And the impression from this regulation that's  
13 now drafted is that may not be recognized as a viable  
14 claim in a viable case. So we will propose some  
15 language that I think will better help address that.  
16 And then finally, just generally on the age  
17 discrimination, I think you all recognize this, but I  
18 can tell you, I'm going on 24 years now with practicing  
19 exclusively on behalf of plaintiffs in employment cases,  
20 and in my own practice, certainly in the past four or  
21 five years, age discrimination, certainly in the Bay  
22 Area, is at epidemic levels. I mean, it is just  
23 atrocious especially in the tech industry, more than any  
24 other, but it's not the only issue.  
25 Speaking to a potential client just last week,

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1 and he was in the financial industry, and he's 49 years  
2 old. And he -- he was laid off, and he was calling me  
3 about issues with that. Well, I started asking, "how is  
4 the job search going; what are you doing now?" And what  
5 he told me, it's just -- and I've heard this over and  
6 over and over again. They walk in for an interview, and  
7 the look on the face of the person interviewing them  
8 instantly tells them they're not getting a job.  
9 And they've gotten specific comments, "why are  
10 you looking at this job?" You know, "you're way too  
11 experienced for this job. Why are you here?" You know,  
12 "what are you doing in this industry? You shouldn't be  
13 in this industry." And very obvious comments, and this  
14 is happening over and over again. So the fact, in  
15 general, that you're looking at this age discrimination  
16 regulation to try to enhance it in the sense of making  
17 it more clear and understandable is to be commended,  
18 because it is a very -- it's a growing problem. It's a  
19 massive problem, and it's a growing problem, certainly  
20 in my own experience in the Bay Area. So thank you,  
21 again, for all your efforts. We will be submitting our  
22 letter shortly.  
23 MR. MANDELBAUM: Thank you.  
24 MS. SCHUR: Is it appropriate to ask  
25 questions?

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1 MR. MANDELBAUM: Sure. I mean, obviously,  
2 we'll be able to respond in writing, but if there's  
3 clarified questions.  
4 MS. SCHUR: I'm just wondering if either now  
5 or in your comments you can clarify whether -- under the  
6 Disability Discrimination Provision that you think that  
7 pre-offer inquiries as to health and disability are  
8 permitted at all under either the ADA Title Seven or  
9 FEHA.  
10 MS. BRODSKY: That's covered in the disability  
11 regs right now. There's a section on preemployment when  
12 inquiries are permissible.  
13 MS. SCHUR: Yeah, I just -- if you had any  
14 thoughts on that.  
15 MR. LEBOWITZ: Okay. I'll be happy to address  
16 it. Thanks. Great. Thank you very much.  
17 MR. MANDELBAUM: Thank you.  
18 Additional public comment? Going once, going  
19 twice.  
20 Brian, anything in writing?  
21 All right. Well, since everyone has had an  
22 opportunity to provide their public comment as part of  
23 the hearing, we will adjourn the hearing portion of our  
24 meeting, and again, one quick reminder on the record  
25 please, that we will continue accepting written comments

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1 until 5:00 o'clock today, July 31st.  
2 So thank you for being part of the public  
3 comment hearing, and with that, the hearing portion is  
4 adjourned.  
5 (End time: 10:47 a.m.)  
6 --oo0oo--  
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1 REPORTER'S CERTIFICATE  
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4 I, Jahmy Alvarez, CSR No. 14094, Certified Shorthand  
5 Reporter, certify:  
6 That the foregoing proceedings were stenographically  
7 reported by me at the time and place therein set forth  
8 and were thereafter transcribed;  
9 That the foregoing is a true and correct transcript  
10 of my shorthand notes so taken.  
11 I further certify that I am not a relative or  
12 employee of any attorney or any of the parties nor  
13 financially interested in the action.  
14 I declare under penalty of perjury under the law of  
15 California that the foregoing is true and correct.  
16 Dated this day of , 2019.  
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JAHMY ALVAREZ, CSR No. 14094

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