UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 23-2103 JGB (ACCVx)**	Date	April 8, 2026
Title	***Paula Ann Sutton v. Markwayne Mullin***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter
Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order (1) GRANTING Defendant's Motion for Summary Judgment (Dkt. No. 48); and (2) VACATING the April 13, 2026, Hearing (IN CHAMBERS)**

Before the Court is Defendant Markwayne Mullin's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 ("Rule 56"). ("Motion," Dkt. No. 48.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support of and in opposition to the Motion, the Court **GRANTS** Defendant's Motion. The April 13, 2026, hearing is **VACATED**.

I. BACKGROUND

On October 13, 2025, Plaintiff Paula Ann Sutton filed a complaint against then-Secretary of the United States Department of Homeland Security Alejandro N. Mayorkas. ("Complaint," Dkt. No. 1.) On January 11, 2024, Plaintiff filed her First Amended Complaint. ("FAC," Dkt. No. 7.) On March 20, 2024, the Court issued an order to show cause for failure to prosecute, based on Plaintiff's failure to provide timely proof of service. (Dkt. No. 9.) Plaintiff satisfied the order to show cause on March 29, 2024, by filing proof of service. (Dkt. No. 10.) Defendant answered on April 15, 2024. ("Answer," Dkt. No. 12.)

On September 22, 2025, Defendant filed his first motion for summary judgment. (Dkt. No. 33.) On October 7, 2025, the Court continued the hearing on the Motion to November 24, 2025. (Dkt. No. 35.) On November 18, 2025, Plaintiff requested an extension of time to file her opposition, citing computer issues. (Dkt. No. 40.) The Court granted the extension, giving her until November 24, 2025, and indicating that no further extensions would be granted. (Dkt. No.

39.) On November 24, 2025, Plaintiff timely filed a three-page document titled "Initial Opposition to Motion" stating that Plaintiff opposed Defendant's Motion and intended to file an "amended opposition." ("Opposition," Dkt. No. 42.)

On December 12, 2025, the Court sua sponte dismissed Plaintiff's FAC and denied as moot and without prejudice the first motion for summary judgment. (Dkt. No. 43.) Plaintiff filed her second amended complaint on December 19, 2026. ("SAC," Dkt. No. 46.) Defendant filed the instant Motion on December 29, 2026. (Mot.)

In support of the Motion, Defendant filed the following:

- Statement of Undisputed Facts ("SUF," Dkt. No. 48-1);
- Declaration of Ruth Zolock and accompanying exhibits ("Zolock Decl.," Dkt. No. 48-2); and
- Declaration of Randy Hsieh and accompanying exhibits ("Hsieh Decl.," Dkt. No. 48-3).

On January 8, 2026, Plaintiff filed an opposition to the Motion. (Dkt. No. 49.) Several weeks later, Plaintiff noticed the appearance of counsel, having previously proceeded pro se. (Dkt. No. 51.) On February 23, 2026, Plaintiff, now assisted by counsel, filed a motion for leave to file a supplemental opposition. (Dkt. No. 55.) On March 11, 2026, the Court granted the request and allowed Defendant to file an extended Reply in light of Plaintiff receiving a second opportunity to oppose. (Dkt. No. 57.)

Plaintiff filed her supplemental opposition on March 16, 2026. ("Supp. Opp'n," Dkt. No. 58.) In support of the Supp. Opp'n, Plaintiff filed the following:

- Plaintiff's Statement of Genuine Disputes of Material Fact ("DMF," Dkt. No. 58-1); and
- Declaration of Paula Ann Sutton and accompanying exhibits ("Sutton Decl.," Dkt. No. 58-2).

Defendant replied on March 27, 2026. ("Reply," Dkt. No. 59.)

II. FACTS

A. Evidentiary Objections

"A trial court can only consider admissible evidence in ruling on a motion for summary judgment." Orr v. Bank of America, NT & SA, 285 F.3d 764, 773 (9th Cir. 2002); see Fed. R. Civ. P. 56(e). For summary judgment, courts consider evidence with ***content*** that would be admissible at trial, even if the ***form*** of the evidence would not be admissible at trial. See, e.g.,

Fraser v. Goodale, 342 F.3d 1032, 1036 (9th Cir. 2003). The Court considers the parties' objections only where necessary.[1] All other objections are **OVERRULED AS MOOT**.

B. Undisputed Facts

The following material facts are sufficiently supported by admissible evidence and are uncontroverted, except as noted. They are "admitted to exist without controversy" for purposes of the Motion. See Fed. R. Civ. P. 56(e)(2); L.R. 56-3.

As an initial matter, Plaintiff's DMF does not even attempt to comply with the mandatory formatting requirements outlined in this Court's standing order. (See DMF; Dkt. No. 6.) The Court's order is clear that "[t]he party opposing the summary judgment motion shall include with its opposition a Statement of Genuine Disputes of Material Fact that includes the moving party's table; but the opposing party shall add a fourth column to the moving party's table identifying those facts that are in dispute, briefly explaining the dispute, and citing the evidence supporting the dispute." (Dkt. No. 6.) Plaintiff's DMF is not in a table; it is a numbered list that fails to even identify to which facts in the SUF it responds. Even pro se plaintiffs are expected to comply with the Court's standing order, and do so frequently. But Plaintiff is no longer pro se, and filed the Supp. Opp'n and DMF with the assistance of counsel after the Court granted an extension to do so. There is simply no excuse for Plaintiff's failure to abide by the Court's formatting rules, which are necessary to enable the Court to properly evaluate the Motion. As such, the Court deems all properly supported facts asserted in the SUF as undisputed. The Court lays out such facts below.

Plaintiff has genetic hearing loss. (SUF ¶ 1.) She was first diagnosed in the early 1980s when she was in graduate school in her early 20s. (Id. ¶ 2.) She has used hearing aids continuously since approximately the early 1990s. (Id. ¶ 3.) At the time she was first diagnosed, she had "moderate severe" hearing loss that has now progressed to more in the "severe" range. (Id. ¶ 4.) She experiences associated conditions with her hearing loss, including tinnitus and noise sensitivity. (Id. ¶ 5.)

Plaintiff has been employed with Customs and Border Patrol ("CBP") since March 2010. (Id. ¶ 6.) She was hired as an environmental protection specialist in Indianapolis, Indiana, and holds the same title today. (Id. ¶ 7.) Ruth Zolock was Plaintiff's first-level supervisor in 2010 and for the next several years. (Id. ¶ 8.) Once Plaintiff was hired, she disclosed her hearing loss to Zolock and requested accommodations. (Id. ¶ 9.) Plaintiff requested a private office and a speech transcription program. (Id. ¶ 10.) Plaintiff recalls making a formal request and being

[1] "[O]bjections to evidence on the ground that it is irrelevant, speculative, and/or argumentative, or that it constitutes an improper legal conclusion are all duplicative of the summary judgment standard itself" and are therefore "redundant" and unnecessary to consider here. Burch v. Regents of Univ. of California, 433 F. Supp. 2d 1110, 1119 (E.D. Cal. 2006); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("Factual disputes that are irrelevant or unnecessary will not be counted.").

asked for medical documentation. (Id. ¶ 11.) Plaintiff was provided with a private office as a reasonable accommodation, though CBP noted at the time that it had "determined that [Plaintiff is] a qualified individual with a disability and that [she] can perform the essential functions of [her] position with or without a reasonable accommodation." (Id.; Zolock Decl., Ex. A.)

In 2017, Plaintiff made a formal request to transfer to the CBP office in Laguna Niguel, California for familial reasons. (Id. ¶ 12.) On May 10, 2018, Plaintiff made a request for a continuation of the accommodation of a private office before the transfer had been approved. (Id. ¶ 13.) Plaintiff made the request to Zolock, who was again her first-level supervisor. (Id. ¶ 14.) Plaintiff's private office accommodation was approved on July 5, 2018, by her then-second level supervisor, Dennis Counihan, around the same time her transfer was approved. (Id. ¶ 15.)

On November 9, 2018, Plaintiff was notified that CBP had to deny the previously approved private office accommodation. (Id. ¶ 16.) Subsequent to the July 5 approval, it was determined that installation of a visually alerting fire alarm in the office space designated for Plaintiff would require extensive facility modifications complicated by the presence of asbestos in the building. (Id. ¶ 17.) CPB inquired about the specifics of installing a visually alerting fire alarm but determined that it would cost between $15,000 and $30,000, and require six months of asbestos-related remediation.[2] (Id. ¶ 18.) There were no other private offices available that already had a visually alerting fire alarm. (Id. ¶ 19.) Instead of a private office, Plaintiff was informed that she had two options for accommodation: a cubicle with a direct sightline to a visually alerting fire alarm, and the option to telework full-time. (Id. ¶ 20.) These two options were intended to be temporary measures until a longer-term solution could be identified. (Id. ¶ 21.)

On November 2, 2018, CBP conducted a sound test and found that the sound range at the cubicle with a direct sightline to a visually alerting fire alarm was lower (49.6 dB-50.3 dB) than that of the private office identified for Plaintiff (49.8 dB – 50.6 dB).[3] (Id. ¶ 22.) Plaintiff moved

[2] Plaintiff's DMF attempts to contest this fact not by contending that this accommodation would not require structural modification, but by arguing that she identified a desktop alerting device that would not require structural changes and cost approximately $199. (DMF ¶ 2.) The existence of an alleged alternative accommodation does not negate the fact that the accommodation discussed here—a private office with a visually alerting fire alarm—would have required structural modification. Plaintiff also disputes Defendant's assertion that her proposed desktop alerting device was not feasible, (id. ¶ 6), but she offers no evidence that her proposed accommodation, the desktop alerting device, would conform to the requirements set forth by the building manager, the General Services Administration ("GSA"), and the local fire marshal. (See Zolock Decl. ¶ 5.)

[3] Plaintiff disputes Defendant's contention that she could perform her job duties without an accommodation and states that "Plaintiff's hearing disability caused communication barriers in noisy cubicle environments, affecting her ability to understand conversations and perform work duties effectively." (DMF ¶ 7.) Defendant only contended that its own findings, as

from Indianapolis to Southern California in November 2018. (Id. ¶ 23.) On April 11, 2019, Plaintiff had an additional interactive dialogue with Zolock and a CBP reasonable accommodation coordinator regarding the private office request.[4] (Id. ¶ 24.) On July 3, 2019, Plaintiff was informed by letter that her request for a private office was denied.[5] (Id. ¶ 28.) From March 2020 through 2022, Plaintiff teleworked full-time due to the COVID-19 pandemic. (Id. ¶ 31.)

III. LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party has the initial burden of identifying the portions of the pleadings and record that it believes demonstrate the absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the nonmoving party bears the burden of proof at trial, the moving party need not produce evidence negating or disproving every essential element of the nonmoving party's case. Id. at 325. Instead, the moving party need only prove there is an absence of evidence to support the nonmoving party's case. Id.; In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir. 2010). The moving party must show that "under the governing law, there can be but one reasonable conclusion as to the verdict." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

If the moving party has sustained its burden, the nonmoving party must then show that there is a genuine issue of material fact that must be resolved at trial. Celotex, 477 U.S. at 324. The nonmoving party must make an affirmative showing on all matters placed at issue by the motion as to which it has the burden of proof at trial. Id. at 322; Anderson, 477 U.S. at 252. A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Anderson, 477 U.S. at 248. "This burden is not a light one.

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documented in letters, were that Plaintiff could perform her job duties without an accommodation. Plaintiff has offered no evidence that she ever contested that finding upon which CBP relied. Additionally, Plaintiff has offered no evidence of what level of "noisy" impeded her ability to work in a cubicle environment or whether the proposed cubicle in Laguna Niguel was as loud as other cubicles she deemed too loud, given that the undisputed facts Defendant asserts demonstrate that the cubicle was comparable to, or even quieter than, the private office.

[4] Plaintiff contends in her DMF that "Defendant asserts that the agency promptly responded to Plaintiff's requests," which she disputes. (DMF ¶ 5.) The Court can identify no such assertion in Defendant's Motion.

[5] This letter also denied Plaintiff's request to use paid official travel to attend the Hearing Loss Association of America's ("HLAA") annual convention in Rochester, New York. (Id. ¶ 28.) While Plaintiff's SAC raises claims regarding the denial of paid official travel to attend the HLAA convention, her Supp. Opp'n makes no reference to those claims. Because, as the Court will discuss further below, those claims are deemed conceded, the Court does not address undisputed facts related to the HLAA request further here.

The nonmoving party must show more than the mere existence of a scintilla of evidence." In re Oracle, 627 F.3d at 387 (citing Anderson, 477 U.S. at 252).

When deciding a motion for summary judgment, the court construes the evidence in the light most favorable to the nonmoving party. Barlow v. Ground, 943 F.2d 1132, 1135 (9th Cir. 1991). Thus, summary judgment for the moving party is proper when a "rational trier of fact" would not be able to find for the nonmoving party based on the record taken as a whole. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

IV. DISCUSSION

Defendant argues that Plaintiff's Rehabilitation Act Claim fails because there is no evidence of discrimination, nor does Plaintiff set forth a prima facie case of discrimination under McDonnell Douglas. (Mot.); see McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Defendant also contends that Plaintiff fails to satisfy the alternative standard, which requires that she "'produce direct or circumstantial evidence demonstrating that a discriminatory reason more likely than not motivated' the defendant's contested conduct." Opara v. Yellen, 57 F.4th 709, 721 (9th Cir. 2023).

Under McDonnell Douglas, "the plaintiff has the initial burden of establishing a prima facie case giving rise to an inference of discrimination. If the plaintiff carries that burden, the burden shifts to the employer to proffer a legitimate, nondiscriminatory reason for its decision. If the employer does so, the burden shifts back to the plaintiff to prove that the proffered reason is a pretext for discrimination." Caldrone v. Circle K Stores Inc., 156 F.4th 952, 955 (9th Cir. 2025) (internal citations omitted). "To state a prima facie case under the Rehabilitation Act, a plaintiff must demonstrate that (1) she is a person with a disability, (2) who is otherwise qualified for employment, and (3) suffered discrimination because of her disability." Walton v. U.S. Marshals Serv., 492 F.3d 998, 1005 (9th Cir. 2007).

Plaintiff's Supp. Opp'n does not make any effort to address the McDonnell Douglas standard or the "more likely than not" standard. Instead, she argues that she identified a reasonable and low-cost accommodation that was feasible, that Defendant failed to engage in the interactive process in a timely manner, and that she disputes Defendant's contention that providing her with a private office was an undue hardship. (See Supp. Opp'n.)

Despite Plaintiff's emphasis on her suggestion of an alternative accommodation, an "employer is not obligated to provide an employee the accommodation he requests or prefers, the employer need only provide some reasonable accommodation." Zivkovic v. S. California Edison Co., 302 F.3d 1080, 1089 (9th Cir. 2002). Even if Plaintiff had introduced evidence that the desktop alerting device would have complied with building, GSA, and fire marshal rules—which she has not—she failed to offer any evidence that the two accommodations Defendant offered were not reasonable. That she had been unable to work in a "noisy" cubicle environment in the past does not actually place in dispute the evidence in this case that the cubicle available to her was comparable to, or even quieter than, the private office she sought.

Plaintiff also asserts that the offer to telework was not a reasonable accommodation because CBP had a teleworking policy that made teleworking available to all employees. (DMF ¶ 8.) That is a nonsensical position unsupported by any caselaw; if there is a work arrangement that makes it possible for Plaintiff to do her job, it does not cease to serve as a reasonable accommodation simply because it is also available to those who do not require accommodations. An accommodation need not be unavailable to others in order to qualify as an accommodation, it must enable an individual to do their job. With respect to whether teleworking would have been a reasonable accommodation, Plaintiff at most asserts that teleworking "did not solve the issues related to workplace communication." (Sutton Decl. ¶ 21.) The Court emphasizes that it is not obligated to even consider this assertion because it was not properly presented as a dispute to Defendant's facts, nor as its own undisputed fact. In any event, even if the Court considered this assertion, it does not create a genuine dispute of a material fact. If Plaintiff were teleworking and not in the workplace, it would not matter what issues might exist with workplace communication were she to be there in person, because she would be remote. And Plaintiff does not offer any evidence as to why teleworking was not a reasonable accommodation to enable her to do her job, especially given that she subsequently teleworked for several years during the COVID-19 pandemic.

With respect to the interactive process, Plaintiff's chief complaint is that the process did not proceed quickly. (Supp. Opp'n at 4.) While she asserts that she had to follow up on requests and experienced delays, she offers no evidence that her case proceeded in a fashion that was unlawfully slow. She provides no caselaw establishing a speed with which the interactive process must proceed. At most she cites to Humphrey v. Memorial Hospitals Association, which notes that "[o]nce an employer becomes aware of the need for accommodation, that employer has a mandatory obligation under the ADA to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations." 239 F.3d 1128, 1137 (9th Cir. 2001). There is no evidence that the process did not start as soon as she requested an accommodation, and Humphrey offers no other instructions with respect to speed.

Finally, Plaintiff asserts that she disputes Defendant's contention that providing her with a private office would constitute an undue hardship to CBP. Again, Plaintiff has not adequately disputed *any* facts in this case. But even accepting her claims that "evidence demonstrates that the agency based its decision on speculative cost concerns rather than a definitive estimate" and that she identified a $199 solution, she does not actually dispute Defendant's assertion about the cost and hardship to CBP. Even without a firm number, the range Defendant was quoted when it inquired about installing the visually alerting fire alarm was at minimum $15,000. CBP asserts that this is a hardship, and Plaintiff offers no evidence that it is not. Additionally, as the Court has previously mentioned, just because Plaintiff identified a cheaper option she found suitable is not evidence that the desktop alerting phone would have satisfied the building standards necessary to allow her to use that option. Plaintiff does not offer evidence that the desktop alerting phone complied with building, GSA, and fire marshal standards. And, of course, the existence of an accommodation other than the two offered to Plaintiff does not in itself demonstrate discrimination.

Ultimately, Plaintiff does not make a prima facie showing of discrimination, nor does she show that discrimination more likely than not motivated Defendant's actions. Defendant offered undisputed evidence that Plaintiff was accommodated with a private office for years, and that CBP had intended to provide her the same accommodation when she moved to Laguna Niguel. (SUF ¶¶ 11, 15.) When it became apparent that it would require costly and time-consuming construction to install a visually alerting fire alarm in a private office for Plaintiff's use, CBP offered Plaintiff two alternative options. (Id. ¶ 20.) As to the first, a cubicle with a sightline to a visually altering fire alarm, CBP conducted testing to demonstrate the similarity—and in fact superiority—of the sound landscape at the cubicle relative to the office. (Id. ¶¶ 20, 22.) As to the second, teleworking, CBP offered Plaintiff the opportunity to work at home. (Id. ¶¶ 20.) Plaintiff's supervisor, Zolock, and a reasonable accommodations coordinator met with Plaintiff to discuss her requests and the options that were available. (Id. ¶ 24.) There is simply no evidence before the Court that in any way demonstrates discrimination against Plaintiff on the basis of her disability. The speed with which Defendant addressed Plaintiff's requests, and the potential existence of an alternative accommodation identified by Plaintiff do not undermine this conclusion.

Finally, Plaintiff's Supp. Opp'n fails in any way to address her claim with respect to the HLAA conference. "[A]rguments to which no response is supplied are deemed conceded." Caravan Canopy Int'l, Inc. v. Home Depot U.S.A. Inc., 2021 WL 831028, at *3 (C.D. Cal. Feb. 25, 2021).

As such, Defendant's Motion is **GRANTED**.

V. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant's Motion. The April 13, 2026, hearing is **VACATED**.

IT IS SO ORDERED.