Superior Court of the State of California
County of Orange

Tentative Rulings
Law and Motion Calendar
Department C23
Honorable David J. Hesseltine

Hearing Date and Time: April 29, 2024, at 11:00 a.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: **Civil Court Reporter Pooling**. For additional information regarding court reporter availability, please visit the court's website at **Court Reporter Interpreter Services**.

Tentative Rulings: The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case. **The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.**

Submitting on Tentative Rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

https://www.occourts.org/media-relations/civil.html before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at https://www.occourts.org/media-relations/aci.html. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150 AND ORANGE COUNTY SUPERIOR COURT RULE 180.

#	Case Name	Tentative
1.	Jimenez Gonzalez v. Santa Ana Unified School District	**OFF CALENDAR** and submitted to discovery referee
2.	Sarmiento v. Western Pump, Inc.	**OFF CALENDAR** pursuant to notice of withdrawal filed March 27, 2024
3.	Whitcomb v. Kia Motors America, Inc.	Before the court is the motion of plaintiff Kristy Whitcomb (Plaintiff) to compel defendant Kia Motors America, Inc. (Defendant) to provide further responses to request for production of documents, set one, and request for monetary sanctions. The motion is **CONTINUED TO MAY 20, 2024, at 2:00 p.m.**, in Department C23. No further briefing will be considered. The court also sets an **ORDER TO SHOW CAUSE HEARING** for **May 20, 2024, at 2:00 p.m.**, in Department C23, to address whether venue is proper in Orange County. The operative complaint does not state sufficient facts showing this case has been commenced in the proper superior court. Pursuant to Code of Civil Procedure section 396a(a), Plaintiff's counsel is ordered to file a declaration showing this case has been commenced in the proper

		superior court under Code of Civil Procedure section 395(b) and/or Civil Code section 2984.4. Plaintiff's counsel is further ordered to attach a copy of the underlying purchase or lease agreement as an exhibit to the declaration showing where the agreement was made. The declaration must be filed and served five court days before the hearing. The clerk is directed to give notice of this ruling.
4.	Iger v. Costco Wholesale	Before the court are the following two discovery motions filed by defendant Costco Wholesale (Defendant) seeking to compel discovery responses from plaintiff Linda Iger (Plaintiff): (1) motion to compel Plaintiff to respond to Defendant's supplemental request for production and request for monetary sanctions and (2) motion to compel Plaintiff to respond to Defendant's supplemental interrogatory and request for monetary sanctions. Motion no. 1 regarding the supplemental request for production was on calendar on April 22, 2024. Prior to the hearing, the court posted a tentative ruling granting the motion and awarding monetary sanctions against Plaintiff and her counsel. The court did not receive any opposition or other response to the motion. Plaintiff's counsel appeared at the hearing and represented his office had served responses to all outstanding discovery back in January and was surprised these motions remained on calendar. Defendant's counsel stated some responses were served but could not confirm responses to the supplemental request for production were served. The court therefore continued the hearing to match up with the hearing on the motion regarding the supplemental interrogatory. The court further directed Plaintiff's counsel to submit a declaration providing evidence responses to both the supplemental request for production and the supplemental interrogatory had been served. As of the afternoon of Friday, April 26, 2024, the court has not received any such declaration. The court finds Defendant properly served both the supplemental request for production and the supplemental interrogatory, and Plaintiff failed to timely respond. As a result, Plaintiff has waived all objections to these discovery requests. Despite the representations of Plaintiff's counsel at the last

		hearing, Plaintiff has presented no evidence showing responses have been served to either set of discovery. Accordingly, both motions are **GRANTED**, and Plaintiff is ordered to serve verified responses, without objections, to both the supplemental document request and the supplemental interrogatory within 10 days of service of notice of this ruling. As to the requests for monetary sanctions, the requests are **GRANTED**, and monetary sanctions in the amount of $735 are awarded on each motion (for a total of $1,470) against Plaintiff and her counsel of record. The sanctions must be paid to Defendant, through its counsel of record, within 30 days of service of notice of this ruling. The sanctions are based on the reasonable hourly rate of $225 per hour, three hours of work on each motion, and a $60 filing fee for each motion. Defendant's counsel is ordered to give notice.
5.	Sanchez v. Greens Operations, Inc.	Before the court is a motion by defendant Greens Operations, Inc. (Operations) to compel plaintiff Nikki L. Sanchez (Plaintiff) to arbitrate her claims against it and to stay the action. The motion is **GRANTED** as to Operations and stayed in its entirety as set forth below. A petition to compel arbitration must allege both (1) a "written agreement to arbitrate" the controversy, and (2) that a party to that agreement "refuses to arbitrate" the controversy. (Code Civ. Proc., § 1281.2.) The Court shall grant the petition unless the petitioner waived the right to compel arbitration, or other grounds exist for rescission of the agreement. (*Ibid*.) Because the obligation to arbitrate arises from contract, the court may compel arbitration only if the dispute in question is one in which the parties have agreed to arbitrate. (*Weeks v. Crow* (1980) 113 Cal.App.3d 350, 352.) Because arbitration is a favored method of dispute resolution, arbitration agreements should be liberally interpreted, and arbitration should be ordered unless the agreement clearly does not apply to the dispute in question. (*Id*. at p. 353; *Segal v. Silberstein* (2007) 156 Cal.App.4th 627, 633.) There is no policy, however, compelling persons to accept arbitration of controversies they

		have not agreed to arbitrate. (*Weeks*, *supra*, 113 Cal.App.3d at p. 353.) Here, the "Dispute Resolution Agreement" (Agreement) is attached as Exhibit 1 to the Declaration of Ashutosh Kadakia, the Managing Principal for Operations. The Agreement is entered into between Operations and Plaintiff. Plaintiff electronically signed the Agreement on March 9, 2022, through BambooHR, a cloud-based HR platform. Through BambooHR, employees "can access the documents sent to them by [Operations]. Employees can view, download, and print documents from their Bamboo HR account. Employees can access both incomplete/unsigned documents and previously completed and/or signed documents." (Kadakia Decl. at ¶7.) Based on the court's review of the Agreement, it is apparent Plaintiff's claims against Operations as alleged in the complaint fall within the Agreement's terms. Operations submits evidence Plaintiff was unwilling to stipulate to arbitration. Plaintiff argues her claims are really against defendant Greens Chandler, LLC (Chandler) because it is the one who allegedly took the adverse employment actions against Plaintiff. Plaintiff's complaint, however, alleges all "Defendants"—i.e., Operations and Greens—engaged in the conduct giving rise to Plaintiff's claims. The burden is on the party opposing arbitration to show the contract cannot be interpreted to cover the claims, and any doubt as to whether a plaintiff's claims come within the arbitration clause must be resolved in favor of arbitration. (See *EFund Capital Partners v. Pless* (2007) 150 Cal.App.4th 1311, 1320.) "In determining whether an arbitration agreement applies to a specific dispute, the court may examine only the agreement itself and the complaint filed by the party refusing arbitration. [Citation.] The court should attempt to give effect to the parties' intentions, in light of the usual and ordinary meaning of the contractual language and the circumstances under which the agreement was made [citation]." (*Weeks v. Crow* (1980) 113 Cal.App.3d 350, 353.) Accordingly, Operations met its burden to show it entered into the Agreement with Plaintiff, Plaintiff's

		claims are covered by the Agreement, and Plaintiff refused to submit her claims to arbitration. The burden therefore shifted to Plaintiff to establish a defense to the Agreement's enforcement. Plaintiff argues the Agreement is both procedurally and substantively unconscionable. Under California law, both procedural and substantive unconscionability must be present for a court to refuse to enforce a contract on the ground it is unconscionable. (See *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83, 114.) Procedural unconscionability focuses on two factors: oppression and surprise. (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 437, 486.) Substantive unconscionability does not have a precise definition, but generally a contract is found to be "substantively suspect if it reallocates the risks of the bargain in an objectively unreasonable or unexpected manner." (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 437, 487.) Unconscionability is determined on a sliding scale. As to procedural unconscionability, Operations does not dispute the terms were not negotiable or the Agreement was a contract of adhesion. However, "the fact that the arbitration agreement is an adhesion contract does not render it automatically unenforceable as unconscionable." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 179.) Further, arbitration agreements that are highlighted for the employee in a freestanding document mitigate against a finding of procedural unconscionability. (*Ibid*.) Further, the signature page of the document shows it was sent to Plaintiff on March 7, 2022, and she did not sign it until March 9, 2022. (Exh. 1 to Kadakia Decl.) There is no evidence of pressure being put on Plaintiff other than being told it was required. The arbitration agreement is not particularly long and uses headnotes to identify the relevant provisions including, "Intent of Agreement," "Covered Claims," "Claims Not Covered," "Arbitration Procedures," "Arbitration Costs and Fees," etc. While Plaintiff asserts she is not that knowledgeable about the law, the Agreement does not seem to have any real complexity to it. Further, if Plaintiff felt the

		document was confusing in any way, she had time to ask her manager a question. There is no evidence Plaintiff was prevented from asking questions. Further, there is no evidence Plaintiff was prevented from contacting an attorney to have the document reviewed, or to otherwise advise her of her rights. To the contrary, Kadakia states the Agreement in its unsigned version was available to be reviewed online at Plaintiff's convenience. Accordingly, the Agreement is an adhesion contract that has some degree of procedural unconscionability, but Plaintiff failed to establish any other factor to strengthen the relative low degree of procedural unconscionability that arises from the adhesive nature of the Agreement alone. As to substantive unconscionability, Plaintiff asserts the filing fees required under the Agreement are excessive. The Agreement, however, provides for a cap on the filing fees at the same amount Plaintiff paid for filing the instant action. The Agreement also allows for mutuality of enforcement in that the plaintiff also has a right to enforce her rights against Operations. Although Plaintiff is not asserting class action claims, the class action waiver is enforceable and does not demonstrate the agreement is unconscionable. (See, e.g., *AT&T v. Concepcion*, 563 U.S. at 352; *Evenskaas v. California Transit, Inc.* (2022) 81 Cal.App.5th 285, 297-98.) Also, the PAGA waiver is not absolute. Instead, the PAGA waiver provides for severance of the PAGA claim which would then be stayed pending completion of the arbitration. Further, the fact Operations did not sign the Agreement it drafted does not render it unenforceable. "Just as with any written agreement signed by one party, an arbitration agreement can be specifically enforced against the signing party regardless of whether the party seeking enforcement has also signed, provided that the party seeking enforcement has performed or offered to do so." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 177.) Accordingly, the court does not find any significant degree of substantive unconscionability. In consideration of the foregoing, the court finds the Agreement was not unconscionable. The motion therefore is **GRANTED** as to Plaintiff's

		claims against Operations, and Plaintiff is ordered to submit her claims against Operations to arbitration. Operations also asserts Plaintiff should be required to arbitrate her claims against Chandler. Operations, however, is the only moving party; the motion is not brought on behalf of Chandler. Operations argues various language in the Agreement and Plaintiff’s allegations allow Chandler, as a non-signatory to the Agreement to nonetheless enforce the Agreement under either a third-party beneficiary or estoppel theory. Chandler, however, is not seeking to enforce the Agreement; only Operations is. Code of Civil Procedure section 1281.2 requires a party seeking to compel arbitration to file a motion requesting such. Accordingly, the request by Operations to compel Plaintiff to arbitrate her claims against Chandler is **DENIED**. This ruling does not prevent the parties from agreeing at the hearing or otherwise to also submit the claims against Chandler to arbitration. Finally, Operations requests the court stay the proceeding pending resolution of the arbitration. Section 1281.4 provides, in relevant part, “If an application has been made to a court of competent jurisdiction, whether in this State or not, for an order to arbitrate a controversy which is an issue involved in an action or proceeding pending before a court of this State and such application is undetermined, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.” Moreover, Code of Civil Procedure section 1281.2 authorizes the court to stay the proceedings not only between the parties to the arbitration agreement, but also any party who is not a party to the arbitration agreement. The court finds that is the appropriate outcome here. Accordingly, the request for a stay is **GRANTED** and the Court orders the action **STAYED** in its entirety pending the outcome of the

		arbitration, that includes Plaintiff's action against Chandler. Plaintiff's request for additional discovery as to unconscionability, the arbitration agreement, and Rowena Eppenger is **DENIED**. No authority is cited to support the request nor is such discovery necessary or appropriate on the facts of this case. Counsel for Operations is ordered to give notice of this ruling.
6.	TCT Mobile, Inc. v. Buendia	Before the court is the demurrer of plaintiff and cross-defendant TCT Mobile, Inc. (TCT) challenging the cross-complaint of defendant and cross-complainant Sheilahmarie Buendia (Buendia). TCT contends each of the six causes of action alleged in the cross-complaint is uncertain and fails to allege sufficient facts to state a cause of action. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) No other extrinsic evidence can be considered (i.e., no "speaking demurrers"). (*Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) In testing the sufficiency of a cause of action, the demurrer admits the truth of all material facts properly pleaded (i.e., all ultimate facts alleged, but not contentions, deductions or conclusions of fact or law). (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *290 Division (EAT), LLC v. City & County of San Francisco* (2022) 86 Cal.App.5th 439, 452; *Travelers Indem. Co. of Conn. v. Navigators Specialty Ins. Co.* (2021) 70 Cal.App.5th 341, 358-359.) The sole issue raised by a general demurrer is whether the facts pleaded state a valid cause of action—not whether they are true. Thus, no matter how unlikely or improbable, the plaintiff's allegations must be accepted as true for the purpose of ruling on the demurrer. (*Hacker v. Homeward Residential, Inc.* (2018) 26 Cal.App.5th 270, 280; *Marina Pacific Hotel & Suites, LLC v. Fireman's Fund Ins. Co.* (2022) 81 Cal.App.5th 96, 104-105.)

		Here, the demurrer and the reply argue many facts that are not alleged in the cross-complaint. The court will not consider these facts, and its ruling is limited to the facts properly alleged in the cross-complaint. Although the reply does not include a proper request for judicial notice, it argues the court should take judicial notice of the dates and contents of email communications between counsel that are attached to a declaration TCT's counsel filed with the reply. The reply argues these facts are "unassailable facts" the court should judicially notice. The court may take judicial notice of facts not reasonably subject to dispute and "capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code § 452, subd. (h).) This covers "facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like." (*Gould v. Maryland Sound Indus., Inc.* (1995) 31 Cal.App.4th 1137, 1145.) The "unassailable facts" TCT argues do not satisfy the requirements of section 425, subdivision(h) even if TCT had made a proper request for judicial notice. Moreover, to the extent these facts could be subject to judicial notice, TCT should have made the request at the time of the demurrer, not the reply. The court will not consider the facts in ruling on the demurrer. Buendia asks the court to take judicial notice of the complaint TCT filed to commence this action. The request is **GRANTED**, but what the court judicially notices is limited to the complaint being filed, the date it was filed, and the allegations made therein. The court, however, does not take judicial notice of the truth of any allegation or other purported fact set forth in the complaint. (Evid. Code, § 452, subd. (d); *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 659-660.) ***<u>Other Cross-Defendants</u>:*** Throughout the demurrer, TCT repeatedly argues Buendia cannot properly bring her claims against the other cross-defendants. TCT, however, is the only cross-

		defendant bringing this demurrer. As such, the court will not address whether Buendia has adequately alleged any claim against the other cross-defendants. ***<u>Release Argument</u>:*** TCT argues all causes of action Buendia alleges in the cross-complaint fail because she executed the "Separation Agreement and Release" attached to the cross-complaint, and thereby released TCT from all claims Buendia attempts to allege. By the cross-complaint, however, Buendia seeks to rescind that agreement. Accordingly, if she succeeds with her efforts to rescind the agreement, then the release would be rescinded and would not bar or prevent Buendia from asserting any of her claims. TCT argues rescission cannot be granted in this case because it would be impossible to restore to TCT all benefits it conferred based on the agreement. That argument, however, relies on facts outside the four corners of the cross-complaint and its exhibit, and therefore cannot be resolved by demurrer. As such, this argument that rescission is unavailable is **OVERRULED**. The proper challenge is whether Buendia properly alleged a basis for rescinding the agreement. As explained below, Buendia has not adequately alleged her claim for rescission at this point in time. Accordingly, the challenge Buendia released all claims is **SUSTAINED** with 15 days leave to amend as to the entire cross-complaint. To help the parties along, the court also will rule on several of the other challenges. ***<u>First Cause of Action (Rescission)</u>:*** TCT argues rescission is a remedy, not a cause of action, and therefore this claim fails as a matter of law. A party, however, may state a claim for rescission as long as it adequately alleges a basis for rescission. (See *Tippet v. Terich* (1995) 37 Cal.App.4th 1517, 1535-1536.) Indeed, Civil Code section 1688, et seq. give the parties the right to rescind a contract and bring an action to enforce the rescission and obtain associated relief. Buendia alleges she is entitled to rescission based on "unilateral mistake, mutual mistake, duress, menace, fraud, and/or undue influence." (See, e.g., XC ¶39.) This is a fairly exhaustive list of the possible grounds for rescission, but amounts to nothing more than a legal conclusion. The court

		must examine the factual allegations to determine whether any of these grounds have been adequately stated. In the opposition Buendia appears to focus on mistake and potentially fraud as the basis for the rescission. Best the court can tell from reviewing the cross-complaint and the opposition is that Buendia alleges/contends TCT misrepresented that it intended to be bound by the agreement. Buendia alleges/contends TCT did not intend to allow her to keep the severance payment and did not intend for the agreement to be the end of their disputes. The court is confused. It would make sense to allege TCT made misrepresentations to induce Buendia to enter into the agreement and release all her claims for a small payment, but she appears to allege/contend TCT did not intend for the agreement to be effective. Is it Buendia's theory TCT entered into the agreement specifically so it could later continue to seek to recover allegedly confidential information from Buendia and force her to repay the severance payment? Buendia needs to allege the specific grounds more clearly for rescission on which she seeks to rely and the facts necessary to state those grounds. The court acknowledges Buendia's contention she also is entitled to rescission because the release does not comply with the requirements of the Age Discrimination in Employment Act (ADEA). Citing *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, Buendia contends the failure to comply with the release requirements of the ADEA invalidates the entire release. *Skrbina*, however, explains, "By its plain terms, 29 United States Code section 626(f)(1) applies only to rights or claims under the ADEA. It does not apply to a waiver of claims based on state law, which are the only claims at issue in the complaint upon which summary judgment was granted." (45 Cal.App.4th at pp. 1367-1368.) Here, Buendia does not allege any claim under the ADEA, and therefore where the parties' agreement complied with the release or waiver requirements of that act is irrelevant. Based on the foregoing, the demurrer to the first cause of action for rescission is **SUSTAINED** with 15 days leave to amend.

		Second Cause of Action (Declaratory Relief): This cause of action appears to seek a judicial declaration regarding the enforceability of the agreement. At paragraph 43, Buendia alleges the agreement is null, void, and unenforceable for the reasons outlined in paragraphs 43 to 48. Those paragraphs, however, do not state any reasons for invalidating the agreement. This appears to be an incorrect internal cross-reference. Presumably, the request for a judicial declaration regarding the agreement's enforceability is based on the same grounds as the rescission claim. As stated above, however, Buendia has not yet adequately alleged a basis for rescission and therefore has not yet adequately alleged a claim for declaratory relief either. (See, e.g., *Ball v. FleetBoston Fin'l Corp.* (2008) 164 Cal.App.4th 794, 800.) Moreover, "an actual, present controversy must be pleaded specifically and the facts of the respective claims concerning the [underlying] subject must be given." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80 (underlining added); see *American Meat Inst. v. Leeman* (2009) 180 Cal.App.4th 728, 742; *Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 513-514 (disapproved on other grounds by *Yvanova v. New Century Mortg. Corp.* (2016) 62 Cal.4th 919, 939, fn. 13 [claim must provide specific facts, as opposed to conclusions of law, that show a "controversy of concrete actuality"].) Based on the foregoing, the demurrer to the second cause of action for declaratory relief is **SUSTAINED** with 15 days leave to amend. ***Third Cause of Action (Retaliation in Violation of FEHA):*** TCT challenges this cause of action on the grounds (1) Buendia fails to sufficiently allege she timely exhausted her administrative remedies, and (2) Buendia fails to adequately allege any of the essential elements of this claim. Plaintiff/cross-complainant bears the burden of pleading and proving timely filing of a sufficient complaint with the California Civil Rights Department and obtaining a right-to-sue notice. (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1402; *Kim v. Konad USA Distribution, Inc.* (2014) 226 Cal.App.4th 1336, 1345-1346.) Here, Buendia alleges she obtained a

		right-to-sue letter (¶2), but she does not allege when she obtained it. Citing *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 325, Buendia contends all she must allege is she obtained a right-to-sue letter and nothing more. *Roman*, however, did not address whether more than the existence of a right-to-sue letter must be alleged. Rather, the portion of the case Buendia cites addresses whether obtaining a letter from DFEH also satisfied the requirement to obtain a letter from the EEOC. Buendia has not satisfied her burden to plead the timely filing of an administrative complaint. Pursuant to CACI 2505, the elements of a retaliation claim under FEHA are (1) plaintiff engaged in protected activity, (2) defendant discharged plaintiff or subjected plaintiff to an adverse employment action, (3) plaintiff's protected activity was a substantial motivating reason for defendant's decision to discharge plaintiff or subject plaintiff to an adverse employment action, (4) plaintiff was harmed, and (5) defendant's decision to discharge plaintiff or subject plaintiff to an adverse employment action was a substantial factor in causing plaintiff's harm. Although not the clearest, Buendia alleges these elements. She alleges she exercised her right to protest violations of law and incorporates the allegations from the general allegations section detailing those alleged violations. The court notes, however, it is a bit confused by the allegations regarding being over age 40 and having different cultural beliefs. This is a retaliation claim, not a discrimination claim. In terms of the adverse employment action, it is clear from a reading of the cross-complaint as a whole, the adverse employment action was Buendia's termination. Moreover, Buendia sufficiently alleges causations. Accordingly, the challenge Buendia failed to allege the necessary elements of this claim is **OVERRULED** (although further clarity would be helpful), but the challenge she failed to allege timely exhaustion of her administrative remedy is **SUSTAINED** with 15 days leave to amend. The demurrer also is **SUSTAINED** with 15 days leave to amend as to the release challenge.

		<u>Fourth Cause of Action (Wrongful Termination in Violation of Public Policy)</u>: Buendia alleges TCT's actions violated FEHA, the California Constitution, and Labor Code section 1102.5. TCT challenges this cause of action on the ground section 1102.5 is the only specific policy identified and that statute only applies when an employee makes complaints to the government; complaints to the employer is not sufficient. TCT, however, relies on outdated authority—i.e., *Collier v. Superior Court* (1991) 228 Cal.App.3d 1117. Section 1102.5 was amended after the *Collier* decision and now supports a claim when the employee makes complaints to the employer. Accordingly, the demurrer on this argument is **OVERRULED**, but the demurrer is nonetheless **SUSTAINED** with 15 days leave to amend as to the release challenge to this cause of action. ***<u>Fifth Cause of Action (Failure to Provide Documents and Records—Labor Code Section 1198.5) and Sixth Cause of Action (Failure to Provide Documents and Records—Labor Code Section 226)</u>:*** TCT challenges these causes of action on the ground it provided the requested documents on June 9, 2023. This challenge, however, relies on facts that are not alleged in the complaint and are not properly subject to judicial notice as set forth above. Accordingly, the demurrer on this argument is **OVERRULED**, but the demurrer is nonetheless **SUSTAINED** with 15 days leave to amend as to the release challenge to these causes of action. TCT's counsel is ordered to give notice.
7.	Bahadorani v. Jaguar Land Rover North America, LLC	**OFF CALENDAR** pursuant to notice of withdrawal filed on November 13, 2023
8.	Bane v. Perez	**OFF CALENDAR** pursuant to notice of withdrawal filed on April 15, 2024
9.	US No. 8 LLC v. White	On calendar is the hearing on the order to show cause regarding the request of plaintiff US No. 8 LLC for a preliminary injunction enjoining defendants Nicholas Phipps White and Mirga Phipps White from accessing the property at 2 Coral Ridge in Newport Beach,

		California 92657 and the surrounding Crystal Cove gated community in Newport Beach, California. No tentative ruling will be posted. The parties are order to appear to address the request.
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