TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 12, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

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1-2. 23CV00801, Committee for Transparent Local Government v. So. Co. LAFCO

Defendants Sonoma County Local Agency Formation Commission and County of Sonoma's Demurrer to First Amended Complaint SUSTAINED without leave to amend as to the general demurrers, as explained herein. The court overrules the demurrers for uncertainty or defect or misjoinder of parties as explained herein, but this has no impact on the outcome because the demurrers which this court sustains fully dispose of all causes of action presented.

Defendant/Real Party in Interest Gold Ridge Fire Protection District's Demurrer to First Amended Verified Complaint SUSTAINED without leave to amend as to the general demurrers, as explained herein. The court overrules the demurrers for uncertainty or defect or misjoinder of parties as explained herein, but this has no impact on the outcome because the demurrers which this court sustains fully dispose of all causes of action presented.

I. Facts

Plaintiffs challenge the alleged decision of Defendants or Respondent Sonoma County Local Agency Formation Commission ("LAFCO") and Real Parties in Interest ("RPIs") County of

Sonoma ("County") and Gold Ridge Fire Protection District ("District") to approve the Gold Ridge Fire Protection District Reorganization detaching areas from County Service Area 40 ("Area 40") and annexing them to the District (the "Reorganization" or "Project"). They also challenge the issuance of a Certificate of Completion (the "Certificate") for the Project.

Plaintiffs contend that the Project was nothing more than "a calculated undertaking to imposed [sic] parcel taxes on property owners in… Area 40 without a vote of registered voters of… Area 40," thereby disenfranchising the voters. FAC, Complaint ¶8. They assert that the move, which transferred the properties at issue from the County's fire services in Area 40 to the District's fire services, was intended to impose the District's parcel taxes for services on the property owners and thus circumvent the owners' resistance to approving such a tax in Area 40. Ibid. They claim that it violated applicable laws because it deprived them of their right to vote and equal protection of the law; LAFCO prematurely issued and recorded the Certificate without completing the conditions precedent for such issuance and before the expiration of the time to seek reconsideration; the Executive Director (the "Director") did not sign the Certificate, rendering it void; LAFCO improperly found the Project to be exempt from CEQA. Comp. ¶¶8-9, 18. They assert that LAFCO also "failed to give statutory notice as required by the government code" and the notice in any case failed to comply with due process because it was not "reasonably calculated to give sufficient not [sic] to the voters" in Area 40. Comp.¶17. They claim that the notice failed to comply with due process or equal protection because it was mailed only to property owners, not registered voters. Comp., ¶¶20-21. Plaintiffs allege that the premature issuance of the Certificate violated government Code ("Gov. Code") section 57200. Comp., ¶22.

Plaintiffs contend that the Project violates CEQA because it will cause environmental impacts by increasing the District's "sphere of… activities," which include "development new [sic] facilities and expansion of existing ones in the rural[,] environmentally sensitive, historic areas and scenic areas," because, "with more money to spend and area under its control, [District] will have a substantial impact on the environment, and that impact will be largely negative in nature, such as new development by it covering heretofore open fields and spaces…. There is also the increase in traffic and attendant noise and air pollution… when it uses its fire equipment…." Comp., ¶10. They contend that LAFCO failed to conduct any environmental review under CEQA, even though the Project will have significant impacts, and thus it failed to proceed in the manner required by law. Comp., ¶¶23-28.

Despite referring to themselves solely as "Plaintiffs" and their pleading solely as a "Complaint," Plaintiffs seek a "judicial determination and declaration" that the Reorganization violated the California Environmental Quality Act ("CEQA") and a writ of mandate and/or prohibition and/or an injunction commanding LAFCO to reverse its decision allowing the subject Reorganization and to vacate its Certificate of Completion," and require "necessary environmental impact review" in compliance with CEQA should LAFCO again consider approving the Reorganization. Plaintiffs identify two causes of action: 1) a petition for writ of mandate pursuant to Code of Civil Procedure ("CCP") sections 1085 "and/or" 1094.5 directing LAFCO to undertake CEQA review for the Reorganization; and 2) Declaratory Relief. They essentially base each identified cause of action on all of the alleged improprieties.

After LAFCO, the County, and District demurred to the original complaint. The hearing was set for March 6, 2024, but continued by stipulation to March 13, 2024. Plaintiffs filed a first amended complaint ("FAC") on February 29, 2024. As with the original complaint, the FAC still asserts two identified causes of action, a petition for writ of mandate under CCP sections 1085 "and/or" 1094.5, and declaratory relief.

II. Demurrers

LAFCO and the County demur to the entire FAC, and separately to the first and second causes of action, on the grounds that the complaint and each cause of action fails to state facts sufficient to constitute a cause of action, the court lacks subject-matter jurisdiction, and the complaint is uncertain.

District joins in and adopts the demurrer and arguments of LAFCO and the County. It also files its own demurrer on the same grounds, and its own memorandum of points and authorities in support of the arguments.

The demurring parties argue that the complaint is untimely because a petition for writ of mandate may only challenge a LAFCO annexation determination prior to the annexation, while after annexation, a party must challenge the determination by in rem proceedings under validating statutes, or a reverse validation action, and the deadline for doing so pursuant to CCP sections 860 and 863 expired before Plaintiffs filed the complaint. They also contend that the summons does not comply with the procedural requirements of CCP section 861, which requires publication, or the content requirements of section 863. They contend that these defects also result in a defect of parties. They add that the FAC admits that a Certificate of Completion ("Certificate") was recorded, and a writ of mandate may only challenge reorganization before the process is final.

Plaintiffs oppose the demurrers. They argue that they allege a CEQA claim because they allege that LAFCO made no investigation into the environmental impacts of the Reorganization; the environmental impacts are significant because they increase the District's sphere of activities and thus allow it to build or expand facilities in new areas; the Reorganization will give the District more money and thus make it easier for it to engage in the activities which "will be largely negative in nature," and it will increase traffic and both noise and air pollution from the fire-fighting activities. They contend also that the Reorganization does not fall within the exemption of Guideline 15320 and instead falls within Guideline 15378's definition of a "project" under CEQA. Plaintiffs also argue in their opposition at 7:4-17, that they "are not challenging said resolution, or the annexation/reorganization adopted thereby. They are challenging the subsequent activities of the issuance of an original certificate of completion, Ex 4, p.1. dated June 21, 2024, and an amended certificated [sic], Ex 5, p.1. dated Sept.9, 2023. The first and second causes of action… seek the invalidation of both those certificates." They reiterate this in their opposition at 8:1-4, where they state, "Plaintiffs are not seeking invalidation of the annexation, nor seeking to set it aside…." This is the crux of their argument regarding these issues. Plaintiffs also present very generalized arguments regarding the alleged violation of the right to vote and right to free speech, none of which includes any analysis refuting the demurring parties' arguments.

The demurring parties have filed reply papers. They point out that Plaintiffs are making new, unsupported, and inconsistent assertions which neither have any basis in their allegations nor legal

support. With respect to CEQA, they assert that Plaintiffs' analysis of the Guideline 15320 exemption is legally and factually flawed, based on a misunderstanding of the exemption's application and of the fire services at issue in the Reorganization.

III. General Demurrer Standards

A demurrer can only challenge a defect appearing on the *face* of the complaint, exhibits thereto, and judicially noticeable matters. CCP section 430.30; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. The grounds for a demurrer are set forth in CCP section 430.10. The grounds, as alphabetically identified in the statute, include: (a) the court lacks subject-matter jurisdiction; (d) defect or misjoinder of parties; (e) the pleading fails to state facts sufficient to constitute a cause of action; and (f) uncertainty.

A. Subject Matter Jurisdiction

The demurrer for lack of subject-matter jurisdiction will only lie where the face of the complaint demonstrates that the court is not competent to act and lacks the power to grant the relief requested. *Buss v. J.O. Martin Co.* (1966) 241 Cal.App.2d 123, 133; *Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1421.

B. Failure to State Facts Sufficient to Constitute a Claim

Demurrer for failure to state facts sufficient to constitute a cause of action is a general demurrer, which must fail if there is *any* valid cause of action. CCP §430.10(e); *Quelimane Co., Inc. v. Steward Title Guar. Co.* (1998) 19 Cal.4th 26, 38; *Fox v. JAMDAT Mobile, Inc.* (2010) 185 Cal.App.4th 1068, 1078 ("as long as a complaint consisting of a single cause of action contains any well-pleaded cause of action, a demurrer must be overruled even if a deficiently pleaded claim is lurking in that cause of action as well"). For example, if a party directs a general demurrer against a cause of action labelled "fraud" based on failure to state that cause of action, the demurrer will fail if the complaint sets forth a valid cause of action for malpractice. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908. The Supreme Court also noted in *Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, at 859, that "including multiple claims within a single action does not render them a single claim."

On a demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not

at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co*. (1962) 57 Cal.2d 463, 473.

C. Joinder

A demurrer for defect, i.e., nonjoinder, or misjoinder of parties lies where it appears on the face of the complaint or judicially noticeable matters that there is a "necessary" party not named in the complaint or plaintiffs lack sufficient community of interest or there is no common question of law or fact as to the defendants. CCP sections 378, 379, 430.10(d). Such a demurrer does not lie where the plaintiff is simply uncertain as to which party is responsible. See CCP sections 379.5, 1048; see also *Landau v. Salam* (1971) 4 Cal.3d 901, 908. Courts have ruled that a defendant demurring for misjoinder where two or more plaintiffs lack sufficient community of interest must show that the defendant will suffer prejudice from the misjoinder. See *Anaya v. Sup.Ct.* (1984) 160 Cal.App.3d 228, 231.

CCP section 389(a), governing compulsory joinder of parties, states that a party qualifies as "necessary" or "indispensable" if, in the party's absence, complete relief cannot be accorded, or a judgment might prejudice him or expose a party to the litigation to additional liability or inconsistent judgments. As stated in *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, at 808-809, one "is an indispensable party... when the judgment to be rendered necessarily must affect his rights." However, it appears that in practice a problem with "complete relief" alone is not necessarily considered enough to find a party to be "necessary" unless nonjoinder may harm the absent party or expose the party to multiple liability, or if the absence makes it impossible to render complete justice *among the parties already joined*. See *Countrywide Home Loans, Inc. v. Sup.Ct.* (1999) 69 Cal.App.4th 785, 792. According to *Countrywide*, quoting a treatise on federal practice, "'joinder is required only when the absentee's nonjoinder precludes the court from rendering complete justice *among those already joined*.... Properly interpreted [the 'complete relief' clause] is not invoked simply because some absentee may cause future litigation."' Emphasis original. The court accordingly ruled in *Countrywide* that certain absent parties did not need to be joined because complete relief could be accorded to those already parties.

Moreover, an absent party's interest, as a practical matter, is not impaired where another party to the lawsuit has the same interest in the litigation. See *Deltakeeper v. Oakdale Irrig. Dist.* (2001) 94 Cal.App.4th 1092, 1102.

If a court finds an absent party to be necessary or indispensable, it should order that the party be joined whenever feasible. CCP section 389(a).

D. Uncertainty

The demurrer for uncertainty is not favored and will only be sustained if the responding party cannot reasonably comprehend what allegations are made against him and thus respond. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.

A demurrer for uncertainty must specify precisely how, why, and where the complaint is uncertain. See *Fenton v. Groveland Community Services Dist.* (1982) 135 Cal.App.3d 797, 809. Failure to do so is thus improper and impairs a party's ability to defend against the demurrer and the court's ability to understand exactly what to consider or what its ruling will be.

IV. Request for Judicial Notice

LAFCO and the County request judicial notice of various official records, attached to the King Declaration as Exhibits 1-12. The court may judicially notice these documents, the contents, and the purported legal effect but may not judicially notice the propriety of the documents or the truth of factual assertions made therein. With this limitation, the court grants the request.

District also requests judicial notice of two documents attached to the Adams Declaration as Exhibits A and B. These are, Ex. A, District Resolution 23/24-01 of July 5, 2023, implementing the reorganization, and Ex. B, a meet-and-confer letter purportedly sent to Plaintiffs regarding the defects in the FAC. Ex. A is judicially noticeable as an official record and act, so the court judicially notices this document, the contents, and the purported legal effect but not the propriety of the documents or the truth of factual assertions made therein. Ex. B is not judicially noticeable. The court therefore denied the request as to Ex. B but it may be considered to show that District attempted to meet and confer regarding the demurrer and that Plaintiffs failed to respond.

V. Legal Analysis

A. The Demurrers Presented

In the actual notice and demurrer, the demurring parties set forth only three demurrer grounds: the complaint and each cause of action fails to state facts sufficient to constitute a cause of action, the court lacks subject-matter jurisdiction, and the complaint and each cause of action is uncertain. However, in their memorandum of points and authorities, they purport to discuss, albeit briefly, one other ground, the special demurrer for misjoinder or defect in the parties. LAFCO and the County argue that the failure to comply with the procedural requirements for a reverse validation action results in a defect or misjoinder of parties because the summons was not directed at all interested parties.

The court notes that the demurrer notice's fail to raise this ground. The court finds that the demurring parties failed to raise or properly notice the demurrer ground for misjoinder or defect in the parties. The court therefore disregards it.

As a result, the only three demurrer grounds which are properly before the court are the three properly noticed general demurrers: the complaint and each cause of action fails to state facts sufficient to constitute a cause of action, the court lacks subject-matter jurisdiction, and the complaint and each cause of action is uncertain.

1. County Service Areas

County Service Areas, such as Area 40, are areas for county services subject to the chapter governing such service areas, at Gov. Code section 25210, et seq., and titled County Service Area Law Gov. Code sections 25210, 25210.2. Amongst other things, county services areas are authorized to provide "Fire protection, fire suppression, vegetation management, search and rescue, hazardous material emergency response, and ambulances." Gov. Code section 25213(b). See also Health & Safety Code section 13862 (listing the services which fire protection districts have the authority to provide).

2. The Reorganization

As noted above, Plaintiffs allege that the Reorganization is the Gold Ridge Fire Protection District Reorganization by which, at hearings on April 5, 2023, and June 7, 2023, LAFCO approved the County's decision to detach properties from Area 40 for purposes of fire protection and annex them to the District. FAC and Complaint, ¶6. LAFCO approved this in Resolution 2768, by which it approved the detachment of territories from County Service Area 40 – Fire Services" to the District. RJN, Ex. 1. The Certificate was recorded on June 21, 2023, and states that the Reorganization as approved consists of detaching territory from "County Service Area 40 (Fire Services)" and annexing them to the District. The territories affected were covered by a mixture of fire companies. RJN, Ex. 1, pages 1-3. The Reorganization will result in continued provision of fire-protection services but will transfer provision of those services from the County to the District. RJN, Ex. 1, pages 1-3.

3. Validation or Reverse Validation Actions

The Cortese-Knox-Hertzberg Local Government Reorganization Act (the "Reorganization Act") of 2000 consists of Govt. Code section 56000 et seq. and constitutes Govt. Code Title 5, Division 3. Section 56100 states that "except as provided in [section 56036(b)(2), section 56036(c)(2), and section 56101], this division provides the sole and exclusive authority and procedure for the initiation, conduct, and completion of changes" in reorganization of cities and districts.

According to Govt. Code section 56103, governing actions testing the validity of any organization, etc., "[a]n action to determine the validity of any change of organization, reorganization, or sphere of influence determination completed pursuant to this division shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure." Therefore, "[a] validation action is 'in the nature of a proceeding in rem.'" *Katz v. Campbell Union High School Dist*. (2006) 144 Cal.App.4th 1024, 1028.

4. CCP section 860 et seq.

CCP section 860 et seq. governs validation proceedings. Section 863 states that any interested person may bring an action within the time and in the court specified by section 860 to determine the validity of any matter that is authorized to be determined in accord with that chapter. Section 860 requires an in rem action to be brought within 60 days and the interested person filing the action must complete notice and file a proof of notice within 60 days from filing the complaint. Section 863 adds that should the interested party fail to provide the required notice, etc., "the action shall be forthwith dismissed on the motion of the public agency unless good cause for such failure is shown by the interested person."

5. The Impacts of the Requirements

As a result of Govt. Code section 56103, validity of a *completed* municipal annexation can only be tested by an in rem proceeding under CCP section 860 et seq. or by a quo warranto proceeding. *Hills For Everyone v. Local Agency Formation Commission of Orange County* (1980) 105 Cal.App.3d 461. This requirement also applies to any challenge to an intermediate step in the

annexation process after the annexation decision has been completed. *Embarcadero Mun. Improvement Dist. v. County of Santa Barbara* (2001) 88 Cal.App.4th 781, 790-791.

In *Hills For Everyone*, a city initiated annexation proceedings with a resolution asking the LAFCO to approve the annexation. At a hearing, LAFCO approved the annexation and the city adopted the resolution for annexation. The petitioner filed an action for writ of mandate to set aside the approval. The trial court granted summary judgment and the appellate court upheld the decision, ruling that the action could only have been brought as an in rem proceeding in compliance with CCP section 860 et seq., or as a quo warranto proceeding by the attorney general in the name of the People of the State of California. *Hills For Everyone*, 466-469. The court rejected petitioner's argument that the requirement to comply with section 860 et seq. did not apply since the annexation allegedly violated CEQA.

Similarly, the court in *Protect Agricultural Land v. Stanislaus County Local Agency Formation Com.* (2014) 223 Cal.App.4th 550, at 558 ("*PAL*"), explained,

> "A LAFCO annexation determination is quasi-legislative and, before the annexation is completed (i.e., final), may be challenged by a petition for a writ of ordinary mandamus brought under Code of Civil Procedure section 1085. [Citations].
>
> Once a LAFCO annexation determination is completed, however, its validity may be challenged only by an in rem proceeding under the validating statutes or by a quo warranto proceeding filed by the Attorney General. (*Hills for Everyone v. Local Agency Formation Com.* (1980) 105 Cal.App.3d 461, 466….) Currently, the requirement for the use of a validating action is set forth in section 56103, which provides:
>
> > "An action to determine the validity of any change of organization, reorganization, or sphere of influence determination completed pursuant to this division shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.""

Accordingly, as the Supreme Court indicated in *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, at 272, and as reiterated in *PAL*, a mandamus will lie to challenge an annexation only before it is final.

The court in *PAL* further explained, at 559-560,

> "Code of Civil Procedure section 860 provides that a public agency may test the legal validity of certain of its acts by filing an in rem validation action within 60 days. If the public agency does not pursue a validation action, Code of Civil Procedure section 863 authorizes any interested person to file a reverse validation action to challenge the validity of the public agency's acts. [Citation.] In a reverse validation action, the summons must be (1) in the

> prescribed form, (2) directed to all persons interested in the matter and to the public agency, and (3) published for the period and in the manner required by statute. (Code Civ. Proc., § 863; [Citation].) If the person bringing the reverse validation action fails to complete publication and file proof thereof within 60 days from the filing of his or her complaint or petition, the lawsuit shall be dismissed "unless good cause for such failure is shown by the interested person." (Code Civ. Proc., § 863; [Citation].
> …
>
> "A validation action is 'in the nature of a proceeding in rem.' ([Code Civ. Proc.,] § 860.) The form of the summons and the manner of service are statutorily prescribed. Jurisdiction of 'all interested persons' is had by publishing a summons for the time provided by Government Code section 6063. ([Code Civ. Proc.,] § 861.) The summons must contain a notice that written answers to the complaint may be filed 'not later than the date specified in the summons, which date shall be 10 or more days after the completion of publication of the summons.' ([Code Civ. Proc.,] § 861.1.) Jurisdiction 'shall be complete after the date specified in the summons.' ([Code Civ. Proc.,] § 862.) In a reverse validation action, if the interested person 'fails to complete the publication ... and to file proof thereof in the action within 60 days from the filing of his complaint, the action shall be forthwith dismissed on the motion of the public agency unless good cause for such failure is shown by the interested person.' ([Code Civ. Proc.,] § 863.)"

B. Discussion

Plaintiffs themselves allege, and Respondents demonstrate in their judicially noticeable matters, that the Certificate was recorded on June 21, 2023. Complaint and FAC, ¶¶17, 19, 21, 22; RJN, Exs.4-5. As a result, Plaintiffs could only challenge the decision under authority governing validation or reverse validation actions by an in rem proceeding and within 60 days from June 21, 2023.

Plaintiffs did not file this action until October 2, 2023, missing the deadline by well over 30 days. The action is therefore defective on its face. Plaintiffs failed to bring this as the mandatory in rem proceeding, as well, and failed to do so within the mandatory timeline. Plaintiffs do not counter this directly in their opposition.

Respondent and RPIs also correctly argue that Plaintiffs failed to comply with the requirements for the contents and service of the summons. Plaintiffs do not address this directly in their opposition.

Somewhat confusingly, Plaintiffs argue in their opposition at 7:4-17, that they "are not challenging said resolution, or the annexation/reorganization adopted thereby. They are challenging the subsequent activities of the issuance of an original certificate of completion, Ex 4, p.1. dated June 21, 2024, and an amended certificated [sic], Ex 5, p.1. dated Sept.9,2023. The first and second causes of action… seek the invalidation of both those certificates." They reiterate this in their opposition at 8:1-4, where they state, "Plaintiffs are not seeking invalidation of the annexation, nor

seeking to set it aside…." This is the crux of their argument regarding these issues. Given that Plaintiffs expressly state that they are not challenging or attempting to undo the Reorganization, it is not clear what they truly are attempting to achieve here, if anything. As the demurring parties point out in their reply papers, this argument makes no sense and the court cannot discern what exactly Plaintiffs are trying to achieve by it. No allegations, facts, or analysis support their claim that the final Certificate is invalid, or that Plaintiffs could even possibly achieve anything by a finding that the Certificate is invalid but the approval and Reorganization are valid. Given that they therefore also present no other arguments, they fail to provide any basis for finding the causes of action to be valid, or for finding any possible basis for curing the defects.

Plaintiffs have already had an opportunity to amend these defects through the FAC, filed in the face of the original demurrers. However, they not only failed to cure the defects but failed to make any apparent substantive changes whatsoever. In light of these issues and the fact that the defect appears incurable from the face of both the pleadings and judicially noticeable matters, the court SUSTAINS the general demurrers on this basis and without leave to amend.

C. CEQA

Characterizing Plaintiffs' CEQA allegations as "makeweight," the demurring parties argue that Plaintiffs fail to state a cause of action for violation of CEQA because the complaint fails even to mention, much less address, either LAFCO's express determination that the Project is exempt from CEQA, or the requirement that Plaintiffs have exhausted administrative remedies.

Plaintiffs, in addressing the CEQA claim again state that "The relief [sic] does not seek to invalidate the Reorganization, it merely seeks enforcement of CEQA." Opposition Brief, 4:14-17. They state that they do not seek "an unwinding of the Reorganization" and instead simply want "an order that the defendants comply with CEQA," apparently including consideration of environmental impacts, alternatives, and mitigation. Opposition 4: 17-28.

1. Exemptions from CEQA

Pursuant to CEQA, an environmental impact report ("EIR") is required for a "project" which substantial evidence indicates may have a significant effect on the environment. Guidelines for the Implementation of CEQA ("Guidelines"), 14 California Code of Regulations ("CCR") section 15063(b); Public Resources Code ("PRC") sections 21100, 21151.

However, an agency may instead find a project to be exempt from CEQA, in which case no further environmental review is necessary and the agency need not further consider whether the action may result in significant environmental effects. PRC section 21084; Guidelines 15002(k), 16061; see also, *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, at 1371-1372. A fundamental component of an exemption determination is that if the agency finds the project to be exempt, then the agency need conduct no further CEQA review. *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (App. 3 Dist. 2015) 242 Cal.App.4th 555, 568.

The Supreme Court in *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, at 74, found that CEQA sets forth a three-stage process for determining if environmental review pursuant to CEQA is necessary and, if so, what level. This three-part process is established in Guideline 15002(k)

and has been further explained and clarified in *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, at 1371-1372, which stated, with emphasis added,

> *"CEQA lays out a three-stage process*. [Citations.] *First, the agency must determine whether the particular activity is covered by CEQA*. [Citation.] CEQA applies to any activity which is a "project," *and which is not exempt*. Generally speaking, any activity a public agency has discretion to carry out or to approve which has the potential for resulting in a physical change in the environment is a "project." [Citations.] Some "projects," however, are statutorily exempt. [Citations.] In addition, if the Secretary of the Resources Agency finds that a class of projects will have no significant effect on the environment, he or she may declare such projects categorically exempt. (§ 21084, subd. (a); Guidelines, §§ 15300-15329, 15354.)
>
> Second, the agency must determine whether the project may have significant environmental effects. [Citation.] Except when the project clearly will have such effects, the agency must conduct an initial study to assist it in making this determination. [Citation.]"
> …
>
> "Based on the initial study, the agency may find no substantial evidence that the project may have a significant effect on the environment. In that case, in lieu of an EIR, it may adopt a statement that the project will have no significant environmental effect. Such a statement is called a negative declaration. [Citations.]
>
> Similarly, the agency may find that, although the project as originally proposed might have had potentially significant environmental effects, the project has been modified by measures which mitigate these environmental effects, and there is no substantial evidence that the project, as modified, may have a significant effect on the environment. In that case, in lieu of an EIR, the agency may adopt a "mitigated" negative declaration. [Citation.]
> …
>
> If the administrative record before the agency contains substantial evidence that the project may have a significant effect on the environment, it cannot adopt a negative declaration; it must go to on the third stage of the CEQA process: preparation and certification of an EIR. [Citations.]
>
> …
>
> However, an agency may undertake or approve a project even though the EIR indicates that it will have significant environmental effects, provided the agency finds that the expected benefits of the project outweigh its environmental effects, and that further mitigation of these effects is not feasible. [Citations.]"

Guideline 15061 governs "Review for Exemption" from CEQA and sets forth the types of exemptions. These include, as relevant here, (2) pursuant to a categorical exemption found in Guidelines 15300, et seq., and (3) the "common sense exemption" for projects with a potential for causing a significant effect and which applies "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment" See *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117. The CEQA Guidelines list a number of classes of projects that are considered generally not to result in a significant impact on the environment and are thus generally exempted from CEQA. PRC 21084; Guidelines 1530015331; *Azusa Land Reclamation Co., Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165.

As noted, LAFCO relied in part on Guideline 15061(b)(3), which is the "common-sense" exemption. See *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117. It states that a project is exempt from CEQA if, "The activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The Discussion following the Guideline states that this "provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process but which common sense provides should not be subject to the act."

The common-sense exemption may be used "only in those situations where its absolute and precise language clearly applies." *Myers v. Board of Supervisors* (1st Dist. 1976) 58 Cal.App.3d 413, 425. Where one can raise a legitimate question of a possible significant impact, the exemption does not apply and, because it requires a finding that such impacts are *impossible*, it requires a factual evaluation based on evidence which shows that it could have no possible significant impact. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117. The agency thus bears the burden of basing its decision on substantial evidence that shows no such possibility. *Ibid.*
LAFCO also relied in part on Guideline 15320, the categorical exemption for actions which are simply a change in organization of local entities. It states, in full,

> "Class 20 consists of changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised. Examples include but are not limited to:
>
> (a) Establishment of a subsidiary district.
> (b) Consolidation of two or more districts having identical powers.
> (c) Merger with a city of a district lying entirely within the boundaries of the city."

At the same time, Guideline 15300.2 sets forth exceptions to categorical exemptions and states that if an exception to the exemptions applies, however, the agency may not rely on an exemption and must conduct further CEQA review. It explains that (a) exemption classes 3, 4, 5, 6, and 11

are "are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies"; (b) all exemptions "are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant"; (c) a "categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances"; (d) a "categorical exemption shall not be used for a project which may result in damage to scenic resources… within a highway officially designated as a state scenic highway"; (e) a categorical exemption shall not be used for a project located on a site which is included on any list of hazardous waste sites compiled pursuant to Section 65962.5 of the Government Code; and (f) a "categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource."

Courts have become fairly uniform in breaking down the standard of review regarding a determination that a project is exempt from CEQA. See *Azusa Land Reclamation Co., Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106. The deferential, substantial-evidence standard applies to the initial agency determination that a categorical exemption applies to a project. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251.

Accordingly, where an agency has determined if a project is exempt from CEQA under a categorical exemption, the court must uphold the agency's decision if supported by substantial evidence in light of the whole record. *Citizens for Environmental Responsibility, supra,* 242 Cal.App.4th 568; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115; *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251; *California Farm Bureau Federation v. California Wildlife Conservation Bd*. (2006) 143 Cal.App.4th 173, at 185.

In the words of *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, at 966, "'Where a project is categorically exempt, it is not subject to CEQA requirements and "may be implemented without any CEQA compliance whatsoever." ' [Citation.] [¶] In keeping with general principles of statutory construction, exemptions are construed narrowly and will not be unreasonably expanded beyond their terms. [Citations.] Strict construction allows CEQA to be interpreted in a manner affording the fullest possible environmental protections within the reasonable scope of statutory language. [Citations.] It also comports with the statutory directive that exemptions may be provided only for projects which have been determined not to have a significant environmental effect. [Citations.]"

As noted above, the court in of *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (App. 3 Dist. 2015) 242 Cal.App.4th 555, at 568, set forth a detailed description of the steps and necessary determinations which are required when an agency studies an activity to determine if CEQA applies and also what level of review is necessary, explaining, with emphasis added, that if an agency finds a project to be exempt from CEQA, "*no further agency evaluation under CEQA is required…*. If, however, the project does *not* fall within an exemption *and it cannot be seen with certainty that the project will not have a significant effect* on the environment, the agency takes the second step and conducts an initial study to determine whether the project may

have a significant effect on the environment." On the burden and standard of review, it explained, at 568 with emphasis added,

> "The lead agency has the burden to demonstrate that a project falls within a categorical exemption *and the agency's determination must be supported by substantial evidence*. [Citation.] Once the agency establishes that the project is exempt, *the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions* listed in Guidelines section 15300.2."

Similarly, the court in *California Farm Bureau Federation v. California Wildlife Conservation Bd*. (2006) 143 Cal.App.4th 173, at 185, also explained, with emphasis added,

> "Where the specific issue is whether the lead agency correctly determined a project fell within a categorical exemption, we must first determine as a matter of law the scope of the exemption and then *determine if substantial evidence supports the agency's factual finding that the project fell within the exemption*. (Citations.) The lead agency has the burden to demonstrate such substantial evidence. (Citations.)
>
> Once the agency meets this burden to establish the project is within a categorically exempt class, "*the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions* listed in Guidelines section 15300.2."

Accordingly, "[a]n agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable. The burden then shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category." *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist*. (2006) 1412 Cal.App.4th 677, 689; quoted and followed also in *San Francisco Beautiful v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012, at 1022-1023.

The Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, at 1105, reiterated that "[a]s to projects that meet the requirements of a categorical exemption, a party challenging the exemption has the burden of producing evidence supporting an exception." Nonetheless, the court added, at 1103, that after finding a project to be categorically exempt, the agency must consider evidence in the record which shows that an exception to the exemption may apply. See also Guideline 15300.2.

Agency actions are presumed to comply with applicable law unless the petitioner presents proof to the contrary. Evid. Code section 664; *Foster v. Civil Service Commission of Los Angeles County* (1983) 142 Cal.App.3d 444, 453. Accordingly, the findings of an administrative agency are presumed to be supported by substantial evidence absent contrary evidence. *Taylor Bus. Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331.

Additionally, as noted above, any inquiry into whether an agency has failed to comply with CEQA must determine if the error, or abuse of discretion, was prejudicial. PRC section 21168.5; see also *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, at 1073.

With respect to the exceptions to exemptions, all of the exceptions have clear and specific factors which will implicate them except for the more vaguely defined "unusual circumstances" exception, for which courts have developed a standard analysis. The Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, at 1105, explained how one challenging an exemption determination must challenge it based on the 'unusual circumstances' exception, stating, with original emphasis,

> "As explained above, to establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project *may* have a significant effect on the environment, because that is the inquiry CEQA requires absent an exemption. (§ 21151.) Such a showing is inadequate to overcome the Secretary's determination that the typical effects of a project within an exempt class are not significant for CEQA purposes. On the other hand, evidence that the project *will* have a significant effect does tend to prove that some circumstance of the project is unusual. An agency presented with such evidence must determine, based on the entire record before it—including contrary evidence regarding significant environmental effects—whether there is an unusual circumstance that justifies removing the project from the exempt class."

The Supreme Court therefore set forth two ways in which someone might support an argument that the unusual circumstances exception applies. As the court in *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (App. 3 Dist. 2015) 242 Cal.App.4th 555, at 574-576, described the ruling of *Berkeley Hillside*,

> "In *Berkeley Hillside*,… our high court added additional clarification to the unusual circumstance exception analysis. The court identified two alternative ways to prove the exception. [Citation].
>
> In the first alternative, as this court said in *Voices*, a challenger must prove both unusual circumstances and a significant environmental effect that is due to those circumstances. In this method of proof, the unusual circumstances relate to some feature of the project that distinguishes the project from other features in the exempt class. [Citation.] Once an unusual circumstance is proved under this method, then the "party need only show a *reasonable possibility* of a significant effect due to that unusual circumstance." (Ibid. italics added.)
>
> The court in *Berkeley Hillside* made clear that "section 21168.5's [10] abuse of discretion standard appl[ies] on review of an agency's decision with respect to the unusual circumstances exception. The determination as to whether there are 'unusual circumstances' [citation] is reviewed under section 21168.5's

substantial evidence prong. However, an agency's finding as to whether unusual circumstances give rise to 'a reasonable possibility that the activity will have a significant effect on the environment' [citation] is reviewed to determine whether the agency, in applying the fair argument standard, 'proceeded in [the] manner required by law.' [Citations.]" [Citation.]

As for the first prong of the exception–whether the project presents circumstances that are unusual for projects in an exempt class–this question is essentially a factual inquiry for which the lead agency serves as " 'the finder of fact.' " [Citation.] Thus, reviewing courts apply the traditional substantial evidence standard incorporated in section 21168.5 to this prong. [Citation.] Under that relatively deferential standard of review, our role in considering the evidence differs from the agency's. (Ibid.) " ' "Agencies must weigh the evidence and determine 'which way the scales tip,' while courts conducting [traditional] substantial evidence ... review generally do not." ' [Citation.] Instead, reviewing courts, after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to support it. [Citations.]" (Ibid.)

As for the second prong of the exception–whether there is "reasonable possibility" that an unusual circumstance will produce "a significant effect on the environment"–our high court has said "a different approach is appropriate, both by the agency making the determination and by reviewing courts." [Citation.] "[W]hen there are 'unusual circumstances,' it is appropriate for agencies to apply the fair argument standard in determining whether 'there is a reasonable possibility of a significant effect on the environment due to unusual circumstances.' " (Ibid. italics added.) Under the fair argument test, " 'an agency is merely supposed to look to see if the record shows substantial evidence of a fair argument that there may be a significant effect. [Citations.] In other words, the agency is not to weigh the evidence to come to its own conclusion about whether there will be a significant effect. It is merely supposed to inquire, as a matter of law, whether the record reveals a fair argument.... " '[I]t does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.' " [Citation.]' " [Citation.] Thus, a lead agency must find there is a fair argument even when presented with other substantial evidence that the project will not have a significant environmental effect. [Citation.] Accordingly, where there is a fair argument, "a reviewing court may not uphold an agency's decision 'merely because substantial evidence was presented that the project would not have [a significant environmental] impact. The [reviewing] court's function is to determine whether substantial evidence support[s] the agency's conclusion as to whether the prescribed "fair argument" could be made.' " [Citation.] Thus, the "agency must evaluate potential environmental effects under the fair argument standard, and judicial

> review is limited to determining whether the agency applied the standard 'in [the] manner required by law.' " [Citation.]
>
> In the second alternative for proving the unusual circumstance exception, "a party may establish an unusual circumstance with evidence that the project will have a significant environmental effect." [Citation.] "When it is shown 'that a project otherwise covered by a categorical exemption will have a significant environmental effect, it necessarily follows that the project presents unusual circumstances.' [Citation.]" [Citation.] But a challenger must establish more than just a fair argument that the project will have a significant environmental effect. [Citation.] A party challenging the exemption, must show that the project will have a significant environmental impact. (Ibid.) Again, as our high court has noted, we review the determination of the unusual circumstances prong of the exception under the deferential substantial evidence test. [Citation.]
>
> As for the second prong under this second alternative, no other proof is necessary. Evidence that a project will have a significant environmental effect, "if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.' [Citation.]" [Citation.]"

Preliminarily, both the allegations and the judicially noticeable matters, which comport with Plaintiffs' allegations, on their face indicate that the two adopted exemptions apply. First, the Project is simply a reorganization of local agencies, and thus falls within the adopted categorical exemption of Guideline 15320. As noted above, this exemption applies to "changes in the organization or reorganization of local governmental agencies where the changes do not change the geographical area in which previously existing powers are exercised." It gives as examples the establishment of a subsidiary district, consolidation of two or more districts having identical powers, and merger with a city of a district lying entirely within the boundaries of the city. In other words, it applies where the reorganization does not alter where already existing services are provided, i.e., it does not remove services from, or expand services to, a geographic area. This Reorganization complies with this exemption because it is solely a change in agency organization, it appears to involve only a change in which agency is responsible for the services at issue rather than a change in, or geographic expansion of, services, and nothing in the complaint or judicially noticeable matters indicates to the contrary. As noted above, the County, in its Area 40, had authority to provide the same types of fire-protection services in the affected area which the District will now provide, demonstrating that there is only a reorganization of agency responsibility which does "not change the geographical area in which previously existing powers are exercised." Plaintiffs' opposition arguments only underscore this. First, they argue that "The reorganization was a calculated undertaking to imposed [sic] parcel taxes on property owners in County Service Area 40 without a vote of the registered voters…." Complaint and FAC, ¶8; Opposition 2:27-28. They themselves accordingly boil the Project down to a reorganization the effect of which is merely to alter the taxes on property owners rather than activity which may cause any impact on the environment. Given that it is merely a reorganization of agencies and a change in taxes of some property owners, it also follows on the face of the matters that it falls within the

common-sense exemption. In another argument in their opposition, Plaintiffs do state that the Guideline 15320 exemption does not apply but they offer no support for this otherwise conclusory assertion. Opposition 5:25-6:8. They cite to no allegations or judicially noticeable matters regarding this. Instead, they provide only one brief explanation which actually supports the demurrers. They contend that the Reorganization "expanded [District's activities] to areas in which previously existing powers are [sic] exercised…." As explained above, this is exactly why the Reorganization falls squarely within the exemption of Guideline 15320: it altered the responsibility for existing services in the affected area without changing the area in which the services are provided. Plaintiffs list what they call "private non-profit volunteer fire departments" as having been responsible for fire protection in the affected area but this does not help them. Opposition 6:2-8. There is, again, no allegation to support this, while Plaintiffs are merely citing to the list of entities in the LAFCO/County demurrer, a list which merely underscores the fact that entities were providing the fire-protection services in the affected territories, under the authority of the County. The Reorganization merely reorganized the authority for the services and did not alter the area in which services are provided. Finally, on this point, Plaintiffs in their opposition, just as in their FAC, completely fail to address the other exemption on which LAFCO relied, the common-sense exemption. Even if Plaintiffs presented a valid basis for finding that they present a valid claim as to the Guideline 15320 exemption, and they do not, they simply ignore the common-sense exemption, with neither allegations nor analysis even touching on it.

Second, Plaintiffs here fail to present any allegations which may assert a legally cognizable challenge to the determination that the Project was exempt from CEQA. They merely allege that LAFCO's decision violated CEQA because it was made "without any investigation as to its environmental impact" and the Project "has a significant impact in the environment and was not exempt." FAC, ¶¶7, 10, 13. These allegations are essentially identical to those in the original complaint, moreover, and the court is unable to discern any substantive change between the two. Comp. and FAC, ¶¶7, 10, 13. As in the original complaint, in the FAC they make no other allegations whatsoever addressing the basis for this determination or indicating why they feel the decision violated CEQA. Otherwise, they simply claim that the Project may cause a significant impact because "it increases the sphere of [District's] activities in and control of activities [sic] in a new area well over twice its previous district size," including the facts that District will have the ability to develop new facilities and expand existing facilities, and there may be an increase in District's traffic, and thus noise and pollution, from expanded operation of its fire equipment. FAC, ¶10. In their opposition, Plaintiffs present the noted argument about why they feel the Guideline 15320 exemption does not apply but they cite to no allegations regarding this.

Aside from the vague, facially speculative, and conclusory nature of these allegations, fundamentally they do not address the standards for challenging a finding that a project is exempt from CEQA. As noted above, if an agency finds a project to be exempt, it by definition need not conduct any further CEQA review into the project's possible environmental impacts. The standard may then shift depending on a petitioner's specific arguments as to why a project should not be exempt, but those details are not implicated at this stage because Plaintiffs fail to address the determination that the Project was exempt or make any legally cognizable allegations addressing the validity of the exemption determination. They only claim that the exemption determination violated CEQA because the Project may cause environmental impacts and LAFCO failed to conduct environmental review pursuant to CEQA. This does not, however, address the fact that

LAFCO found the Project to be exempt in a manner which comports with CEQA. As noted above, if a project is exempt, then the agency need not conduct such environmental review in the first place. Moreover, merely because a project may have environmental impacts is not the standard for addressing a finding that a project is exempt. Plaintiffs do not assert that the exemption of Guideline 15320 does not apply for any reason, they do not argue that the common-sense exemption does not apply, and they do not allege that the Project falls within an exception to the exemptions. Plaintiffs' allegations in short ignore the standard for exemptions and are jumping to the next step in CEQA review without addressing the validity of the exemption determinations.

Finally, even if the issues raised were appropriate for challenging the exemption decision, they are insufficient to raise a CEQA defect. The claim is wholly vague, speculative, and conclusory, but this is only part of the problem. The assertion of possible impacts on its face appears to be nonsensical. Plaintiffs present no allegation or explanation indicating why environmental effects could possibly result from a decision merely to transfer fire-protection service of an area from one agency to another.

Again, as noted above, Plaintiffs' allegations and opposition underscore the facial flaw in their reasoning, because in their opposition they argue that "The reorganization was a calculated undertaking to imposed [sic] parcel taxes on property owners in County Service Area 40 without a vote of the registered voters…." Complaint and FAC, ¶8; Opposition 2:27-28. Nothing about this claim goes to CEQA analysis. Even if their allegations on this point could be taken to present a cognizable challenge to the exemption determinations, and they do not, Plaintiffs at most raise only possible social or economic impacts, not physical environmental impacts. The authority is expressly clear that CEQA is concerned only with physical environmental impacts and not social or economic impacts except in narrow instances in which they relate to physical environmental impacts. PRC 21080(e), Guideline 15064(e) (stating, in part and with emphasis added, "*Economic and social changes* resulting from a project *shall not be treated as significant effects on the environment*"); Guideline 15384 (states, with emphasis added, that "evidence of *social or economic impacts which do not contribute to or are not caused by physical impacts on the environment* does *not* constitute substantial evidence."); Guideline 15358; Guideline 15131; see also *Hecton v. People of the State of California* (1976) 58 Cal.App.3d 653, at 656; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, at 1019-1022.

Plaintiffs' allegations also clearly fail to implicate any exception to exemptions. Not only do Plaintiffs make no reference to exceptions to exemptions, or mention anything which seems to raise the exceptions, but substantively no allegation even hints at them at all. They fail even to hint at the existence of unusual circumstances, much less that there are any which could apply, and they obviously make no reference to any of the other exceptions such as those related to scenic highways or hazardous waste sites. It is also obvious from the face of the pleadings and judicially noticeable matters than none of these exceptions applies or has been raised in any way.

In their opposition, Plaintiffs repeat the allegations in the FAC that the Project will increase District's sphere of activities and that this will include development of new facilities and expansion of existing ones in a region with sensitive historic and scenic areas. However, this argument is unpersuasive. First, as noted, they only raise this as an issue which could mean that the Project may result in environmental impacts, without presenting any basis for challenging the exemption

determinations. Second, the allegations are based solely on the claim that the District will be able to increase its activities because it will have more money. This is, as noted, vague and speculative, there is no indication that this will happen, and the record is clear that the Project at issue involves no change or expansion of activities or firefighting services or construction or development of physical projects in any way; it merely changes which agency has authority for firefighting services in a given area.

Petitioners also claim that the Project will increase traffic and pollution as a result of District using its equipment to fight fires, an argument which again is not only completely speculative and based on no specific aspects of this Project, but it simply does not go to the validity of the exemption determinations. Moreover, it fails to take into account the fact that the issues of traffic or pollution resulting from firefighting activities will exist regardless of which agency is responsible for such services in the area. This project, as stated above, merely changes which agency is responsible for such services in the affected area. On its face, this in no way raises any possible environmental impact or other basis for demonstrating a CEQA violation here.

Plaintiffs fail to state a valid cause of action for CEQA for the reasons stated above. They must present allegations addressing the exemption determination and setting forth why that determination fails to comply with CEQA in a manner consistent with the standards under CEQA controlling exemption determinations. On this basis, the court SUSTAINS the demurrer as to the claim under CEQA. The court further notes that this is Plaintiffs' FAC and they have already had an opportunity to cure the defects in the face of the original demurrers. Moreover, not only have they failed to cure the defects, but the court, as indicated above, discerns no meaningful change in the allegations whatsoever, underscoring the finding that Plaintiffs are unable to cure their defects. The court SUSTAINS without leave to amend the general demurrer to the CEQA claims, for failure to state a cause of action. However, these arguments and issues do not support the other demurrers.

D. Exhaustion of Administrative Remedies

According to PRC section 21177, "[a] person shall not maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the filing of the notice of determination." This does not, however, bar an association or organization formed after approval from raising a challenge which one of its constituent members had raised, directly or by agreeing with or supporting another's comments. PRC section 21177(c). Moreover, someone may file a legal challenge based on an issue as long as "any person" raised that issue during the review process. PRC section 21177(a); see *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 267-268.

This requirement does not apply to any grounds for which the agency did not give required notice and for which there was no hearing or opportunity to be heard. PRC section 21177(e). Accordingly, while a petitioner challenging an agency's decision ordinarily must exhaust administrative remedies in the underlying proceedings and may only raise an argument in court which had been raised in the underlying proceedings, this does not apply where the issue was unknown prior to the final determination so that no member of the public had notice and an opportunity to raise the issue. *Attard v. Board of Supervisors of Contra Costa County* (2017) 14 Cal.App.5th 1066, 1083. As explained in *Attard*, "[w]hen a litigant suspects bias on the part of a

member of an administrative hearing body, the issue must be raised in the first instance at the hearing."

At that same time, a party challenging a decision under CEQA cannot, to exhaust administrative remedies, rely merely on "general objections" or "unelaborated comments." *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197. However, "[l]ess specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding…." *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163.

The Supreme Court in *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, held that the petitioner needed to exhaust administrative remedies prior to raising its challenge to a determination that a project was exempt from CEQA, clarifying a prior dispute over this requirement. The court added, however, that in instances where the agency has not given notice of, and allowed for public hearings and comments regarding, an exemption determination, then exhaustion of administrative remedies is not required.

The demurring parties correctly assert that the FAC, like the complaint before it, fails to demonstrate exhaustion of administrative remedies. The only reference to this issue in the FAC is in ¶32 which states, in full, "Plaintiffs have exhausted their available administrative remedies and to the extent any exhaustion was not pursued, such pursuit would have been futile, especially given the complicity of the defendants in fostering and actively allowing the violations of law asserted herein." This again is identical to the allegations in the original complaint. Otherwise, the only other allegations which even might be taken to implicate this issue are the conclusory allegations that LAFCO failed to give required notice to all affected members of the public or in a manner reasonably calculated to provide sufficient notice. …." FAC and Comp. ¶¶7, 17, 20, 30, 31, 35. They allege that the notice was improperly limited to property owners and that the notice was not "reasonably calculated to give sufficient not [sic] to the voters, residents and property owners…." FAC and Comp. ¶17. Paragraph 7 states, in full,

> "Plaintiffs assert that the notices for said meeting were deficient as a matter of statutory law and as a matter of constitutional due process law. Specifically, the notices provided were not reasonable [sic] calculated to provide notice to plaintiffs as property owners and registered voters, and to property owners and registered voters in County Service Area 40 of the proposed annexation and the asserted CEQA exempt status of the project."

Other allegations are more vague and conclusory, merely stating that the notice was insufficient, such as the statement in ¶35 that "no hearing was ever properly noticed…." Comp., ¶¶20, 30, 31, 35. They allege that LAFCO only gave notice by mail to property owners. Comp., ¶20. They contend that this notice violated "statutory law" but fail to explain what statutory law it violated and how. Comp., ¶¶7, 17. Again, these allegations are fundamentally unchanged from the original complaint and largely identical.

These allegations are insufficient to demonstrate either that Plaintiffs exhausted their administrative remedies or were excused from doing so. The allegations indicate that there was a

decision and that some notice was sent to some members of the affected public. The thin, conclusory, and unexplained allegations that notice was legally insufficient fail to explain how or why the notice was insufficient or to provide any facts to support the claim, or even indicate what legal requirements the notices might have violated. Moreover, since clearly some members of the public received some form of notice, the allegations fail to explain why they could not have challenged the determination. Petitioner, finally fail to allege whether there were administrative remedies available subsequent to the allegedly improperly noticed hearing by which they could have challenged the determinations originally made.

The demurring parties also demonstrate, from the exhibits in the request for judicial notice, that LAFCO in fact gave notice of the reliance on CEQA exemptions, held two public hearings, and made the determination in a three-step process. RJN, Exs. 1, 3-12. LAFCO held the hearings on April 5, 2023, and June 7, 2023, and published notice for both hearings in the Press Democrat newspaper on March 8, 2023, and April 28, 2023, respectively. The June hearing was for the purpose of receiving and considering written protests against the Project. Public comment was allowed but the minutes show that public comment was submitted only at the June hearing. After the two public hearings, LAFCO issued and recorded the Certificate on June 21, 2023, followed by a corrected Certificate on September 19, 2023.

The notices, moreover, show that LAFCO did not, as Plaintiffs allege, solely give notice by mailing notice to property owners. The notices also clearly explain where and when the hearings were, and what the hearings would decide, explaining the Project as alleged in the complaint and also stating that LAFCO is finding the Project to be exempt from CEQA pursuant to Guidelines 15061(b)(3) and 15320. As the demurring parties argue, Gov. Code section 56157(h) allows service of notice under the Reorganization Act to be by publication where the number of recipients is over 1,000. It states, in full, "If the total number of notices required to be mailed in accordance with subdivisions (d) and (f) exceeds 1,000, then notice may instead be provided by publishing a display advertisement of at least one-eighth page in a newspaper, as specified in Section 56153, at least 21 days prior to the hearing." Gov. Code section 56153 governs the manner of service by publication. It states, in full,

> "Notice required to be published shall be published pursuant to Section 6061 in one or more newspapers of general circulation within each affected county, affected city, or affected district. If any newspaper is a newspaper of general circulation in two or more affected cities or affected districts, publication in that newspaper shall be sufficient publication for all those affected cities or affected districts. If there are two or more affected counties, publication shall be made in at least one newspaper of general circulation in each of the affected counties."

According to Gov. Code section 57025, notice of a protest hearing, in this case the hearing of June 7, 2023, shall be given in the manner provided in section 56153, set forth above, and adds that the commission also "shall give mailed notice to *all landowners* owning land within any affected territory…." Emphasis added. As the complaint itself states, mailed notice was given to the landowners and the complaint fails to mention the service by publication on others or make any assertion that such service was improper.

Gov. Code section 56160 adds, “The failure of any person or entity to receive notice given pursuant to this division shall not constitute grounds for any court to invalidate any action taken for which the notice was given.”

Finally, the content of the notices appears to comply with the requirements of Gov. Code section 57026, which governs the contents. This states, in full,

The notice required to be given by Section 57025 shall contain all of the following information:

(a) A statement of the distinctive short form designation assigned by the commission to the proposal.

(b) A statement of the manner in which, and by whom, proceedings were initiated. However, a reference to the proponents, if any, shall be sufficient where proceedings were initiated by a petition.

(c) A description of the exterior boundaries of the affected territory.

(d) A description of the particular change or changes of organization proposed for each of the subject districts or cities and new districts or new cities proposed to be formed, and any terms and conditions to be applicable. The description may include a reference to the commission's resolution making determinations for a full and complete description of the change of organization or reorganization, and the terms and conditions.

(e) A statement of the reason or reasons for the change of organization or reorganization as set forth in the proposal submitted to the commission.

(f) A statement of the time, date, and place of the protest hearing on the proposed change of organization or reorganization.

(g) If the affected territory is inhabited and the change of organization or reorganization provides for the submission of written protests, a statement that any owner of land within the territory, or any registered voter residing within the territory, may file a written protest against the proposal with the executive officer of the commission at any time prior to the conclusion of the hearing by the commission on the proposal.

(h) If the affected territory is uninhabited and the change of organization or reorganization provides for submission of written protests, a statement that any owner of land within the territory may file a written protest against the proposal with the executive officer of the commission at any time prior to the conclusion of the hearing by the commission on the proposal.

The notices appear to contain all of the required information. Moreover, nothing in the complaint alleges that the notices lacked any of this information, much indicate how or why the notices may have violated these requirements.

Accordingly, not only do Plaintiffs fail to allege any basis as to why they might have been excused from exhausting administrative remedies, but the judicially noticeable documents demonstrate proper notice and opportunity to exhaust such remedies.

Plaintiffs, as noted, make the vague and conclusory statement that exhausting such remedies would have been futile, adding that this was true "especially given the complicity of the defendants to claim that the collusion," apparently indicating bias and collusion to prevent meaningful efforts to exhaust such remedies. Plaintiffs do not explain this, however, or provide any allegations beyond this which could support such a finding.

In their opposition, Plaintiffs provide only very generalized arguments regarding the alleged violation of the right to vote and right to free speech, none of which includes any analysis refuting the demurring parties' arguments.

The court SUSTAINS the general demurrers to the CEQA claim on this basis, again without leave to amend because Plaintiffs have already had one opportunity to amend in the face of the prior demurrers and not only have they failed to cure the defects, but they have effectively made no effort to make any substantive changes whatsoever.

E. Conclusion as to CEQA Claims

As explained above, Plaintiffs fail to state a valid cause of action based on a violation of CEQA and this court has no subject-matter jurisdiction. The court therefore SUSTAINS the general demurrers. However, the issues do not support the other demurrers, which the court overrules.

Plaintiffs have already had an opportunity to amend, having filed their FAC on the last day they could do so in the face of pending demurrer. Despite having thus been advised of possible defects and already having taken an opportunity to correct their mistakes, they made no changes whatsoever with regard to the noted defects in the CEQA claim. The allegations, judicially noticeable documents, and arguments together also reveal no possible basis on which Plaintiff may be able to cure the defects. The court therefore sustains the demurrers to the CEQA claim without leave to amend.

VI. Conclusion

The court SUSTAINS the general demurrers presented in both demurring papers, without leave to amend. The court overrules the demurrers for uncertainty or defect, or misjoinder of parties as explained herein, but this has no impact on the outcome because the demurrers which this court sustains fully dispose of all causes of action presented.

The prevailing parties shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

3-6. SCV-269767, Ravioli LLC v. Master Bango Inc.

The Hon. Oscar Pardo has been recused from this case under CCP § 170.1. On review of Cross-Complainant's motion for leave to amend the Cross-Complaint, Cross-Complainant alleges that the failure to plead the Cross-Complaint properly was the result of an error by Cross-Complainant's prior counsel. Cross-Complainant's prior representation was through this judicial officer's former law firm. As prior counsel substituted out before this judicial officer had any reason to review the file, no conflict previously arose, nor was any apparent to the Court. The current circumstances appear to rise to adequate basis to recuse at this time rather than make further substantive rulings within the case.

The three motions to set aside the right to attach order, and the motion for leave to amend the Cross-Complaint currently on the Court's calendar has been transferred to Department 17, to be heard by the Honorable Judge Bradford DeMeo. The matter is not continued, and will be heard at the scheduled date and time in Department 17. The tentative ruling from that judicial officer is available under the Civil tentative ruling page under the rulings for Department 17.

7. SCV-269813, Velazquez v. Sullivan

The Court preliminarily notes that the parties were included in the discovery facilitator program. While the facilitator was not able to resolve the matter without Court intervention, the Court thanks him for his efforts and service.

Plaintiff Adriana Velazquez ("Plaintiff"), filed the complaint in this action against defendants George Sullivan ("Defendant"), and Does 1-100 arising out of an alleged car collision (the "Complaint"). This matter is on calendar for Plaintiff's motion to reopen discovery under CCP § 2024.050. The motion is **DENIED**.

I. Governing Law

Under CCP § 2024.020, the discovery cut-off is based on the date *initially* set for trial, and as such, a trial continuance or postponement of the trial date does not operate to reopen discovery. *See Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1575. Discovery is to be completed 30 days prior to initial trial date, and motions regarding discovery are to be heard no later than 15 days before the initial trial date. *Ibid*. "The purpose of imposing a time limit on discovery is to expedite and facilitate trial preparation and to prevent delay. Without a cutoff date, the parties could tie up each other and the trial court in discovery and discovery disputes right up to the eve of trial or beyond. Furthermore, as defendants point out, to be effective the cutoff date must be firm or some litigants will manipulate the proceedings to avoid the cut-off date." *Beverly Hosp. v. Sup. Ct.* (1993) 19 Cal.App.4th 1289, 1295 (articulating purpose of cut-off in context of holding that notwithstanding statutory reference to "initial trial date," permitting additional discovery following a mistrial, order granting new trial or reversal on appeal is consistent with the overall purposes of the discovery rules). Upon a motion to re-open discovery, the decision to reopen discovery must weigh: 1) The necessity and the reasons for the discovery; 2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier;

3) Any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; 4) the length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action. See CCP § 2024.050.

II. Analysis

The parties were initially scheduled for trial on September 1, 2023. On August 4, 2023, Plaintiff filed an ex parte application to continue the trial and extend trial deadlines because: 1) Plaintiff's mother had passed away and she was unavailable due to necessary familial commitments; and 2) Plaintiff's counsel was unavailable due to other trial commitments. The Court will note that since this Application, the Court has been informed that Plaintiff's mother passed away in 2011. Plaintiff does not refute this but now states that it was her aunt that passed at the time of the Application. The request to continue deadlines was noticeably not supported by evidence that Plaintiff would be unable to (through counsel) perform the necessary expert discovery. Defendant only opposed the extension of discovery. By ex parte order on August 7, 2023, the Court continued the trial, but specifically provided that the close of discovery would continue to be anchored to the original trial date, in part due to the ex parte nature of the request. Now, on noticed motion, Plaintiff requests that the Court re-open discovery only for the purposes of allowing expert discovery. Defendant opposes the motion, averring that the failure to perform the necessary discovery before the original trial date is Plaintiff's unforced error.

First, the Court addresses the Plaintiff's diligence in pursuit of this motion. The original trial was scheduled for September 1, 2023. In the motion to continue that trial, the Court particularly denied the Plaintiff's request to allow discovery to track to the new trial date. Plaintiff did nothing to address this until March of 2024, only then attempting to meet and confer with Defendant regarding the instant motion. Plaintiff filed the motion on April 10, 2024. This means that despite being particularly on notice of the close of discovery, Plaintiff made no efforts to address the issue for close to eight months. This deficiency is compounded by Plaintiff's lack of diligence in performing the expert depositions before the discovery cutoff. Plaintiff's combined lack of diligence in this regard is perturbing.

As to the necessity of the discovery, that appears nebulous. Whether or not Plaintiff's initial failure to produce their retained expert witnesses was unreasonable is not before the Court. Neither party particularly argued or briefed the issue. The Court need not make any determination on an issue not argued by either party. To the degree that the failure to depose Defendant's expert may be prejudicial, the level of prejudice does not appear untoward. As to Plaintiff's experts, the Court notes that Plaintiff has only two retained experts. As discussed above, whether Defendant's deposition notice and that Plaintiff did not produce the witnesses amounts to "unreasonable" failure to produce the experts is not before the Court. Plaintiff has 13 unretained witnesses which she avers she may produce. Even if Plaintiff were precluded from producing the retained expert witnesses, Plaintiff provides no evidence to the Court with the motion showing the prejudice suffered from not being able to produce their retained expert witnesses.

Granting the motion reopening discovery for this purpose will not delay the trial. This motion is being heard more than 40 days prior to trial, which is the normal period which parties would have to perform these functions. There is no indication that this will impact the trial date.

The original trial date was in September 2023. The current trial date is July 24, 2024. This is a continuance of moderate duration. The length of time between the two trial dates does not weigh heavily on the result of the decision due to this relatively regular duration of continuance.

Weighing all these particularities, the Court does not find cause to re-open discovery. Plaintiff has neither displayed diligence, nor given reason why the lack of apparent diligence was reasonable under the circumstances.

Plaintiff's Motion is **DENIED**.

III. Conclusion

Based on the foregoing, Plaintiff's motion is **DENIED**.

Defendant shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

8. SCV-273331, Barragan v. American Honda Motor Co, Inc.

Plaintiff Yesenia Barragan ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants American Honda Motor Co., Inc., ("Defendant" or "Manufacturer"), and Does 1-10. The Complaint contains causes of action for: 1) breach of express warranty through failure to repair under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") (Civ. Code § 1793.2); and 2) fraudulent inducement – concealment.

This matter is on calendar for Plaintiff's motion to compel further responses to requests for production of Documents under CCP § 2031.310. The motion is **GRANTED in part.**

I. Evidentiary Issues

Plaintiff asserts new factual issues related to the *Cadena* class action contained in the amended RPOD ¶ 46. New substantive evidence and points raised on reply are generally properly disregarded. *Jay v. Mahaffey* (2013) Cal.App.4th 1522, 1537. Therefore, the Court disregards the fresh matter raised.

II. Governing Law

Regarding RPODs, a party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party is not able to comply with a

particular request, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." CCP § 2031.230. "This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and "[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." *Id.*

Upon receipt of a response to a request for production, the propounding party may move for an order compelling further response if the propounding party deems that a statement of compliance with the demand is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection in the response is without merit or too general. CCP § 2031.310(a). A motion to compel further responses to a request for production of documents must "set forth specific facts showing 'good cause' justifying the discovery sought by the demand." CCP §2031.310(b)(1). Absent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing 'good cause' simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. *See also Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98. Once good cause is shown, the burden shifts to the responding party to justify its objections. *See Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 220-221.

"If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log." CCP, § 2031.240 (c)(1). However, failure to provide a privilege log does not, in and of itself, waive attorney client privilege. *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1131. The attorney-client privilege limits disclosure of confidential communications between a lawyer and client. Evid. Code § 954. "But not all communications with attorneys are subject to that privilege." *Caldecott v. Superior Ct*. (2015) 243 Ca1.App.4th 212, 227. The attorney-client privilege follows from the establishment of the professional relationship between client and attorney. *Moeller v. Superior Ct.* (1997) 16 Cal.4th 1124, 1130. Once this relationship is established, the attorney-client privilege attaches to communications made in confidence during the course of the relationship. *Ibid.* As such, "[i]n assessing whether a communication is privileged, the initial focus of the inquiry is on the *'dominant purpose of the relationship' between attorney and client and not on the purpose served by the individual communication*." *Fiduciary Tr. Int'l v. Klein* (2017) 9 Cal.App.5th 1184, 1198 (emphasis in original). The party claiming the attorney-client privilege as a bar to disclosure has the burden of showing that the communication sought to be suppressed falls within the parameters of the privilege. *Doe 2 v. Superior Ct*. (2005) 132 Ca1.App.4th 1504, 1522. Although the information must have been transmitted, or the advice given, "in the course of that relationship" (Evid. Code, § 952), there is no requirement that the attorney actually be employed in order to create an attorney-client relationship. *Benge v. Superior Court* (1982) 131 Cal.App.3d 336, 345. Evidence Code section 951 states the prevailing view that a person may discuss a potential legal problem with an attorney for the purpose of obtaining advice or representation, and the statements made are privileged whether or not actual employment ensues. *Ibid.*

The right to discovery is generally liberally construed. *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540. Good cause can be met through showing specific facts of the case and the relevance of the requested information. *Associated Brewers Distributing Co. v. Superior Court of Los Angeles County* (1967) 65 Cal.2d 583, 586–587. "(T)he good cause which must be shown should be such that will satisfy an impartial tribunal that the request may be granted without abuse of the inherent rights of the adversary. There is no requirement, or necessity, for a further showing." *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 388. As the right to discovery is liberally construed, so too is good cause. *Id* at 377-378.

CCP § 2031.310(h) (relating to requests for production of documents) provides that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." For the court to order sanctions against an attorney, the Court must find that the attorney advised their client to engage in discovery misconduct. *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 81. Additionally, the motion must advise the attorney that joint and several liability against the attorney is sought for the sanctions. *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 319.

III. Analysis

As an initial matter, Plaintiff has agreed to narrow the scope of RPODs ¶ 44 and 46. RPOD ¶ 44 is narrowed to customer complaints within the state of California. RPOD ¶ 46 is narrowed to a single federal district court case.

A. RPODs 4, 7, 9-10, 12, 18-19, and 44

First, the burden is on the Plaintiff to demonstrate good cause. Here, as to RPODs 4, 7, 9-10, 12, 18-19, and 44, the documents requested are sufficiently specific to show relevance to the instant case based on the Complaint and the claims of willfulness. See Civ. Code § 1794(c). The principle of similar vehicles having relevance is supported by the findings in *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 144, where expert testimony was admitted as to the findings of similar problems in other similar vehicles. Discovery procedures are generally designed to support the production of evidence relevant to the case. CCP §2017.010; *Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546; *Colonial Life & Accident Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790. Defendant argues that the *Donlen* court did not consider any factors related to production of documents, and therefore the decision is inapplicable. This is unpersuasive. The *Donlen* decision is not cited for the purpose of showing that the information gathered will be admissible (though in that case it was), but to show it may lead to admissible evidence, which is the burden on good cause for production.

Defendant's argument in this regard is unpersuasive in its interpretation of the willfulness remedy of the Act. Defendant repeatedly avers that Plaintiff need not provide any defect about any vehicle except her own in order to prevail. This is true, but ignores the enhanced damages available to plaintiffs under the Act where a manufacturer has refused to repair willfully. Much as a personal injury plaintiff would prove the extent of the harm suffered in order to prove their

damages, evidence of willfulness is relevant for showing an element of claims under the act. Whether Defendant was aware of prevalent failures of the same type or failed to gather available information of those failures, **is the factors of willfulness**. Defendant argues that "Motive is irrelevant" but cites no case relevant to the Act in this proposition. The cases provided by Defendant show particular categories of information that may be relevant for determination of willfulness, but no case provided avers that it forms the comprehensive list of all evidence which may be relevant for that determination. That one category of evidence may be used to show willfulness is not preclusive of other relevant categories of information meeting the same burden. Therefore, information about other vehicles with the same litigable claims as Plaintiffs are salient to the instant case, because it shows whether there was reasonably available information. Plaintiffs have sufficiently shown the relevance of the requested information and have therefore shown good cause.

As to Defendant's contention that Plaintiff has not tendered their vehicle sufficient times for the locking of the seatbelt to be relevant, the Court simply notes that the FAC incorporates this claim. If Defendant has an argument for the claim not being viable, there are motions and procedures by which they can attack those allegations. Defendant provides no authority showing that the Court may restrict discovery based on unlitigated alleged deficiencies in the complaint. The pleadings determine what is relevant for discovery. The pleadings include the allegation that the seat belt would tighten without warning. See FAC ¶ 91. That is still the operative complaint. Therefore, the allegation remains relevant, and discovery thereon appears supported.

After good cause has been shown, the burden is on Defendant to justify their objections. First, to address Defendant's contention that the responses provided are code compliant, and therefore there is no basis to compel. The Court notes that as to RPODs 10, 12, and 18-19, Defendant avers that there are no responsive documents to which there are no objections. As the Court will address below, the objections fail for various reasons. Therefore, Plaintiff is entitled to a response affirming whether there are responsive documents once the objections are overruled. That Defendant has asserted a response which derives language from the Discovery Act after potentially withholding documents under unsupported objections is not sufficient to be a "code complaint response". This argument is unsupported. The failure to provide a response which delineates the documents sought to be protected under an asserted privilege is a facially non-compliant response under the Discovery Act. CCP, § 2031.240 (b) and (c)(1). Attorney work product and attorney client privilege must be asserted as to specific facts and documents. *See, e.g.*, CCP § 2031.240. Any objection based on these principles shall include sufficient factual information to allow for evaluation of the claim, possibly including a privilege log. *See* CCP § 2031.240(c)(1). Defendant has not produced these requirements for assertion of privilege. Defendant's repeated averment of attorney client and work product privileges is not supported by any documentation which would allow for determination of its merit. However, failure to provide a privilege log does not, in and of itself, waive attorney client privilege. *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1131.

The Court notes that in their objections, Defendant repeatedly cites to *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216 ("*Calcor*"). This reliance is misplaced. *Calcor* involved a subpoena served on a third party, and that does not apply similarly to the instant parties. *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th

566, 595. When discussing parties, the *Calcor* court relies on *Greyhound Corp. v. Superior Court In and For Merced County* (1961) 56 Cal.2d 355, 384 (superseded by statute on other grounds)("*Greyhound*"). However, the court in *Greyhound* also notes that between the parties, discovery fishing expeditions may be appropriate. *Id*. at 384. As is elucidated above, the RPODs request documents which are salient to factual determinations at issue in this case.

Defendant also objects that the requested information is unduly burdensome. Objections for undue burden must include types or categories of information that are not reasonably accessible. CCP § 2031.210(d). Trial courts retain broad discretion and authority to manage discovery issues, including determining whether a discovery request causes undue burden. *Toshiba America Electronic Components v. Superior Court* (2004) 124 Cal.App.4th 762, 773. Here Defendant claims undue burden, but has not sufficiently shown that the information requested is not reasonably accessible to meet the court's expectation for undue burden. The burden of the requested discovery is not "undue", and Defendant's averment that they have no intent to comply with basic discovery requests is not persuasive.

The motion is GRANTED as to RPODs 4, 7, 9-10, 12, 18-19, and 44.

B. RPODs 24-26, 37-38, and 46

This is not to say that all of Plaintiff's requests are well taken. RPOD ¶ 46, requesting all documents produced in other, unidentified court cases within the United States, is overbroad, as it seeks for Defendant to produce categories of information from other lawsuits. Even the narrowed version only requesting documents from a particular federal district court case fails. It contains a definition particularly identified in this lawsuit with possible different definitions within the other actions. There is no showing that the definition provided by Plaintiff here is repeated in other cases. Plaintiff also requests any documents from court cases from 2014 to present, when in fact the vehicle at issue here was produced in 2020. Finally, Plaintiff's other requests cover facts related directly to their case. The broad request to ride in the wake of other litigation is not supported. Plaintiff produces no case law providing otherwise.

Similarly, the Court struggles to find the relevance of the request for broad policies in RPODs 24-26 and 37-38 without some showing of applicability to the instant case. Plaintiff's burden on proving willfulness is to show that the Defendant did not make a "reasonable, good faith decision" about the repurchase decision. Individuals working in repurchasing can be shown to have exposure to repeated complaints of issues with the same vehicle. The connection between the requested information and admissible evidence is tactile and probable. The same logic applies to training materials. However, there is no showing that broad, disparate policy discussions which may have occurred at the corporate level are subject to the same analysis. There is no showing of factual connection at this juncture between the decisions made by Defendant's agent charged with repurchasing decisions and the vague categories of documents requested.

The motion is DENIED as to RPODs 24-26, 37-38 and 46.

C. Sanctions

CCP § 2031.310(h) (relating to requests for production of documents) provides that a monetary sanction "shall" be imposed against the party losing a motion to compel further responses unless the court finds "substantial justification" for that party's position or other circumstances making sanctions "unjust." The purpose of monetary sanctions is to mitigate the effects of the necessity of discovery motions and responses on the prevailing party.

Defendant avers that their opposition is couched in reasons which amount to substantial justification. This is unpersuasive. Defendant produced no privilege log to accompany several RPODs to which they asserted privilege objections. Substantial portions of this motion would have been unnecessary without assertion of either an inapplicable objection assuming that no documents were withheld or the necessary privilege log if documents were withheld under privilege. The motion was necessitated at least in part by these unsupported contentions, and there is no showing that the motion was not necessary based on Defendant's discovery abuse as a result.

Plaintiff seeks $3,060, representing attorney work of 3 hours for the motion, 3 anticipated hours in reading the opposition and preparing the and two more hours attending the hearing at $375/hr, and $60 in filing fees. Nandivada Declaration, ¶ 13-14. The request for filing fees is both actual and reasonable. The time expended on making the motion and preparing the reply appears actual and reasonable. The request for fees associated with the time for hearing is speculative, as the hearing has not yet occurred. Therefore, the request for two hours preparing for and attending the hearing is disallowed at this time. The Court finds that a total of 6 hours at the reasonable rate of $375/hr is appropriate, for a total sanctions award in the amount of $2,310 ($2,250 + $60 filing fee). Defendant and/or their counsel are to pay $2,310 to Plaintiff within 30 days of this order.

Defendant's request for sanctions, predicated entirely on CCP § 2023.010, against a successful discovery motion, does not appear supported. A successful motion here indicates strongly that Plaintiff's motion is not discovery abuse. Defendant's request for sanctions is DENIED.

IV. Conclusion

Based on the foregoing, the motion to compel further responses is GRANTED as to RPODs 4, 7, 9-10, 12, 18-19, and 44. The motion is DENIED as to RPODs 24-26, 37-38 and 46.

Plaintiff's request for sanctions is GRANTED in the amount of $2,310 ($2,250 + $60 filing fee). Defendant and/or their counsel are to pay $2,310 to Plaintiff within 30 days of this order.

Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

****This is the end of the Tentative Rulings.*****