

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

Tentative Ruling

2023CUOE016090: ROGER PICHARDO vs CITY OF CAMARILLO

01/29/2026 in Department 43

Motion for Summary Judgment

The morning calendar in courtroom 43 will normally begin at 8:45. Please arrive for your hearing no later than 8:30 a.m. The door will be opened before the calendar is called.

The Court allows appearances by CourtCall and Zoom. Refer to the Courtroom 43 webpage for more information about remote appearances. If appearing by CourtCall, call in no later than 8:30 a.m. If you wish to appear by CourtCall, you must make arrangements with CourtCall by 4:00 p.m. the court day before your scheduled hearing. Requests for approval of a CourtCall appearance made on the morning of the hearing will not be granted. No exceptions will be made.

For Zoom appearances, all counsel appearing by Zoom must email the court at Courtroom43@ventura.courts.ca.gov with a simultaneous copy to all other counsel/self-represented parties no later than 3:00 p.m. the court day before the hearing. INCLUDE THE PHRASE "ZOOM APPEARANCE ON (DATE OF HEARING)" IN THE SUBJECT LINE OF YOUR EMAIL. The email must identify the person who will make the appearance. You will receive the login information for your appearance in reply to your email. If appearing by Zoom, log into the hearing no later than 8:30 a.m. The Court will transfer you to the meeting room when your matter is called. Additional instructions can be found on the Courtroom 43 webpage. When you log in to Zoom, be sure that your name and the case name are used as your Zoom name. IF YOU DO NOT FOLLOW ALL OF THESE INSTRUCTIONS, YOU WILL NOT BE PERMITTED TO APPEAR BY ZOOM AT THE HEARING.

With respect to the tentative ruling below, no notice of intent to appear is required. If you wish to submit on the tentative ruling you can fax notice to Judge Coats's secretary, Ms. Brantner at 805-477-8790, stating that you submit on the tentative. Or you may email Courtroom43@ventura.courts.ca.gov with all counsel copied on the email. Do not call in lieu of sending a fax or email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. If you are the moving party and do not advise the Court that you submit on the tentative, or you do not appear at the hearing, the Court may deny your motion irrespective of the tentative.

Unless stated otherwise at the hearing, if a formal order is required but not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

Motion: Defendant's Motion for Summary Judgment and Summary Adjudication in the Alternative.

Tentative Ruling: Defendant's Motion for Summary Judgment or in the Alternative Summary Adjudication is DENIED. Plaintiff has demonstrated that there are triable issues of fact as to (1)

whether Plaintiff filed a grievance to exhaust his administrative remedies; (2) whether Plaintiff made a reasonable and good faith claim for unpaid wages which would constitute a protected activity; and (3) whether Plaintiff's claims of a series of acts by Defendant constitute an adverse employment action.

Plaintiff is ordered to serve notice of the Court's ruling.

DISCUSSION

I. Legal Standard

Summary judgment is proper "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Where a defendant seeks summary judgment or adjudication, he must show that either "one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subd. (o)(2).)

The summary judgment standard is as follows: first, the party moving for summary judgment always bears the burden of *persuasion* that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. Thus, in defendant's motion for summary judgment, he bears the burden of persuading the court that one or more elements of plaintiff's cause of action cannot be established or that there is a complete defense thereto. (Code Civ. Proc., § 437c, subd. (p).)

Second, the party moving for summary judgment bears an initial burden of *production* to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. Thus, in order to shift the burden of production to the plaintiff, defendant is required to produce evidence showing the nonexistence of some element of the claim. Until the moving defendant has discharged its burden of proof, the opposing plaintiff has no burden to come forward with any evidence. Once the moving defendant has discharged its burden as to a particular cause of action, however, the plaintiff may defeat the motion by producing evidence showing that a triable issue of one or more material facts exists as to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

Third, how the parties moving for, and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial. Thus, where defendant moves for summary judgment against a party who bears the burden of proof at trial, he must present *evidence* that would require a reasonable trier of fact *not* to find any underlying material fact more likely than not. (*Aguilar v Atlantic Richfield Co.* (2001) 25 Cal.4th 826.)

As to any alternative request for summary adjudication of issues, such alternative relief must be clearly set forth in the Notice of Motion and the general burden shifting rules apply but the issues upon which summary adjudication may be sought are limited by statute. "A motion for summary

adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.” (Code Civ. Proc., § 437c, subd. (f)(1).)

Whether a triable issue of fact exists is determined by the supporting papers, not the pleadings. (*Martins v. Winder* (1961) 191 Ca.2d 143.) Such supporting papers must be evidentiary, and not ultimate facts or conclusions of law, and must be based upon the affined’s personal knowledge. (*Estate of Nelson* (1964) 227 Ca.2d 42.)

As a general rule, in reviewing the evidence presented on summary judgment, the moving party’s evidence is strictly construed and the opposing party’s evidence is liberally construed. (See e.g., *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, and *Binder v. Aetna Life Insurance Company* (1999) 75 Cal.App.4th 832.) The court is to consider all evidence submitted by the parties, direct and circumstantial, except that to which a proper objection has been sustained. (Code Civ. Proc., § 437c, subd. (c).)

Summary adjudication is granted where a moving party establishes a right to adjudication of an issue in its favor as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The purpose of a motion for summary judgment/adjudication is to penetrate evasive language and adept pleading to ascertain the existence or absence of triable issues of material fact. (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) The material issues on the motion are framed by the pleadings, and the motion can neither be granted nor denied on a ground not properly raised therein. (*Tsetmetzin v. Coast Fed. Sav. & Loan Ass’n* (1997) 57 Cal.App.4th 1334, 1343; *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382.)

In ruling on a motion for summary judgment/adjudication, the trial court must consider not only the evidence submitted but the reasonable inferences deducible from such evidence. (*Binder v. Aetna Life Ins. Co., supra*, 75 Cal.App.4th at p. 840.) Conflicting reasonable inferences must be resolved in favor of the party opposing the motion. (*Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1397, fn.4.)

II. Application

A. Request for Judicial Notice

Defendant requests the Court take notice of the following:

- (1) Plaintiff’s Complaint.
- (2) City of Camarillo Municipal Code 2.04
- (3) City of Camarillo Municipal Code 2.23
- (4) Plaintiff’s Government Claim dated April 3, 2023

Document (1) is a court record pursuant to Evidence Code section 452, subdivision (d). Documents (2) through (3) are official acts of a political subdivision of the executive of the State of California

pursuant to Evidence Code section 452, subdivision (c). The Court takes judicial notice of these documents.

Defendant filed a supplemental request for judicial notice with its reply as to the Minute Order on Motion for Summary Judgment of John Fraser v. City of Camarillo, 202200571589CUOE. This is a court document pursuant to Evidence Code section 452, subdivision (d) and judicial notice is proper. However, it is new evidence submitted with the reply is disregarded by the Court pursuant to Code of Civil Procedure section 437c, subdivision (b)(4). Regardless, this issue (Fraser's "constructive termination") is not material to the motion.

B. Evidentiary Objections

1. Plaintiff's Objections

Plaintiff objects to portion of the declarations of Greg Ramirez, Carman Nichols, and Wendy Levy.

Objection 1

(Ramirez Decl. ¶ 7, p. 4:4-5.)

The objections asserted by are not based on the competence of the evidence, but instead are arguments as to the weight of the evidence and the support of the evidence for the facts asserted. The objection is overruled.

Objection 2

(Ramirez Decl., ¶ 8, p. 4:16-17.)

This statement to which Plaintiff objects is based on Mr. Ramirez's present sense impression of Plaintiff's email communication and is proper testimony. The objection is overruled.

Objection 3

(Ramirez Decl., ¶ 11, p. 5:4-7.)

This statement to which Plaintiff objects is based on Mr. Ramirez's present sense impression of an employee's work and is proper testimony. The objection is overruled.

Objection 4

(Ramirez Decl., ¶ 11, p. 5:10-11.)

The statement asserts the fact that complaints were made and the subject matter of them. As the City Manager, Mr. Ramirez was in a position to have personal knowledge of complaints made to the City during that time period. Moreover, the statement is made as a foundation for evaluating Michelle D'Anna's performance and not for the truth of the statement. The objection is overruled.

Objection 5

(Ramirez Decl., ¶ 11, p. 5:11-12.)

The statement asserts facts related to an ultimate resolution as to Ms. D'Anna's role in addressing a problem. The statement is made as a foundation for evaluating Michelle D'Anna's performance and not for the truth of the statement. The objection is overruled.

Objection 6

(Ramirez Decl., ¶ 11, p. 5:18-20.)

This objection is based on the assertion that Mr. Ramirez did not provide the same level of detail in his deposition response as provided in the declaration. At his deposition, Mr. Ramirez indicated that he would have to give a lot of thought to the details of the response. This deposition statement does not contradict the statement in the declaration. The statement that Mr. Ramirez received feedback is not hearsay because it does not assert the contents of the feedback and represents Mr. Ramirez's perception of the feedback. The objection is overruled.

Objection 7

(Ramirez Decl., ¶ 14, p. 5:27-28.)

As the City Manager, Mr. Ramirez is in a position to have personal knowledge of the duties of a Senior Management Analyst and Assistant to the City Manager. The objection is overruled.

Objection 8

(Ramirez Decl., ¶ 15, p. 6:13-24)

Mr. Ramirez made the decision to not promote Plaintiff, and he is the only person that has full personal knowledge of his reasons. The statements are not ultimate facts; they are a list of the reasons for Mr. Ramirez's decision. The objection is overruled.

Objection 9

(Nichols Decl., ¶ 7, p. 4:4-5.)

Plaintiff's citation to this statement is incorrect, the correct citation is Nichols Declaration, paragraph 29. Disregarding the incorrect citation, this statement is a proper statement of fact. As Monique Martinez's former supervisor, Ms. Nichols is in a position to have knowledge of her qualifications. The objection is overruled.

Objection 10

(Nichols Decl., ¶ 11, p. 5:4-11.)

Ms. Nichols is in a position to have personal knowledge of the differences between the Senior Management Analyst position and the Assistant to the City Manager positions. A lay opinion as to the differences between these positions is admissible. In addition, it appears she have unique qualifications to offer this as an expert opinion given her experience and job duties. The objection is overruled.

Objection 11

(Nichols Decl., ¶ 29, p. 10:16-22.)

Ms. Nichols is in a position to have personal knowledge of the qualifications of employees she supervises. The objection is overruled.

Objection 12

(Nichols Decl., ¶ 30, p. 10:25-11:2.)

The objection appears to be to the Exhibit referenced in Ms. Nichols declaration, but the objection is asserted as to the statement in the declaration. The objections to the Exhibit appear to go to the weight of the evidence and the competency. The objections are overruled..

Objection 13

(Nichols Decl., ¶ 37, p. 12:22-23.)

The objections go to the weight of the evidence and the competency. The objection is overruled.

Objection 14

(Nichols Decl., ¶ 38, p. 12:24-13:3.)

There is no explanation as to the objections asserted. The statement is admissible. The objection is overruled.

Objection 15

(Levy Decl., ¶ 35, p. 8:16- 18.)

As the Director of Human Resources for the City, Mr. Levy is in a position to offer testimony about the performance rating received by Plaintiff. The objection is overruled.

Objection 16

(Levy Decl., ¶ 36, p. 8:20- 9:1.)

As the Director of Human Resources for the City, Mr. Levy is in a position to offer testimony about the performance rating received by Plaintiff. The objection is overruled.

Objection 17

(Levy Decl., ¶ 37, p. 9:2- 10.)

As the Director of Human Resources for the City, Mr. Levy is in a position to offer testimony about the performance rating received by Plaintiff. The objection is overruled.

Objection 18

(Levy Decl., ¶ 38, p. 9:11- 18.)

As the Director of Human Resources for the City, Mr. Levy is in a position to offer testimony about the performance rating received by Plaintiff. The objection is overruled.

Objection 19

(Levy Decl., ¶ 39, p. 9:19- 10:11.)

As the Director of Human Resources for the City, Mr. Levy is in a position to offer testimony about the performance rating received by Plaintiff. The objection is overruled.

Objection 20

(Levy Decl., ¶ 45, p. 11:1-3.)

Ms. Levy may assert a statement based upon a review of Plaintiff's personnel file. The objection is overruled.

Objection 21

(Levy Decl., ¶ 48, p. 11:15-22.)

Ms. Levy may assert a statement based upon a review of corporate records. The objection is overruled.

2. Defendant's Objections

Objection 1

(Pichardo's (Plaintiff) Declaration in its entirety.)

Generally, objections must be specific and made statement by statement to identify the exact statement objected to. (Cal. Rules Court, r. 3.1354, subd. (b). The objection is overruled. as it is an improper blanket objection.

Objection 2

(Pichardo Decl. ¶ 8, 2:9-12.)

The objections go to the weight of the evidence and not admissibility. Plaintiff's experience with the City provides sufficient foundation for his knowledge of the salary range of positions within the City. The objection is overruled.

Objection 3

(Pichardo Decl. ¶ 6, 2:13-14.)

Plaintiff's statement "who told me to put something together to justify my request" is hearsay without exception. The objection as to this text is sustained and overruled as to the remaining part of the sentence.

Objection 4

(Pichardo Decl. ¶ 6, 2:14-17.)

The statement is inadmissible to prove the truth of the contents of the email. However, the fact that Plaintiff sent the email is not inadmissible.

Objection 5

(Pichardo Decl. ¶ 6, 2:17-18.)

The statement is a description of Plaintiff's actions and his perceived lack of response. Any ambiguity should go to the weight of the evidence. The objection is overruled.

Objection 6

(Pichardo Decl. ¶ 7, 2:22-26.)

The statement is incomplete and potentially misleading. However, that does not render the statement inadmissible. Instead, the whole performance evaluation is subject to examination. (*People v. Arias* (1996) 13 Cal. 4th 92, 156.) The objection is overruled.

Objection 7

(Pichardo Decl. ¶ 8, 2:29-30.)

This statement appears to be an admissible expression of Plaintiff's opinion as to why his reclassification request was denied. While the opinion is inadmissible to prove that the reasons for the denial were disingenuous, Plaintiff is permitted to testify as to his understanding of the reasons. The objection is overruled.

Objection 8

(Pichardo Decl. ¶ 8, 2:31-32.)

The City's objections go to the weight of the evidence and not admissibility. The objection is overruled.

Objection 9

(Pichardo Decl. ¶ 9, 3:7-8.)

This statement does not contradict discovery responses but adds more detail to the discovery responses. The objection is overruled.

Objection 10

(Pichardo Decl. ¶ 10, 3:9.)

The statement is potentially relevant. The objection is overruled.

Objection 11

(Pichardo Decl. ¶ 10, 3:11.)

This statement does not appear to contradict discovery responses but adds more detail to the discovery responses. The objection is overruled.

Objection 12

(Pichardo Decl. ¶ 10, 3:12-16.)

The statements: "Carmen Nichols and Greg Ramirez had made it obvious that they want younger people working in the City" and "The offering of the VRIP, to me, showed the City's desire to get rid of older employees" are speculative and represent a legal conclusion. The Court sustains the objection as to these statements and overrules the objection as to the remaining part of the statement.

Objection 13

(Pichardo Decl. ¶ 11, 3:17.)

Plaintiff is testifying as to his actions. The objection is overruled.

Objection 14

(Pichardo Decl. ¶ 11, 3:18-21.)

The statement “and those actions were in retaliation for me complaining about the ATCM work I was doing for which I wasn’t being paid” is an ultimate legal conclusion. The objection as to this statement is sustained, and overruled as to the remaining part of the statement.

Objection 15

(Pichardo Decl. ¶ 12, 4:2-3.)

The statement is potentially relevant. The objection is overruled.

Objection 16

(Pichardo Decl. ¶ 13, 4:6.)

The statement is potentially relevant. The objection is overruled.

Objection 17

(Pichardo Decl. ¶ 15, 4:17-18.)

Plaintiff is testifying as to his evaluation of the email he received. The objection is overruled.

Objection 18

(Pichardo Decl. ¶ 15, 4:17-18.)

The objection goes to the weight of the evidence and not admissibility. The objection is overruled.

Objection 19

(Pichardo Decl. ¶ 16, 4:27-28.)

The statement represents a legal conclusion as to animus. The objection is sustained.

Objection 20

(Pichardo Decl. ¶ 16, 4:27-5:2.)

Plaintiff is testifying as to his evaluation of the statement made to him. The objection is overruled.

Objection 21

(Pichardo Decl. ¶ 17, 5:3-6.)

Plaintiff is testifying as to his evaluation of the statement made to him. The objection is overruled.

Objection 22

(Pichardo Decl. ¶ 17, 5:6-8.)

The objection appears to go to the weight of the evidence and not admissibility. The objection is overruled.

Objection 23

(Pichardo Decl. ¶ 18, 5:9-10.)

Plaintiff is testifying email exchanges with employees. The objection is overruled.

Objection 24

(Pichardo Decl. ¶ 18, 5:10-13.)

Plaintiff is testifying email exchanges with employees. The objection is overruled.

Objection 25

(Pichardo Decl. ¶ 18, 5:12-19.)

Plaintiff is testifying as to his perception of events. The objection is overruled.

Objection 26

(Pichardo Decl. ¶ 19, 5:20-22.)

This statement does not appear to contradict discovery responses but adds more detail to the discovery responses. The objection is overruled.

Objection 27

(Pichardo Decl. ¶ 19, 5:22-24.)

Plaintiff is testifying as to his perception of events. The objection is overruled.

Objection 28

(Pichardo Decl. ¶ 19, 5:22-24.)

The objection appears to go to the weight of the evidence and not admissibility. The objection is overruled.

Objection 29

(Pichardo Decl. ¶ 20, 5:26-28.)

As to the first part of the statement, Plaintiff is testifying as to his perception of events. As to the second the objection goes to the weight of the evidence and not admissibility. The objection is overruled.

Objection 30

(Pichardo Decl. ¶ 21, 5:30-31.)

Plaintiff is testifying as to his perception of events. The objection is overruled.

Objection 31

(Pichardo Decl. ¶ 21, 6:2-6.)

Plaintiff is testifying as to his perception of events. The objection is overruled.

Objection 32

(Pichardo Decl. ¶ 21, 6:2-6.)

Plaintiff is testifying as to his perception of events. Plaintiff's perception that it was in retaliation is permissible so long as it is not being offered as to the truth of the fact of retaliation. The objection is overruled.

Objection 33

(Pichardo Decl. ¶ 23, 6:14.)

Plaintiff is testifying as to his knowledge of the facts. The objection is overruled.

Objection 34

(Pichardo Decl. ¶ 23, 6:14-6:15.)

Plaintiff is testifying as to his perception of events. Plaintiff's perception as to the reason for the reprimand is permissible so long as it is not being offered as to the truth as to the purpose of the reprimand. The objection is overruled.

Objection 35

(Pichardo Decl. ¶ 24, 6:16-6:19.)

Plaintiff is testifying as to his knowledge of the facts. The objection is overruled.

Objection 36

(Pichardo Decl. ¶ 25, 6:20-6:24.)

Plaintiff is testifying as to the fact that he provided a written rebuttal. This is permissible so long as it is not being offered as to the truth of the contents of the rebuttal. The objection is overruled.

Objection 37

(Pichardo Decl. ¶ 26, 6:25-6:30.)

Plaintiff is testifying as to his actions. The objection is overruled.

Objection 38

(Pichardo Decl. ¶ 27, 7:1-3.)

The statement "I suffered further retaliatory adverse employment actions" is a legal conclusion and the objection is sustained. The remaining statement is admissible as testimony of Plaintiff's perception.

Objection 39

(Pichardo Decl. ¶ 28, 7:5-6.)

There is no valid evidentiary objection. The objection is overruled.

Objection 40

(Pichardo Decl. ¶ 28, 7:6-8.)

The objection goes to the weight of the evidence and not admissibility. The objection is overruled.

Objection 41

(Pichardo Decl. ¶ 29, 7:10-13.)

Plaintiff is testifying as to his perception of events. The objection is overruled.

Objection 42

(Pichardo Decl. ¶ 30, 7:14.)

The statement is a legal conclusion. The objection is sustained.

Due to the volume of objections, the Court rules on the remaining objections as follows:

The Court overrules the following objections: 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 59, 60, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 87, 88, 89, 90, 91, 92, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

The Court sustains the following objections: 54, 58, 61, 62, 74, 84, 86, 93, 94

C. Material Facts

1. Defendant's Undisputed Material Facts

(The Court notes there is no fact number 10.)

Undisputed Material Facts (UMFs) Numbers 1, 2, 3, 4, 6, 9, 11, 12, 13, 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 42, 45, 46, 48, 52, 54, 55, 56, 66, 67, 68, 69, 75, 76, 77, 78, 80, 81, 82, 83, 84, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 102, 105, 106, 107, 111, 112, 113, 114, 119, 120, 121, 122, 123, 126, 128, 129, 131, 132, 133, 134, 136, 137, 138, 139, 140, 142, 143, 144, 145, 146, 147, 148, 149, 150, 152, 154, and 155 are undisputed and established.

UMF Numbers 7, 8, 15, 23, 36, 38, 39, 40, 43, 44, 47, 53, 57, 58, 59, 60, 61, 62, 63, 64, 65, 71, 72, 73, 74, 79, 85, 86, 96, 97, 101, 103, 104, 108, 124, 127, 130, 141, 153, 156, and 159 are disputed but established.

UMF Numbers 5, 14, 22, 24, 41, 50, 70, 109, 110, 115, 116, 117, 118, 125, 135, 151, 157, and 158 are disputed and not established.

2. Plaintiff's Additional Material Facts

Additional Material Facts (AMFs) Numbers 4, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 45, 46, 47, 51, 53, 55, 60, and 78 are undisputed and established.

AMF Numbers 1, 2, 8, 15, 26, 30, 32, 40, 43, 44, 48, 49, 52, 65, 66, and 68 are disputed but established.

AMF Numbers 3, 5, 6, 7, 9, 10, 13, 25, 27, 28, 29, 31, 33, 35, 36, 37, 38, 39, 41, 42, 50, 54, 56, 57, 58, 59, 61, 62, 63, 64, 67, 69, 70, 71, 72, 73, 74, 75, 76, and 77 are disputed and not established.

D. Merits

1. First Cause of Action for Violation of Labor Code Section 98.6

The City argues that it is entitled to summary adjudication as to Plaintiff's first cause of action because (1) Plaintiff did not exhaust his administrative remedies; and (2) Plaintiff did not engage in protected activity.

A failure to exhaust internal grievance mechanisms of a public entity precludes a private civil action. (*Terris v. County of Santa Barbara* (2018) 20 Cal.App.5th 551, 555.) The City's Personnel Rule 3.3.4 provides a filing procedure for a grievance for violation of Personnel Rules. (UMF Nos. 143-150.)

The City Personnel Rules provide:

Filing a Complaint. If an employee believes he/she has been harassed, discriminated, or retaliated against in violation of this policy, the affected employee should promptly report the details of the incident(s), the names of the individuals involved, and the names of any witnesses, to his/her immediate supervisor. The supervisor has an obligation to respond to all verbal complaints. An employee will be required to provide a signed statement with facts in writing and any relevant details. If the employee refuses to provide a written statement, his/her supervisor will summarize the complaint in writing for the employee to sign. If the immediate supervisor is involved in the wrongful conduct or if for any reason the employee feels uncomfortable about making a complaint to that supervisor, the employee may report the complaint to Human Resources, or directly to the City Manager. All employees should note that the failure to use the City's complaint reporting procedures may result in the defeat of any claim of harassment, discrimination, or retaliation, if litigated.

(City of Camarillo Personnel Code section 3.3.4.)

Whether Plaintiff filed a complaint or a grievance during his employment is legitimately contested and his failure to do so is not conclusively established by the evidence. (UMF No. 151.) The City states that there is no complaint in the file and that the City rules require the complaint to be in the file. Plaintiff argues that he made verbal complaints that were not documented in the file. The question of whether Plaintiff's verbal complaint is within compliance with the administrative procedure is a disputed fact for the trier of fact to determine. The City is not entitled to summary adjudication on the issue of failure to exhaust administrative remedies.

The City also argues that Plaintiff failed to engage in a protected activity because he was not owed unpaid wages under his job classification. Plaintiff argues that his reasonable belief that he was owed unpaid wages is a protected activity.

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A protected activity includes any practices forbidden under FEHA. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043.) An activity is a protected activity when the employee opposes conduct that ultimately is determined to be unlawfully discriminatory under FEHA, and when the employee opposed conduct that the employee reasonably and in good faith believes to be discriminatory. (*Ibid.*) The facts are disputed as to whether Plaintiff made a complaint for unpaid wages and whether he reasonably believed that he was owed unpaid wages. (UMF No. 5.) The question of whether Plaintiff made a reasonable and good faith claim for unpaid wages is an issue for determination by the trier of fact. The City is not entitled to summary adjudication on the question of failure to engage in a protected activity.

2. *Second Cause of Action for Violation of Labor Code Section 1102.5*

Defendant argues that it is entitled to summary adjudication as to the second cause of action because (1) Plaintiff failed to exhaust administrative remedies; and (2) Plaintiff cannot show that retaliation for engaging in a protected activity was a contributing factor to an adverse employment action.

A failure to exhaust internal grievance mechanisms of a public entity precludes a private civil action. (*Terris v. County of Santa Barbara* (2018) 20 Cal.App.5th 551, 555.) The City's Personnel Rule 3.3.4 provides a filing procedure for a grievance for violation of Personnel Rules. (UMF Nos. 143-150.)

The City Personnel Rules provide:

Filing a Complaint. If an employee believes he/she has been harassed, discriminated, or retaliated against in violation of this policy, the affected employee should promptly report the details of the incident(s), the names of the individuals involved, and the names of any witnesses, to his/her immediate supervisor. The supervisor has an obligation to respond to all verbal complaints. An employee will be required to provide a signed statement with facts in writing and any relevant details. If the employee refuses to provide a written statement, his/her supervisor will summarize the complaint in writing for the employee to sign. If the immediate supervisor is involved in the wrongful conduct or if for any reason the employee feels uncomfortable about making a complaint to that supervisor, the employee may report the complaint to Human Resources, or directly to the City Manager. All employees should note that the failure to use the City's complaint reporting procedures may result in the defeat of any claim of harassment, discrimination, or retaliation, if litigated.

(City of Camarillo Personnel Code section 3.3.4.)

Whether Plaintiff filed a complaint or a grievance during his employment is legitimately contested and his failure to do so is not conclusively established by the evidence. (UMF No. 151.) The City states that there is no complaint in the file and that the City rules require the complaint to be in the file. Plaintiff argues that he made verbal complaints that were not documented in the file. The question of whether Plaintiff a verbal complaint in compliance with the administrative procedure

or not is a fact for the jury. The City is not entitled to summary adjudication on the second cause of action for failure to exhaust administrative remedies.

The City argues that Plaintiff was not engaged in a protected activity, he suffered no adverse employment action, retaliation was not a contributing factor to an adverse employment action, and the City establishes a same-decision defense.

A protected activity includes any practices forbidden under FEHA. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043.) An activity is a protected activity when the employee opposes conduct that ultimately is determined to be unlawfully discriminatory under FEHA, and when the employee opposed conduct that the employee reasonably and in good faith believes to be discriminatory. (*Ibid.*) There are material facts in dispute as to whether Plaintiff made a complaint for unpaid wages and whether he reasonably believed that he was owed unpaid wages. (UMF No. 5.) The question of whether Plaintiff made a reasonable and good faith claim for unpaid wages is a fact for the jury.

Plaintiff argues that a denial of reclassification, removal of responsibilities and ultimately constructive termination were adverse employment actions. A series of retaliatory acts, viewed collectively, may constitute an adverse employment action if they materially affect job terms or conditions. (*Id.* at 1057.) Plaintiff makes claims of a series of act that constitute adverse employment action. (UMF No. 9.) The City has not proven that these acts did not occur. The City is focused on materiality as to constructive termination. Initially, the City fails to meet its burden to establish facts demonstrating that Plaintiff cannot prove his claim. The City argues that Plaintiff's evidence does not support the basis for his claim of constructive termination. However, as the moving party the City has the initial evidentiary burden. Moreover, it is a question of fact as to whether Plaintiff's work conditions were so intolerable that a reasonable employer would realize a reasonable person would be compelled to resign. It is recommended that the Court find that the City failed to meet its burden to establish facts that demonstrate that Plaintiff cannot prove the elements of its second cause of action and deny summary adjudication.

3. Third Cause of Action for Unlawful Age Discrimination

The City argues that Plaintiff cannot state a prima facie claim for age discrimination and the City had legitimate, non-discriminatory reasons for its actions.

The City first argues that Plaintiff did not suffer an adverse employment action. A protected activity includes any practices forbidden under FEHA. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1043.) An activity is a protected activity when the employee opposes conduct that ultimately is determined to be unlawfully discriminatory under FEHA, and when the employee opposed conduct that the employee reasonably and in good faith believes to be discriminatory. (*Ibid.*) There are disputed facts as to whether Plaintiff made a complaint for unpaid wages and whether he reasonably believed that he was owed unpaid wages. (UMF No. 5.) The question of whether Plaintiff made a reasonable and good faith claim for unpaid wages is an issue for the jury.

Plaintiff argues that a denial of reclassification, removal of responsibilities and ultimately constructive termination were adverse employment actions. A series of retaliatory acts, viewed

collectively, may constitute an adverse employment action if they materially affect job terms or conditions. (*Id.* at 1057.) Plaintiff makes claims of a series of acts that constitute adverse employment action. (UMF No. 9.) The City does not prove that these acts did not occur. The City again is focused on materiality as to constructive termination. The City fails to meet its burden to establish facts demonstrating that Plaintiff cannot prove his claim. The City argues that Plaintiff's evidence does not support the basis for his claim of constructive termination. However, as the moving party the City has the initial evidentiary burden. Moreover, it is a question of fact as to whether Plaintiff's work conditions were so intolerable that a reasonable employer would realize a reasonable person would be compelled to resign. The City has failed to meet its burden to establish facts that demonstrate that Plaintiff did not suffer an adverse employment action.

The City next argues that there is no nexus to unlawful ageist animus. Plaintiff establishes that a younger employee was reclassified into the position he was denied. (AMF Nos. 6, 8.) Plaintiff also establishes that he was reprimanded for sending an email to two younger employees. (AMF Nos. 25, 26.) This is sufficient to establish a triable issue of fact as to whether an ageist animus resulted in an adverse employment action.

Finally, the City argues that it had legitimate, non-discriminatory reasons for its actions. Plaintiff disputes this assertion. The City establishes Plaintiff's performance rating and certain areas of improvement noted in his performance evaluations. (UMF Nos. 137-140.) However, these facts do not necessarily establish that there was no discriminatory intent. This is an issue for consideration by the trier of fact.

4. Fourth Cause of Action for Unlawful Retaliation under FEHA and Fifth Cause of Action for Failure to Prevent Discrimination and Retaliation

The fourth and fifth causes of action are derivative of the prior causes of action for the purposes of the motion because the City only challenges them to the extent that it asserts Plaintiff cannot prove age discrimination in violation of FEHA. Summary adjudication as to the fourth and fifth causes of action is denied.