SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: October 17, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV409501	Andres De La Rosa v. Pablo Gerald Boas et al.	OFF CALENDAR
LINE 2	23CV427360	Chris Volek v. Knorex, Inc. et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	24CV430088	Amalgamated Transit Union Local 265 v. Santa Clara Valley Transportation Authority	Click on LINE 3 or scroll down for ruling.
LINE 4	23CV420362	Calsoft Labs, Inc. v. Sanjay Bhardwaj	OFF CALENDAR
LINE 5	24CV429076	Jane AAY Doe v. Alum Rock Union School District et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	24CV440815	Farm Credit Services of America, PCA v. Jagjit Singh Tut	Application of John O'Brien to appear pro hac vice: parties to appear. Notice is proper. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will GRANT it.

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Calendar Line 2
Case Name: *Chris Volek v. Knorex, Inc. et al.*
Case No.: 23CV427360

This is a demurrer by plaintiff Chris Volek to defendant Knorex, Inc.'s ("Knorex's") answer to the second amended complaint. As a general matter, a plaintiff may demur to a defendant's answer on three grounds: (1) failure to state facts sufficient to constitute a defense; (2) uncertainty; or (3) failure to state whether a contract alleged in the answer is written or oral. (Code Civ. Proc., §§ 430.20, 430.40, subd. (b).) Here, Volek has demurred to each of Knorex's 13 affirmative defenses on two grounds: failure to state sufficient facts and uncertainty. Notice is proper for this demurrer, but the court has received no opposition from Knorex.

While Volek is correct that Knorex's affirmative defenses are perfunctory at best, they are not "unintelligible"—at the very least, Volek's demurrer fails to explain how they are supposedly "unintelligible"—and so the court overrules the demurrer on the basis of uncertainty. In addition, Volek's demurrer itself is perfunctory and consists largely of boilerplate text, with very little explanation as to why any affirmative defense fails to state sufficient facts.

A defense that a *complaint* (in this case, the second amended complaint) does not state sufficient facts to constitute a cause of action or is uncertain can be asserted in an answer. (See Code of Civ. Proc., § 430.10, subd. (a).) Such a defense is not an "affirmative" defense at all, as it does not constitute "new matter." It merely denies the sufficiency of the complaint's allegations. No new or additional facts are required to state the defense, and so the court overrules the demurrer to the first affirmative defense.

For the same reason, the court overrules the demurrer to the second affirmative defense—"uncertainty"—as this also does not set forth new matter. The defense of uncertainty is merely an attack on the adequacy of the complaint (in this case, the second amended complaint).[1]

As for the third through thirteenth affirmative defenses, however, these do attempt to assert new matter. For any "new matter" as to which a defendant has the burden of proof at trial, the defendant must plead supporting facts. (*California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.) The court finds that the skeletal allegations in these affirmative defenses are not sufficiently supported. Accordingly, the court sustains the demurrer to the third through thirteenth affirmative defenses.

In short, the court OVERRULES the demurrer on the ground of uncertainty. It OVERRULES the demurrer to the first and second affirmative defenses on the ground of insufficient facts. It SUSTAINS the demurrer to the third through thirteenth affirmative defenses on the ground of insufficient facts, with 20 days' leave to amend.

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[1] Ironically, Knorex's defense of uncertainty in its answer is no less perfunctory that Volek's assertion of uncertainty in his demurrer.

Calendar Line 3
Case Name: *Amalgamated Transit Union Local 265 v. Santa Clara Valley Transportation Authority*
Case No.: 24CV430088

This is a petition to compel arbitration by Amalgamated Transit Union Local 265 ("Local 265") against respondent Santa Clara Valley Transportation Authority ("VTA"). Local 265 claims that it has submitted nine grievances that are arbitrable under the parties' collective bargaining agreement ("CBA"). VTA opposes the petition, arguing that one of the grievances involved a probationary employee, as to which there is no right to arbitration, and that the other eight involved untimely grievances—each filed more than 30 days after the occurrence or discovery of the grievance—as to which there has been a "forfeiture" of any dispute.

As a threshold matter, the court notes that Local 265 has filed this as a "motion for summary judgment," which is plainly the wrong procedure. The purpose of a summary judgment motion is to obtain "a pretrial entry of judgment on the ground that there is no dispute of material fact." (*Weiss v. People ex rel. Department of Transportation* (2020) 9 Cal.5th 840, 864.) The court is *not* to "weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party." (*Ibid.*) A petition to compel arbitration, in stark contrast, is a summary proceeding in which the court sits as a trier of fact, *weighing the evidence*, and determines the existence of an applicable arbitration agreement or any defense thereto "by a preponderance of the evidence." (E.g., *Juen v. Alain Pinel Realtors, Inc.* (2019) 32 Cal.App.5th 972, 978.)

The court has reviewed the relevant provisions of the CBA and concludes that the nine grievances are not arbitrable under the CBA. First, the grievance from May 20, 2022 involved the dismissal of a probationary employee (see Declaration of Rajvinder Singh, Exhibit E; Declaration of Richard North, Exhibit 5), and so the applicable section of the CBA is "Section 6 – Probation," which states in pertinent part: "New probationary employees may be disciplined[] or discharged at the total discretion of VTA[,] and such actions shall not be subject to review under any provision of this Agreement." Under the plain language of this agreement, the dismissal of the probationary employee is not subject to arbitration.

Second, for the other eight grievances, which date from January 2022 to October 2022 (North Declaration, Exhibits 2-4 & 6-10), VTA has shown—and Local 265 has not disputed—that all of them were filed more than 30 days after the occurrence or discovery of the grievance. Here, the applicable section of the CBA is "Section 19 – Grievances and Dispute Resolution," which provides: "If a grievance is alleged by VTA or the Union, it must be filed in writing with the designated representative of VTA or the Union, as the case may be, within 30 calendar days after the occurrence or discovery of the alleged grievance." (Section 19.2.) It goes on to provide: "The failure of either party to adhere to the time limitations in this Section shall cause forfeiture of that party's case." (Section 19.5.) Thus, under the plain terms of the "dispute resolution" section of the CBA, there was a "forfeiture" of each of these cases.

Local 265 repeatedly argues that the court "should not interpret provisions of the CBA" in adjudicating this petition, but it provides no support for this illogical notion. (E.g., Reply, pp. 1:11-12; 1:21-22; 4:19-22; 5:8-9.) For example, Local 265 argues: "Evaluating Respondent's position that Section 6 provides an absolute bar to any requests for arbitration

would require this Court to interpret the CBA and the interrelation between Section 6, 18, 19, and 20, a task that has consistently found [sic] to be properly relegated to an arbitrator." (Reply, pp. 4:19-5:1.) But then, instead of citing cases that interpret this particular CBA, Local 265 cites cases that have nothing to do with the terms of the present CBA. (E.g., *ibid.* [citing *United Steelworkers of America v. American Mfg. Co.* (1960) 363 U.S. 564-567-568].) Unless there is a clear and unmistakeable provision in the arbitration agreement that delegates the question of arbitrability to an arbitrator, the court decides arbitrability. (*BG Group, PLC v. Republic of Argentina* (2014) U.S. 25, 34; *United Teachers of Los Angeles v. Los Angeles Unified School District* (2012) 54 Cal.4th 504, 524-525.) Here, Local 265 completely fails to identify any language in the CBA that provides that an arbitrator, instead of a judge, decides arbitrability. Based on the court's own review of the CBA, it finds none. Local 265's citations to other cases (including numerous federal cases), involving completely different arbitration agreements, are inapposite.

Ultimately, the court agrees with VTA that Local 265's inordinate emphasis on a "presumption" of arbitration is tantamount to an effort to advance an unconditional right to arbitration, even in the face of clear ineligibility or forfeiture of a particular grievance under the applicable language of the arbitration agreement.

The petition is DENIED.

Because the entirety of this action is premised on the initiation of arbitration, the court sets this matter for an order to show cause re: dismissal on December 5, 2024 at 10:00 a.m. in Department 10 of this court.

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Calendar Line 5
Case Name: *Jane AAY Doe v. Alum Rock Union School District et al.*
Case No.: 24CV429076

This is a continued motion for a preferential trial setting under Code of Civil Procedure section 36, subdivision (b). The motion originally came on for a hearing on September 5, 2024, but because notice was not proper, the court continued the hearing to October 17, 2024. In its September 5 order, the court determined that the most recently added defendant to the case, Maria Gutierrez, should have until October 4, 2024 to file a substantive response. The court has now received that response. In addition, the court still has the response of the other defendants (Alum Rock Union School District (the "District") and employees of the District), which was filed on August 22, 2024.

The court finds that plaintiff Jane AAY Doe has shown that section 36, subdivision (b), applies, and so the motion must be granted. Doe is "under 14 years of age," and she has a "substantial interest in the case." (Code Civ. Proc., § 36, subd. (b).) The District argues that "implementation of that statute [section 36] will create severe logistical and scheduling problems." (August 22, 2024 Opposition, p. 3:12-21.) While that may well be the case, that is not a valid basis for withholding implementation. In fact, consideration of the "logistical and scheduling problems" caused by a preferential trial setting is expressly prohibited: the convenience of the parties (and the court) is completely "irrelevant" in the eyes of the Legislature that enacted the law. (*Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085.) "The trial court has no power to balance the differing interests of opposing litigants in applying the provision. The express legislative mandate for trial preference is a substantive public policy concern which supersedes such considerations." (*Id.* at pp. 1085-1086.)

In her response, Gutierrez asks only that the court schedule the trial during the week of February 10, 2025 to avoid scheduling conflicts on other dates. It turns out that the week of February 10, 2025 is just within the 120-day timeframe mandated by section 36 (the 120th day is February 14, 2025), and so the court will set the trial for that week, even though that week is already terribly overset with over 20 other civil trials.

The court sets the trial for **February 10, 2025**. There will be a mandatory settlement conference on **February 5, 2025** (time TBD), and there will be a trial assignment conference on **February 6, 2025 at 1:30 p.m. in Department 6** of the court.

The motion is GRANTED.

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