

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: April 4, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

FOR ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

FOR APPEARANCES: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml

FOR COURT REPORTERS: The Court does **not** provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.scsccourt.org/general_info/court_reporters.shtml

FOR YOUR NEXT HEARING DATE: Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website.

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1-2, 11	23CV424409	GRACE THOMPSON et al vs SUNNY GARCIA et al	Defendants' demurrer is SUSTAINED WITHOUT LEAVE TO AMEND, motion to strike is MOOT, and motion to expunge lis pendens and for attorney fees and costs is GRANTED. Scroll to lines 1-2, 11 for complete ruling. Court to prepare formal order. Parties are to appear for argument.
3	20CV363612	Jai Kumar vs Jade Global, Inc.	Jade Global's motion for summary judgment, or in the alternative summary adjudication is continued to August 1, 2024, at 9:00 a.m. in Department 6. Scroll to line 3 for complete ruling. Court to prepare formal order.
4-7	23CV417104	Danica Coriloni vs Porsche Cars North America, Inc.	These four motions to compel were continued from January 9, 2024 to February 22, 2024 and again to April 4, 2024 pursuant to stipulation of the parties to permit further discussions after the vehicle inspection took place. There has been no further update provided to the Court or oppositions filed to these motions. The parties are ordered to appear, provide an update on their ongoing discussions, and indicate whether these motions need to be reset or can be taken off calendar.
8	20CV368089	Santa Clara Valley Transportation Authority et al vs World Oil Corp. et al	Peterson Law Group PC (John S. Peterson)'s motion to be relieved as counsel for Qudrat Swaleh and Rukhsana Swaleh is GRANTED. The Court will use form of order on file, which will become final upon proof of service. The parties are ordered to appear and explain the status of representation for World Oil Corporation.
9	22CV396854	Rajaa Sonai et al vs 3375 CAMINO CITY SQUARE, LLC et al	Michael Yesk's motion to be relieved as counsel for Rajaa Sonai, individually and as managing partner of Sonai, LLC and Officer of Mr. Stores Inc., the managing member of Sukira LLC is GRANTED. Order shall be effective upon proof of service of the final order, which the Court will prepare by using the form of order on file. The Court further orders Sukira, LLC and Sonai, LLC to appear on May 28, 2024 at 11 a.m. in Department 6 (the same date and time as the trial setting conference) and show cause why the case should not be dismissed as to those two entities for lack of counsel. Sukira, LLC and Sonai, LLC cannot proceed without counsel. (See <i>CLD Construction, Inc. v. City of San Ramon</i> (2004) 120 Cal. App. 4th 1141.) Thus, unless those entities file a substitution of counsel before May 28, 2024, the case will be dismissed without prejudice as to those two entities.
10	22CV405430	Alison Perea vs Sidney Flores et al	The Court again thanks the parties for their significant efforts to work together and resolve their discovery disputes. Given these efforts, the Court does not find it appropriate to continue this motion as a motion for terminating sanctions. Rather, the Court will set a discovery hearing for June 13, 2024 at 9 a.m. in Department 6. The parties are ordered to brief any remaining disputes pursuant to the deadlines set forth in the Code of Civil Procedure with the Plaintiff treated as moving party. This order will be reflected in the minutes.
12	18CV340043	BH Financial Services LLC vs Rafael Cortez	Rafael Cortez's claim of exemption is GRANTED, IN PART. The Court will order \$125 be garnished per pay period until the debt is satisfied. Court to prepare formal order.

13-14	20CV371800	Michelle Dang vs Michael Tran	<p>Plaintiff’s Motion for Order Deeming Truth of Facts Admitted Against Defendant Tran is DENIED. A party served with requests for admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the requests for admission deemed admitted, the Court must order the requests for admission deemed admitted. (Code of Civ. Pro. §2033.280(c); <i>St. Mary v. Superior Court</i> (2014) 223 Cal.App.4th 762, 775-776.) However, where, as here, a party serves code compliant responses before the hearing, the motion to have matters admitted must be denied. (Code of Civ. Proc. § 2033.280(c); <i>St. Mary v. Superior Court</i> (2014) 223 Cal.App.4th 762, 776, 778.)</p> <p>Plaintiff’s Motion to Compel Defendant’s Answers to Form Interrogatories (Set Three) is DENIED. Defendant swears, and Plaintiff does not deny, that he served code compliant responses to form interrogatories on March 18, 2024.</p> <p>Plaintiff’s motion for sanctions is DENIED. The Court is not happy with either party. Defense counsel has numerous options available to ensure service of time sensitive documents at his law firm: counsel can set up a service email, permit his paralegal access to his email account, or make sure to check his own email for important documents, since he is counsel of record. Nor can defense counsel complain about his opponents having “ex parte” communications with his paralegal when counsel appears to delegate so much authority and legal work to that same paralegal, not even acknowledging receipt of discovery documents unless that paralegal is directly copied. However, Plaintiff is no better. Plaintiff knew Defense counsel required his paralegal to be copied and was familiar with how heavily Defense counsel relies on the paralegal as part of the litigation team yet failed to copy the paralegal on discovery requests. Worse, even after learning that Defense counsel did not know about the discovery requests because the paralegal was not copied on them, Plaintiff filed these motions to compel before the responses would be due based on the new service date. And Plaintiff failed to inform the Court that responses had been served before the hearing date. The Court refuses to be drawn into this discovery gamesmanship and believes both parties have behaved in a manner that warrants sanctions. However, the Court declines to issue an order that would amount to make work, since the sanctions would ultimately cancel each other out. Suffice it to say here that each party is cautioned to clean up its act before this Court.</p>
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Calendar Lines 1-2, 10

Case Name: *Grace Thompson, et al. v. Sunny Garcia, et al.*

Case No.: 23CV424409

Before the Court is Defendants’ Sunny Garcia, individually and as trustee of the Rodolfo S. and Sunny E. Garcia Family Living Trust, and Celia Estillore (collectively, “Defendants”) (1) demurrer to Plaintiffs’ Grace Thompson, Jordan Thompson, and Gloria Estillore complaint, (2) motion to strike portions contained therein, and (3) motion to expunge lis pendens.¹ Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is an action for quiet title. Plaintiffs own real property at 1711 B Marshall Ct in Los Altos (the “Property”). (Complaint, ¶ 4.) Plaintiffs allege the basis of their title is fraudulent transfer of Severino Estillore’s interest in the Property circa 1998. (*Ibid.*) Plaintiff seeks to quiet title to the Property against all adverse claims.

Plaintiffs initiated this action to quiet title on October 18, 2023. On February 9, 2024, Defendants filed the instant motions, which Gloria opposes.²

II. Defendant’s Request for Judicial Notice

Defendants request judicial notice of:

- (1) The Complaint, Summons, Lis Pendens, Court Order of Dismissal, and Clerk’s notice of Dismissal for Case No. 2009-1-CV-159921;
- (2) The Complaint, Summons, Lis Pendens, and Clerk’s Notice of Dismissal for Case No. 2010-1-CV-178708;
- (3) The Clerk’s Notice of Entry of Order of Expungement with awards of fees/costs for Case No. 23CV412463;
- (4) Recorded Lis Pendens in the instant action; and
- (5) Identification of Gloria Estillore as a vexatious litigant by the Judicial Council of California.

¹ As some individuals share surnames, the Court will refer to them by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

² On March 20, 2024, and March 28, 2024, Jordan and Grace respectively filed requests for dismissal in this matter, thus, Gloria is the only Plaintiff remaining in this matter and the Court will refer to her accordingly.

The Court can take judicial notice of items 1 through 4 as court records. (Evid. Code, § 452, subd. (d); see also *Stepan v. Garcia* (1974) 43 Cal.App.3d 497, 500 [the court may take judicial notice of its own file].) But, “while courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files.” (*Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 658.) The Court can also take judicial notice of item 5 under Evidence Code section 452, subdivision (h), which permits judicial notice of “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Evid. Code, § 452, subd. (h).) Thus, Defendants request for judicial notice is GRANTED.

III. Demurrer

A. Legal Standard

“The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in [Code of Civil Procedure s]ection 430.30, to the pleading on any one or more of the following grounds: . . . (e) The pleading does not state facts sufficient to constitute a cause of action, (f) The pleading is uncertain.” (Code Civ. Proc., § 430.10, subds. (e) & (f).) A demurrer may be utilized by “[t]he party against whom a complaint [] has been filed” to object to the legal sufficiency of the pleading as a whole, or to any “cause of action” stated therein, on one or more of the grounds enumerated by statute. (Code Civ. Proc., §§ 430.10, 430.50, subd. (a).)

The court treats a demurrer “as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.” (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214 (*Committee on Children’s Television*).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank*,

N.A. (2013) 214 Cal.App.4th 743, 751.) Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

Defendants demur to the Complaint on the ground that it is uncertain and fails to allege sufficient facts. (Code Civ. Proc., § 430.10, subds. (e) & (f).)

B. Analysis

First, Gloria’s arguments regarding Defense counsels’ alleged status and *their* standing are irrelevant; they are not the defendants in this case. Nor is Gloria’s discussion of the Administration of Justice Act of 1970 relevant here—that is a United Kingdom law.

Next, “[t]o maintain an action to quiet title a plaintiff’s complaint must be verified and must include (1) a description of the property including both its legal description and its street address or common designation; (2) the title of plaintiff as to which determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which a determination is sought and, if other than the date the complaint is filed, a statement why the determination is sought as of that date; and (5) a prayer for determination of plaintiff’s title against the adverse claims.” (Code Civ. Proc., § 761.020.) The purpose of a quiet title action is to settle all conflicting claims to the property and to declare each interest or estate to which the parties are entitled. (*Newman v. Cornelius* (1970) 3 Cal.App.3d 279, 284.) “Quieting title is the relief granted once a court determines that title belongs in plaintiff... [T]he plaintiff must show he has a substantive right to relief before he can be granted any relief at all.” (*Leeper v. Beltrami* (1959) 53 Cal.2d 195, 216 (*Leeper*).) The elements are: (1) the plaintiff is the owner and in possession of the land; and (2) defendant claims an interest adverse to the plaintiff. (*South Shore Land Co. v. Peterson* (1964) 226 Cal.App. 2d 725, 740-741.)

Defendants argue the Complaint fails because it is uncertain, barred by the statute of limitations, and Plaintiff fails to allege sufficient facts.

1. Uncertainty

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (*Khoury v. Maly’s of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616 (*Khoury*).) “A

demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Ibid.*) “[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend. (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Defendants contend the Complaint is uncertain because the allegations are conclusory. However, it appears Defendants are conflating uncertainty as a basis for demurrer with the failure to plead sufficient facts to state a claim as the basis for demurrer. (*Buter v. Sequiera* (1950) 100 Cal.App.2d 143, 145-146 “[a] special demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the pleading but it is directed at the uncertainty existing in the allegations already made”].) Moreover, it does not appear the Complaint is so bad that Defendants cannot reasonably respond to it. (*Khoury, supra*, 14 Cal.App.4th at p. 616.) Thus, Defendants’ demurrer on the basis of uncertainty is OVERRULED.

2. Statute of Limitations

“The legislature has not established a specific statute of limitations for actions to quiet title.” (*Muktarian v. Barmby* (1965) 63 Cal.2d 558, 560.) Therefore, courts refer to the underlying theory of relief to determine the applicable period of limitations. (*Ibid.*) Claims for fraudulent transfer are governed by California’s Uniform Voidable Transfer Act (“UVTA”), Civil Code sections 3439 et seq., formerly known as the Uniform Fraudulent Transfer Act. The applicable statute of limitations is four years after the transfer was made or one year after the transfer was or reasonably could have been discovered by the claimant. (Civ. Code, § 3439.09, subd. (a).) Section 3439.09, also imposes a statute of repose, which states: “Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is *extinguished* if no action is brought or levy made within seven years after the transfer was made...” (Civ. Code, § 3439.09, subd. (c) [emphasis added].)

“[A] suit under the UFTA is not the exclusive remedy by which fraudulent transfers may be attacked. Principles of law and equity, including estoppel, fraud, misrepresentation, ‘or other validating or invalidating causes,’ are available to supplement an action under the UFTA.” (*Jhaveri v. Teitelbaum*

(2009) 176 Cal.App.4th 740, 755.) “If and as such [a common law] action is brought, the applicable statute of limitations is [Code of Civil Procedure] section 338, subdivision (d), and more importantly, the cause of action accrues not when the fraudulent transfer occurs but when the judgment against the debtor is secured (or maybe even later, depending upon the belated discovery issues).” (*Macedo v. Bosio* (2001) 86 Cal.App.4th 1044, 1051 (*Macedo*).)

“However, ‘even if belated discovery can be pleaded and proven’ with respect to the statute of limitation applicable to common law remedies for fraudulent transfers, ‘in any event the maximum elapsed time for a suit *under either the UFTA or otherwise* is seven years after the transfer.’” (*PGA West Residential Assn., Inc. Hulven Internat., Inc.* (2017) 14 Cal.App.5th 156, 170 [internal citations omitted].) “This conclusion logically follows from the language of section 3439.09, subdivision (c). ‘[B]y its use of the term “[n]otwithstanding any other provision of law,” the Legislature clearly meant to provide an overarching, all-embracing maximum time period to attack a fraudulent transfer, no matter whether brought under the UFTA or otherwise.’” (*Id.* at pp. 170-171 [internal citations omitted].)

Plaintiff alleges the fraudulent transfer occurred around 1988 and this action was not filed until 2023. Gloria contends the alleged fraud was discovered in 2023, although the Complaint is devoid of such facts. (See Opp., p. 7:10-16.) Moreover, even if Gloria amends the Complaint to include those facts, the claim is barred by the statute of repose. Thus, the demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Having sustained the demurrer on this basis, the Court declines to consider the remaining arguments.

IV. Motion to Strike

Given the Court’s ruling on the demurrer, Defendants’ motion to strike is MOOT.

V. Motion to Expunge Lis Pendens

Defendants/Petitioners seek to expunge the *lis pendens* recorded on October 19, 2023, against the real property located at 1711 March Court, No. A & B, Los Altos, CA 94024, APN 318-26-023.

Respondent’s collective opposition to all the motions before the Court does not appear to respond to the instant motion.

A. Legal Standard

Code of Civil Procedure section 405.30 provides:

At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice... Evidence or declarations may be filed with the motion to expunge the notice. The court may permit evidence to be received in the form of oral testimony, and may make any orders it deems just to provide for discovery by any party affected by a motion to expunge the notice. The claimant shall have the burden of proof under Section 405.31 and 405.32.

(Code Civ. Proc., § 405.30.)

A *lis pendens* is intended to ensure a plaintiff's interest in real property is preserved pending litigation. (*Campbell v. Superior Court* (2005) 132 Cal.App.4th 904, 917-918 (internal citations omitted).) A *lis pendens* clouds the title, effectively preventing transfer of the property until the litigation is resolved, thus it is to be applied narrowly. (*BGJ Associates LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 966-967.) Thus, to maintain a *lis pendens*, a complaint must state a real property claim and the claimant must establish "probable validity" of the real property claim. (Code Civ. Proc., § 405.32; *Brownlee v. Vang* (1962) 206 Cal.App.2d 814, 817; *Castro v. Superior Court* (2004) 116 Cal.App.4th 1010, 1017.) "Probable validity" means that it is more likely than not the claimant will obtain a judgment against the defendant on the claim. (Code Civ. Proc., § 405.32; *Amalgamated Bank v. Superior Court* (2007) 149 Cal.App.4th 1003, 1016.)

B. Analysis

Gloria recorded a *lis pendens* against the Property in two prior actions: (1) 09CV159921; and (2) 10CV178708, which concluded on July 1, 2010, and February 2, 2012, respectively. On March 13, 2023, Defendants initiated a new action by filing a petition to expunge *lis pendens*. On November 1, 2023, the Court (Hon. Geffon) granted the motion to expunge *lis pendens*. Before the matter was heard, Gloria initiated this action seeking to quiet title on the Property.

Given that Defendants' demurrer is sustained without leave to amend, and Gloria fails to offer any argument in response to the instant motion, Gloria cannot meet her burden to show probable validity of her claim. Thus, the motion to expunge *lis pendens* is GRANTED.

Defendants also request a “restraining order of prohibition against any recording of additional cloud or title inhibiting documents.” (MPA, p. 3:14-15.) However, Defendants fail to provide any authority supporting the request, therefore, the request is denied. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282 [points asserted without supporting authority are waived]; see also *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 [“When [a party] fails to raise a point or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived]; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 619, fn. 2 [“[A] point which is merely suggested by a party’s counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion”].)

C. Attorney’s Fees and Costs

Code of Civil Procedure section 405.38 states the “court *shall* direct that the party prevailing on any motion under this chapter be awarded the reasonable attorney’s fees and costs of making or opposing the motion unless the court finds that the other party acted with substantial justification or that other circumstances make the imposition of attorney’s fees and costs unjust.” (Code Civ. Proc., § 405.38 (emphasis added).) The Court notes Plaintiff is self-represented. Self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants “are held to the same standards as attorneys” and must comply with the rules of civil procedure. (*Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543; see also *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985.)

Petitioners request \$4,750 in attorney’s fees based for 10 hours of time spent “working with the Plaintiffs” and “in preparation of this Petition and Motion.” (See Richard Kelly Decl., ¶ 7.) Counsel “anticipates” an additional 4 hours of time to “file any additional motion, appearances, and documentation regarding the Order to Expunge.” (*Ibid.*) Petitioners also seek \$465.11 in filing costs.

The Court finds it appropriate on this record to award Petitioners their attorney’s fees and costs, but it will reduce the number of hours to twelve (12). Given the filings in this case and the anticipated length of any hearing, the Court finds it reasonable to reduce the hours of anticipated work to two hours. The \$450.00 per hour is reasonable.

Accordingly, the Court orders Respondent to pay Petitioners attorney's fees totaling \$5,400 and costs of \$465.11 within 60 days of service of this final order.

Calendar Line 3**Case Name:** *Jai Kumar v. Jade Global, Inc.***Case No.:** 20CV363612

Before the Court is Defendant Jade Global, Inc.’s (“Jade Global”) motion for summary judgment or in the alternative, summary adjudication. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This is a representative action under the Private Attorney General Act of 2004 (“PAGA”) for civil penalties and various Labor Code violations purportedly committed by Jade Global, which is an information technology services company headquartered in San Jose. (FAC, ¶ 10.) Plaintiff Jai Kumar was hired in November 2013 and held various positions in the company over the following six years until he was terminated in December 2019. (FAC, ¶¶ 10, 11.) Plaintiff alleges Jade Global wrongfully demanded that he not discuss concerns about his compensation with other employees on the grounds that doing so would be in violation of company policy. (FAC, ¶ 15.)

On June 25, 2019, Jade Global emailed a document entitled, “Jade Global FY20 LOB & Practice Leaders Variable Compensation Plan (“VCP”) to Plaintiff and other employees and required that they sign it by the week of July 5, 2019. (FAC, ¶¶ 16, 17; Exh. A.) Jade Global’s sales personnel were also sent a contract with the same provisions and required to sign it. (FAC, ¶¶ 18-19.) The VCP allegedly prohibited employees from speaking about their variable compensation with other employees in violation of California labor laws. (FAC, ¶ 22.) The VCP also required the employee to forfeit and waive any right to variable compensation earned but not paid prior to the date of termination of his or her employment in violation of Labor Code sections 201, 202, 203, 206.5, and 432.5. (FAC, ¶¶ 27-32.) The VCP further violated Labor Code section 432.5 by establishing Jade Global as the conclusive arbiter of disputes relating to variable compensation. (FAC, ¶ 33-37.)

In February 2018, Jade Global presented Plaintiff with an updated Employment, Confidential Information and Invention Assignment Agreement (“ECIIAA”) and required him to sign it. (FAC, ¶ 38; Exh. B.) The ECIIAA prohibited Plaintiff from soliciting any of Defendant’s customers for a period of 12 months after the termination of employment. (FAC, ¶ 39.) Plaintiff alleges Defendant required current and former employees to sign employment agreements materially identical to the ECIIAA and

the prohibition of soliciting customers after termination is an unlawful contractual restriction in violation of Labor Code section 432.5 and Business and Professions Code section 16600. (FAC, ¶¶ 40-44.) Plaintiff alleges the ECIIAA unlawfully prohibited employees from engaging in any outside business activities or employment without Jade Global's prior written approval. (FAC, ¶¶ 51-57.)

Plaintiff initiated this action on February 13, 2020, and on May 5, 2020 filed his FAC asserting a single claim for civil penalties under PAGA based on violations of Labor Code section 201, 202, 203, 206.5, 432.5, and 1197.5. On January 16, 2024, Jade Global filed the instant motion, which Plaintiff opposes.

II. Plaintiff's Request for a Continuance to Permit Further Discovery

Plaintiff filed his opposition on March 21, 2024 and requests the motion be continued pursuant to Code of Civil Procedure section 437c, subdivision (h). That section provides:

If it appears from the affidavit submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, and make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

(Code Civ. Proc., § 437c, subd. (h).)

When faced with a request for relief under section 437c(h), the trial court must determine whether the declaration or affidavit meets the substantive standards of the statute in that it demonstrates “(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts.” (*Fraze v. Seely* (2002) 95 Cal.App.4th 627, 633 (*Fraze*) [quoting *Wachs v. Curry* (1993) 13 Cal.App.4th 616, 623].) “The reason for this ‘exacting requirement’ is to prevent ‘every unprepared party who simply files a declaration stating that unspecified essential facts may exist’ from using the statute ‘as a device to get an automatic continuance.’ ‘The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be

presented.” (*Chavez v. 24 Hour Fitness USA, Inc.* (2015) 238 Cal.App.4th 632, 643 (*Chavez*), citing *Lerna v. County of Orange* (2004) 120 Cal.App.4th 709, 715-716 (*Lerna*).)

If the party’s submission fulfills these requirements, “the court shall deny the [summary judgment] motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just.” (Code Civ. Proc., § 437c, subd. (h).) “[I]n cases in which the opposing party (usually the plaintiff) has been thwarted in the attempt to obtain evidence that might create an issue of material fact, or discovery is incomplete, the motion for summary judgment should not be granted.” (*Krantz v. BT Visual Images* (2001) 89 Cal.App.4th 164, 174 (*Krantz*).)

If the party does not meet the requirements for a mandatory denial or continuance, the court must still consider whether a party has established “good cause” for a discretionary denial, continuance, or other relief. The court’s discretion must be exercised liberally in favor of granting a continuance: “The interests at stake are too high to sanction the denial of a continuance without good cause.” (*Fraze*, *supra*, at 634; see also *Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 517-520 [denial of request for continuance to perform site inspection was error]; *Hamilton v. Orange County Sheriff’s Dept.* (2017) 8 Cal.App.5th 759, 766 [trial court abused its discretion by denying parties’ joint request to continue summary judgment hearing for plaintiff to take necessary depositions]; *Denton v. City & County of San Francisco* (2017) 16 Cal.App.5th 779, 791-794 [oral request at hearing may be sufficient to show good cause for discretionary continuance].)

Where a party requests a continuance under the statute and satisfies its conditions, the determination whether to grant the request is vested in the discretion of the trial court and will not be disturbed on appeal unless an abuse of discretion appears. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 100; *Desaigoudar v. Meyercord* (2003) 108 Cal.App.4th 173, 190.) In exercising its discretion, the court may properly consider the extent to which the requesting party’s failure to secure the contemplated evidence more seasonably results from a lack of diligence on his part. (*Desaigoudar v. Meyercord*, *supra*, 108 Cal.App.4th at p. 190 [“Where a lack of diligence results in a party’s having insufficient information to know if facts essential to justify opposition may exist, and the party is therefore unable to provide the requisite

affidavit under Code of Civil Procedure section 437c, subdivision (h), the trial judge may deny the request for continuance of the motion.”]; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 257] [“majority of courts” have held that “lack of diligence may be a ground for denying a request for a continuance of a summary judgment motion hearing”]; but see *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398 [questioning whether diligence plays any proper role in the matter, given absence of any statutory reference to it].) [Footnote.] (*Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1038 (*Rodriguez*).)

Plaintiff requests a continuance so he can: (1) depose Elizabeth Geiser; (2) depose Krishnakala Busani; (3) move to compel Jade Global to provide further responses to inspection demands and special interrogatories regarding Busani’s role in drafting the ECIIAA and her communications with Jade Global regarding the lawfulness of its provisions; and (4) move to compel Jade Global’s witnesses to testify regarding these topics. (Opp., p. 2:12-16.) Plaintiff’s counsel Erin M. Adrian submits a declaration stating she reasonably believes Busani, who was the outside counsel to Jade Global, has information regarding Jade Global’s knowledge that any term in the ECIIAA was unlawful or prohibited by law, as Jade Global admitted she was involved in the drafting of the ECIIAA, which is essential to this motion. (Adrian Decl., ¶ 9.) She further states Busani’s deposition subpoena was issued on February 2, 2024, but Plaintiff was unable to depose Busani because he was unable to serve her at her residence despite multiple attempts. (*Id.* at ¶¶ 7-9.) Adrian further states she reasonably believes Geiser, who was the head of Human Resources for most of the relevant period, has information regarding Jade Global’s knowledge that any term of the ECIIAA was unlawful or prohibited by law as Jade Global admitted she was involved in the drafting of the ECIIAA. (*Id.* at ¶ 12.) Plaintiff also contends Geiser would know whether Jade Global had a policy to prohibit employees from sharing their compensation in violation of Labor Code section 1197.5, subdivision (k), and she was involved in the efforts to require employees to sign the agreements. (Opp., p. 3:19-23.) Adrian further states Geiser’s deposition subpoena was issued on February 21, 2024, but Plaintiff was unable to depose her because he was unable to serve her at her residence despite multiple attempts. (Adrian Decl., ¶¶ 10-12.)

“[T]he court must determine whether the party requesting the continuance has established good cause for it. That determination is within the court’s discretion.” (Weil & Brown et al., CAL. PRAC.

GUIDE: CIV. PRO. BEFORE TRIAL (The Rutter Group 2020) ¶10:208, pp. 10-90 to 10-91 citing *Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 716, et al.)

Factors the court may consider in deciding to continue include:

- The length of time the case has been pending.
- The length of time the requesting party had to oppose the motion.
- The proximity of the trial date or the 30-day discovery cut-off before trial.
- Whether the continuance motion could have been made earlier.
- Prior continuances for this purpose.
- Whether the evidence sought is “essential” to the issue to be adjudicated.
- Death or serious illness of an attorney or party is normally good cause for granting a continuance.

(*Id.* at ¶10:208.1, pp. 10-91 to 10-92.)

The matter has been pending for four years and two months as the Complaint was filed on February 13, 2020. Jade Global contends the individuals were made known to Plaintiff in February 2022. The Court notes the matter was stayed from October 24, 2022, until August 24, 2023, for arbitration of Plaintiff’s individual PAGA claims. On December 21, 2023, the Court issued its order granting Plaintiff’s motion for approval of PAGA settlement of his individual claims. Jade Global filed the instant motion on January 16, 2024, thus, Plaintiff had two months to oppose the motion. The matter is scheduled for trial on October 7, 2024. No prior continuances for this purpose have been made. Plaintiff has set forth sufficient evidence establishing whether the evidence sought is “essential” to the issue to be adjudicated in his opposition and in Counsel’s declaration. Given the liberality in favor of granting continuances, Plaintiff’s request for continuance is GRANTED. Jade Global’s motion for summary judgment, or in the alternative summary adjudication is continued to August 1, 2024, at 9:00 a.m. in Department 6. Plaintiff shall file and serve a revised opposition [superseding the opposition papers filed on March 21, 2024] no later than July 9, 2024. A reply, if any, shall be filed and served no later than July 26, 2024.

