

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

Department 19, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS

DATE: APRIL 17, 2024 TIME: 1:30 P.M.

PREVAILING PARTY SHALL PREPARE THE ORDER

UNLESS OTHERWISE STATED (SEE [RULE OF COURT 3.1312](#))

LINE #	CASE #	CASE TITLE	RULING
LINE 1	20CV368472	Tesla, Inc. v. Pascale, et al.	See Line 1 for tentative ruling.
LINE 2	20CV366939	ZL Technologies, Inc. v. Splitbyte Inc., et al. (LEAD CASE; Consolidated With 20CV373027, 20CV373149, 21CV378097, 21CV382329)	See Line 2 for tentative ruling.
LINE 3	20CV366939	ZL Technologies, Inc. v. Splitbyte Inc., et al. (LEAD CASE; Consolidated With 20CV373027, 20CV373149, 21CV378097, 21CV382329)	See Line 2 for tentative ruling.
LINE 4	20CV368472	Tesla, Inc. v. Pascale, et al.	Unopposed application for admission <i>pro hac vice</i> is GRANTED. No appearance necessary on this motion. Court will sign proposed order.

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

Department 19, Honorable Theodore C. Zayner Presiding

Maggie Castellon, Courtroom Clerk
191 North First Street, San Jose, CA95113
Telephone: 408.882.2310

To contest the ruling, call (408) 808-6856 before 4:00 P.M. or email department19@scscourt.org. Please state your case name, case number, the name of the attorney and contact number. It would also be helpful if you could identify the specific portion or portions of the tentative ruling that will be contested. Please also make sure you have notified the other side in a timely fashion that you are contesting the tentative ruling. (See R. Ct. 3.1308(a)(1); Local Rule 8.E.)

Court Reporters are not provided. Please consult our Court's website, www.scscourt.org, for the rules, policies, and required forms for appointment by stipulation of privately-retained court reporters.

- **Parties can appear either in person or remotely.** All remote appearances must be made through Microsoft Teams, unless otherwise arranged with the Court. Please go to https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml to find the appropriate link.
- If any party wants a Court Reporter, the appropriate form must be submitted. The Reporter can appear in person or remotely.
- Members of the public who wish to observe can do so through Microsoft Teams (using the link discussed above) or in person. Please make sure to turn your camera off and mute yourself if you are observing the proceedings remotely.
- As a reminder, state and local Court Rules prohibit recording of court proceedings without a Court order. This prohibition applies while in the courtroom and while on Microsoft Teams.

LAW AND MOTION TENTATIVE RULINGS

LINE 5	20CV368472	Tesla, Inc. v. Pascale, et al.	See Line 1 for tentative ruling.
LINE 6			
LINE 7			
LINE 8			
LINE 9			
LINE 10			
LINE 11			
LINE 12			
LINE 13			

Calendar Lines 1 & 5

Case Name: Tesla, Inc. v. Pascale, et al.

Case No.: 20CV368472

The above-entitled action comes on for hearing before the Honorable Theodore C. Zayner on April 17, 2024, at 1:30 p.m. in Department 19. The court now issues its tentative ruling as follows:

I. INTRODUCTION

This action arises out of the alleged misappropriation of trade secrets owned by plaintiff Tesla, Inc. (“Plaintiff” or “Tesla”). According to the allegations of the operative Fourth Amended Complaint (“FAC”), filed on September 29, 2021, Plaintiff designs, manufactures, and sells electric cars, electric vehicle powertrain components, as well as scalable energy generation and storage products. (FAC, ¶ 36.) Plaintiff sells successful electric vehicles and is poised to enter the pickup truck market, with over 500,000 reservations for its highly anticipated Cybertruck. (*Ibid.*)

Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC (collectively, “Rivian”) are a prospective electric vehicle manufacturer with a desire to bring to market a truck or SUV based on an electric drivetrain. (FAC, ¶ 37.) Plaintiff, as the world leader in electric vehicles and vehicle automation, is Rivian’s number one target from which to acquire information, including trade secret, confidential, and proprietary information. (*Id.* at ¶ 38.) Rivian has hired at least 70 employees directly from plaintiff Tesla. (*Ibid.*) Thirteen of Rivian’s recruiters are former Tesla employees who are familiar with the type of information Tesla employees have access to and what information would be useful to Rivian. (*Id.* at ¶ 39.)

Tesla has in place a comprehensive set of policies and practices that robustly protect its trade secret, confidential, and proprietary information. (FAC, ¶ 41.) As a condition of employment, all Tesla employees must sign an Employee Nondisclosure and Inventions Assignment Agreement (“NDA”). (*Ibid.*) Defendants Vince Tanner-Duran (“Tanner-Duran”), Tami Pascale (“Pascale”), Kim Wong (“Wong”), Jessie Yoste (“Yoste”), Savayia Bero (“Bero”), Jessica Siron (“Siron”), Carrington Bradley (“Bradley”), Andrea Zechmann

(“Zechmann”), Ashwin Alinkil (“Alinkil”), Saikat Das, and David Wu (“Wu”) (collectively, “Individual Defendants”) each electronically signed the NDA. (*Ibid.*)

Through the NDA, employees pledge, among other things, not to disclose Plaintiff’s “Proprietary Information,” defined to include “all information, in whatever form and format, to which I have access by virtue of and in the course of my employment,” and encompassing, as relevant here, “technical data, trade secrets, know-how, plans, designs,. . . methods, processes, data, programs, lists of or information relating to, employees, suppliers, financial information and other business information.” (FAC, ¶ 42.)

Plaintiff’s Internet Usage Policy and Technology Systems and Electronic Communications Policy both specifically prohibit the unauthorized “transmitting, copying, downloading, or removing” of Tesla trade secret, proprietary, or confidential business information. (FAC, ¶ 44.) Plaintiff also reminds employees that they “must not . . . forward work emails outside of . . . Tesla or to a personal email account.” (*Ibid.*)

Plaintiff takes extensive measures to ensure that its trade secret, confidential, and proprietary information cannot be wrongfully misappropriated, such as implementing stringent information and security policies and practices. (FAC, ¶¶ 46-47.)

Rivian is knowingly encouraging the misappropriation of Plaintiff’s trade secret, confidential, and proprietary information by employees that Rivian hires. (FAC, ¶ 48.) Plaintiff has discovered a pattern of its employees surreptitiously stealing trade secret, confidential, and proprietary information and departing for Rivian. (*Id.* at ¶ 48.) Rivian directs and encourages those thefts even though defendant Rivian is well aware of Tesla employees’ confidentiality obligations. (*Ibid.*) Furthermore, Rivian employees, who were previously employed by Plaintiff, are soliciting Plaintiff’s employees to steal Plaintiff’s trade secrets by secretly sending highly confidential files to Rivian while attempting to avoid detection by Plaintiff. (*Ibid.*)

Tesla alleges Rivian’s complicity in the misappropriation became evident when Tesla confronted Rivian about it. (FAC, ¶ 117.) On July 10, 2020, Tesla sent a letter to Rivian describing the thefts of information by Pascale, Wong, and Siron. During a phone call five days later, Ash Zahr (“Zahr”), Rivian Associate General Counsel, stated that Rivian had only

talked with a single employee about the allegations and the employee had confirmed that she misappropriated Tesla documents. (*Ibid.*) Zahr further stated Rivian was satisfied the employee had deleted the information in question and Rivian was confident that nothing would be found when Rivian reviewed its computer systems. (*Id.* at ¶¶ 117-118.) Additionally, when Tesla informed Rivian of Yoste's theft, Rivian responded two days later that the claim that Yoste download documents was frivolous. (*Id.* at ¶ 120.) Rivian was also aware of Alinkil's theft of Tesla information, but never notified Tesla of the theft. (*Id.* at ¶ 121.)

The information misappropriated by the Individual Defendants allows Rivian to copy significant parts of Plaintiff's work in key areas without investing the substantial effort, time, and resources that defendant Rivian would need to develop these systems on its own. (FAC, ¶ 126.) This is information Plaintiff does not make available to its competitors or to the public. (*Ibid.*)

Based on the foregoing allegations, the FAC sets forth causes of action for:

(1) Violation of the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.); (2) Breach of Contract; and (3) Violation of California Computer Access and Fraud Act (Cal. Pen. Code § 520 et seq.).

On October 18, 2021, Rivian filed an answer to the FAC, generally denying the allegations of the FAC and asserting various affirmative defenses.

On May 13, 2022, the court (Hon. Patricia M. Lucas) entered a Stipulation and Order Appointing Hon. Elizabeth D. Laporte (Ret.) as Discovery Referee ("Stipulation"). Under the terms of the Stipulation, all parties to the action agreed to the appointment of Hon. Elizabeth D. Laporte (Ret.) of JAMS to act as the discovery referee in this matter pursuant to Code of Civil Procedure section 638. The parties further agreed that all discovery issues decided by the discovery referee shall stand as the decision of the court pursuant to Code of Civil Procedure sections 638, subdivision (a) and 644, subdivision (a), subject to certain limited exceptions.

The Stipulation provides that

[t]he Discovery Referee will hear and determine any and all discovery disputes and issue a written order reflecting any rulings, except the Discovery Referee will not have jurisdiction over the following: (a) any discovery disputes with third-parties, absent agreement by the third-party; (b) any discovery disputes between Tesla and Defendants Saikat Das and/or Ashwin Alinkil that do not also involve Rivian; and (c) any issues not pertaining to discovery.

(Stipulation, ¶ 3.)

On November 1, 2023, the court entered a minute order continuing Rivian's motion for summary judgment to February 7, 2024, in order to allow Tesla additional time to complete discovery.¹

On January 18, 2024, the court granted Tesla's ex parte application to continue Rivian's motion for summary judgment to April 17, 2024. In its order, the court noted that it intended this second continuance to be the final continuance of the hearing on Rivian's motion for summary judgment.

Now before the court are the following matters: (1) the motion by Rivian, Das, and Wu to compel the deposition of Alinkil²; (2) the motion by Tesla for orders regarding the purported waiver of Rivian's assertion of attorney-client privilege and work product protection; (3) the motion by Rivian for summary judgment of the FAC; and (4) related motions to seal.³ The discovery motions and motion for summary judgment are opposed.

¹ On November 17, 2023, the court entered an Order Setting Briefing Schedule for Tesla's Amended Opposition to Rivian's Motion for Summary Judgment; and Granting Motions to Seal, which memorialized the rulings set forth in the November 1, 2023 minute order.

² Rivian states in its reply that it has been advised that Wu and Das have withdrawn their request for relief at this time. However, no such notice of withdrawal was filed with the court. Consequently, the court addresses the motion to compel Alinkil's deposition with respect to Wu and Das.

³ On April 10, 2024, Rivian filed a notice of withdrawal of its motion for monetary sanctions in connection with the motion to compel Alinkil's deposition. Consequently, the court will not address Rivian's motion for sanctions.

II. MOTION TO COMPEL ALINKIL'S DEPOSITION

Rivian, Das, and Wu (hereinafter, "Moving Parties") move to compel Alinkil to sit for two days of deposition sometime between mid-December 2023 and early January 2024, pursuant to Code of Civil Procedure section 2025.450, subdivision (a). (Defendants Rivian Automotive, Inc., Rivian Automotive, LLC, Saikat Das, and David Wu's Notice of Motion and Motion to Compel Deposition for Defendant Shwin Alinkil, pp. i:2-11, 1:2-16.) Moving Parties advise that the discovery dispute concerns how long Alinkil should be deposed for, not whether he should be deposed at all. (*Ibid.*) Moving Parties seek to compel Alinkil to sit for two days of deposition. (*Ibid.*) At the Informal Discovery Conference ("IDC") of October 26, 2023, Alinkil would only agree to one day of deposition. (*Ibid.*)

In opposition, Alinkil states that he sat for one day of deposition on January 18, 2024. Alinkil argues that the motion is, therefore, moot. Alinkil contends that the only relief sought by the motion was for him to sit for deposition sometime between mid-December 2023 and early January 2024, and not for a specific number of days of deposition testimony. Alinkil also suggests that Moving Parties must serve a second deposition notice on him before the court can order a second day of deposition.

In reply, Rivian argues that the motion is not moot because it requested, and established good cause for, two days of deposition in its moving papers. Rivian also asserts that a second deposition notice is not necessary as Code of Civil Procedure section 2025.610, subdivision (b) allows the court to grant leave to take a subsequent deposition for good cause.

As a threshold issue, Moving Parties have not established that the court may properly hear this motion. As explained above, the parties to the action (including Rivian, Das, Wu, and Alinkil) entered into the Stipulation, which appoints a discovery referee and provides that the discovery referee "will hear and determine any and all discovery disputes and issue a written order reflecting any rulings" subject to certain limited exceptions. Specifically, the Stipulation states that the discovery referee will not have jurisdiction over: (1) any discovery disputes with third-parties, absent agreement by the third-party; (2) any discovery disputes between Tesla and Das and/or Alinkil that do not also involve Rivian; and (c) any issues not pertaining to discovery. (Stipulation, ¶ 3.)

The instant motion is clearly a discovery dispute. The motion is brought under the Discovery Act—specifically, Code of Civil Procedure section 2025.450, subdivision (a)—and seeks to compel Alinkil to sit for an additional day of deposition. Furthermore, the discovery dispute does not fall within any of the exceptions to the discovery referee’s jurisdiction outlined in the Stipulation. Consequently, this discovery dispute falls within the jurisdiction of the discovery referee and should not have been brought before the court.

Accordingly, the motion by Rivian, Das, and Wu to compel the deposition of Alinkil is DENIED, without prejudice.

III. MOTION FOR ORDERS REGARDING WAIVER OF ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT PROTECTION

Tesla moves for the following orders regarding the purported waiver of Rivian’s assertion of attorney-client privilege and work product protection:

- (1) an order confirming Rivian waived attorney-client privilege and work product protection “over all communications, documents, and information relating to Rivian’s ‘investigation’ into Tesla’s allegations of trade secret misappropriation on the grounds that Rivian has relied on that investigation by asserting it as a defense to Tesla’s claims and by making selective disclosures about the investigation”; and
- (2) an order overruling Rivian’s attorney-client privilege and work product objections to Tesla’s discovery requests and deposition questions seeking information regarding that investigation and compelling code-compliant responses to the discovery (as specified in Tesla’s separate statement); or, alternatively,
- (3) an order striking any reference to any evidence or argument regarding the investigation from Rivian’s motion for summary judgment and precluding Rivian from making any reference to the investigation going forward.

(Plaintiff Tesla, Inc.’s Motion to Confirm Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC’s Waiver of Privilege and Work Product or, in the Alternative, to Strike Evidence and Argument from the Summary Judgment Record, pp. i:4-iii-5.) Tesla’s motion is

made pursuant to Code of Civil Procedure sections 2025.480, 2030.300, and 2031.310, Evidence Code section 912, California Rules of Court, rule 3.1352, and the court’s inherent power. (*Id* at p. i:4-6.) Tesla argues that Rivian refused to permit discovery regarding its investigation of Tesla’s allegations of trade secret misappropriation as to the individual defendants despite the fact that Rivian references and relies on the investigation in its motion for summary judgment. (*Id* at pp. 1:2-2:16.) Tesla contends Rivian’s reference to and reliance on the investigation constitutes a waiver of any assertion of the attorney-client privilege and work product doctrine by Rivian, and the court should therefore “compel the production of information Rivian is withholding[] or, at the very least, [...] preclude Rivian from relying on its ‘investigation’ in any way at summary judgment or at trial.” (*Ibid.*)

In opposition, Rivian argues that the instant motion is improper as it attempts to circumvent the jurisdiction of the discovery referee and it violates this court’s orders. Rivian also asserts that it has not waived the attorney-client privilege and work product protection relating to its investigation of Tesla’s allegations of trade secret misappropriation.

In reply, Tesla contends that its motion is procedurally proper because it seeks a ruling on an issue that the discovery referee deferred to this court for resolution. Tesla also reiterates its arguments that Rivian waived any objections to discovery based on the attorney-client privilege and work product doctrine.

As a threshold matter, the court agrees with Rivian that Tesla has not established that the court may properly hear this motion. As explained above, the parties to the action (including Rivian and Tesla) entered into the Stipulation, which appoints a discovery referee and provides that the discovery referee “will hear and determine any and all discovery disputes and issue a written order reflecting any rulings” subject to certain limited exceptions. Specifically, the Stipulation states that the discovery referee will not have jurisdiction over: (1) any discovery disputes with third-parties, absent agreement by the third-party; (2) any discovery disputes between Tesla and Das and/or Alinkil that do not also involve Rivian; and (c) any issues not pertaining to discovery. (Stipulation, ¶ 3.)

The instant motion is essentially a discovery dispute. The motion is expressly brought under various provisions of the Discovery Act—specifically, Code of Civil Procedure sections

2025.480, 2030.300, and 2031.310—and primarily seeks to (1) overrule Rivian’s attorney-client privilege and work product objections to certain discovery requests and deposition questions and (2) compel Rivian to produce the sought-after discovery. Furthermore, the discovery dispute does not fall within any of the exceptions to the discovery referee’s jurisdiction outlined in the Stipulation. Consequently, this discovery dispute falls within the jurisdiction of the discovery referee and should not have been brought before the court.

The court notes that Tesla previously brought a motion before the discovery referee regarding some of the discovery at issue here. In its Order Re: Tesla’s Motion to Compel Rivian to Produce Information Regarding Their Investigation into Tesla’s Allegations dated December 11, 2023, the discovery referee denied Tesla’s motion without prejudice pending the court’s ruling on the instant motion and Tesla’s objections to evidence submitted by Rivian in support of its motion for summary judgment. The discovery referee determined that “in order to avoid inconsistent rulings on issues that are deeply intertwined with the pending Motion for Summary Judgment, the Court should first rule on Tesla’s Motion to Strike Evidence of Purported ‘Investigation’ and Objections to Evidence Submitted by Rivian in Support of their Motion for Summary Judgment [...]” Specifically, the discovery referee stated that in connection with Rivian’s motion for summary judgment, the court would be asked “to decide whether Rivian must show that its investigations and responses thereto were adequate to prevail on its [r]atification defense [...]” The discovery referee denied Tesla’s discovery motion without prejudice as it was concerned that the court might disagree with its “resolution of the privilege, work product and waiver issues raised by Tesla [...]”

The fact that Rivian’s motion for summary judgment, and to some extent Plaintiff’s objections to evidence submitted by Rivian in support of its motion for summary judgment, require the court to address the merits of Plaintiff’s ratification theory of liability does not remove this discovery dispute from the discovery referee’s jurisdiction. Similarly, the fact that the discovery referee determined that the court should first rule on the merits of the ratification theory, does not mean that the court can properly address the separate and distinct issue of whether certain discovery should be compelled.

Tesla also cites Evidence Code section 912, California Rules of Court, rule 3.1352, and the court's inherent authority as bases for the instant motion. First, Evidence Code section 912 generally governs waiver of the attorney-client privilege and similar privileges. It does not authorize any type of discovery motion, motion to strike, or motion to preclude argument or evidence at summary judgment or trial. Second, California Rules of Court, rule 3.1352 states that a party desiring to make objections to evidence in the papers on a motion for summary judgment must either: (1) submit objections in writing under rule 3.1354; or (2) make arrangements for a court reporter to be present at the hearing. That rule does not authorize any type of discovery motion, motion to strike, or motion to preclude argument or evidence at summary judgment or trial. And to the extent the instant motion constitutes an objection to evidence submitted by Rivian in support of its motion for summary judgment, it is not in one of the formats required by California Rules of Court, rule 3.1354(b). Third, Tesla does not cite any legal authority demonstrating that the court may enter the requested orders pursuant to its inherent authority, particularly in light of the parties' Stipulation, which refers all discovery disputes to the discovery referee.

Accordingly, the motion by Tesla for orders regarding the purported waiver of Rivian's assertion of attorney-client privilege and work product protection is DENIED.

IV. MOTION FOR SUMMARY JUDGMENT

A. Request for Judicial Notice

In connection with its reply, Rivian asks the court to take judicial notice of: (1) a copy of Defendant Rivos Inc.'s Reply in Support of Motion to Dismiss filed in *Apple Inc. v. Rivos Inc.* (United States District Court for the Northern District of California, Case No. 22-CV-02637-EJD, ECF No. 143); (2) a copy of Hymson's Products webpage, titled "Products High-Speed Laser Notching & Slitting Integrated Machine (Horizontal)," <https://global.hymson.com/en/product/93>; (3) a copy of a thesis dissertation out of Luleå University of Technology by Nikolaj König and Johan Norlin, titled "Quality Improvements for Anode Coating in Lithium-Ion Battery Cell Manufacturing," <https://www.diva->

portal.org/smash/get/diva2:1573462/FULLTEXT01.pdf; (4) a copy of Chinese Patent No. CN 111681241 A, titled “Quality Control Method and System Based on Machine Vision Detection and Measurement Depth Integration”; (5) a copy of a KADO Intelligent Technology (Shanghai) Co., Ltd.’s webpage, titled “Alignment Detection System for Lithium Electricity Industry,” <https://www.kado-china.com/showpr.php?pid=907&yuy=eng>; (6) a copy of U.S. Patent Application Publication No. US 2023/0261208 A1, titled “Method and System for Producing Electrochemical Cells, and Electrode for an Electrochemical Cell”; (7) a copy of a Poggenamp Nagarsheth Powertronics Pvt. Ltd.’s webpage, titled “Production – Design & Manufacturing,” <https://poggen.com/production/>; (8) a copy of European Patent EP 4 044 336 B1, titled “Electrode Assembly, Battery, Battery Pack and Vehicle”; (9) a copy of an article by Battery LAB, titled “A Better Life with Batteries - How to Make a Battery Step 1. Electrode Manufacturing: Slitting and Notching,” <https://inside.lgensol.com/en/2023/01/a-better-life-with-batteries-how-to-make-a-battery-step-1-electrode-manufacturing-slitting-and-notching/>; (10) a copy of an article by Amada Weld Tech, titled “Machine Vision: How Can It Benefit Your Manufacturing Process?,” <https://amadaweldtech.com/blog/machine-vision-how-can-it-benefit-your-manufacturing-process/>; and (11) copy of an article by Hymson Laser, titled “Congratulations on the grand listing of Hymson Laser,” <https://www.hymsonlaser.net/article/congratulations-on-the-grand-listing-of-hymson-laser.html>.

First, the existence of Item No. 1 is a proper subject of judicial notice because Item No. 1 is a court record that is generally relevant to issues raised in connection with the pending motion for summary judgment. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits the trial court to “take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.”].)

Second, Rivian has not established that Item Nos. 2-11 are proper subjects of judicial notice. Rivian cites Evidence Code section 452 subdivisions (g) and (h) as the bases for its request. Those provisions authorize judicial notice of “[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute” and “[f]acts 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, subds. (g) & (h).) The facts asserted in the various articles, websites, patent applications are not the type of facts that are properly noticed under these subdivisions. (See *People v. Kutz* (1960) 187 Cal.App.2d 431, 434 [taking judicial notice of a major street]; see also *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1145 [stating that information judicially noticeable under subdivision (h) includes “facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter”]; *Barreiro v. State Bar* (1970) 2 Cal.3d 912, 925 [“If there is any doubt whatever either as to the fact itself or as to its being a matter of common knowledge, evidence should be required”].)

Accordingly, Rivian’s request for judicial notice is GRANTED IN PART and DENIED IN PART. The request is GRANTED as to the existence of Item No. 1. The request is DENIED in all other respects.

B. Evidentiary Objections

1. Tesla’s Objections

In connection with its opposition, Tesla submits numerous objections to evidence offered by Rivian in support of its motion for summary judgment.

As a preliminary matter, a substantial portion of Tesla’s evidentiary objections (see pages 3:1-6:18) do not comply with California Rules of Court, rule 3.1354. Specifically, Tesla submits several paragraphs of argument asserting various objections, which are not in one of the formats described in California Rules of Court, rule 3.1345(b). (See Cal. Rules of Ct., rule 3.1354(b) [a party must provide written objections that comply with one of the formats described in the rule].) Thus, this portion of Tesla’s evidentiary objections does not comply

with California Rule of Court, rule 3.1354 and the court declines to consider, or rule on, the objections raised in the subject portion. (See *Vineyard Spring Estates v. Superior Court* (2004) 120 Cal.App.4th 633, 642 (*Vineyard*) [trial courts only have duty to rule on evidentiary objections presented in proper format]; see also *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 8-9 (*Hodjat*) [the trial court is not required to rule on objections that do not comply with California Rules of Court, rule 3.1354 and is not required to give objecting party a second chance at filing properly formatted papers]; *Schmidt v. Citibank, N.A.* (2018) 28 Cal.App.5th 1109, 1118 (*Schmidt*) [the trial court acted within its discretion when it overruled evidentiary objections for failing to meet the requirements of the California Rules of Court for the format of evidentiary objections].)

With respect to Objection Nos. 1-91, where material to the disposition of the motion the court addresses the objections below; otherwise, the court declines to rule on the objections. (See Code Civ. Proc., § 437c, subd. (q) [“In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion.”].)

2. Rivian’s Objections

In connection with its reply, Rivian submits hundreds of objections to evidence offered by Tesla in support of its opposition to Rivian’s motion for summary judgment.

As a preliminary matter, a portion of Rivian’s evidentiary objections (see pages 2:7-3:4) do not comply with California Rules of Court, rule 3.1354. Specifically, Rivian submits paragraphs of argument asserting various objections, which are not in one of the formats described in California Rules of Court, rule 3.1345(b). (See Cal. Rules of Ct., rule 3.1354(b) [a party must provide written objections that comply with one of the formats described in the rule].) Thus, this portion of Rivian’s evidentiary objections does not comply with California Rule of Court, rule 3.1354 and the court declines to consider, or rule on, the objections raised in the subject portion. (See *Vineyard, supra*, 120 Cal.App.4th at p. 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; see also *Hodjat, supra*, 211 Cal.App.4th at pp. 8-9 [the trial court is not required to rule on objections that do not comply with California Rules of Court, rule 3.1354 and is not required to give objecting party a second

chance at filing properly formatted papers]; *Schmidt, supra*, 28 Cal.App.5th at p. 1118 [the trial court acted within its discretion when it overruled evidentiary objections for failing to meet the requirements of the California Rules of Court for the format of evidentiary objections].)

With respect to Objection Nos. 1-237, where material to the disposition of the motion the court addresses the objections below; otherwise, the court declines to rule on the objections. (See Code Civ. Proc., § 437c, subd. (q) [“In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion.”].)

C. Legal Standard

A motion for summary judgment must dispose of the entire action. (Code Civ. Proc., § 437c, subd. (a); *All Towing Services LLC v. City of Orange* (2013) 220 Cal.App.4th 946, 954 [“Summary judgment is proper only if it disposes of the entire lawsuit.”].) The pleadings limit the issues presented for summary judgment and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98; see also *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73 [“the pleadings determine the scope of relevant issues on a summary judgment motion”].)

“Summary judgment is properly granted when no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law. [Citation.] A defendant moving for summary judgment bears the initial burden of showing that a cause of action has no merit by showing that one or more of its elements cannot be established or that there is a complete defense. [Citation.]” (*Madden v. Summit View, Inc.* (2008) 165 Cal.App.4th 1267, 1272 (*Madden*).) To satisfy this burden, the defendant must present evidence which either conclusively negates an element of the plaintiff’s cause of action, or which shows the plaintiff does not possess, and cannot reasonably obtain, needed evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)

“Once the defendant has met that burden, the burden shifts to the plaintiff ‘to show that a triable issue of one or more material facts exists as to that cause of action or a defense

thereto.’ [Citation.] ‘There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.’ [Citation.]” (*Madden, supra*, 165 Cal.App.4th at p. 1272.)

For purposes of establishing their respective burdens, the parties involved in a motion for summary judgment must present admissible evidence. (*Saporta v. Barbagelata* (1963) 220 Cal.App.2d 463, 468.) Additionally, in ruling on the motion, a court cannot weigh said evidence or deny summary judgment on the ground that any particular evidence lacks credibility. (See *Melorich Builders v. Superior Court* (1984) 160 Cal.App.3d 931, 935; see also *Lerner v. Superior Court* (1977) 70 Cal.App.3d 656, 660.) As summary judgment “is a drastic remedy eliminating trial,” the court must liberally construe evidence in support of the party opposing summary judgment and resolve all doubts concerning the evidence in favor of that party. (See *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389; see also *Hepp v. Lockheed-California Co.* (1978) 86 Cal.App.3d 714, 717-718.)

D. Discussion

Rivian moves for summary judgment of the FAC as alleged against it on the ground that there are no triable issues of material fact as to whether it misappropriated any trade secrets. Rivian argues it is not liable for trade secret misappropriation because merely hiring an employee in possession of a former employer’s trade secret, without more, does not subject the subsequent employer to liability. Rivian also asserts that it did not direct or encourage the Individual Defendants’ alleged misappropriation of trade secrets because: (1) it told all of the Individual Defendants when it hired them that it did not want any former employer’s confidential information or trade secrets; (2) it promptly investigated Tesla’s allegations when it learned of them; and (3) it took appropriate action against two of the Individual Defendants (i.e., Alinkil and Das) following an investigation of their alleged misconduct. Rivian contends that Tesla has no evidence that any of the alleged trade secrets possessed by former Tesla employees ever made their way onto any of Rivian’s internal networks or systems; there is no evidence that the Individual Defendants ever provided access to or otherwise shared or disseminated any of the alleged trade secrets to anyone at Rivian such that they could have

been used by others at Rivian; and Tesla cannot show that Rivian disclosed the alleged trade secrets because it never possessed the alleged trade secrets. Rivian states that Wong, Pascale, Siron, Bero, Yoste, Zechman, Wu, and Das were employed by Tesla when they allegedly took possession of the trade secrets and, therefore, Rivian cannot be held vicariously liable for that conduct. With respect to Duran, who was a Rivian employee at the time of the allegedly wrongful conduct, Rivian asserts that there is no evidence that the alleged trade secrets were actually received by Duran. Regarding Alinkil, Rivian acknowledges that Alinkil was its employee when he allegedly received Tesla's trade secrets. However, Rivian asserts the evidence does not support the implication that Alinkil was acting at its behest and for its benefit because (1) it placed him on administrative leave and suspended his access to Rivian's systems within two business days of becoming aware of his alleged misconduct and (2), following a later investigation, terminated his employment. Finally, Rivian urges that it did not ratify the Individual Defendant's alleged misappropriation because the undisputed facts show that: (1) it promptly initiated an investigation of Tesla's allegations when it learned of the conduct by each Individual Defendant; (2) it gave Tesla various assurances regarding its investigation; and (3) "[w]here appropriate, [it] took actions" (such as placing Alinkil on administrative leave, and later terminating his employment and revoking Das' job offer) "that are completely inconsistent with any contention by Tesla that Rivian ratified the actions of these Individual Defendants.

In opposition, Tesla argues that Rivian acquired and used Tesla's trade secrets. Among other things, Tesla contends that Alinkil solicited and obtained Tesla's trade secrets from Das, a Tesla employee, on multiple occasions during Alinkil's employment with Rivian. Furthermore, Tesla asserts that Alinkil accessed the documents he obtained from Das during his employment with Rivian. Tesla also contends that the evidence supports the inference that Rivian relied on documents acquired from Das to accelerate the progress of its battery-manufacturing program more quickly than what could feasibly be achieved through independent development. Tesla argues that Alinkil was acting within the scope of his employment when he obtained Tesla's trade secrets from Das because the information solicited was related to the battery-manufacturing projects Rivian was working on. Tesla also argues

that Rivian ratified the Individual Defendants' conduct. Tesla asserts that an inadequate response to employee misconduct can support a finding of liability based on the theory of ratification. Tesla notes that Rivian has refused to produce discovery necessary for Tesla to evaluate whether Rivian's investigation and response was appropriate. Finally, Tesla argues that the court should deny the motion because Rivian has continued to withhold critical discovery and denial, or a continuance, of a motion for summary judgment is warranted when it appears that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented.

In reply, Rivian reiterates many of the arguments raised in its moving papers. Rivian also contends that a continuance is not warranted because the instant motion was filed several months ago and Tesla has already sought and obtained two continuances to obtain more discovery.

Code of Civil Procedure section 437c, subdivision (h) states, in pertinent part, that "[i]f it appears from the affidavits 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, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just."

Where a party requests a denial or a continuance to obtain facts essential to justify opposition to a motion for summary adjudication, the determination whether to grant the request is vested in the discretion of the trial court. (*Chavez v. 24 Hour Fitness USA, Inc.*

(2015) 238 Cal.App.4th 632, 643 (*Chavez*).)

"Notwithstanding the court's discretion in addressing such continuance requests, 'the interests at stake are too high to sanction the denial of a continuance without good reason.' [Citation.] Thus, '[t]o mitigate summary judgment's harshness, the statute's drafters included a provision making continuances—which are normally a matter within the broad discretion of trial courts—virtually mandated “‘upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion.’ ” ’ ’ [Citation.]

To make the requisite good faith showing, an opposing party's declaration must show (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. [Citation.] The reason for this "exacting requirement" [citation] is to prevent "every unprepared party who simply files a declaration stating that unspecified essential facts may exist" [citation] from using the statute "as a device to get an automatic continuance" [citation]. "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." [Citation.]

(*Chavez, supra*, 238 Cal.App.4th at p. 643, citations omitted.)

Notably, “[e]ven absent a sufficient declaration, ‘the court must determine whether the party requesting the continuance has nonetheless established good cause therefor.’ [Citation.]”

(*Chavez, supra*, 238 Cal.App.4th at p. 643, citations omitted.)

While the court would generally be disinclined to grant a third continuance of this motion, the court is troubled by the fact that Tesla brought a motion to compel discovery relevant to the theory of ratification, but the discovery referee declined to rule on the merits of the discovery motion given the pending motion for summary judgment. The discovery referee denied Tesla’s discovery motion without prejudice because it believed the court would be asked “to decide whether Rivian must show that its investigations and responses thereto were adequate to prevail on its [r]atification defense” and it was concerned that the court might disagree with its “resolution of the privilege, work product and waiver issues raised by Tesla [...].”

The issue of ratification, as it is presented in this case, is not an affirmative defense asserted by Rivian. Rather, ratification is a theory of direct liability that Tesla has arguably alleged in its FAC. (FAC, ¶¶ 117-121, 139; see *City of Brentwood v. Department of Finance* (2020) 54 Cal.App.5th 418, 436 (*City of Brentwood*) [“Ratification is an agency doctrine. ‘Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. [Citations.]’ ”]; see also *Cisco Sys. v. Wilson Chung* (N.D.Cal. 2020) 462 F. Supp. 3d 1024, 1057 [“As an alternate theory to respondeat superior, an employer may be liable for an employee’s act where the employer either authorized the tortious act or subsequently ratified an originally unauthorized tort.”]; *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1110 [same].)

Ratification is generally a question of fact that may be proved by circumstantial as well as direct evidence. (*City of Brentwood, supra*, 54 Cal.App.5th at p. 429; *Streetscenes v. ITC Entertainment Group, Inc.* (2002) 103 Cal.App.4th 233, 242.) Case law establishes that “ratification may be inferred from the fact that the employer, after being informed of the employee’s actions, does not fully investigate and fails to repudiate the employee’s conduct by

redressing the harm done and punishing or discharging the employee.” (*Garcia v. Clovis Unified Sch. Dist.* (E.D.Cal. 2009) 627 F.Supp.2d 1187, 1202 (*Garcia*); *Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 621 [same], superseded by statute on other grounds as stated in *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 880; see *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1385 [holding there was a triable issue of material fact as to the issue of ratification when the presented evidence as to the scope and results of defendants’ investigation from which a reasonable trier of fact could conclude that the defendants unreasonably took no action to prevent ongoing injury].)

While Tesla will ultimately bear the burden of proof at trial to establish ratification, to meet its initial burden on summary judgment, Rivian must present evidence which either conclusively negates Tesla’s theory of ratification or which shows Tesla does not possess, and cannot reasonably obtain, needed evidence to support its theory of ratification. (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 840 [The defendant ‘must show that under no possible hypothesis within the reasonable purview of the allegations of the complaint is there a material question of fact which requires examination by trial.’ ”].) In order to meet its initial burden, Rivian argues that it promptly investigated Tesla’s allegations when it learned of them and took appropriate action against two of the Individual Defendants (i.e., Alinkil and Das) following its investigation of their alleged misconduct. (Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC’s Motion for Summary Judgment; Memorandum of Points and Authorities in Support Thereof, pp. 1:22-2-4, 19:10-14.) Rivian’s repeated assertion that it took certain actions against Individual Defendants *where appropriate* invokes an issue concerning the adequacy of Rivian’s investigation and the steps taken by Rivian to redress the harm done. (See *Garcia, supra*, 627 F.Supp.2d at p. 1202 [“ratification may be inferred from the fact that the employer, after being informed of the employee’s actions, does not *fully* investigate and fails to repudiate the employee’s conduct by *redressing the harm done* and punishing or discharging the employee”], italics added; see also *Wellpoint Health Networks v. Superior Court* (1997) 59 Cal.App.4th 110, 128 [“If a defendant employer hopes to prevail by showing that it investigated an employee’s complaint and took action appropriate to the

findings of the investigation, then it will have put the adequacy of the investigation directly at issue [...].”.)

Consequently, Tesla’s Motion to Compel Rivian to Produce Information Regarding Their Investigation into Tesla’s Allegations sought to obtain facts essential to justify Tesla’s opposition to Rivian’s motion for summary judgment. However, Tesla was unable to present those facts because the discovery referee denied the motion without prejudice pending this court’s ruling on Rivian’s motion for summary judgment.

In light of the foregoing, the court finds that a further continuance of the motion for summary judgment is warranted in order to allow Tesla to renew its Motion to Compel Rivian to Produce Information Regarding Their Investigation into Tesla’s Allegations before the discovery referee. (See *Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1015 [the denial of a motion without prejudice impliedly invites the moving party to renew the motion at a later date].)

Accordingly, Rivian’s motion for summary judgment is CONTINUED to July 24, 2024, at 1:30 p.m. in Department 19.

V. MOTIONS TO SEAL

A. Legal Standard

“Unless confidentiality is required by law, court records are presumed to be open.” (Cal. Rules of Court, rule 2.550(c).) “A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties.” (Cal. Rules of Court, rule 2.551(a).) The court may order that a record be filed under seal only if it expressly finds facts that establish:

1. There exists an overriding interest that overcomes the right of public access to the record;
2. The overriding interest supports sealing the record;
3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
4. The proposed sealing is narrowly tailored; and
5. No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.550(d).)

A party moving to seal a record must file a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).) A declaration supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an overriding interest that overcomes the right of public access. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 305 (*In re Providian*).)

Further, where some material within a document warrants sealing but other material does not, the document should be edited or redacted if possible, to accommodate the moving party's overriding interest and the strong presumption in favor of public access. (See Cal. Rules of Court, rule 2.550(e)(1)(B); see also *In re Providian*, *supra*, 96 Cal.App.4th at p. 309.) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*In re Providian*, *supra*, 96 Cal.App.4th at p. 309.)

B. Plaintiff's Motion to Seal Portions of Rivian's Reply in Support of Its Motion for Summary Judgment

Plaintiff moves to seal Exhibits 3 and 6 to Rivian's Reply In Support Of Its Motion For Summary Judgment. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain Plaintiff's confidential business information and trade secret information, and public disclosure would create an unreasonable risk of harm to Plaintiff.

In support of its motion, Plaintiff provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Melissa Baily in Support of Plaintiff Tesla, Inc.'s Motion to Seal Certain Exhibits to Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Reply in Support of Motion for Summary Judgment, ¶¶ 3-6.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party.

(*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286 (*Universal*)). In addition, courts have found that, under appropriate circumstances, trade secrets, when properly asserted and not waived, may constitute overriding interests warranting sealing. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46 (*NBC*); see Civ. Code, § 3426.5.) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

C. Plaintiff's Motion to Seal Portions of its Motion for Orders Regarding Waiver of Attorney-Client Privilege and Work Product Protection

Plaintiff moves to seal portions of its motion for orders regarding Rivian's purported waiver of the attorney-client privilege and work product protection, portions of its Separate Statement in Support of the Motion, and Exhibit Nos. 4, 6-8, 11, 12, 14, 15, and 18 to the Declaration of Melissa Baily in Support of the Motion. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain private employment information of individual employees as well as Plaintiff's confidential business information and trade secret information, and public disclosure would create an unreasonable risk of harm to Plaintiff.

In support of its motion, Plaintiff provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Allison Huebert in Support of Plaintiff Tesla, Inc.'s Motion to Seal Certain [*Sic*] in Support of Motion to Confirm Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Waiver of Privilege and Work Product or, in the Alternative, to Strike Evidence and Argument from the Summary Judgment Record, ¶¶ 3-10.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) In addition, courts have found that, under appropriate circumstances, trade secrets, when properly asserted and not waived, may

constitute overriding interests warranting sealing. (*NBC, supra*, 20 Cal.4th at p. 1222; see Civ. Code, § 3426.5.) Finally, individuals have a right to privacy in their personal employment information. (See *In re Providian, supra*, 96 Cal.App.4th at p. 298, fn.3 [“Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests.”].) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

D. Rivian’s Motion to Seal Portions of its Opposition to Plaintiff’s Ex Parte Application to Continue Motion for Summary Judgment

Rivian moves to seal portions of its opposition to Plaintiff’s ex parte application to continue the hearing on Rivian’s motion for summary judgment. Specifically, Rivian seeks an order sealing the portions of Exhibit No. 7 to the Declaration of Brett M. Schuman. Rivian argues that sealing is warranted on the grounds that subject material contain confidential business information regarding the current status of batteries in its electric vehicles and its future plans relating to the batteries in its electric vehicles. Rivian limits public disclosure of certain categories of information about the batteries in its electric vehicles and its plans relating to those batteries. For example, employees and vendors are not permitted to disclose such information without prior approval from Rivian. Rivian asserts that public disclosure of the subject material would be likely to harm its competitive standing by providing its competitors with information about the batteries in its vehicles.

In support of its motion, Rivian provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC’s Motion to Seal Portion of Exhibit 7 to Declaration of Brett M. Schuman in Support of Rivian’s Opposition to Plaintiff Tesla, Inc.’s Ex Parte Application to Continue the Briefing and Hearing on Rivian’s Motion for Summary Judgment, ¶¶ 2-3.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

E. Rivian's Motion to Seal Portions of Plaintiff's Motion for Orders Regarding Waiver of Attorney-Client Privilege and Work Product Protection and Plaintiff's Ex Parte Application to Continue Motion for Summary Judgment

Rivian moves to seal: (1) Exhibit Nos. 9 and 10 to the Declaration of Melissa Baily submitted in support of Plaintiff's motion for orders regarding Rivian's purported waiver of attorney-client privilege and work product protection; and (2) Exhibits B, C, and F to the Declaration of Melissa Baily submitted in support of Plaintiff's ex parte application to continue the hearing on Rivian's motion for summary judgment. Rivian argues that sealing is warranted on the grounds that subject material contain confidential business information (such as discussion regarding vendors, contract negotiations, and its battery technology).

In support of its motion, Rivian provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal, ¶¶ 2-7.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

F. Plaintiff's Motion to Seal Portions of its Amended Opposition to Rivian's Motion for Summary Judgment

Plaintiff moves to seal portions of amended opposition to Rivian's motion for summary judgment, its amended response to Rivian's separate statement, its amended objections to Rivian's evidence, its proposed order on its amended objections, portions of the Declaration of Colin Sacks, Exhibit Nos. 2-17 to the Declaration of Colin Sacks, Exhibit Nos. 19-29, 31, 40-42, 46, 48--67 to the Declaration of Sara Pollock, portions of the Declaration of Melissa Baily, Exhibits G, H, J, M, N, and P to the Declaration of Melissa Baily, portions of the Declaration of Chunmeng Yang, Exhibits C-G to the declaration of Chunmeng Yang, portions of the Declaration of Former Tesla Employee, Exhibit A to the Declaration of Former Tesla Employee, portions of the Declaration of James Kaschmitter, Exhibits F, G, I-N, and P to the Declaration of James Kaschmitter, and portions of the Declaration of Seth Nielson. Plaintiff asserts that sealing is warranted on the grounds that the subject materials contain private employment information of individual employees as well as Plaintiff's confidential business information and trade secret information, and public disclosure would create an unreasonable risk of harm to Plaintiff.

In support of its motion, Plaintiff provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Allison Huebert in Support of Plaintiff Tesla, Inc.'s Motion to Seal Certain Exhibits to Declarations in Support of Tesla's Amended Opposition to Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion for Summary Judgment, ¶¶ 3-29.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) In addition, courts have found that, under appropriate circumstances, trade secrets, when properly asserted and not waived, may constitute overriding interests warranting sealing. (*NBC, supra*, 20 Cal.4th at p. 1222; see Civ. Code, § 3426.5.) Finally, individuals have a right to privacy in their personal employment

information. (See *In re Providian*, *supra*, 96 Cal.App.4th at p. 298, fn.3 [“Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests.”].) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential and private information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

G. Rivian’s Motion to Seal Portions of its Opposition to Plaintiff’s Motion for Orders Regarding Waiver of Attorney-Client Privilege and Work Product Protection

Rivian moves to seal portions of its opposition to Plaintiff’s motion for orders regarding Rivian’s purported waiver of attorney-client privilege and work product protection and Exhibit No. 6 to the Declaration of Brett M. Schuman. Rivian argues that sealing is warranted on the grounds that subject material contain confidential business information (such as discussion sensitive business information regarding internal investigations).

In support of its motion, Rivian provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendants Rivian Automotive, Inc. and Rivian Automotive, LLC’s Motion to Seal Portions of Their Opposition to Plaintiff Tesla, Inc.’s Motion to Confirm Waiver of Privilege and Work Product or, in the Alternative, to Strike Evidence From Summary Judgment Record and Exhibits Thereto, ¶¶ 2-5.)

Information involving confidential matters relating to a party’s business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal*, *supra*, 110 Cal.App.4th at p. 1286.) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

H. Rivian's Motion to Seal Portions of its Amended Reply

Rivian moves to seal portions of its Amended Reply in Support of Motion for Summary Judgment, its Response to Tesla's Separate Statement of Additional Material Facts, its Objections to Evidence in Support of Tesla's Opposition, the Proposed Order on Rivian's Objections to Evidence, Exhibit No. 2 to Rivian's Evidence in Support of Amended Reply in Support of Motion for Summary Judgment, and Exhibit Nos. 9, 10, and 22 to Amended Reply Evidence. Rivian argues that sealing is warranted on the grounds that subject material contains confidential business information regarding its batteries. Rivian limits public disclosure of certain categories of information about its batteries. For example, employees and vendors are not permitted to disclose such information without prior approval from Rivian. Rivian asserts that public disclosure of the subject material would be likely to harm its competitive standing by providing its competitors with information about the batteries in its vehicles.

In support of its motion, Rivian provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal Amended Reply in Support of Motion for Summary Judgment, ¶¶ 2-3.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

I. Rivian's Motion to Seal

Rivian moves to seal portions of Plaintiff's Amended Opposition to Rivian's Motion for Summary Judgment and Plaintiff's motion for orders regarding Rivian's purported waiver of attorney-client privilege and work product protection. Rivian argues that sealing is warranted on the grounds that subject material contains confidential business information regarding its

batteries, its service operations, and plans for certain markets. Rivian limits public disclosure of this information. Rivian asserts that public disclosure of the subject material would be likely to harm its competitive standing.

In support of its motion, Rivian provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Katherine Wolf in Support of Defendant Rivian Automotive, Inc. and Rivian Automotive, LLC's Motion to Seal, ¶¶ 2-4.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) Thus, as a general matter, the subject materials appear to be subject to sealing. Moreover, the sealing request is narrowly tailored as it only seeks to seal explicit references to the confidential information disclosed in the documents.

Accordingly, the motion to seal is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

- oo0oo -

Calendar Lines 2 – 3

Case Name: ZL Technologies, Inc. v. Splitbyte Inc., et al. (LEAD CASE; Consolidated With
20CV373027, 20CV373149, 21CV378097, 21CV382329)
Case No.: 20CV366939

The above-entitled actions come on for hearing before the Honorable Theodore C. Zayner on April 17, 2024, at 9:00 a.m. in Department 19. The court now issues its tentative ruling as follows:

II. INTRODUCTION

This consolidated action involves five related matters:

- (1) *ZL Technologies, Inc. v. SplitByte Inc, et al.* (Case No. 20CV366939);
- (2) *Arvind Srinivasan v. ZL Technologies, Inc., et al.* (Case No. 20CV373027);
- (3) *Arvind Srinivasan v. ZL Technologies, Inc.* (Case No. 20CV373149);
- (4) *ZL Technologies, Inc., et al. v. Arvind Srinivasan* (Case No. 21CV378097); and
- (5) *Arvind Srinivasan v. ZL Technologies, Inc.* (Case No. 21CV382329).

As is relevant here, *ZL Technologies, Inc., et al. v. Arvind Srinivasan* (Case No. 21CV378097) (“Defamation Case”) is a defamation action filed by ZL Technologies, Inc. (“ZL Technologies”), Kon Leong (“Leong”), and Chimmy Shioya (“Shioya”) against Arvind Srinivasan (“Srinivasan”).

On May 6, 2021, Srinivasan filed a new action against ZL Technologies, *Arvind Srinivasan v. ZL Technologies, Inc.* (Case No. 21CV382329) (“Indemnity Case”), seeking specific performance based on an indemnity agreement and corporate by-laws. The prayer for relief demands “an order requiring ZL to pay all costs incurred to date in defending the action referred to above [the Defamation Action].”

On November 3, 2022, the court (Hon. Patricia M. Lucas) denied Srinivasan’s motion for an order compelling ZL Technologies to pay the sum of \$130,746.49 to his counsel as well as all attorneys’ fees and costs related to his defense of the Defamation Case. The court explained that Corporations Code section 317 does not allow indemnification unless the party seeking indemnification acted in good faith and in a manner reasonably believed to be in the best interests of the corporation. The court determined that Srinivasan’s moving papers failed to provide any evidence bearing on these points, and Srinivasan was prohibiting from offering such evidence for the first time in reply.

On June 23, 2023, the Sixth District Court of Appeal affirmed in part and reversed in part an order by the court (Hon. Drew C. Takaichi) denying Srinivasan’s special motion to strike the defamation cause of action under the anti-SLAPP statute. Specifically, the reviewing court directed the trial court to issue a new order granting the motion to strike defamation claims arising out of the October 7, 2020 letter and the October 29, 2020 email (including republication of the letter in that email) and denying the motion with respect to claims arising out of other republications and communications. (*Zl Techs. v. Srinivasan* (June 26, 2023, No. H049444) ___Cal.App.5th___ [2023 Cal. App. Unpub. LEXIS 3675, at *22-23].)

On October 5, 2023, the court continued ZL Technologies’ motion for summary adjudication to allow Srinivasan additional time to complete Shioya’s and Leong’s depositions.

Now before the court are: (1) the renewed motion by Srinivasan for advancement of attorney fees and costs; (2) the motion by ZL Technologies for summary adjudication of ZL Technologies’ sixth cause of action for breach of contract, Srinivasan’s tenth cause of action for reformation, Srinivasan’s fifth cause of action for breach of alleged severance contract, and Srinivasan’s sixth cause of action for breach of alleged contract for a Chennai office; and (3) related motions to seal. The renewed motion for advancement of attorney fees and costs and the motion for summary adjudication are opposed.

II. RENEWED MOTION FOR ADVANCEMENT OF ATTORNEY FEES AND COSTS

A. Request for Judicial Notice

In connection with his moving papers, Srinivasan asks the court to take judicial notice of various court documents filed in this consolidated action.

The existence of the subject documents, and the truth of the results reach in the court orders and decisions, are proper subjects of judicial notice as they are relevant to issues raised in the pending motion. (See Evid. Code, § 452, subd. (d) [permitting judicial notice of court records]; see also *People v. Woodell* (1998) 17 Cal.4th 448, 455 [Evid. Code, § 452, subd. (d) permits the trial court to “take judicial notice of the existence of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth

of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact.”].)

Accordingly, the request for judicial notice is GRANTED.

B. Legal Standard

Code of Civil Procedure section 1008, subdivision (b) governs renewed motions. It provides that “[a] party who originally made an application for an order which was refused in whole or part ... may make a subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.” (Code Civ. Proc., § 1008, subd. (b).) These requirements are jurisdictional. (Code Civ. Proc., § 1008, subd. (e); *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 383 (*Kerns*) [In amending Code of Civil Procedure section 1008 in 1992, “the Legislature expressly intended to make section 1008 both jurisdictional and applicable to all motions for reconsideration of interim orders, as well as all renewed motions for interim orders previously denied.”].)

In *Kerns*, the appellate court held that the lower court lacked jurisdiction to hear a second motion for summary judgment after denying the first such motion. (*Kerns, supra*, 106 Cal.App.4th at pp. 372 & 391.) The undisputed record showed that there were no new facts, circumstances, or legal authorities cited in the renewed motion for summary judgment that were not previously presented in the original motion. Specifically, the original and renewed motions “cited the same two Policy exclusions.” (*Id.* at p. 391.) The party moving for summary judgment “gave no satisfactory explanation whatsoever for its failure to offer any new facts, circumstances or law, much less for its resubmission of the identical motion.” (*Ibid.*) “[B]ecause the requirements of section 1008 are jurisdictional with respect to applications by civil parties litigant for reconsideration of previous orders or renewing previously denied motions, any action by the trial court on such an application not in compliance with the dictates of section 1008 would be in excess of its jurisdiction.” (*Id.* at p. 394.)

C. Discussion

Here, Srinivasan renews his earlier motion to compel ZL Technologies to advance fees and costs incurred in connection with the Defamation Action. After discussing the procedural history of this case, Srinivasan states that his motion is based on new and different facts. Srinivasan contends the new and difference facts are that: (1) the October 7, 2020 letter from Srinivasan's counsel to ZL's counsel was made in good-faith and in the best interest of ZL Technologies; (2) the statements were made to demand ZL Technologies' board of directors provide Srinivasan with information and to propose a shareholder vote to remove and replace Leong; (3) Srinivasan believed Leong mismanaged ZL Technologies and that Leong and Shioya exploited ZL Technologies' assets for their personal gain; (4) Srinivasan listed the mismanagement that he believed to be reasonable grounds for the removal of Leong; and (5) Srinivasan reserved the right to bring litigation on behalf of ZL Technologies should the company fail to take action. (Memorandum of Points and Authorities in Support of Plaintiff's Renewed Motion for Advancement of Attorneys' Fees and Costs, p. 5:13-22.)

However, none of these facts are new or different facts. The identified facts concern statements made in and October 7, 2020 letter and Srinivasan's beliefs regarding the subject statements. Srinivasan does not provide any explanation, let alone a satisfactory one, for his failure to produce these facts at an earlier time. (See *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 689-690 [denying the motion for reconsideration because "[t]he information consisting of [the moving party's] own declared knowledge was obviously always within his possession, and no satisfactory explanation appeared for not bringing it out earlier"]; see also *New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213 [The burden under the statute "is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial."].)

Srinivasan also states that his motion is based on new law. Srinivasan contends that the new law is the decision issued by the Sixth District Court of Appeal on June 26, 2023.

Srinivasan's argument is not well-taken. The opinion at issue does not set forth any new law. Rather, it applies well-established law to the facts alleged in the Defamation Action.

Srinivasan also asserts the Sixth District Court of Appeal determined that he acted in good faith because it held that the October 7, 2020 letter from Srinivasan's counsel to ZL's counsel qualified as a statement in connection with litigation. (See *Zl Techs. v. Srinivasan* (June 26, 2023, No. H049444)

___Cal.App.5th___ [2023 Cal. App. Unpub. LEXIS 3675, at *14] [“Because the letter also demands that ZL take action, and threatens litigation absent such action, it qualifies as a statement in connection with litigation and is protected under subdivision (e)(2) of the anti-SLAPP statute”].)

In its opinion, the Sixth District Court of Appeal explained that As Plaintiffs acknowledged at oral argument, Srinivasan’s October 7, 2020 letter is a demand letter. The letter demanded, among other things, that ZL’s chairman, plaintiff Leong, be removed from the board of directors due to a litany of misconduct. The letter made this demand expressly “to avoid the commencement of a shareholder’s action,” and it reserved Srinivasan’s right to proceed “in his own name against all those responsible for the improper and unlawful conduct” described. Moreover, it is reasonable to infer that this demand was made in anticipation of litigation under serious consideration at the time because Srinivasan actually sued ZL for removal of Leong based on much the same alleged misconduct on November 3, 2020, less than a month later.

(*ZL Techs. v. Srinivasan* (June 26, 2023, No. H049444) ___Cal.App.5th___ [2023 Cal. App. Unpub. LEXIS 3675, at *16-17].) Thus, contrary to Srinivasan’s assertion otherwise, the reviewing court did not find that he acted with good faith and in the best interests of the corporation, as required to obtain indemnity under Corporations Code section 317. (Corp. Code, § 317 [a corporation may indemnify a person “if that person [seeking indemnification] acted in good faith and in a manner the person reasonably believed to be in the best interests of the corporation”].) Rather, the court merely determined that it was reasonable to infer that the demand letter was made in anticipation of litigation under serious consideration at the time because Srinivasan actually sued ZL Technologies for removal of Leong less than a month later.

For these reasons, Srinivasan has failed to identify any new or different facts, circumstances, or law to warrant renewal.

Accordingly, the renewed motion to advance attorney fees and costs is DENIED.

III. MOTION FOR SUMMARY ADJUDICATION

A. Evidentiary Objections

In connection with its reply, ZL Technologies submits several objections to evidence offered in support of Srinivasan’s opposition to the motion for summary adjudication.

ZL Technologies’ objections do not comply with California Rules of Court, rule 3.1354. Rather than timely submit two separate documents as required by the rule—one setting forth the objections and another setting forth a proposed order—ZL Technologies submitted a single packet of objections, signed by counsel, with blanks for the court to indicate its rulings and lines for the court to

sign on. (See Cal. Rules of Ct., rule 3.1354(b) [a party must provide written objections that comply with one of the formats described in the rule] (c) [a party must provide a proposed order that complies with one of the formats described in the rule].) This hybrid document does not comply with California Rule of Court, rule 3.1354.

Because ZL Technologies' evidentiary objections do not comply with the California Rules of Court, the court is not required to rule on the objections. (See *Vineyard Spring Estates v. Superior Court* (2004) 120 Cal.App.4th 633, 642 [trial courts only have duty to rule on evidentiary objections presented in proper format]; see also *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 8-9 [the trial court is not required to rule on objections that do not comply with California Rules of Court, rule 3.1354 and is not required to give objecting party a second chance at filing properly formatted papers]; *Schmidt v. Citibank, N.A.* (2018) 28 Cal.App.5th 1109, 1118 [the trial court acted within its discretion when it overruled evidentiary objections for failing to meet the requirements of the California Rules of Court for the format of evidentiary objections].)

Accordingly, the court declines to rule on ZL Technologies' evidentiary objections.

B. Legal Standard

"A motion for summary adjudication ... shall proceed in all procedural respects as a motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) The pleadings limit the issues presented for summary adjudication and such a motion cannot be granted or denied on issues not raised by the pleadings. (*Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73; *Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663-1664.) "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc., § 437c, subd. (f)(1).) "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).)

A plaintiff seeking summary adjudication on a cause of action “must present evidence sufficient to establish every element of that cause of action. A plaintiff’s initial burden ... does not include disproving any affirmative defenses the defendant asserts. ‘Once the plaintiff ... has met [its] burden, the burden shifts to the defendant ... to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.’ ” (*California Bank & Trust v. Lawlor* (2013) 222 Cal.App.4th 625, 630–631 (*California Bank*).)

A defendant seeking summary adjudication “must show that at least one element of the plaintiff’s cause of action cannot be established, or that there is a complete defense to the cause of action. ... The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue.” (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72; see Code Civ. Proc., § 437c, subd. (p)(2).)

“A triable issue of material fact exists ‘if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.’ [Citation.] Thus, a party ‘cannot avoid summary [adjudication] by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]’ [Citation.]” (*California Bank, supra*, 222 Cal.App.4th at p. 631.)

For purposes of establishing their respective burdens, the parties involved in a motion for summary adjudication must present admissible evidence. (See *Saporta v. Barbagelata* (1963) 220 Cal.App.2d 463, 468.) The motion may not be granted by the court based on inferences reasonably deducible from the papers submitted, if such inferences are contradicted by other inferences which raise a triable issue of fact. (*Hepp v. Lockheed-California Co.* (1978) 86 Cal.App.3d 714, 717-718 (*Hepp*).) Additionally, in ruling on the motion, a court cannot weigh said evidence or deny summary adjudication on the ground that any particular evidence lacks credibility. (See *Melorich Builders v. Superior Court* (1984) 160 Cal.App.3d 931, 935; see also *Lerner v. Superior Court* (1977) 70 Cal.App.3d 656, 660.) As summary adjudication “is a drastic remedy eliminating trial,” the court must liberally construe evidence in support of the party opposing summary adjudication and resolve all doubts concerning the

evidence in favor of that party. (See *Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 389; see also *Hepp, supra*, 86 Cal.App.3d at p. 717.)

C. Discussion

1. ZL Technologies' Sixth Cause of Action and Srinivasan's Tenth Cause of Action

ZL Technologies' sixth cause of action is for breach of a written loan agreement entered into by Srinivasan on June 5, 2017. ZL Technologies alleges that the agreement provided that it would loan \$500,000 to Srinivasan, which Srinivasan would repay with 2 percent interest at the earlier of the fifth anniversary of the loan, the sale of the company, or as soon as Srinivasan chooses not to be an employee or contractor of the company. ZL Technologies contends that Srinivasan breached the written agreement because he received the \$500,000, but failed to repay the principal and interest by the fifth anniversary of the loan

Srinivasan's tenth cause of action seeks reformation of the written loan agreement on the basis of unilateral or mutual mistake of fact. Srinivasan alleges that prior to the execution of the written agreement, Leong represented to him that the loan would only be due upon the sale of the company and Leong would cover the interest.

Here, ZL Technologies' presents sufficient evidence to meet its initial burden to show that Srinivasan breached the written loan agreement. Specifically, the undisputed material facts show that Srinivasan read and signed the written loan agreement on June 5, 2021 (UMF Nos. 1-5); Srinivasan subsequently received the \$500,000 from ZL Technologies (UMF Nos. 5-6); and Srinivasan did not pay back the principal and interest by the fifth anniversary of the loan (i.e., June 5, 2022) (UMF No. 7).

However, Srinivasan presents evidence in opposition that is sufficient to raise a triable issue of material fact regarding Srinivasan's defense of mutual mistake and Srinivasan's tenth cause of action for reformation based on mutual mistake. Srinivasan declares that although he read and understood the terms of the written agreement, Leong fraudulently represented to him that—despite the terms of the written agreement—the loan would only be due upon the sale of the company and Leong himself would pay the interest. (Declaration of Defendant and Cross-Complainant Arvind Srinivasan in Support of Opposition to ZL Technologies, Inc.'s Motion for Summary Adjudication, ¶¶ 8-10, 17.)

Notably, the fact that Srinivasan read the written contract and understood its terms does not prevent a finding that the written agreement was executed under a mistake. (See *Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 529 [the fact that a party seeking reformation has read the contract does not prevent a court from finding that it was executed under a mistake]; see also *Martinelli v. Gabriel* (1951) 103 Cal.App.2d 818, 824 (*Martinelli*) [“The fact that the party seeking relief has read the instrument and knows its contents does not prevent a court from finding that it was executed under a mistake.”].)

Furthermore, ZL Technologies’ contention that parol evidence is not admissible to vary the terms of the written instrument lacks merit. “[I]t is well settled that ‘[i]n an action to reform a contract, parol evidence is admissible to show that the writing through mistake does not express the intention of the parties, and does not contain the real contract.’ ” (*Martinelli, supra*, 103 Cal.App.2d at p. 825.)

For these reasons, the motion for summary adjudication of ZL Technologies’ sixth cause of action and Srinivasan’s tenth cause of action is DENIED.

2. Srinivasan’s Fifth and Sixth Causes of Action

Srinivasan’s fifth cause of action alleges that ZL Technologies breached a severance agreement written on a whiteboard in August 2017. Specifically, Srinivasan alleges that the agreement provided that upon his separation of employment he was to receive a severance payment, which was to be calculated as 4 weeks of his base pay (excluding deferred compensation) for every year of service plus 6 months of additional transition pay (i.e., the sum of 6 months of annual pay and 6 months of health care costs). (SACC, ¶ 20.) Srinivasan further alleges that at the time of his termination on August 13, 2020, he had worked for 21 years, his annual base pay was \$350,000, plus health benefits and deferred compensation of \$300,000. (*Id.* at ¶ 21.) Srinivasan concludes that his weekly base pay came to \$7,000 while his annual pay equaled \$650,000 exclusive of benefits. (*Ibid.*) Srinivasan also alleges that his monthly health payments since his termination round to \$2,000. (*Ibid.*) Srinivasan alleges that application of the severance formula yields a severance payment of \$925,000. (*Ibid.*)

Srinivasan’s sixth cause of action alleges that ZL Technologies breached an agreement regarding the establishment of an office in Chennai, India that was written on a whiteboard in June 2019. Specifically, Srinivasan alleges that he and Leong agreed it would be in ZL Technologies’

interest to set up an office in Chennai, India to develop spinoff companies from ZL Technologies' existing products, and to present such a proposal to the full board. (SACC, ¶ 28.) Leong allegedly proposed, and Srinivasan agreed to, terms as written on the whiteboard, which included that ZL Technologies would augment Srinivasan's compensation with payment of an additional \$300,000 for traveling to, establishing, and staffing the Chennai outpost. (*Id.* at ¶¶ 28-29.) Srinivasan alleges that the new office would operate under the auspices of ZL Technologies India Pvt. Ltd., an Indian company with offices in Hyderabad that ZL Technologies formed five years earlier. (*Ibid.*)

Here, ZL Technologies presents sufficient evidence to meet its initial burden to show that the material terms of the alleged "whiteboard" agreements are not sufficiently definite.

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1489.)

"Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached." [Citation.] "To be enforceable, a promise must be definite enough that a court can determine the scope of the duty[,] and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." [Citations.] "Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable." [Citations.] "The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy." [Citations.] But "[i]f ... a supposed 'contract' does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract." [Citation.]

(*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 209.)

ZL Technologies presents a photograph of the whiteboard allegedly signed by the parties in August 2017. (UMF Nos. 14-21.) The numbers and terms written on the whiteboard do not address the scope of the alleged contract or the timing of Srinivasan's exit. Moreover, although the whiteboard contains various dollar amounts and dates, the whiteboard does not state what the specific dollar amounts mean, what the dates are intended to convey, or what the parties' associated contractual obligations were with respect to certain numbers. ZL Technologies also presents a photograph of the whiteboard alleged signed by the parties in June 2019. (UMF Nos. 23-27.) The numbers and terms written on the white board do not address the scope of the alleged contract or outline the parties' alleged contractual obligations. Nothing on the whiteboard provides that ZL Technologies is obligated

to pay Srinivasan \$300,000 for traveling to, establishing, and staffing the Chennai outpost. Consequently, ZL Technologies' evidence demonstrates that the alleged whiteboard agreements are not reasonably certain as they do not provide a basis for determining what obligations the parties agreed to.

In opposition, Srinivasan fails to raise a triable issue of material fact with respect to these claims. Srinivasan also relies on the photographs of the whiteboards and reasserts his allegations regarding their contents. Srinivasan does not identify specific terms set forth in the whiteboard agreements themselves that clearly identify the contractual obligations of each party.

Accordingly, ZL Technologies' motion for summary adjudication of Srinivasan's fifth and sixth causes of action is GRANTED.

IV. MOTIONS TO SEAL

A. Legal Standard

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) "A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, rule 2.551(a).) The court may order that a record be filed under seal only if it expressly finds facts that establish:

1. There exists an overriding interest that overcomes the right of public access to the record;
2. The overriding interest supports sealing the record;
3. A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
4. The proposed sealing is narrowly tailored; and
5. No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.550(d).)

A party moving to seal a record must file a memorandum and a declaration containing facts sufficient to justify the sealing. (Cal. Rules of Court, rule 2.551(b)(1).) A declaration supporting a motion to seal should be specific, not conclusory, as to the facts supporting the overriding interest. If the court finds that the supporting declarations are conclusory or otherwise unpersuasive, it may conclude that the moving party has failed to demonstrate an

overriding interest that overcomes the right of public access. (See *In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 305 (*In re Providian*).)

Further, where some material within a document warrants sealing but other material does not, the document should be edited or redacted if possible, to accommodate the moving party's overriding interest and the strong presumption in favor of public access. (See Cal. Rules of Court, rule 2.550(e)(1)(B); see also *In re Providian, supra*, 96 Cal.App.4th at p. 309.) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*In re Providian, supra*, 96 Cal.App.4th at p. 309.)

B. ZL Technologies' Motion to Seal Portions of Srinivasan's Opposition to its Motion for Summary Adjudication

ZL Technologies moves to seal Exhibit Nos. 3, 4, 10, and 11 to the Declaration of Ray Bacon filed in support of Srinivasan's opposition to the motion for summary adjudication, and Exhibit No. 1 to Srinivasan's declaration filed in support of his opposition to the motion for summary adjudication. ZL Technologies contends that the materials sought to be sealed contain its sensitive financial and business information (i.e., information regarding ZL Technologies' balance of cash and cash equivalents, the value of ZL Technologies' stock, and the potential acquisition of the company), and information protected by the attorney-client privilege.

In support of its motion, ZL Technologies provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Maria Radwick in Support of ZL Technologies, Inc.'s Motion to File Confidential Documents Under Seal, ¶¶ 4-6.)

Information involving confidential matters relating to a party's business operations can be sealed if public revelation of these matters would interfere with its ability to effectively compete in the marketplace and, if made available to the public, there is a substantial probability that their revelation would prejudice the foregoing legitimate interests of the party. (*Universal City Studios, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1273, 1286 (*Universal*).) Therefore, based on the information provided by ZL Technologies, the information regarding its business operations in the subject

documents is subject to sealing. Moreover, the request is narrowly tailored in that it takes a line-by-line approach to sealing portions of the subject documents. Thus, the request for sealing is well-taken.

Accordingly, the motion to seal is GRANTED.

C. ZL Technologies' Motion to Seal Portions of Srinivasan's Renewed Motion to Advance Attorney Fees and Costs

ZL Technologies moves to seal Exhibits B and D to Srinivasan's declaration filed in support of his renewed motion to advance attorney fees and costs, portions of Srinivasan's declaration, and portions of Srinivasan's memorandum of points and authorities filed in support of his renewed motion to advance attorney fees and costs. ZL Technologies contends that the materials sought to be sealed contain its sensitive financial and business information (i.e., information regarding ZL Technologies' balance of cash and cash equivalents, and the value of ZL Technologies' stock).

In support of its motion, ZL Technologies provides a declaration from its counsel, which generally supports the request for sealing. (Declaration of Maria Radwick in Support of ZL Technologies, Inc.'s Motion to File Confidential Documents Under Seal, ¶¶ 4-5.)

Generally, financial information involving confidential matters relating to the business operations of a party is subject to sealing when public revelation of these matters would interfere with the parties' ability to effectively compete in the marketplace. (*Universal, supra*, 110 Cal.App.4th at p. 1286.) Therefore, based on the information provided by ZL Technologies, the financial data in the subject documents is subject to sealing. Moreover, the request is narrowly tailored in that it takes a line-by-line approach to sealing portions of the subject documents. Thus, the request for sealing is well-taken.

Accordingly, the motion to seal is GRANTED.

The prevailing party shall prepare the order in accordance with California Rules of Court, rule 3.1312.

- oo0oo -

Calendar Line 3

Case Name: ZL Technologies, Inc. v. Splitbyte Inc., et al. (LEAD CASE; Consolidated With
20CV373027, 20CV373149, 21CV378097, 21CV382329)

Case No.: 20CV366939

- oo0oo -

Calendar Line 4

Case Name: Tesla, Inc. v. Pascale, et al.

Case No.: 20CV368472

Unopposed application for admission *pro hac vice* is GRANTED. No appearance necessary on this motion. Court will sign proposed order.

- oo0oo -

Calendar Line 5

Case Name: Tesla, Inc. v. Pascale, et al.

Case No.: 20CV368472

- oo0oo -

Calendar Line 6

Case Name:

Case No.:

- oo0oo -

Calendar Line 7

Case Name:

Case No.:

- oo0oo -

Calendar Line 8

Case Name:

Case No.:

- oo0oo -

Calendar Line 9

Case Name:

Case No.:

- oo0oo -

Calendar Line 10

Case Name:

Case No.:

- oo0oo -

Calendar Line 11

Case Name:

Case No.:

- oo0oo -

Calendar Line 12

Case Name:

Case No.:

- oo0oo -

Calendar Line 13

Case Name:

Case No.:

- oo0oo -