

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

Department 6

Honorable Evette D. Pennypacker, Presiding

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

DATE: July 18, 2024 TIME: 9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

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

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

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

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

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

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

FOR YOUR NEXT HEARING DATE: Use Court Schedule to reserve a hearing date for your next motion. Court Schedule is an online scheduling tool that can be found on the court's website here:

<https://reservations.scsccourt.org/>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	19CV358986	Kaushik Banerjee et al vs Carlos Martinez et al	Kaushik Banerjee's and Arkesh Ventures, Inc.'s motion for an order of assignment is GRANTED. Code of Civil Procedure section 708.510 provides: "Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, <i>whether or not the right is conditioned on future developments.</i> " (Code Civ. Proc. § 708.510 (emphasis added).) Thus, the plain language of the statute contemplates additional steps may need to be taken before the assigned payments would come due. The goal of the statute is to permit assignment of the right to receive the payments if the payments are made. There is sufficient evidence submitted with the motion for the Court to conclude that Judgment Debtor here will receive payment for work performed—the motion need not have even specifically referenced the Bassi litigation—Judgment Creditor could have simply sought assignment of any payments related to legal work Judgment Debtor performed before Judgment Debtor's law license was suspended. The Court also finds good cause to enter the requested order enjoining Judgment Debtor from assigning or otherwise diverting these future payments. Moving party to prepare formal orders within 5 court days of the hearing date.
2	19CV359863	Barclays Bank Delaware vs John Nalty	Plaintiff Barclays Bank Delaware's motion to set aside and vacate prior dismissal and enter judgment is GRANTED. Moving party to prepare formal order within 5 court days of the hearing date.
3	20CV371745	Jai Kumar vs Jade Global, Inc.	While the Court would prefer to address the motion, Plaintiff's filing the second amended complaint unfortunately renders the current summary judgment/adjudication moot; case law is clear the Court would be committing reversible error by addressing the current motion, which would not assist the parties. Scroll to line 3 for complete ruling. Court to prepare formal order.
4	21CV382331	Nationwide West LLC vs Eduardo Viera	Plaintiff's motion to correct judgment is GRANTED. Moving party to submit corrected judgment for Court's signature within 5 court days of the hearing.
5	21CV385527	Richard Gardner et al vs Linming Jin et al	Plaintiff's motion for leave to file a First Amended Complaint is CONTINUED to August 1, 2024 at 9 a.m. in Department 6. Plaintiff is ordered to prepare, file, serve, and email to Department6@scscourt.org a redlined version of the proposed First Amended Complaint that will illustrate all additions and deletions by 5 pm on July 22, 2024. Defendant may file, serve, and email to Department6@scscourt.org any further arguments and objections on or before 5 pm on July 29, 2024. Court will prepare formal order.
6	22CV407295	Taekus, Inc. vs Productfy, Inc.	Pursuant to the parties' stipulation, this motion is continued to August 8, 2024 at 9 a.m. in Department 6 pursuant.
7	23CV409690	Silverio Zuniga vs Alesia Murrieta et al	Cross-Defendant's demurrer to the first amended cross complaint is SUSTAINED WITHOUT LEAVE TO AMEND. A notice of motion with this hearing date and time was served by electronic mail on May 22, 2024. Cross-complainants failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (<i>Sexton v. Super Ct.</i> (1997) 58 Cal.App.4th 1403, 1410.) The demurrer is also well taken. And, as it is Cross-Complainant's burden to demonstrate how the cross complaint can be amended, and Cross-Complainant failed to respond to the demurrer, the Court declines to grant leave to amend. (<i>Goodman v. Kennedy</i> (1976) 18 Cal.3d 335, 349.)

8	23CV418073	BLUE SIGNAL SEARCH vs DIAMANTI, INC.	Diamanti, Inc.’s motion to set aside default and default judgment is GRANTED. Plaintiff’s main argument against granting this relief appears to be that Defendant’s neglect was not excusable, but instead an example of sloppy internal management and deliberate neglect. However, the motion to set aside is well within the six-month period—if the legislature wanted the time to be shorter, it would have said as much. The statute is also in place to address neglect of this sort—the wrong employee receiving documents or simply forgetting to route them to the correct place. And under California law Defendant could not appear in the case until it had retained counsel. (See <i>Clean Air Transp. Sys. v. San Mateo County Transit Dist.</i> (1988) 198 Cal. App. 3d 576, 578 (“[A] corporation is a distinct legal entity, separate from its shareholders and officers. The rights and liabilities of corporations are distinct from the persons composing it. Thus, a corporation cannot appear in court except through an agent.”); <i>Ferruzzo v. Superior Court</i> (1980) 104 Cal. App. 3d 501, 503 (“The rule is clear in this state that, with the sole exception of small claims court, a corporation cannot act in propria persona in a California state court.”); <i>Merco Constr. Engineers, Inc. v. Municipal Court</i> (1978) 21 Cal. 3d 724, 727 (“the Legislature cannot constitutionally vest in a person not licensed to practice law the right to appear in a court of record on behalf of another person, including a corporate entity.”)) This last point is key: if Defendant had, as Plaintiff argues it should have, submitted a response to the Complaint before retaining counsel, Plaintiff could have simply moved to strike that response on the grounds that Defendant could not appear without counsel. Thus, while everyone would have preferred for Defendant to move more quickly, these facts appear to be on all fours with the very purpose behind Code of Civil Procedure section 473, and Defendant’s motion is granted. Defendant is ordered to file its responsive pleading within 5 court days of service of the formal order, which order the Court will prepare.
9	23CV418764	Lisa Bargas et al vs Thomas Zscherpel	Defendant’s motion to enforce settlement agreement is CONTINUED to August 1, 2024 at 9 a.m. in Department 6. Code of Civil Procedure Section 664.6 authorizes the court to enter judgement on a stipulated settlement—even where there are disputed issues of fact—where one party refuses to comply with the terms. (<i>Casa de Valley View Owner’s Assn. v. Stevenson</i> (1985) 167 Cal. App. 3d 1182.) The court must first determine whether the parties entered a valid, binding settlement agreement, which determination the court can make based on declarations or other testimony. (<i>Corkland v. Boscoe</i> (1984), 156 Cal. App. 3d 989; <i>Malouf Bros. v. Dixon</i> (1991) 230 Cal. App. 3d 280.) The settlement agreement must be signed by both parties, contain all material terms of the parties’ agreement, and the parties must agree to those terms. (<i>Weddington Productions, Inc. v. Flick</i> (1998) 60 Cal.App.4th 793.) The Court is unable to complete this analysis because the exhibits referenced in declaration of Ivan F. Higuera are not attached. Defendant is ordered to file and serve those attachments by the close of business on Friday, July 19.

10	24CV433722	Frank Bonzell et al vs Retirement Capital Strategies, Inc., a California Corporation et al	<p>Plaintiffs’ motion for trial preference is GRANTED. Under Code Civil Procedure section 36, “the court shall grant” a petition for trial preference made by a party “who is over 70 years of age”; “has a substantial interest in the action as a whole”; and where “[t]he health of the party is such that a preference is necessary to prevent prejudicing the party’s interest in the litigation.” Both Bonzells state under oath that they were born on March 23, 1935, are 89 years old, and suffering from serious health issues, including declining memory. Given this evidence, the Court finds that trial preference is mandatory under Code of Civil Procedure section 36. Defendant’s arguments to the contrary are unpersuasive. First, the evidence is competent, and Defendant’s objections are overruled. The objections ignore the sworn statements from the Bonzells and their son/attorney-in-fact who corroborates their declining memory. Indeed, the fact that the Bonzells already have an attorney-in-fact combined with their advanced age is further evidence of their need for trial preference. Defendant’s “due process” arguments are similarly meritless. Plainly, the legislature balanced these issues against those of the elderly and infirm when crafting this trial preference legislation. And Defendant’s argument that having less time for discovery and motion practice is prejudicial is belied by Defendant’s efforts to move this case to arbitration where discovery and motion practice would be limited. Accordingly, Plaintiffs’ motion for trial preference is GRANTED. The parties are ordered to meet and confer, identify potential trial dates, and appear for trial setting on July 30, 2024 at 11:00 in Department 6.</p>
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Calendar Line 3**Case Name:** *Jai Kumar v. Jade Global, Inc.***Case No.:** 20CV363612

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

I. Background

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

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

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

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

Plaintiff initiated this action on February 13, 2020, with the filing of the Complaint and on May 5, 2020, he filed his FAC which asserts a single claim for civil penalties under PAGA for violations of Labor Code section 201, 202, 203, 206.5, 432.5, and 1197.5. On January 16, 2024, Jade Global filed the instant motion which Plaintiff opposes. On April 5, 2024, the Court issued its order continuing the hearing for further discovery. On May 28, 2024, Plaintiff filed his second amended complaint ("SAC") which asserts a single claim for civil penalties under PAGA for violations of Labor Code section 201, 202, 203, 206.5, 432.5, 96, subdivision (k), 98.6, and 1197.5. The parties filed their supplemental papers as per the Court's order.

II. Procedural Matters

Plaintiff argues the instant motion is moot because he filed his SAC.

"[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading." (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884.) "The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. [Citation.] Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior complaint. [Citation.]" (*State Compensation Ins. Fund. v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 (*State Compensation Ins. Fund.*)). "Thus, once an amended complaint is filed, *it is error to grant summary adjudication on a cause of action contained in a previous complaint.*" (*Ibid.*)

Here, Plaintiff was granted leave to amend after the motion for summary judgment was continued and he filed his SAC. The SAC supersedes the FAC and renders the instant motion moot. (See *State Compensation Ins. Fund, supra*, 184 Cal.App.4th at p. 1131.) While Defendant addresses the newly alleged portion in its supplemental papers, it fails to provide any authority that permits the

Court to consider this motion on the merits when it was originally directed towards a superseded pleading. The Court is aware this action is set for trial on October 7, 2024. Thus, if the parties wish to entertain a motion for summary judgment/adjudication to the SAC, they should stipulate and submit an order to the Court to have the motion heard on shortened time. (See *McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 114 [the court held that the express language of Code of Civil Procedure § 437c, subdivision (a), precludes a trial court from shortening the minimum notice period for hearing on summary judgment motions, absent the consent of the parties].) Thus, the instant motion for summary judgment or in the alternative, summary adjudication is MOOT.