**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: May 23, 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.scscourt.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.scscourt.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.scscourt.org/

## FREE MCLE Civil Bench Presentation:

***Civil Trials and Civil Motion Practice:***
***Best Practices in Santa Clara County Superior Court***

**Date:** June 20, 2024
**Time:** 12-1:00
**Place:** Microsoft Teams: https://msteams.link/YGLE

| LINE | CASE NO. | CASE TITLE | TENTATIVE RULING |
|---|---|---|---|
| 1-3 | 20CV363612 | Jai Kumar vs Jade Global, Inc. | Plaintiff's motion for leave to file a second amended complaint is GRANTED; Plaintiff's motion to compel and Defendant's motion to quash are GRANTED, IN PART. Scroll to lines 1-2 for complete rulings. Court to prepare formal orders. |
| 4 | 20CV367561 | ZACHARY KOWITZ et al vs MICHAEL KOWITZ et al | Off calendar; will be heard by Judge Alloggiamento. |
| 5 | 20CV374136 | JOHN DOE vs TIMOTHY ANDO, MD et al | John Doe's motion to strike costs is GRANTED with respect to filing and motion fees and jury fees but otherwise DENIED. Defendants' invoices attached to the Declaration of Daniela P. Stoutenburg support each of the costs Defendants seek. The Court is not persuaded that any reduction in those costs should be made based on a hypothetical split of the costs—if Defendants had been the only parties sued, they would have had to take these depositions and employ these experts in any event. Accordingly, Plaintiffs are ordered to reimburse Defendants' reasonably incurred costs of $61,303.49. Court to prepare formal order. |
| 6 | 22CV406414 | DEBORAH THAM vs PACIFIC MAINTENANCE SERVICES, INC. et al | Defendant Pacific Maintenance Solutions, Inc.'s motion to compel special interrogatories (set one), form interrogatories (set one), and request for production (set one) and for $1,860 in sanctions is GRANTED, IN PART. A notice of motion with this hearing date and time was served by electronic mail on April 24, 2024. Plaintiff failed to oppose the motion, inferring Plaintiff has no meritorious arguments. (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) And Plaintiff does not. This discovery was served on Plaintiff by electronic mail on February 6, 2024. Defendant followed up by email after the time for response past, and Plaintiff still has, to date, failed to respond. Accordingly, Plaintiff is ordered to (1) serve verified, code compliant responses without objections to these discovery requests and (2) pay Defendant $860 in attorneys' fees and costs for this motion within 20 days of service of the formal order. Fees are reduced to reflect that no opposition was filed, and this was a straightforward motion where no responses were provided. Court to prepare formal order. |
| 7 | 22CV409256 | Fernando Ortiz Silva dba OSOrtiz Trucking and Hauling vs Affiliated Technology, LLC et al | Christopher J. Olson, Esq.'s motion to be relieved as counsel for Affiliated Technology, LLC is GRANTED. A company, regardless of corporate form, cannot represent itself in civil litigation in California. (See *Clean Air Transp. Sys. v. San Mateo County Transit Dist.* (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."); *Ferruzzo v. Superior Court* (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."); *Merco Constr. Engineers, Inc. v. Municipal Court* (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 in behalf of another person, including a corporate entity.") Accordingly, on September 10, 2024 at 11:00 a.m. in Department 6, if a substitution of counsel has not by then been filed, Affiliated Technology, LLC is ordered to appear and show cause why its answer should not be stricken and default be entered against it for failure to obtain counsel. Court to use proposed order on file. |

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|---|---|---|---|
| 8 | 23CV419278 | Qian Yang vs Irene Lin et al | On April 12, 2024, the Court ordered the parties "to meet and confer by video conference—letters, emails, and telephone calls are not sufficient—at least once on or before May 3, 2024 and on or before May 17, 2024 [] file, serve, and email to Department6@scscourt.org a joint statement of no more than 2 pages listing the discovery issues that remain for the Court to determine." The Court did not receive any further briefing from the parties, and this matter is therefore off calendar. This order will be reflected in the minutes. |
| 9 | 23CV419472 | Fidelity National Title Company vs Thu Nguyen et al | Interpleader Fidelity National Title Company's motion for order of discharge and for attorneys' fees pursuant to Code of Civil Procedure section 386(b) is GRANTED. Interpleader served Defendants with the summons and complaint and obtained default against each after they failed to respond. Interpleader also served this motion on Defendants by U.S. mail on April 25, 2024. Defendants did not oppose the motion. "[T]he failure to file an opposition creates an inference that the motion or demurrer is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) Interpleader has taken all steps necessary for the Defendants to have made some claim to the disputed $4,200; Defendants did nothing in response. Interpleader incurred $7,801.72 in attorneys' fees and costs in this action and is entitled to reimbursement. Accordingly, Interpleader's motion is granted. Moving party to prepare formal order. |
| 10 | 23CV426329 | Michael Merino vs LEENETTE MERINO et al | The Court was inclined to grant Defendants' motion for preference and trial setting. Plaintiff brought this declaratory relief action which seeks (among other things) a declaration as to the impact of the family law proceedings on the disposition of the subject property. Plaintiff is thus in no position to deny that this is a declaratory relief action subject to trial preference pursuant to Code of Civil Procedure section 1062.3. Moreover, a declaration as to the rights between the parties under the Tenancy in Common agreement does not necessarily translate into a sale of the subject property, but even if it did, such sale would not violate the family law orders, since the sale would be subject to a judgment/court order.<br><br>However, Defendants here filed a separate action on November 29, 2023 (Case No. 23CV426913, pending in D20), just days after Plaintiff here filed this declaratory relief action on November 15, 2023 (pending in D6). It so happens that the undersigned Court is covering both department 6 and 20's law & motion calendars today. These cases are based on identical facts and include the same parties and should be consolidated, which consolidation could impact the request for trial preference. The Court orders the parties to appear for argument on this issue. |

**Calendar Lines 1-3**
**Case Name:** *Jai Kumar vs Jade Global, Inc.*
**Case No.:** 20CV363612

Before the Court are Plaintiff's motion for leave to file a second amended complaint, Plaintiff's motion to compel, and Defendant's motion to quash. Pursuant to California Rule of Court 3.1308, the Court issues its tentative rulings.

## 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 alleges he was hired in November 2013 and held various positions in the company over the following six years until he was terminated in December 2019. (FAC, ¶¶ 10, 11.) According to Plaintiff, Jade Global, among other things, 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 January 16, 2024, Jade Global moved for summary judgment, and Plaintiff sought a continuance of the summary judgment hearing to conduct discovery. After argument, the Court issued the following orders on April 5, 2024:

1. Plaintiff's request to continue the hearing on Jade Global's motion for summary judgment, or in the alternative summary adjudication is GRANTED;
2. Plaintiff may depose (1) Elizabeth Geiser and (2) Krishnakala Busani. No further discovery is permitted in connection with this motion. The Court will not grant a further continuance of the hearing on this motion to conduct these depositions. To the extent Defendants have any control over either of these witnesses, Defendants are ordered to cooperate with Plaintiff to identify mutually agreeable dates, times, and locations for these depositions to take place in advance of the further briefing and continued hearing on this motion;

3. Defendants may file and serve a supplemental opening memorandum of no more than 10 pages and any additional evidence obtained during this discovery on or before June 21, 2024;
4. Plaintiff may file and serve a supplemental opposition of no more than 10 pages and any additional evidence obtained during this discovery on or before July 5, 2024.
5. Defendant may file and serve a supplemental reply of no more than 5 pages and any rebuttal evidence on or before July 12, 2024.
6. The Court shall conduct a further hearing on Jade Global's motion for summary judgment, or in the alternative summary adjudication is on July 18, 2024 at 9:00 a.m. in Department 6.

Plaintiff then filed a motion for leave to file a second amended complaint, motion to compel written discovery, and motion to quash.

**II. Plaintiff's Motion for Leave to file a Second Amended Complaint**

Plaintiff seeks leave to amend to remove "information and belief" language from certain allegations because Plaintiff now has personal knowledge of the allegations through discovery and to add a violation of Labor Code section 2968 through predicate violations of Labor Code Sections 96(k) and 98.6 based on the same set of alleged facts. Defendant opposes the motion ostensibly on the grounds of prejudice and undue delay.

"[It] is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (*Guidery* v. *Green*, 95 Cal. 630, 633; *Marr* v. *Rhodes*, 131 Cal. 267, 270. If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson* v. *Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton* v. *Bassett*, 158 Cal. 425, 427.)" (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend).

The unique situation here is that amendment is requested in the face of a summary judgment motion. Under *Kirby v. Albert D. Seeno Construction Co.* (1992) 11 Cal. App. 4th 1059, 1069 even in the face of a summary judgment motion, "the rule is that if it is reasonably possible that a defect in a complaint can be cured by an amendment, the trial court abuses its discretion by dismissing the action." In *Kirby*, the court of appeal reversed the trial court's grant of summary judgment where "appellants submitted sufficient documentation in the form of deposition statements and the supplementary declarations to indicate a distinct probability that the complaint could be amended [to state a claim and requested] leave to amend prior to entry of judgment, in their motion for reconsideration." (*Id.*)

However, "amendments are usually allowed after summary judgments have been filed only to repair complaints that are legally insufficient—in other words, those that would be subject to a motion for judgment on the pleadings. (*Van v. Target Corp*. (2007) 155 Cal. App. 4th 1375, 1387, citing *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719, fn. 5; *Hobson v. Raychem Corp.* (1999) 73 Cal.App.4th 614, 625, disapproved on another ground in *Colmenares v. Braemar Country Club, Inc*. (2003) 29 Cal.4th 1019, 1031, fn. 6.) "[I]f summary judgment is granted on the ground that the complaint is legally insufficient, but it appears from the materials submitted in opposition to the motion that the plaintiff could state a cause of action, the trial court should give the plaintiff an opportunity to amend the complaint before entry of judgment." (*Bostrom v. County of San Bernardino* (1995) 35 Cal. App. 4th 1654, 1663, citing *College Hospital, Inc*. v. *Superior Court* (1994) 8 Cal. 4th 704, 719, fn. 5; *Kirby* v. *Albert D. Seeno Construction Co*. (1992) 11 Cal. App. 4th 1059, 1067-1070; *Williams* v. *Braslow* (1986) 179 Cal. App. 3d 762, 774.)

> Summary judgment cannot be granted on a ground not raised by the pleadings. (*Metromedia, Inc*. v. *City of San Diego* (1980) 26 Cal. 3d 848, 885 [164 Cal. Rptr. 510, 610 P.2d 407], revd. on other grounds (1981) 453 U.S. 490 [69 L. Ed. 2d 800, 101 S. Ct. 2882].) Conversely, summary judgment cannot be *denied* on a ground not raised by the pleadings. (*Lewinter* v. *Genmar Industries, Inc*. (1994) 26 Cal. App. 4th 1214, 1223 [32 Cal. Rptr. 2d 305] [complaint alleged failure to warn of manufacturing defect in boat;

plaintiff could not avoid summary judgment by showing failure to warn based on postmanufacture discovery of defect]; *Danieley* v. *Goldmine Ski Associates,* [***18] *Inc*. (1990) 218 Cal. App. 3d 111, 119-120 [266 Cal. Rptr. 749] [complaint alleged owner negligently maintained ski slopes; plaintiff could not avoid summary judgment by showing owner negligently cared for her after [**676] accident]; *Cochran* v. *Linn* (1984) 159 Cal. App. 3d 245, 250 [205 Cal. Rptr. 550] [complaint alleged products liability based on manufacture and sale of liquid protein diet; plaintiffs could not avoid summary judgment by showing defendant negligently wrote book promoting diet]; see generally, *FPI Development, Inc*. v. *Nakashima* (1991) 231 Cal. App. 3d 367, 381-382 [282 Cal. Rptr. 508].)

If either party wishes the trial court to consider a previously unpleaded issue in connection with a motion for summary judgment, it may request [*1664] leave to amend. ( *Lee* v. *Bank of America* (1994) 27 Cal. App. 4th 197, 216 [32 Cal. Rptr. 2d 388]; *Dorado* v. *Knudsen Corp*. (1980) 103 Cal. App. 3d 605, 611 [163 Cal. Rptr. 477].) Such requests are routinely and liberally granted. However, " ' "[I]n the absence of some request for amendment there is no occasion to inquire about possible issues not raised by the pleadings." ' " (*Metromedia,* [***19] *Inc*. v. *City of San Diego*, *supra*, 26 Cal. 3d at p. 885, quoting *Krupp* v. *Mullen* (1953) 120 Cal. App. 2d 53, 57 [260 P.2d 629].) Declarations in opposition to a motion for summary judgment "are no substitute for amended pleadings." (*AARTS Productions, Inc*. v. *Crocker National Bank* (1986) 179 Cal. App. 3d 1061, 1065 [225 Cal. Rptr. 203].) If the motion for summary judgment presents evidence sufficient to disprove the plaintiff's claims, as opposed to merely attacking the sufficiency of the complaint, the plaintiff forfeits an opportunity to amend to state new claims by failing to request it. (See *Kirby* v. *Albert D. Seeno Construction Co*., *supra*, 11 Cal. App. 4th at p. 1068.)

*Bostrom v. County of San Bernardino* (1995) 35 Cal. App. 4th 1654, 1663-1664.

Here, Plaintiff does seek to add a new theory, but it is one based on identical facts asserted throughout the lawsuit, thus is will not, as Defendants decry, require additional discovery or a trial continuance. Thus, the Court GRANTS leave to amend, orders Plaintiff to file the Second Amended Complaint on or before May 28, 2024, Defendant to answer the Second Amended Complaint on or before June 7, 2024, and increases Defendants' page limit for a supplemental opening memorandum to 15 and for a supplemental reply to 10 pages.

**III. Plaintiff's Motion to Compel and Defendants' Motion to Quash**

Plaintiff moves to compel Jade Global to provide further responses to Plaintiff's inspection demands (set four), certain deposition questions to Jade Global CEO Karan Yaramada, and certain deposition questions to Jade Global's person most qualified Rama Karanam. Defendants move to quash a subpoena to Jade Global's former attorney, Krishnakala Busani. Both motions turn on the same questions: Are the withheld communications subject to the attorney-client privilege, and, if so, did Jade Global waive it?

"To successfully invoke the lawyer-client privilege, three requirements must be met. There must be a (1) communication, (2) intended to be confidential, and (3) made in the course of the lawyer-client relationship." (*Sullivan v. Superior Court* (1972) 29 Cal. App. 3d 64, 69, citing *City & County of S.F.* v. *Superior Court* (1951) 37 Cal.2d 227, 234-235.)) The policy behind the privilege is well known, as summarized by *Sullivan*:

> The privilege is given on grounds of public policy in the belief that the benefits derived therefrom justify the risk that unjust decisions may sometimes result from the suppression of relevant evidence. Adequate legal representation in the ascertainment and enforcement of rights or the prosecution or defense of litigation compels a full disclosure of the facts by the client to his attorney. 'Unless he makes known to the lawyer all the facts, the advice which follows will be useless, if not misleading; the lawsuit will be conducted along improper lines, the trial will be full of surprises, much useless litigation may result.

> Thirdly, unless the client knows that his lawyer cannot be compelled to reveal what is told him, the client will suppress what he thinks to be unfavorable facts.' [Citation.]" ( *City & County of S.F.* v. *Superior Court, supra*, at p. 235.) (*Sullivan v. Superior Court* (1972) 29 Cal. App. 3d 64, 69.)

First, the Court finds there was an attorney-client relationship at the time the ECIIAA was revised. The evidence shows Busani was a licensed attorney in Illinois at the time of the communications and was engaged to assist Jade Global with a review of its agreements. Thus, the documents and communications Plaintiff seeks are presumptively privileged.

However, the Court agrees with Plaintiff that the documents Jade Global provided to its person most knowledgeable to prepare for deposition must be produced. Evidence Code section 771(a) provides:

> (a) Subject to subdivision (c), if a witness, either while testifying or prior thereto, uses a writing to refresh his memory with respect to any matter about which he testifies, such writing must be produced at the hearing at the request of an adverse party and, unless the writing is so produced, the testimony of the witness concerning such matter shall be stricken.

Defendants argue this code section does not apply to the documents provided to its PMK to prepare for deposition under *Sullivan v. Superior Court* (1972) 29 Cal. App. 3d 64 and because the deponent did not use and testify from the emails during his deposition as the deponent testified from the reports ordered to be produced in *Kerns Constr. Co. v. Superior Court of Orange County* (1968) 266 Cal. App. 2d 405, 408-409. The Court is not persuaded by either of these arguments.

The "document" at issue in *Sullivan* was a transcript of a client intake meeting for a personal injury case. Permitting the adversary to have that document would have been akin to permitting the adversary to sit in the room during a private, attorney-client privileged communication. (*Sullivan v. Superior Court* (1972) 29 Cal. App. 3d 64.) That is not the case here—these are emails exchanged with the company before the deponent even worked there. The Court does not agree that emails are the same as a transcript of a conversation between attorney and client.

And the facts in *Kerns* seem distinguishable from those at bar, but on closer review, they are not. *Kerns* explains:

> It was not claimed by the witness that a mere glance at the reports refreshed his memory to the point that he could testify as to material contained in them or on the facts found by his investigation. His testimony on this point is to the contrary for he had to read the reports in order to give the testimony. The record before us does not reflect what part of the testimony given by the witness was independent of any reference he made to the papers and documents. The record does reflect that the witness testified he could not have given testimony without such reference by him. Prior to the time when the deposition was taken, and in order to refresh his memory, he had reviewed his reports which he obtained from the attorney for Gas Co. Also, during the deposition, Mr. Reynolds "paged through the folder" containing various papers but referred only to his own reports. The reports were specifically identified and marked for identification by the reporter taking the deposition. Only when deposing counsel requested that the identified reports be appended to the deposition and copies be made available to counsel did the attorney for Gas Co. object on the ground of violation of the attorney-client privilege and "it is a work product." (*Kerns Constr. Co. v. Superior Court of Orange County* (1968) 266 Cal. App. 2d 405, 408-409.)

Here, there is no evidence that Jade's PMK "paged through" the emails during his deposition. Nor is there evidence before the Court that any party at the deposition sought to attach them as exhibits. However, it is the case that the PMK could not have testified as to the topics without first reviewing—with more than a casual glance—these documents because he was not at the company when the agreement was reviewed and revised. Thus, this case is similar to *Kerns* in a material way: the deponent here could not have offered any testimony on this subject without reviewing the emails, which makes this *Kern* conclusion relevant:

> It would be unconscionable to allow a rule of evidence that a witness can testify to material contained in a report, though not verbatim, and then prevent a disclosure of the reports. As is stated in 8 Wigmore, Evidence, section 2327 (McNaughton rev. 1961), "There is always also the objective consideration that when his [holder of the privilege] conduct touches a certain point of disclosure, fairness requires that his privilege shall cease whether he intended that result or not. He cannot be allowed, after disclosing as much as he pleases, to withhold the remainder. He may elect to withhold or to disclose, but after a certain point, his election must remain final."
>
> (*Kerns Constr. Co. v. Superior Court of Orange County* (1968) 266 Cal. App. 2d 405, 414.)

Thus, the Court concludes the documents Jade's PMK reviewed to prepare for deposition must be produced.

The disposition of the balance of the discovery requests and Busani's deposition turns on whether Jade Global waived the privilege by relying on an advice of counsel defense to knowledge of the potential unlawfulness of these contractual provisions. Jade Global argues it is not relying on an advice of counsel defense because it has not expressly so stated.

The attorney client privilege can be waived under a variety of circumstances:

> The privilege may be waived impliedly or by disclosure of the subject communication. The privilege is waived with respect to a protected communication if any holder of the privilege voluntarily discloses a significant part of the communication or has consented to such disclosure made by anyone. (Evid. Code, § 912, subd. (a).) What constitutes a significant part of the communication is a matter of judicial interpretation; however, the scope of the waiver should be determined primarily by reference to the purpose of the privilege. (*Jones* v. *Superior Court* (1981) 119 Cal.App.3d 534, 547 [174 Cal.Rptr. 148].)
>
> **The privilege may also be impliedly waived where a party to a lawsuit places into issue a matter that is normally privileged. It is said that in that case the gravamen of the lawsuit is so inconsistent with the continued assertion of the privilege as to compel the conclusion that the privilege has in fact been**

> **waived.** (*Wilson* v. *Superior Court* (1976) 63 Cal.App.3d 825 [134 Cal.Rptr. 130].) **The scope of either a statutory or implied waiver is narrowly defined and the information required to be disclosed must fit strictly within the confines of the waiver.** (See, e.g., *Travelers Ins. Companies* v. *Superior Court* (1983) 143 Cal.App.3d 436 [191 Cal.Rptr. 871]; *Jones* v. *Superior Court, supra*, 119 Cal.App.3d 534.) Privileged communications do not become discoverable simply because they are related to issues raised in the litigation. (*Schlumberger Limited* v. *Superior Court* (1981) 115 Cal.App.3d 386 [171 Cal.Rptr. 413].) (*Transamerica Title Ins. Co. v. Superior Court* (1987) 188 Cal. App. 3d 1047, 1052-1053 (emphasis added).)

The Court has two competing concerns: (1) a party should not be permitted to rely on a lack of knowledge based on legal advice but still avoid waiver by claiming it is not asserting an advice of counsel defense just because it does not use those words, but (2) a party responding to discovery should not be penalized because it responds truthfully to discovery requests asking who assisted with the revision of a contract.

As to the first concern, Jade Global does not expressly assert advice of counsel as an affirmative defense. Jade Global's fourth affirmative defense asserts the actions alleged in the complaint were "made without malice or wrongful intent on the part of Defendant and in reasonable and good-faith belief of its legal right to perform the actions complained of." In response to Form Interrogatory 15.1, which requires the responding party to state all facts supporting its affirmative defenses, Jade Global states:

> Defendant did not know, or have reason to know, that certain provisions in the ECIIAA may be interpreted as unlawful and/or allegedly violated the Labor Code. . . [A] template was used by Defendant's former human resources personnel, Elizabeth Geiser and Shalini Bhojwani, to create the ECIIAA. Defendant is informed and believes Krishnakaka Busani, Esq. reviewed the ECIIAA and assisted in drafting non-competition and non-solicitation clauses of the ECIIAA.

Jade Global also relied on the Declaration of Karan Yaramada in support of its summary judgment motion, which declaration states:

> In drafting the ECIIAA, we had assistance from outside counsel, who dealt with the human resources department in this task. At the time of presenting the agreements to Jade Global employees, I believed that the terms contained within them were lawful. As a result, I have no knowledge that any provisions in the agreements would be interpreted as "unlawful" at the time they were drafted. I was never advised or understood that any provisions of these agreements were illegal, unlawful, "prohibited by law," or could be interpreted as "prohibited by law" in California until Kumar raised the issue.

These assertions make clear that, despite Jade Global not expressly asserting an advice of counsel defense, it is relying on the fact that it used counsel to draft the ECIIAA as a basis for its lack of knowledge that these provisions were unlawful under California law. Plainly, if Busani told Jade Global otherwise in her communications with them during the revisions to the ECIIAA, Jade Global's lack of knowledge argument would be undermined.

However, the extent of the reliance is narrow, thus the extent of the ordered discovery is narrow. The motion to quash is denied, in part, and the motion to compel is granted, in part. Jade Global is ordered to produce documents and communications and the deponents, including Busani, are ordered to answer questions regarding, Busani's communications with Jade Global regarding the lawfulness of non-solicitation and/or non-competition clauses in connection with her work on the ECIIAA.