

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

**Department 20 (will be heard in Department 6)  
Honorable Evette D. Pennypacker, Presiding (for Hon. Socrates Manoukian)**

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

**DATE: June 4, 2024      TIME: 9:00 A.M.**

**RECORDING COURT PROCEEDINGS IS PROHIBITED**

**THIS CALENDAR WILL BE CALLED IN DEPARTMENT 6. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 6 TEAMS LINK FROM THE COURT WEBSITE.**

[https://www.sccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml)

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

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

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

[https://www.sccourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccourt.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.sccourt.org/general\\_info/court\\_reporters.shtml](https://www.sccourt.org/general_info/court_reporters.shtml)

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

LINE #	CASE #	CASE TITLE	RULING
1	19CV345499	Sergev Firsov vs Yevgeniy Babichev et al	Parties are ordered to appear for the debtor's examination.
2	22CV404995	FIRST-CITIZENS BANK & TRUST COMPANY, vs LORENZO TERRONES et al	Parties are ordered to appear for the debtor's examination.
3	21CV392006	Cuong Quach vs Kristy Tran et al	Amended complaint filed; demurrer off calendar.
4	23CV422678	Dejan Kuzmanovic vs Gliberman Properties Inc. et al	Defendants' demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. A notice of motion with this hearing date and time was served by U.S. Mail on April 19, 2024. Plaintiff failed to oppose the motion. "[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.) And, while Plaintiff is self-represented, the law is clear that self-represented litigants are entitled to the same, but no greater, consideration than other litigants and attorneys. ( <i>County of Orange v. Smith</i> (2005) 132 Cal.App.4th 1434, 1444.) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. ( <i>Kobayashi v. Superior Court</i> (2009) 175 Cal.App.4th 536, 543; see also <i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975, 984-985.) Defendants are correct that the First Amended Complaint is sprawling, fails to attach or recite the alleged contract, and contains numerous pleading defects. The pleading party "bears the burden of proving there is a reasonable possibility of amendment." ( <i>Rakestraw v. California Physicians' Service</i> (2000) 81 Cal.App.4th 39, 43 ( <i>Rakestraw</i> )). To satisfy this burden, the party "must show in what manner [it] can amend [its] complaint and how that amendment will change the legal effect of [its] pleading." ( <i>Goodman v. Kennedy</i> (1976) 18 Cal.3d 335, 349.) The party "must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, [the party] must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary." ( <i>Rakestraw, supra</i> , 81 Cal.App.4th at pp. 43-44.) Plaintiff failed to respond the demurrer and thus failed to meet this burden. Defendants' demurrer is therefore SUSTAINED WITHOUT LEAVE TO AMEND. Court to prepare formal order.
5	23CV428281	Jayaswor Acharya vs Yogesh Gupta et al	GCW's demurrer to Plaintiff's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action is OVERRULED. Scroll to line 5 for complete ruling. Court to prepare formal order.
6	17CV320282	Barbara Holdings, Inc vs Tracy Smith et al	Judgment creditors motion for sale of real property is GRANTED. Moving party to prepare form of order, which shall include the authority and facts making clear the subject property is not a "dwelling" as that term is defined in Code Civ Proc § 704.710 (a). These rulings will be reflected in the minutes.
7	21CV391083	LOUIS LINDSEY vs DONALD LINDSEY et al	Defendants' motion to continue trial and trial related dates is GRANTED, IN PART. The parties appear to agree that at least some continuance would conserve resources given the upcoming mediation in June or July; they disagree about the length of that continuance. However, given the Court's trial schedule, the only current reasonably feasible date to reset this case in 2024 (other than the week of Thanksgiving) is August 26, 2024. Trial is therefore continued to August 26, 2024, and all fact and expert discovery and other pre-trial deadlines shall be calculated from the August 26, 2024 trial date. A mandatory settlement conference is set for August 21, 2024 and a trial assignment hearing is set for August 22, 2024. These orders will be reflected in the minutes.

8	23CV421714	THE DANVILLE GROUP vs SOLARJUICE AMERICAN, INC. et al	Danville Group's motion to enforce settlement is DENIED. The parties must agree in writing for the Court to retain jurisdiction to enforce a settlement agreement pursuant to Code of Civil Procedure section 664.6. The parties did not do that here. In fact, there is no writing signed by the parties—there are emails and phone conversations. Accordingly, the Court cannot grant the relief sought. This order will be reflected in the minutes.
9	23CV426470	David Williams vs AccuRadio LLC	This case is dismissed with prejudice pursuant to Code of Civil Procedure sections 581(f)(2)(4) and 518d. This order will be reflected in the minutes.

**Calendar line 5****Case Name:** *Jayaswor Acharya v. Yogesh Gupta, et al.***Case No.:** 23CV428281

Before the Court is defendant Gourmet Chili Wok, Inc.'s demurrer to plaintiff Jayaswor Acharya's complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

**I. Background**

Defendants Yogesh Gupta ("Gupta"), Red Chili Wok CA, Inc. ("RCW"), and Gourmet Chili Wok, Inc. ("GCW") own, operate, manage, control, maintain, and oversee at least two restaurants in California with identical names, "Inchin's Bamboo Garden," located at 151 Washington Avenue, Sunnyvale and 39024 Paseo Padre Parkway, Fremont. (Complaint, ¶19.)

From about October 24, 2022 through August 23, 2023, defendants Gupta, RCW, and GCW employed plaintiff Jayaswor Acharya and jointly exercised control over his wages, hours, or working conditions. (Complaint, ¶¶18, 20.) On October 24, 2022, Defendants offered Plaintiff employment for the position of busboy. (Complaint, ¶22.) Defendants paid Plaintiff the minimum wage of \$17.95 per hour plus tips. (*Id.*) On average, Plaintiff worked 4-6 hours per day, five days per week. (*Id.*)

Defendants knowingly failed to provide Plaintiff with a 30-minute meal break during the first five hours of work due to chronic staff shortages. (Complaint, ¶¶23, 25.) Plaintiff was on duty if any meal break was taken. (*Id.*) Similarly, Defendants knowingly and consistently required Plaintiff to work four hours straight without a 10-minute rest break. (Complaint, ¶¶24, 25.) Defendants refused to provide Plaintiff paid sick leave when Plaintiff was ill. (Complaint, ¶26.) Defendants failed to pay Plaintiff the wages due upon termination on or about August 23, 2023, including premiums for missed meal and rest periods. (Complaint, ¶27.)

While working for Defendants, Plaintiff noticed gratuities paid out to him did not reflect actual restaurant sales and business volume in general. (Complaint, ¶28.) Plaintiff voiced his concerns but Defendants and their managers refused to address Plaintiff's complaints or provide any explanation. (*Id.*) Defendants also deprived Plaintiff of his sick leave benefits and ultimately terminated Plaintiff for exercising his sick leave rights. (Complaint, ¶¶29-31.) Defendants terminated Plaintiff's employment

because of: (1) Plaintiff's complaints about unlawful tip pooling practices and/or (2) Plaintiff exercising his sick leave rights under the Healthy Workplaces, Healthy Families Act of 2014. (Complaint, ¶33.)

On December 26, 2023, Plaintiff filed a complaint<sup>1</sup> against defendants Gupta, RCW, and GCW asserting causes of action for:

- (1) Failure to Provide Meal and Rest Periods
- (2) Conversion of Gratuities
- (3) Failure to Provide Accurate Itemized Wage Statements and Maintain Adequate Records
- (4) Failure to Pay All Wages Due at Termination
- (5) Wrongful Termination in Retaliation for Complaining About Unlawful Activities
- (6) Wrongful Termination in Retaliation for Exercising Sick Leave Rights
- (7) Termination in Violation of Public Policy
- (8) Civil Penalties for Violation of Private Attorneys General Act of 2004

On April 8, 2024, Gupta and RCW jointly filed an answer to Plaintiff's complaint.

On April 29, 2024, GCW filed the motion now before the court, a demurrer to Plaintiff's complaint.

## **II. Defendant GCW's demurrer to Plaintiff's complaint is OVERRULED.**

GCW acknowledges Plaintiff's allegation that GCW and RCW are a "joint enterprise," but contends Plaintiff has not sufficiently stated a cause of action against it because the allegations concerning "joint enterprise" are legal conclusions and not sufficiently specific. GCW cites to a portion of *Allen v. Staples, Inc.* (2022) 84 Cal.App.5th 188 which was not certified for publication<sup>2</sup>, but states: "Corporate entities are presumed to have separate existences, and the corporate form will be disregarded only when the ends of justice require this result. In particular, there is a strong presumption that a parent company is not the employer of its subsidiary's employees." (*Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737; internal citations omitted.) However, "more is required than solely a parent-

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<sup>1</sup> Defendant GCW's request for judicial notice of the Plaintiff's complaint is DENIED as unnecessary since the court necessarily considers the subject pleading at issue for purposes of a demurrer. (See *Duarte v. Pacific Specialty Insurance Company* (2017) 13 Cal.App.5th 45, 51, fn. 6—denying request where judicial notice is not necessary, helpful or relevant.)

<sup>2</sup> California Rules of Court, rule 8.1115 precludes citation or reliance upon an unpublished decision. With exceptions not applicable here, "an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action."

subsidiary corporate relationship to create liability of a parent for the actions of its subsidiary.” (*Walker v. Signal Companies, Inc.* (1978) 84 Cal.App.3d 982, 1001.)

GCW’s argument on demurrer fails because it is based on the assumption that GCW is the parent corporation and RCW is its subsidiary and that RCW, and not GCW, employed Plaintiff. On a demurrer, the court looks only to the allegations of the subject pleading and to any judicially noticed facts.<sup>3</sup> Here, Plaintiff’s complaint alleges “all defendants were the employer of Plaintiff.” (Complaint, ¶18.) The Court thus cannot make these assumptions on demurrer.

Accordingly, GCW’s demurrer to Plaintiff’s complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] is **OVERRULED**.

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<sup>3</sup> Even in the portion of *Allen v. Staples, Inc.* (2022) 84 Cal.App.5th 188 cited by defendant GCW, the court considered the issue on a motion for summary adjudication, not on a challenge to the pleading.

