

**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: September 24, 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/>

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	19CV347073	Bank of America, N.A. vs Raymond Lee	Judgment creditor's claim to have the \$248.09 in excess of the exempt funds held in the Wells Fargo account released (i.e., found not exempt) is GRANTED. Court will prepare formal order releasing the funds.
3	20CV361473	Absolute Resolutions Investments, LLC vs Tho Le	Judgment debtor's claim of exemption is GRANTED IN PART. One hundred dollars per pay period will be garnished from judgment debtor's wages. Court will prepare formal order.
5	22CV402493	2040 Services v SVI LLC	Withdrawn by moving party.
6	22CV409351	Stephanie Cucchiara vs Jared Washington et al	Withdrawn by moving party.
7	23CV412126	MITTHAN MEENA vs SRINIVAS AKELLA et al	<p>Plaintiff's motion for leave to file an amended complaint is GRANTED. "[T]he trial court has wide discretion in allowing the amendment of any pleading". (<i>Bedolla v. Logan & Frazer</i> (1975) 52 Cal. App. 3d 118, 135-136.) [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.' (<i>Guidery v. Green</i>, 95 Cal. 630, 633; <i>Marr v. Rhodes</i>, 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. (<i>Nelson v. Superior Court</i>, 97 Cal.App.2d 78; <i>Estate of Herbst</i>, 26 Cal.App.2d 249; <i>Norton v. Bassett</i>, 158 Cal. 425, 427.)" (<i>Morgan v. Superior Court of Los Angeles County</i> (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend).</p> <p>The Court agrees with Plaintiff that the deficiencies in the prior motions to amend have now been corrected. The case is in its early stages, and Defendants articulate no prejudice they will suffer as a result of the amendment. Accordingly, Plaintiff's motion to amend is granted. Plaintiff is ordered to file the amended complaint within 10 days of service of the formal order, which formal order the Court will prepare.</p>
8	23CV425663	Arli Torres vs Andre Esteva et al	Plaintiff's motion to compel Defendant Artera, Inc. and Andre Esteva to produce verified code compliant responses, without objections, to Plaintiff's discovery requests and all documents responsive to request for production nos. 12, 13, 26, 32 to Artera and Nos. 1, 24 to Esteva and for \$4500 in sanctions is GRANTED. The discovery requested is relevant, and the current responses are insufficient. For example, that there are no contract claims asserted does not mean that the existence of a contractual relationship has no relevance to this employment action, and Defendants' current interrogatory responses are contradictory in that one says there are no contracts and another says there is an employment contract. Similarly, employment investigations are not automatically privileged – at the very least, Defendants must identify what information is not privileged and log what information they contend is privileged on a privilege log, which has not been done here. Further, Defendants cannot point to deposition testimony to avoid code compliant responses—if there has not been additional litigation other than this case, it would have been more efficient for Defendants to simply say so in an amended response rather than put counsel and the Court through the paces of motion practice. So too regarding identifying documents by bates number. In sum, The Court finds Plaintiff's motion has merit, and it is granted. Defendants are ordered to produce verified, code compliant supplemental responses and to produce all responsive documents and a privilege log within 20 days of service of the formal order. Defendants are further ordered to pay to Plaintiff \$4,500 in sanctions. Court to prepare formal order.

9	24CV432080	SERENITY MSO LLC et al vs PALO ALTO MIND BODY et al	The hearing on this motion is VACATED in light of the Court's ruling on Defendants' motion to compel arbitration.
10	24CV432377	Eric Peschke et al vs Arthur Cook et al	Plaintiffs filed an amended complaint, and the demurrer is moot. Defendants nevertheless seek fees for preparing the demurrer, arguing Plaintiff should have agreed to file an amended complaint during the meet and confer required under Code of Civil Procedure section 430.41. However, Defendants cite no authority to support this request. The parties did engage in the meet and confer and did not reach agreement. Plaintiff then received the demurrer and decided to file a first amended complaint. The statute requiring meet and confer does not prohibit this action. While the meet and confer is required at least in part to avoid a demurrer, if the statute were to award fees to defendants where a plaintiff declines to amend a complaint until after seeing the arguments laid out in the demurrer, a plaintiff would be discouraged from filing an amended complaint even when the deficiencies are only fully understood after seeing the defendants' arguments. Accordingly, Defendants' motion for attorneys' fees is denied. Court to prepare formal order.
11	24CV438628	SHAREEF JARBAWI vs JPMORGAN CHASE BANK, N.A.	JP Morgan Chase Bank's petition to confirm arbitration award is GRANTED. Plaintiff's argument that the award cannot be confirmed because the arbitration agreement is unconscionable is unpersuasive. First, Plaintiff originally brought his claim pursuant to the arbitration agreement and therefore waived any argument that the agreement is not enforceable. Next, unconscionability is not one of the limited grounds listed in Code of Civil Procedure section 1286.2 permitting the Court to vacate an award. The award is therefore confirmed. Moving party to prepare formal order and judgment.

