

TENTATIVE RULINGS for CIVIL LAW and MOTION September 22, 2015

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Please take note that Yolo Superior Court is now located at 1000 Main Street, in Woodland.

Telephone number for the clerk in Department Three: (530) 406-6888
Telephone number for the clerk in Department Eleven: (530) 406-6843

TENTATIVE RULING

**Case: Protech Services, Inc. v. Gillette
Case No. CV CV 12-527**

Hearing Date: September 22, 2015 Department Eleven 9:00 a.m.

Plaintiff Protech Services, Inc.'s ("Protech") request for judicial notice, filed on August 27, 2015, is **GRANTED** as to Exhibit 4. (Evid. Code, § 452, subd. (d).) Protech's request that the Court take judicial notice of Exhibits 1 through 3 is **DENIED**. Exhibits 1 through 3 are not filed stamped copies of court documents.

Protech's request for judicial notice, filed on September 15, 2015, is **GRANTED** as to Exhibits 2, 3, 4, and 6. (Evid. Code, § 452, subd. (d).) Protech's request that the Court take judicial notice of Exhibits 1, 5, 7, and 8 is **DENIED**. Exhibits 1, 5, 7, and 8 are not filed stamped copies of court documents.

Protech's motion to reduce the bond amount, as previously ordered by the Court on June 11, 2014, is **DENIED**. (Code Civ. Proc., §§ 996.030, 1030.) Plaintiff fails to establish that the current bond amount is excessive. (Decl. of James Gillette, Exh. C.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

The Court rules upon defendant, cross-defendant, and cross-complainant James Gillette, individually, and as trustee of the Gillette Family Revocable Bypass Trust's ("Gillette") motions for summary judgment, or in the alternative, summary adjudication, as follows:

Plaintiff and cross-defendant Protech Services Inc.'s ("Protech") evidentiary objections are **OVERRULED**. (Evid. Code, § 1200 et seq.)

Protech's request for judicial notice is **GRANTED** as to Exhibit 3. (Evid. Code, § 452, subd. (d).) Protech's request that the Court take judicial notice of Exhibits 1 and 2 is **DENIED**. Exhibits 1 and 2 are not filed stamped copies of court documents.

Gillette's motion for summary adjudication of the first cause of action for breach of written contract in Protech's third amended complaint ("TAC") is **DROPPED FROM CALENDAR** as moot. Protech dismissed this cause of action, as to Gillette, on August 27, 2014.

Gillette's motion for summary adjudication of the third cause of action for breach of fiduciary duty, fifth cause of action for breach of duty of loyalty, sixth cause of action for fraud/concealment, ninth cause of action for negligence, twelfth cause of action for conversion, and fourteenth cause of action for violation of Penal Code section 502 in Protech's TAC is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Triable issues of material facts exist. (Gillette's Statement of Undisputed Material Facts ("UMF") 7-8; Decl. of James Gillette, Exhs. A, C-G; Decl. of Christopher Ott, ¶¶ 19-21; Decl. of Len Pisciotta, ¶¶ 1-5, Exhs. A-F; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1053-1054; *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1366.)

Gillette's motion for summary adjudication of the first cause of action for fraud and concealment, fourth cause of action for breach of fiduciary duty, and seventh cause of action for equitable indemnity in Protech's first amended cross-complaint is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Triable issues of material facts exist. (Gillette's UMF 7-8; Decl. of James Gillette, Exhs. A, C-G; Decl. of Christopher Ott, ¶¶ 19-21; Decl. of Len Pisciotta, ¶¶ 1-5, Exhs. A-F; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1053-1054; *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1366.)

Gillette's motion for summary adjudication of the first cause of action for breach of contract in Gillette's cross-complaint is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(1).) Triable issues of material facts exist. (Gillette's UMF 13-14; Protech's UMF 113-114; Decl. of James Gillette, Exhs. A, C-G; Decl. of Christopher Ott, ¶¶ 19-21; Decl. of Len Pisciotta, ¶¶ 1-5, Exhs. A-F; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252; *San Diego Hospice v. County of San Diego* (1995) 31 Cal.App.4th 1048, 1053-1054; *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1366.)

Gillette's motions for summary judgment are **DENIED**.

If no hearing is requested, Protech is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.

The Court rules upon cross-defendant Kristine L. Arevalo’s motion for summary judgment, or in the alternative, summary adjudication directed to cross-complainants Protech and Christopher Ott’s first amended cross-complaint, as follows:

Cross-defendant’s request for judicial notice is **DENIED**. (Evid. Code, § 452, subd. (d).) Exhibits 1 and 2 are not filed stamped copies of court documents.

The Court rules on cross-defendant’s evidentiary objections as follows:

1. Evidentiary objection nos. 2, 4, 7, and 10 are **OVERRULED**.
2. Evidentiary objection nos. 1, 9, and 12 through 16 are **SUSTAINED**.
3. Evidentiary objection no. 3 is **SUSTAINED IN PART**, as to “misconduct.”
4. Evidentiary objection no. 5 is **SUSTAINED IN PART**, as to “willfully.”
5. Evidentiary objection no. 6 is **SUSTAINED IN PART**, as to “embezzlement.”
6. Evidentiary objection no. 8 is **SUSTAINED IN PART**, as to “fraud and breaches of fiduciary duty.”
7. Evidentiary objection no. 11 is **SUSTAINED IN PART**, as to “unlawful acts.”

Cross-complainants’ evidentiary objections are **OVERRULED**.

Cross-defendant’s motion for summary adjudication is **DENIED**. (Code of Civ. Proc., § 437c, subds. (b)(1), (f).) Cross-defendant fails to state the specific cause of action or claim for damages, verbatim, in her notice of motion that she seeks to have adjudicated as required. (Cal. Rules of Court, rule 3.1350(b) & (d).) Further, cross-defendant’s separate statement of undisputed material facts fails to comply with the format requirements for each “issue” she seeks to have adjudicated. (Cal. Rules of Court, rule 3.1350(h).)

Cross-defendant’s motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Triable issues of material facts exist. (Cross-defendant’s Statement of Undisputed Material Facts 6, 20, 24, and 39; Decl. of Kevin E. Stern, Exhs. B, E-F, K; Decl. of Mark P. Fickes, Exhs. A-D; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

If no hearing is requested, cross-complainants are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c(g) and California Rule of Court 3.1312.

TENTATIVE RULING

Case: **R & A Assocs. v. Flores**
Case No. CV UD 15-859

Hearing Date: **September 22, 2015** **Department Eleven** **9:00 a.m.**

Defendant Teresa Flores’s demurrer to the amended complaint is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff’s notice of termination does not include the language mandated by Civil Code section 1946.1(h).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

TENTATIVE RULING

Case: **Ramos Oil, Inc. v. Amiri**
Case No. CV CV 10-1246

Hearing Date: September 22, 2015 Department Three 11:00 a.m.

Plaintiff and cross-defendant Ramos Oil, Inc.'s unopposed motion for reconsideration is **GRANTED**. (Code Civ. Proc., § 1008.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.