

TENTATIVE RULINGS for CIVIL LAW and MOTION
April 7, 2017

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 on Yolo Court's 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.

Telephone number for the clerk in Department Ten: (530) 406-6722

TENTATIVE RULING

Case: Wallis v. PHL Associates, Inc.
Case No. CV CV 06-72352

Hearing Date: April 7, 2017 **Department Ten** **1:30 p.m.**

Defendant PHL Associates, Inc.'s request for judicial notice of Exhibits 2-3 and 5-22 is **GRANTED**. (Evid. Code, § 452, subd. (d).) Defendant's request for judicial notice of Exhibit 4 is **DENIED**. Defendant fails to provide any legal authority which authorizes the Court to take judicial notice of Exhibit 4.

Plaintiff Dale M. Wallis's request for judicial notice of Exhibits A-MM and OO-UU is **GRANTED**. (Evid. Code, § 452, subd. (d).) Plaintiff's request for judicial notice of Exhibit NN is **DENIED**. Defendant fails to provide any legal authority which authorizes the Court to take judicial notice of Exhibit NN.

Plaintiff's evidentiary objection no. 5 is **SUSTAINED**. (Evid. Code, § 1400.) Plaintiff's evidentiary objections nos. 1-4 are **OVERRULED**. The Court declines to rule on plaintiff's remaining evidentiary objections as they are immaterial to the disposition of defendant's motion. (Code Civ. Proc., § 437c, subd. (q).)

Defendant's evidentiary objection no. 39 is **OVERRULED**. The Court declines to rule on defendant's remaining evidentiary objections as they are immaterial to the disposition of defendant's motion. (Code Civ. Proc., § 437c, subd. (q).)

Defendant's motion for summary adjudication and motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Procedurally, defendant relies on evidence that it failed to include in its moving papers (*e.g.*, Defendant's Exh. 29, pp. 1476-1488, 1491-1493, Exh. 30, pp. 1551-1557, 1597-1600). Substantively, defendant fails to meet its burden of showing that one or more element for each of plaintiff's causes of action for unjust enrichment and constructive trust cannot be established, or that a complete defense exists. (Defendant's Statement of Undisputed Material Facts ("UMF") 1-22.) Based on defendant's material facts, the Court cannot determine, as a matter of law, that defendant did not wrongfully acquire or

retain the J-5 TC antigen. (Civ. Code, § 2224; UMF 17, 39; Defendant's Exh. 8, Special Verdict No. 5.) Further, triable issues of material facts exist. (UMF 11, 13, 33, 35; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)

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.