

TENTATIVE RULINGS for LAW and MOTION
October 2, 2020

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) 406-6816
Telephone number for the clerk in Department Nine (530) 406-6819

NOTICE: Effective May 4, 2020, all court appearances are by Zoom or Conference call. Yolo Superior Court Virtual Courtroom and conference call information is posted on the Yolo Court’s Website at www.yolo.courts.ca.gov.

TENTATIVE RULING

Case: **Monster Lead Group, Inc. v. Capital Presort, Inc.**
Case No. CV 2016-663
Hearing Date: October 2, 2020 Department Nine 9:00 a.m.

Plaintiff Monster Lead Group, Inc.’s unopposed motion to compel compliance with subpoena is **GRANTED**. (Code Civ. Proc., § 2025.480.) Rebecca Kozlowski has not objected to the subject subpoena, and Michael Manning has failed to produce the requested documents, despite plaintiff’s meet and confer efforts. (*Ibid.*; Barrett decl., ¶¶ 3-4, Exhibits 1-3.) Michael Manning shall serve copies of the requested documents on the deposition officer by no later than October 23, 2020.

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: **Protech v. Gillette**
Case No. CV CV 12-527
Hearing Date: October 2, 2020 Department Nine 9:00 a.m.

Defendant and cross-defendant Daniel Burgett’s unopposed request for judicial notice is **GRANTED**. (Evid. Code, §§ 452, subd. (d), 453.) Defendant and cross-defendant John Coon’s unopposed request for judicial notice is **GRANTED**. (Evid. Code, §§ 452, subd. (d), 453.)

Defendant and cross-defendant Daniel Burgett’s motion for dismissal for delay in prosecution is **GRANTED**. (Code Civ. Proc., § 583.310.) Defendant and cross-defendant John Coon’s motion for dismissal for delay in prosecution is **GRANTED**. (Code Civ. Proc., § 583.310.)

The action against defendants Coon and Burgett commenced within the meaning of Code of Civil Procedure section 583.310 upon the filing of the plaintiff's original complaint on October 6, 2011. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 723.) The Code of Civil Procedure requires that a case is brought to trial within five years. (Code Civ. Proc., § 583.310.) This Court must dismiss an action if the action is not brought to trial within the time prescribed, unless there is established an extension, excuse, or exception provided by statute. (Code Civ. Proc., § 583.360.)

A trial within the meaning of Code of Civil Procedure section 583 is the determination of an issue of law or fact which brings the action to the stage where final disposition can be made. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 723.) A case has been brought to trial if it has been assigned to a department for trial, it is called for trial, the attorneys have answered that they are ready for trial, and proceedings begin, even if the proceeding is a legal matter such as a motion for judgment on the pleadings. (*Ibid.*) If an action is tried to a jury, the action is brought to trial when the jury is impaneled and sworn. (*Ibid.*) In this matter, the matter was set as a jury trial, the matter was assigned to Department 11 in front of Judge Fall, the parties showed up and began in limine motions on September 19, 2016. (Ficke's Decl., Exh. A.) Prospective jurors were not impaneled or sworn. (Ficke's Decl., Exh. A; *Stueve v. Nemer* (2017) 7 Cal.App.5th 746, 748.) After ruling on in limine motions, the Court commenced a separate bifurcated bench trial on the legal issue of release and the equitable claim of rescission between plaintiffs Protech and Ott against defendant James Gillette. The action against defendant Coon and defendant Burgett, a separate action to be tried to a jury, did not commence because no jury was impaneled or sworn. (*Bruns v. E-Commerce Exchange, Inc.* (2011) 51 Cal.4th 717, 723; Code Civ. Proc., § 583.310; Ficke's Decl., Exh. A.) Protech has not established that any of the in limine motions set for September 19, 2016 and argued that day or the bench trial between Protech, Ott and Gillette constituted a partial trial on a legal issue affecting the rights of defendant Coon and defendant Burgett for the purposes of the dismissal statute. (*Cf. Katleman v. Katleman* (1959) 175 Cal.App.2d 493, 495–496.)

Parties may enter into a written stipulation to stay proceedings for the purposes of Code of Civil Procedure section 583.310. (Code Civ. Proc., § 583.330.) Protech has not provided legal authority, however, for the argument that that the parties' written stipulation, executed on June 20, 2017, establishes the legal conclusion for purposes of the dismissal statute that trial commenced against Coon and Burgett on September 19, 2016. Trial either commenced on that date or it did not, as a matter of law, regardless of the parties' subsequent agreement or understanding about whether trial commenced on that date.

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.