

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar  
Judge: HONORABLE SUSAN GREENBERG  
Department 3

400 County Center, Redwood City  
Courtroom 2B

Friday, May 18, 2018

**NOTICE TO ALL COUNSEL**

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

IF YOU **INTEND TO APPEAR** ON ANY CASE ON THIS CALENDAR, YOU MUST DO THE FOLLOWING:

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 and 2 will result in no oral presentation.

**Notifying CourtCall with your intent to appear is not an alternative to notifying the court.**

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

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9:00

LINE: 1

16-CIV-02044 MALAETELE V. IAULUALO, ET AL. VS. STATE OF CALIFORNIA, ET AL.

MALAETELE V. IAULUALO  
STATE OF CALIFORNIA

THOMAS J. BRANDI  
JOHN P. DEVINE

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MOTION TO QUASH

**TENTATIVE RULING:**

The Motion to Quash Deposition Subpoena For Production of Business Records To Lucile Salter Packard Children's Hospital is DENIED. The request for Sanctions by Plaintiff is DENIED. The request for monetary sanctions pursuant to CCP § 2023.010 by Defendant County of San Mateo in the amount of \$3,000 is GRANTED.

Here, Plaintiff concedes that Plaintiff only visited hospital once and that the sole purpose of the visit was for injuries caused by the subject accident. The motion to quash is brought on the sole grounds that since the language of the subpoena contains no limitation, the hospital might provide non-relevant documents if it in fact possessed any, a condition that Plaintiff concedes not to be the case.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 2

16-CIV-02469 TELIGENZ TECH SOLUTIONS PVT. LTD. VS. TORA HOLDINGS,  
INC., ET AL

TELIGENZ TECH SOLUTIONS PVT. LTD.  
TORA HOLDINGS, INC.

TERANCE D. ORME  
ORI EDELSTEIN

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MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

**TENTATIVE RULING:**

Plaintiff TELIGENZ TECH SOLUTIONS PVT, LTD's Motion for Summary Judgment / Adjudication is DENIED in its entirety. Plaintiff is unable to establish an essential element of each of its claims for (1) trade secret misappropriation; (2) breach of contract; and (3) breach of the implied covenant of good faith and fair dealing, namely that an actual breach or misappropriation occurred.

Plaintiff asserts that the terms of the parties' Nondisclosure Agreement are "clear and unambiguous". (Plaintiff's UMF No. 6.) The Court agrees. The clear and unambiguous terms of the NDA expressly contemplate that Plaintiff's Confidential Information would be shared with certain "Representatives", including Defendant's "employees, agents and consultants", for the purpose of conducting due diligence in anticipation of purchasing Plaintiff's software. (Decl. Lakshminarayanan, Exhibit 1, NDA at Section 1.1.) The NDA further requires that disclosures to such "Representatives" be made on a "need to know" basis, and that each Representative must "enter into a nondisclosure agreement having no less restrictive terms and conditions than the terms and conditions of this Agreement." (*Id.* at Section 2.2(a).) Defendant has submitted ample evidence demonstrating that for the purpose of conducting due diligence, it disclosed Plaintiff's Confidential Information to a small group of employees and to two consultants on a strict "need to know" basis, and that each individual employee and consultant were bound by a nondisclosure agreement, as required by the NDA.

Plaintiff further contends that Defendant breached the NDA, misappropriated its trade secrets, and breached the implied covenant by conducting a live MVP of Plaintiff's software code. However, again this conduct was specifically contemplated in the parties' LOI, Schedule B, which sets out "Minimum Viable Product requirements" for the software code. (Decl. Lakshminarayanan, Exhibit 2, Letter of Intent.) The LOI states that any purchase by Defendant would be contingent on the "development by Plaintiff of the features and functionality in ProTrade by Closing as outlined in Schedule B."

Accordingly, there is no question that the terms of the parties' agreements expressly authorized Defendant to (1) disclose Plaintiff's Confidential Information to its employees and consultants who needed access to conduct due diligence and who executed an appropriate nondisclosure

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agreement, and (2) test Plaintiff's software code to determine whether it fulfilled the MVP requirements set forth in Schedule B of the LOI. As Plaintiff fails to meet its moving burden to establish each element of its causes of action, its motion is denied. Code Civ. Proc. § 437c(p)(1).

Defendant's Evidentiary Objections are SUSTAINED as to Objection Nos. 12, 15-19, 25-27, 31, 35-48, and 50, and OVERRULED as to Objection Nos. 1-11, 13, 14, 20-24, 28-30, 32-34, 49, and 51-53. Defendant's Objection to Plaintiff's "Revised Memorandum" and "Revised Separate Statement", inappropriately filed on April 30, 2018, just four days before Defendant's Opposition was due, is SUSTAINED. These "revised" papers have not been considered by the Court and are STRICKEN for failure to comply with the notice and due process requirements of Code Civ. Proc. § 437c.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 3

16-CIV-02469 TELIGENZ TECH SOLUTIONS PVT. LTD. VS. TORA HOLDINGS,  
INC., ET AL

TELIGENZ TECH SOLUTIONS PVT. LTD.  
TORA HOLDINGS, INC.

TERANCE D. ORME  
ORI EDELSTEIN

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MOTION FOR SUMMARY OF JUDGMENT/ADJUDICATION OF ISSUES

**TENTATIVE RULING:**

Defendant TORA HOLDINGS, INC.'s Motion for Summary Judgment is GRANTED in its entirety. Defendant has demonstrated that an element of each of Plaintiff's causes of action cannot be established, and Plaintiff fails to meet its burden of showing the existence of a triable issue of material fact. Code Civ. Proc. § 437c(p)(2).

Each of Plaintiff's claims for (1) misappropriation of trade secrets; (2) breach of contract; and (3) breach of the implied covenant assert that Defendant was not permitted to disclose Plaintiff's Confidential Information to its employees and consultants without prior written authorization, or conduct a live MVP without prior written authorization. However, the clear and unambiguous terms of the parties' Nondisclosure Agreement expressly contemplate that Plaintiff's Confidential Information would be shared with certain "Representatives", including Defendant's "employees, agents and consultants", for the purpose of conducting due diligence in anticipation of purchasing Plaintiff's software. (Decl. Lakshminarayanan, Exhibit 1, NDA at Section 1.1.) The NDA further requires that disclosures to such "Representatives" be made on a "need to know" basis, and that each Representative must "enter into a nondisclosure agreement having no less restrictive terms and conditions than the terms and conditions of this Agreement." (*Id.* at Section 2.2(a).) Defendant has submitted ample evidence demonstrating that for the purpose of conducting due diligence, it disclosed Plaintiff's Confidential Information to a small group of employees and to two consultants on a strict "need to know" basis, and that each individual employee and consultant were bound by a nondisclosure agreement, as required by the NDA.

Plaintiff further contends that Defendant breached the NDA, misappropriated its trade secrets, and breached the implied covenant by conducting a live MVP of Plaintiff's software code. However, again this conduct was specifically contemplated in the parties' LOI, Schedule B, which sets out "Minimum Viable Product requirements" for the software code. (Decl. Lakshminarayanan, Exhibit 2, Letter of Intent.) The LOI states that any purchase by Defendant would be contingent on the "development by Plaintiff of the features and functionality in ProTrade by Closing as outlined in Schedule B."

Accordingly, there is no question that the terms of the parties' agreements expressly authorized Defendant to (1) disclose Plaintiff's Confidential Information to its employees and consultants

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who needed access to conduct due diligence and who executed an appropriate nondisclosure agreement, and (2) test Plaintiff's software code to determine whether it fulfilled the MVP requirements set forth in Schedule B of the LOI. Defendant has therefore met its moving burden. Plaintiff fails to meet its opposing burden to raise a triable issue of material fact. Its response to Defendant's Separate Statement attempts to raise a dispute with bare legal conclusions, such as "Defendant was prohibited from directing a team of software engineers to test and evaluate Plaintiff's Confidential Information", or "Defendant was prohibited from hiring iQuest without Plaintiff's written consent." Such statements are supported only by reference to the NDA itself and to the allegations of Plaintiff's 4<sup>th</sup>AC, which is insufficient. Plaintiff "may not rely upon the mere allegations or denials of its pleadings...but instead, [must] set forth the specific facts showing that a triable issue of material fact exists." Code Civ. Proc. § 437c(p)(2); *Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4<sup>th</sup> 798, 805 ("to defeat a motion for summary judgment, a plaintiff must show 'specific facts', and cannot rely upon the allegations of the pleadings"). Thus, Defendant's motion for summary judgment is granted in its entirety.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 4

16-CIV-03065 IRIS TAM VS. TEIKO I. LEWIS, ET AL.

IRIS TAM  
TEIKO I. LEWIS

MICHAEL RAIFSNIDER  
ISAAC JACOBSON

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MOTION TO COMPEL FURTHER

**TENTATIVE RULING:**

The Motion of Defendant/Cross-Complainant Teiko I. Lewis (“Defendant”) to Compel Further Discovery Responses and Request for Monetary Sanctions is ruled on as follows:

Defendant’s motion to compel further responses to Special Interrogatories nos. 2, 4, 5, 10-57, is GRANTED. Plaintiff Iris Tam (“Plaintiff”) is to provide complete and verified further responses without objections by June 18, 2018. Such responses are to comply with Code of Civil Procedure sections 2030.210, 2030.220 and 2030.230.

Defendant’s motion to compel further responses to Requests for Production of Documents nos. 1, 3-5, 7-13, 15-18, 20-24, is GRANTED. Plaintiff is to provide complete and verified further responses without objections, and to produce all responsive documents by June 18, 2018. Such responses are to comply with Code of Civil Procedure sections 2031.210, 2031.220, 2031.230

Defendant’s request for monetary sanctions is DENIED.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 5

17-CIV-01123 SEAN STOUT, ET AL. VS. THE SWINGIN' DOOR, ET AL.

SEAN STOUT  
THE SWINGIN' DOOR

ALBERT L. THUESEN  
GEOFFREY T. MACBRIDE

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MOTION TO COMPEL FURTHER

**TENTATIVE RULING:**

At the request of the moving party this motion is dropped from calendar.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 6

17-CLJ-03016 WELLS FARGO BANK, N.A. VS. DANILO B. RUBIOS

WELLS FARGO BANK, N.A.  
DANILO B. RUBIOS

LAURA M. HOALST  
PRO/per

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MOTION TO DEEM FACTS AS ADMITTED

**TENTATIVE RULING:**

The motion is granted. The genuineness of any documents and the truth of any matters in the requests for admission are deemed admitted.

The request for sanctions is also granted pursuant to CCP §2033.280(c). Defendant shall pay plaintiff \$260 within 14 days.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 7

17-CLJ-03669 WELLS FARGO BANK, N.A. VS. YESENIA RUIZ

YESENIA RUIZ

PRO/PER

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MOTION FOR JUDGMENT

**TENTATIVE RULING:**

The unopposed motion is granted. The complaint states facts sufficient to constitute a cause of action and the answer does not allege facts to constitute a defense. CCP §438(c)(1)(A). Judgment shall be entered in favor of plaintiff in the amount of \$5,904.59. Costs may be sought pursuant to applicable post judgment procedures.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 8

18-CLJ-01161 JOSEPH NORTHINGTON VS. DANIEL MULREADY, ET AL.

JOSEPH NORTHINGTON  
DANIEL MULREADY

PRO/PER  
JOANNA KOZUBAL

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MOTION TO STRIKE  
**TENTATIVE RULING:**

The moving parties failed to file a declaration, as required by CCP §435.5(a)(3), showing that the parties met and conferred in person or by telephone for the purpose of determining whether an agreement could be reached to resolve the objections to be raised in the motion to strike. Consequently, the hearing on the motion is continued to June 19, 2018 at 9:00 a.m. in the Law and Motion Department so that the parties may meet and confer. The moving parties are required to file, no later than 7 days prior to the new hearing date, a code-compliant declaration stating either (1) the parties have met and conferred in person or by telephone and (a) the parties have resolved the objections raised in the motion, which shall be taken off calendar or (b) the parties did not reach an agreement resolving the objections raised in the motion or (2) the party who filed the pleading subject to motion failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. If the parties fail to file and serve the declaration demonstrating compliance with the requirements of Section 435.5, the motion will be stricken as procedurally improper.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 9

18-UDL-00243 MILLARD TONG VS. PAT MCNAMARA, ET AL.

MILLARD TONG  
PAT MCNAMARA

ILENE M. HOCHSTEIN  
SHIRLEY E. GIBSON

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HEARING ON DEMURRER

**TENTATIVE RULING:**

This matter is dropped from calendar. A Dismissal was filed on 5-14-18.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 10

CIV468937 TOYOTA MOTOR CREDIT CORPORATION VS. MARSHALL A. MASOLI

TOYOTA MOTOR CREDIT CORPORATION  
MARSHALL A. MASOLI

LE T. DUONG  
FRED W. SCHWINN

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MOTION FOR PROTECTIVE ORDER

**TENTATIVE RULING:**

Plaintiff/Cross-Defendant Toyota Motor Credit Corp.'s (TMCC) "Motion for Protective Order Directing Masoli to Amend Discovery Requests," filed 1-10-18, is GRANTED-IN-PART, as set forth below.

TMCC filed this motion seeking a protective order as to Requests for Production of Documents (RFPs) and Special Interrogatories served on TMCC by Defendant/Cross-Complainant Masoli (specifically, Masoli's RFP Nos. 2, 4-19, and Special Interrogatory Nos. 2, 6-8, 11-13, 15). Since the filing of the motion, both at the Court's request and on the parties' own initiative, the parties have further met and conferred in an attempt to resolve their dispute. According to TMCC, Defendant Masoli has agreed to narrow many of the disputed requests, and has withdrawn some of them, which has rendered much of this motion moot. See TMCC's 5-11-18 Supplemental Brief (stating the parties have further met and conferred, that the motion is largely moot, that TMCC reached out to Masoli's counsel on 5-4-18 to inquire regarding any remaining dispute(s) so that the parties can update the Court, and that Masoli's counsel responded on 5-8-18, stating he "could not confirm any issues.")

On 4-9-18, at the request of both parties, the Court continued the hearing on this motion so that the parties could attempt to resolve this dispute without Court intervention. The Court instructed that each party file a Supplemental Brief by 5-11-18 to update the Court on the status any remaining dispute(s). (See 4-9-18 Minute Order: "This matter is continued to May 18, 2018. *Each party shall file and serve a Supplemental Brief no later than May 11, 2018 ... setting forth the status of the subject discovery.*"). Masoli did not file any Supplemental Brief by the stated deadline, which the Court construed as its indication this matter has been resolved. Accordingly, TMCC's motion is GRANTED-IN-PART such that TMCC's responses to each of the discovery requests raised in the moving papers (RFP Nos. 2, 4-19, and Special Interrogatory Nos. 2, 6-8, 11-13, 15) is deemed sufficient and TMCC need not respond further.

The Court notes there is a disconnect between TMCC's 5-11-18 Supplemental Brief and the moving papers. TMCC's 5-11-18 brief refers to several discovery requests not raised in the moving papers, such as Form Interrogatory No. 15.1, Special Interrogatory Nos. 9-10 and 14, and RFP Nos. 1, 20-21. Similarly, on 5-15-18, Mr. Masoli's counsel filed a late Supplemental Brief stating that the parties are still meeting and conferring regarding a number of discovery requests,

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many of which are not part of this motion. This Order applies only to the discovery requests placed at issue in TMCC's moving papers, namely, RFP Nos. 2, 4-19, and Special Interrogatory Nos. 2, 6-8, 11-13, 15.

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9:00

LINE: 11

CIV532571 GARY CECCATO, ET AL. VS. 1893 WOODLAND EPA LLC, ET AL.

DAVID MONTGOMERY  
1893 WOODLAND EPA LLC

PETER H. BONIS  
DAVID J. LONICH

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MOTION FOR RELIEF

**TENTATIVE RULING:**

Moving parties have not filed a proof of service indicating that the motion was served in compliance with CCP §1005. However, the motion is moot. The request for entry of default filed on October 13, 2017 does not indicate that a default was actually entered against the moving parties.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 12

CIV535154 CYPRESS INSURANCE COMPANY VS. STATE OF CALIFORNIA,  
DEPARTMENT OF TRANSPORTATION

CYPRESS INSURANCE COMPANY  
STATE OF CALIFORNIA, DEPARTMENT OF  
TRANSPORTATION

DAVID W. HUGHES  
DAVID SULLIVAN

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MOTION TO COMPEL FURTHER

**TENTATIVE RULING:**

This matter is dropped from calendar. Notice of Settlement was filed 5-8-18.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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POSTED: 3:00 PM