

**TENTATIVE RULINGS for CIVIL LAW and MOTION**  
**August 14, 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](http://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 Two: (530) 406-6843

**TENTATIVE RULING**

**Case:** Day & Night Truck Trailer Repair, Inc. v. River City Petroleum, Inc.  
Case No. CV CV 15-508

**Hearing Date:** August 14, 2015 Department Two 9:00 a.m.

Defendants River City Petroleum, Inc. and Leonard Robinson's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendants' motion for judgment on the pleadings directed to plaintiff Day & Night Truck Trailer Repair, Inc.'s ("Day & Night") first cause of action for breach of contract and third cause of action for "intentional infliction of business losses" is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B).) Based on the pleadings and matters which are judicially noticeable, the Court cannot determine as a matter of law that the time for Day & Night to file an appeal in Yolo Superior Court case no. UD 14-1544 has expired. (Cal. Rules of Court, rule 8-104.) A judicial decision is not final for purposes of res judicata and collateral estoppel until the time to file an appeal has expired. (*Abelson v. Nat'l Union Fire Ins. Co.*, (1994) 28 Cal.App.4th 776, 787.)

Defendants' motion for judgment on the pleadings directed to Day & Night's second cause of action for breach of "covenants of good faith dealing" is **DENIED**. (Code Civ. Proc., § 438, subd. (c)(1)(B).) Day & Night states facts sufficient in its first amended complaint to support a cause of action for breach of the implied covenant of good faith and fair dealing. (*Cobb v. Ironwood Country Club* (2015) 233 Cal.App.4th 960, 966; *Racine & Laramie, Ltd. v. Dep't of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031.)

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:** **Dobic v. Eaton Corporation**  
**Case No. CV PO 14-723**  
**Hearing Date:** **August 14, 2015** **Department Two** **9:00 a.m.**

The petitioner, Galina Fatnik, and the minors, Serghei Dobic, Anastasia Dobic, Kristina Dobic, and Elizabeth Dobic, are directed to appear. (Cal. Rules of Court, rule 7.952.) If the parties fail to appear at the hearing and the Court has not excused their personal appearance, the petition will be denied without prejudice. No request for a hearing is required.

**TENTATIVE RULING**

**Case:** **Kane v. Valley Slurry Seal Company**  
**Case No. CV CV 08-2483**  
**Hearing Date:** **August 14, 2015** **Department Seven** **4:00 p.m.**

The motion to tax costs and motion for attorneys' fees are **CONTINUED** to be heard on September 11, 2015, in Department 10 at 4:00 p.m.

**TENTATIVE RULING**

**Case:** **People v. Turkovich**  
**Case No. CV PT 15-520**  
**Hearing Date:** **August 14, 2015** **Department Fourteen** **10:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to be heard on September 14, 2015, at 10:00 a.m. in Department 3.

**TENTATIVE RULING**

**Case:** **Sacramento Floormasters, Inc. v. Sac Profloors, Inc.**  
**Case No. CV CV 13-2165**  
**Hearing Date:** **August 14, 2015** **Department Two** **9:00 a.m.**

Defendants Sac Profloors, Inc., Enrique Curbelo, and Gene Sorenson's motion for summary judgment, or in the alternative, summary adjudication:

Plaintiffs Sacramento Floormasters, Inc. and DT Floormasters, Inc.'s application to seal is **GRANTED**. (Cal. Rules of Court, rule 2.550-2.551.)

Plaintiffs' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).) The Court takes notice of the existence of such documents, but not their truth. (*Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4<sup>th</sup> 757, 768.)

Plaintiffs' evidentiary objection nos. 1 and 2 to the declaration of Miguel Osuna are **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, §§ 403, 1200, & 1520.)

Plaintiffs' evidentiary objection nos. 1 and 2 to the declaration of Isidro Echeuria are **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, §§ 403, 1200, & 1520.)

Plaintiffs' evidentiary objection nos. 1 and 2 to the declaration of Jose Mejia are **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, §§ 403, 1200, & 1520.)

Plaintiffs' evidentiary objections to the declaration of Teri Szabadi are **SUSTAINED**. (Evid. Code, §§ 403, 1200, & 1520.)

Plaintiffs' evidentiary objections to the declaration of Matthew Errecart are **OVERRULED**.

Plaintiffs' evidentiary objections to the declaration of Debbie Regan are **OVERRULED**.

Plaintiffs' evidentiary objections to the declaration of Thomas McLaughlin are **OVERRULED**.

Plaintiffs' evidentiary objections to the declaration of Jennifer Ishimoto are **SUSTAINED**. (Evid. Code, § 403.)

Plaintiffs' evidentiary objection nos. 1-3, 6, 8-12, 20, 22-23, 25-27, and 31, to the declaration of Enrique Curbelo, are **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, §§ 403, 1200, & 1520.)

Plaintiffs' evidentiary objection nos. 1 and 3 to the declaration of Esther Shek are **OVERRULED**. Evidentiary objection no. 2 is **SUSTAINED**. (Evid. Code, § 350.)

Plaintiffs' evidentiary objection nos. 2 and 7 to the declaration of Gene Sorenson are **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, §§ 403, 1200, & 1520.)

Defendants Sac Profloors, Inc., Enrique Curbelo, and Gene Sorenson's evidentiary objection no. 5 to the declaration of Chris Crawford is **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, §§ 403, 1200.)

Defendants' evidentiary objection nos. 3, 5, 13, and 15 to the declaration of Donald Lau are **OVERRULED**; the remainder of the evidentiary objections are **SUSTAINED**. (Evid. Code, § 403.)

Defendants Sac Profloors, Inc., Enrique Curbelo, and Gene Sorenson's motion for summary adjudication of the first through fifth, and seventh through twelfth causes of action is **DENIED**. (Defendant's Undisputed Material Facts ("UMF") 18, 21, 22, 28, 29, & 30; Code Civ. Proc., § 437c, subd. (p)(2).) A separate statement effectively concedes the materiality of whatever facts are included. Therefore, if a triable issue is raised as to any of the facts in a separate statement, the motion must be denied. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4<sup>th</sup> 243, 252.) Triable issues of material fact preclude summary adjudication.

Defendants' motion for summary adjudication of the sixth cause of action is **DENIED**. (UMF 34; Code Civ. Proc., § 437c, subd. (p)(2); *Nazir*, supra.) A triable issue of material fact precludes summary adjudication.

Summary judgment is **DENIED**.

If no hearing is requested, plaintiffs 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.

Cross-defendants Donald Lau and Teresa Lau's motion for summary judgment, or in the alternative, summary adjudication against cross-complainant Enrique Curbelo:

Cross-defendants Donald Lau and Theresa Lau's evidentiary objection nos. 1-3, and 8 and 9 to the declaration of Enrique Curbelo are **OVERRULED**. Cross-defendants' evidentiary objection nos. 4-7 thereto are **SUSTAINED**. (Evid. Code, §§ 403, 1200.)

Cross-defendants' evidentiary objection nos. 1-8 to the declaration of Jennifer Ishimoto are **SUSTAINED**. (Evid. Code, § 403; Decl. Thomas A. Woods.)

Defendant and cross-complainant Enrique Curbelo's evidentiary objection nos. 1 & 2 to the declaration of Patrick Delangis are **SUSTAINED**. (Evid. Code, § 403.)

Cross-defendants' motion for summary adjudication of the first through fifth causes of action is **DENIED**. (Cross-defendants Undisputed Material Facts ("UMF") 26, 29, 32 and 33; Code Civ. Proc., § 437c, subd. (p)(2).) Triable issues of material fact preclude summary adjudication.

Cross-defendants' motion for summary adjudication of the seventh through eleventh causes of action is **DENIED**. (UMF 39; Code Civ. Proc., § 437c, subd. (p)(2).) Cross-defendants have not established sufficient evidence to controvert each of the events alleged in cross-complainant's complaint, and a triable issue of material fact precludes summary adjudication. Additionally, cross-defendants fail to support their request for adjudication of these causes of action by any recitation of the elements of each cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

Summary judgment is **DENIED**.

If no hearing is requested, cross-defendants 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.