

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 07/28/2016

EVENT TIME: 08:20:00 AM

DEPT.: 43

JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2015-00465460-CU-BC-VTA

CASE TITLE: AEROVIRONMENT INC VS. TORRES

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Breach of Contract/Warranty

EVENT TYPE: Motion for Summary Adjudication - of Issues

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Adjudication, 05/04/2016

---

**The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m.**

**Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.**

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: [Courtroom43@ventura.courts.ca.gov](mailto:Courtroom43@ventura.courts.ca.gov) or send a telefax to Judge DeNoce's secretary, Christine Schaffels at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending a telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce's rules and procedures for law and motion matters, *ex parte* matters, telephonic appearances, trial rules and procedures, etc., please visit: <http://www.ventura.courts.ca.gov/Courtroom/C43>

---

**The court's tentative ruling is as follows:**

Defendants Gabriel Torres, Justin McAllister, Jeff McBride, and Micasense, Inc.'s Motion for Summary Adjudication (Opposed)

**Evidentiary Matters:**

Plaintiff's Evidentiary objections to the declarations A. Louis Dorny, Dr. Gabriel Torres, Justin McAllister, and Jeff McBride:

Sustain numbers 1, 28-36, 69-80, 116, 117

Overrule numbers: 3, 4, 20-23, 39, 58-64, 100, 11, 112,

**Moving defendants' undisputed material facts:**

Fact 1 is disputed and establishes that the Inventions Agreements are substantially identical.

Fact 2 is disputed and not established as stated.

Fact 3 is disputed and establishes a shortened and incomplete version of what the Agreements state regarding the

---

TENTATIVE RULINGS

assignment of inventions.

Fact 4 is disputed but not established.

Fact 5 is disputed but not established.

Fact 6 is disputed but not established.

Fact 7 is disputed but not established.

Fact 8 is disputed but not established.

Fact 9 is disputed but not established.

Fact 10 – [The court defers from making a determination.]

Issue 1: Plaintiff's 1<sup>st</sup> cause of action for breach of contract fails because the patent and confidentiality agreement is an unlawful restraint of trade.

Ruling: Deny. Defendants have not met their burden on this motion under CCP 437c(p)(2). The burden did not shift to Plaintiffs to establish a triable issue of material fact.

Issue 2: Plaintiff's 1<sup>st</sup> cause of action for breach of contract fails because the patent and confidentiality agreement is unconscionable.

Ruling: Deny. Defendants met their burden on this issue under CCP 437c(p)(2) and the burden shifted to Plaintiff to establish a triable issue. Plaintiff established a triable issue as to whether the subject patent and confidentiality agreement is unconscionable.

Issue 3: The 2<sup>nd</sup> cause of action for fraud fails because Plaintiff cannot demonstrate harm attributable to defendants' alleged misrepresentations.

Ruling: Deny. Defendants met their burden on this motion under CCP 437c(p)(2). The burden shifted to Plaintiffs to establish a triable issue. Plaintiff established a triable issue as to whether there was harm attributable to defendants' alleged misrepresentations.

Issue 4: Summary adjudication is necessary because assertion of the state's secret privilege precludes presentation of a valid defense. The court cannot make a ruling one way or the other on the states secrets privilege until more evidence is developed. Since the court believes the privilege has not yet been adequately invoked, the issue is not before the court. A requisite declaration of a government official is required. That being said, my gut tells me that there may be a state secret at play here but I would need more information. I don't know if the potentially "secret" material is central to this case; I think there is a strong argument it is.

**Plaintiff's Cal. Labor Code 2860 claim (third cause of action.)**

Defendants contend that this claim fails because the concept of a multispectral camera was public knowledge. In ¶55 of the FAC, it is alleged that the breach of the Labor Code stems from "the Individual Defendants . . . [use of] the information about AV's inventions, improvements discoveries, ideas and designs, which they acquired by virtue of their AV employment . . . to create and market the MicaSense RedEdge." Defs concede what the statutory language of Section 2860 purports to protect. (See above.) However, according to defs, in practice, this section is viewed as, and analyzed synonymously with, the common law duty of loyalty. (See Cf. *Align Tech., Inc. v. Tran* (2009) 179 cal.App.4<sup>th</sup> 949, 954, n.3 – summarizing causes of action thusly, "breach of loyalty (Lab. Code §§ 2860-2863)"). Defendants contend, therefore, just as AV's claim for breach of duty of loyalty and breach of contract claims are both susceptible to summary adjudication because the multispectral camera idea was not developed from AV's confidential information, so too this must cause of action must be disposed of.

AV contends that defs violated Section 2860 by taking RedEdge, ATLAS and the myriad, confidential documents reflecting their research, development, and design work. Defs agreed to preserve such Inventions as confidential information of the Company, and to return documents containing confidential information on termination of their employment. (Torres, Ex. 505). This is AV's property, and it is well-settled that employers can seek the return of their property from former employees. (See *Angelica Textile Servs., Inc.*, 220 Cal.App.4<sup>th</sup> at 508 – "even if the documents Park took with him when he left [his employer] contained no trade secrets, they were still tangible property and therefore the proper subject of a conversion claim"); *Conn v. Superior Court* (1987) 196 Cal.App.3d 774, 781 –requiring return of documents to employer); *Pillsbury, Madison & Sutro v. Schectman* (1997) 55 Cal.App.4<sup>th</sup> 1279, 1288.)

---

Deny. There is a triable issue of material fact as to whether the RedEdge and ATLAS products belong to AV and whether related documents were confidential in the first place (provided the underlying Agreement is enforceable.)