

No. S241812

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

BRETT VORIS,
Plaintiff and Appellant,

v.

GREG LAMPERT,
Defendant and Respondent.

SUPREME COURT
FILED

AUG 11 2017

Jorge Navarrete Clerk

Deputy

After a Decision by the Court of Appeal,
Second Appellate District, Division Three, Case No. B265747

Appeal from the Superior Court for the County of Los Angeles, Case
No. BC408562, The Honorable Michael L. Stern Presiding

**APPELLANT'S REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPENING BRIEF; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATION OF REGINA
YEH; PROPOSED ORDER**

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**IN THE SUPREME COURT
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**TO ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that, pursuant to California Evidence Code sections 452 and 459, California Rule of Court 8.252, and supporting case law, Plaintiff and Appellant Brett Voris (“Voriss”) hereby respectfully requests that the Court take judicial notice of the following materials cited in the Opening Brief on the Merits (“Opening Brief”), relevant to the issues presented for review:

- Kendall, Marissa, *When startups fail: what happens when the cash runs out*, THE MERCURY NEWS, Oct. 2, 2016, available at <http://www.mercurynews.com/2016/10/02/when-startups-fail-what-happens-when-the-cash-runs-out/>
- O’Neill, Casey and Hanley Chew, *WrkRiot: Rite Of Passage Or Federal Offense?*, Law360.com, June 16, 2017, available at <https://www.law360.com/articles/935203>; and

- Indictment at 1, *USA v. Isaac Choi* (N.D. Cal. June 1, 2017) Case 5:17-cr-00308-EJD).

This request is based on this Notice, the accompanying Memorandum of Points and Authorities, and the Declaration of Regina Yeh.

Dated: August 9, 2017

Respectfully submitted,

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

By: _____
Regina Yeh
*Attorneys for Plaintiff and Appellant
Brett Voris*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Voris respectfully requests that this Court take judicial notice of the following materials cited in its Opening Brief. True and correct copies of these materials are attached as Exhibits A through C to the Declaration of Regina Yeh:

- Kendall, Marissa, *When startups fail: what happens when the cash runs out*, THE MERCURY NEWS, Oct. 2, 2016, available at <http://www.mercurynews.com/2016/10/02/when-startups-fail-what-happens-when-the-cash-runs-out/> (“Exhibit A”);
- O’Neill, Casey and Hanley Chew, *WrkRiot: Rite Of Passage Or Federal Offense?*, Law360.com, June 16, 2017, available at <https://www.law360.com/articles/935203> (“Exhibit B”); and
- Indictment at 1, *USA v. Isaac Choi* (N.D. Cal. June 1, 2017) Case 5:17-cr-00308-EJD) (“Exhibit C”).

Under California Rule of Court 8.252(a)(2)(C) and Evidence Code section 459, a reviewing court may take notice of anything that would be noticeable by a trial court under Evidence Code section 452. All of the materials cited above, which have not previously been presented in this case, fall under that provision. They are also relevant to the issues presented in this matter for the reasons stated below and in the Opening Brief. This Court should therefore grant Voris’s request.

II. ARGUMENT

This Court may properly take judicial notice of items that meet the requirements of Evidence Code section 452. (*See* Evid. Code, § 459.)

A. News Articles May be Judicially Noticed

Judicial notice of news articles is proper under Evidence Code section 452. Evidence Code section 452 states in pertinent part: “Judicial notice may be taken of the following matters ... (h) “Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (*See People v. Hardy* (1992) 2 Cal.4th 86, 174 fn. 24 [judicial notice of articles]; *see also Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 408 [judicial notice of controversy as evidenced by articles in the press].)

The articles submitted under Exhibits A and B both discuss the incidence of startup company failures in California, as well as the impact that such failures may have on the employees of those startups. That these news articles address and discuss startup failures as a wide-ranging issue is a fact “not reasonably subject to dispute and [is] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Code Civ. Proc., § 452, subd. (h); *see also Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808 [taking judicial notice of news articles because the fact that news articles discussed certain topics relevant to the case were published was not reasonably subject to dispute]; *Schweitzer v. Westminster Invests.* (2007) 157 Cal.App.4th 1195, 1203 [taking judicial notice of various articles published by the California

Association of Realtors for limited purpose of demonstrating what advice had been given in those articles].)

These articles under Exhibit A and B are relevant to the issues presented in the Opening Brief. The recognition of failed startups and what happens to the employees of those startups in the news is potentially relevant to this Court's policy considerations of worker's wage protections in California, in connection with whether to recognize and approve of a wage conversion claim.

This Court should therefore judicially notice these articles.

B. Federal Court Records May Be Judicially Noticed

Judicial notice of federal court records is also proper under section 452. Evidence Code section 452 also states in pertinent part: "Judicial notice may be taken of the following matters ... (d) Records of ... (2) any court of record of the United States." (*See People v. Johnson* (2006) 38 Cal. 4th 1096, 1103 [granting request for judicial notice of court documents in Ninth Circuit Court of Appeals, in determining whether retrial or limited remand was appropriate for trial court's federal constitutional error on murder defendant's challenge to prosecutor's excusal of African American jurors].)

Exhibit C is the criminal indictment of Isaac Choi, founder and CEO of WrkRiot, one of the California-based startup companies cited in both of the articles under Exhibits A and B, filed in the Northern District of California. The indictment reflects that Choi had engaged in, *inter alia*, making fraudulent representations to WrkRiot employees regarding the company's ability to pay their salaries and other compensation so that they would continue working. (*See Ex. C at 2:12-14.*)

The fact of Isaac Choi's indictment is likewise relevant to this Court's considerations of policy considerations of worker's wage protections in California, in connection with whether to recognize and approve of a wage conversion claim.

III. CONCLUSION

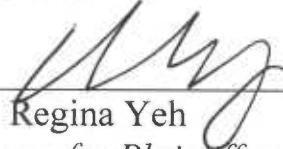
For the foregoing reasons, Voris respectfully requests that the Court take judicial notice of Exhibits A through C.

Dated: August 9, 2017

Respectfully submitted,

ANDERSON YEH PC
Edward M. Anderson
Regina Yeh

By: _____


Regina Yeh

*Attorneys for Plaintiff and Appellant
Brett Voris*

DECLARATION OF REGINA YEH, ESQ.

I, REGINA YEH, declare as follows:

1. I am an attorney at the law firm of Anderson Yeh PC, counsel of record for Brett Voris. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and could and would testify competently to such facts under oath.

2. Attached hereto as Exhibit A is a true and correct copy of: Kendall, Marissa, *When startups fail: what happens when the cash runs out*, THE MERCURY NEWS, Oct. 2, 2016, available at <http://www.mercurynews.com/2016/10/02/when-startups-fail-what-happens-when-the-cash-runs-out/>.

3. Attached hereto as Exhibit B is a true and correct copy of: O'Neill, Casey and Hanley Chew, *WrkRiot: Rite Of Passage Or Federal Offense?*, Law360.com, June 16, 2017, available at <https://www.law360.com/articles/935203>.

4. Attached hereto as Exhibit C is a true and correct copy of the Indictment at 1, *USA v. Isaac Choi* (N.D. Cal. June 1, 2017) Case 5:17-cr-00308-EJD.

Executed on August 9, 2017 in Santa Monica, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Regina Yeh

Exhibit A

Business

When startups fail: what happens when the cash runs out



The high-tech Skully motorcycle helmet, as it appeared in product photography images on the company's website. The helmet featured a

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heads-up display, GPS-tracking, a rear-view camera and enhanced audio capability, all starting at about \$1,500. Skully is one of several Bay Area startups that ran out of cash and shut down in recent months. Experts say these failures prove not every entrepreneur can live the Silicon Valley dream. (Courtesy of Skully)

By **MARISA KENDALL** | mkendall@bayareanewsgroup.com | Bay Area News Group
 PUBLISHED: October 2, 2016 at 1:00 pm | UPDATED: October 3, 2016 at 8:41 am

Silicon Valley has long lured ambitious entrepreneurs into shiny co-working spaces and startup accelerators, promising them the chance to create the next Google, Facebook or Uber.

But the reality is most startups fail, a risk that some say is growing as funding that once poured into the booming tech market begins to slow. For founders and employees, the results can be devastating.

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Ex-Pets.com CEO bounces back from failure

“It sounds good on paper, but that’s not really how it is,” Dr. Michael Freeman said of the Silicon Valley dream. A psychiatrist at UC San Francisco who studies and counsels entrepreneurs, Freeman likened the tech boom to the Gold Rush. “A lot of people in 1849 came to California looking for gold. And some people found it — and most didn’t.”

Lately, it’s the entrepreneurs in the “didn’t find gold” category who are making headlines. San Francisco-based smart motorcycle helmet maker Skully ran out of funds and shut down in August after its founders were accused of spending company money on luxury cars, vacations and strippers. Weeks later, job platform WrkRiot went offline after a former employee claimed the founders forged wire transfers because they couldn’t pay workers.

Those failures can be crushing for employees — and not just because they find themselves out of a job. Carlos Rodriguez, Skully’s former vice president of sales and marketing, said the company’s demise was especially

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painful because he was personally invested in Skully's mission to prevent motorcycle accidents.

He worked 80 or 90 hours a week, spending some nights in a hotel to be closer to work. His children had Skully stickers on their laptops. As the company fell apart, Rodriguez pulled himself away for a preplanned trip to France with his wife for their anniversary. On the plane, he was hit hard by what happened.

"I was looking out the window, and I just started bawling," Rodriguez said. "I was saddened for customers ... I was grieving for them. I was grieving for the work I put in for the development of this product. I was grieving for the time that I was away from my family."

Now Rodriguez works as an adviser for a few other tech companies, but they compensate him mostly in equity, forcing him to live off his savings while he hunts for another job. Despite his experiences at Skully, he's considering signing on with another small startup.

"You can have a greater impact," he said, "whereas in corporate America you're literally a name on a list."

Zirtual founder and CEO Maren Kate Donovan felt a similar heartbreak when her startup went under last year.

"It was very much like several deaths," she said. "It was the death of hopes and dreams. It was the death of a community that I and my co-founders had

spent five years building. ... It was absolutely devastating — definitely one of the worst things I've ever been through.”

Zirtual, a San Francisco- and Las Vegas-based startup, matched small-business owners with remote online assistants. The company ultimately was resurrected after being acquired by Startups.co, but Donovan didn't stay.

Silicon Valley hadn't prepared Donovan for failure. People rarely talk about startups that don't make it, Donovan said. Now she offers one piece of advice to other entrepreneurs: Get a therapist — you're going to need one.

Failures don't just affect the founders and employees — a startup's customers also pay the price when the company collapses.

Emilie Fairbanks, a lawyer who runs a small landlord-tenant law practice in Washington, D.C., used a Zirtual assistant for three years before waking up to an email that said the company was no more. Fairbanks panicked. She changed the passwords her assistant used, got a new credit card and ran damage control with clients who were used to emailing her assistant directly — and now were seeing their emails bounce back. It was disruptive, and Fairbanks worried it made her look unprofessional.

“It really has made me less willing to use other startup services,” she said.

Still, for entrepreneurs, failure is nearly a Silicon Valley rite of passage.

“The cost of failure has gone down pretty dramatically ... and that's a good thing in some respects, but that's also a bad thing,” said Harvard Business School professor and startup expert Shikhar Ghosh. “It creates a certain recklessness.”

Brisbane-based digital publishing company Mode Media, which was valued at \$1 billion and rumored to be on the verge of an initial public offering a few years ago, became another Silicon Valley casualty last month. Mode struck advertising deals between bloggers and third-party companies, posting ads on the blogs and doling out cash to the bloggers. When Mode shut down, many of those bloggers claimed they were owed thousands of dollars.