Tentative Rulings for May 16, 2024
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

24CECG01192 ***In Re: Alex Romero*** **is continued to Tuesday, May 21, 2024, at 3:30 p.m. in Department 503**

20CECG02931 ***Tiffany Higgins v. Brian Gooch*** **is continued to Tuesday, July 23, 2023, at 3:30 p.m. in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Rodriguez v. D.H. Blattner & Sons, LLC***
Superior Court Case No. 23CECG04200

Hearing Date: May 16, 2024 (Dept. 503)

Motion: Defendant's Motion to Stay Proceedings

Tentative Ruling:

To deny defendant's motion to stay the proceedings until the appeal is resolved.

Explanation:

Under Code of Civil Procedure section 1294, subdivision (a), "[a]n aggrieved party may appeal from: (a) An order dismissing or denying a petition to compel arbitration." Also, under Code of Civil Procedure section 916, subdivision (a), "[e]xcept as provided in Sections 917.1 to 917.9, inclusive, and in Section 116.810, the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." However, the Legislature recently amended section 1294 to state that, "[n]otwithstanding Section 916, the perfecting of such an appeal shall not automatically stay any proceedings in the trial court during the pendency of the appeal." (Code Civ. Proc., § 1294, subd. (a).)

Thus, the filing of an appeal by the party who moved to compel arbitration no longer automatically stays the underlying proceedings. The legislative history of the amendment to section 1294 indicates that the amendment was intended to address some of the perceived unfairness of the prior statute, which allowed employers and other defendants being sued for allegedly illegal practices to delay the plaintiffs' cases for years by filing an appeal of an order denying a petition to compel arbitration and obtaining an automatic stay of the pending court case while the appeal was pending, while at the same time denying plaintiffs the right to appeal an order granting a petition to compel arbitration until after the arbitration had been fully resolved.

"Under existing law, Code of Civil Procedure Section 1294 identifies various orders or judgements [*sic*] which may be appealed by an aggrieved party, including an order dismissing or denying a petition to compel arbitration. Code of Civil Procedure Section 916 further provides that, subject to exceptions, the perfecting of such an appeal stays proceedings in trial court. That is to say, when a party is denied in their effort to compel arbitration, upon their appeal, the court proceedings to adjudicate the underlying conflict are postponed until the appeal is decided. Interestingly, no such postponement is provided should a party seek to appeal a decision compelling arbitration. This poses significant difficulties for consumers and employees, due to the inherent power dynamic between them and the opposing businesses and employers. The ultimate judicial or arbitration award, intended to make an employee or consumer whole, may pale in light

of the growing costs of maintaining ongoing litigation. It is more likely that a business or employer will have greater resources than individual employees or consumers, and therefore greater capacity to handle a delayed resolution of the dispute." (See Plaintiff's Request for Judicial Notice, Exhibit A, Bill Analysis of SB 365. The court should take judicial notice of the Bill Analysis under Evidence Code section 452, subdivision (c).)

"*This bill* would prohibit civil legal proceedings from automatically being stayed, or delayed, during the pendency of an appeal of an order denying or dismissing a party's petition to compel arbitration. [¶] *This bill is arguably a modest step towards balancing the equity of arbitration.* The current practice of arbitration is one that is significantly skewed in favor of parties seeking to arbitrate disputes. This preference is underlined by various statutory functions, including requiring parties to arbitrate a matter completely before a party may appeal an order compelling arbitration, and automatically staying any court proceedings in the event a party appeals the denial of an order to compel arbitration. While this approach may further the goal of streamlining dispute resolution, the current status quo nonetheless appears to risk burdening plaintiffs, namely employees and consumers. Considering that this measure does not *obligate* parties to continue with court proceedings before appealing the denial of the order to compel arbitration, as is currently the case for matters that have been directed to arbitration, the process would still be skewed in favor of the party seeking to arbitrate. Ultimately, this bill is arguably a modest step towards equalizing an adjudicatory process that is often perceived to have its thumb on the scale in favor of businesses and employers, thereby providing some additional support to consumers and employees." (*Ibid*, italics in original.)

Thus, section 1294(a) no longer automatically provides for a stay of pending court proceedings after the moving party files an appeal of the court's order denying its petition to compel arbitration, as automatically staying the pending court action whenever an appeal is filed could prejudice the rights of employees and consumers who are frequently the plaintiffs in the types of actions that employers and businesses seek to have arbitrated. However, it does not appear that the amendment to section 1294(a) eliminates the court's inherent power to stay the matter pending the appeal if a stay would be in the interest of justice and promote judicial efficiency. (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.)[1]

Defendant cites to *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180 in support of its motion to stay the proceedings. However, the California Supreme Court's decision in *Varian* only interpreted the automatic stay provision of section 916, which no longer applies to appeals under section 1294(a). The Supreme Court held that, "[t]he purpose of the automatic stay provision of section 916, subdivision (a) 'is to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided. The [automatic stay] prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it.'" (*Id*. at p. 189, footnote and citations omitted.) "To accomplish this purpose, section 916, subdivision (a) stays all further trial court proceedings 'upon the matters embraced' in or 'affected' by the appeal. In determining whether a proceeding is embraced in or

[1] Defendant contends that the court should follow California Rules of Court, rule 3.515, which sets forth the procedure that the court must follow in determining whether to grant a stay of an action. However, rule 3.515 only applies to actions being considered for coordination, not actions where an appeal is filed after a petition to compel arbitration has been denied. (See Cal. Rules of Court, rule 3.515(a).) Since there is no motion for coordination pending here, rule 3.515 does not apply.

affected by the appeal, we must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. '[W]hether a matter is "embraced" in or "affected" by a judgment [or order] within the meaning of [section 916] depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the 'effectiveness' of the appeal.' 'If so, the proceedings are stayed; if not, the proceedings are permitted.'" (*Ibid*, citations omitted.)

Defendant also cites to *Prudential-Bache Securities, Inc. v. Superior Court* (1988) 201 Cal.App.3d 924, which likewise held that an appeal from an order denying a motion to compel arbitration automatically stays the proceedings in the trial court until the appeal has been decided. (*Id.* at p. 925.)

However, *Varian* and *Prudential-Bache* were both decided long before the January 1, 2024 amendment to section 1294(a). At the time *Varian* and *Prudential-Bache* were decided, section 1294 and section 916 required an automatic stay of the lower court proceedings after the filing of an appeal of an order denying a motion to compel arbitration. Now that section 1294(a) has been amended to state that section 916 does not apply to appeals of orders denying motions to compel arbitration and that such appeals do not automatically stay the lower court proceedings, the holdings of *Varian* and *Prudential-Bache* have been superseded and are no longer useful in ruling on the present motion to stay.

The Legislature has not provided any guidance to the courts to help them to determine whether to grant a stay where there is a pending appeal of an order denying a petition to compel arbitration. Nor have the parties cited to any cases that have interpreted the amended version of section 1294(a). Nevertheless, it appears that the court still has discretion to grant a stay of the lower court proceedings, but it should not do so as a matter of course whenever an arbitration petition has been denied and the moving party has filed an appeal. Instead, there must be some additional circumstances showing that it would promote efficiency and the ends of justice to grant a stay. (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.) Otherwise, the amendment to section 1294(a) would be essentially nullified, as the courts would routinely grant stays of all matters where a petition to compel arbitration has been denied and the moving party has filed an appeal of the order denying arbitration. Also, the court should not grant a stay simply because allowing the court proceedings to go forward might render the appeal moot. (*Varian, supra*, at p. 189.)

In the present case, defendant has argued that the court should grant a stay of the lower court proceedings because allowing the case to go forward would affect the pending appeal and render the appeal futile. Defendant contends that it would be in the interests of justice to stay the action and allow the appeal to move forward first, as the Court of Appeal's decision will determine whether further proceedings should be held in this court or whether the case should proceed in arbitration. Allowing the underlying case to proceed while the appeal is pending would result in inefficiency, as the Court of Appeal may reverse this court's order and send the case to arbitration.

However, defendant has not pointed to any additional circumstances or reasons why the case should be stayed that are not present in any case where the court has denied a petition to compel arbitration and an appeal has been filed. Any time the court denies a petition to compel arbitration and the moving party appeals from the court's order, the pending appeal would potentially be affected if the underlying case

is allowed to proceed. Also, the fact that the appeal might become moot if the underlying case goes forward is not enough, by itself, to justify staying the action. (*Varian, supra*, at p. 189.) In addition, allowing the lower court case to go forward will always create the danger of some inefficiency, as if the Court of Appeal reverses the order denying arbitration the case would be sent to arbitration and any lower court proceedings that took place after the appeal was filed would become redundant. If the court were to grant defendant's motion here without a showing of some additional circumstances indicating that allowing the underlying case to proceed would result in inefficiency or injustice, it would effectively nullify the amendment to section 1294(a) and reinstate the automatic stay language that the Legislature expressly removed when it amended the statute. Because defendant has not pointed to any additional circumstances or reasons why the lower court case should be stayed here that are not present in any other case where an arbitration petition has been denied, the court intends to deny the motion to stay the lower court action pending the resolution of the appeal.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 5/15/24.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Lloyd Bettis v. Fresno Food Concepts, Inc.***
Superior Court Case No. 22CECG02481

Hearing Date: May 16, 2024 (Dept. 503)

Motion: By Plaintiffs for Preferential Trial Setting

Tentative Ruling:

To grant. (Code Civ. Proc., § 36, subd. (a).)

Explanation:

Code of Civil Procedure section 36 governs where preference is to be granted based on age, medical reasons, in the interests of justice, or on time for trial. Subdivision (a) provides:

> (a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court *shall* grant if the court makes both of the following findings:
>
> (1) The party has a substantial interest in the action as a whole.
>
> (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.
>
> (Code of Civ. Proc., § 36, subd. (a), emphasis added.)

The intent behind the provision of a preferential trial setting is to "safeguard litigants who qualify under subidivision (a) of section 36 against the acknowledged risk that death or incapacity might deprive them of the opportunity to have their case effectively tried and to obtain the appropriate recovery." (*Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085.) Furthermore, where a litigant meets the criteria of subdivision (a), it is "mandatory and absolute in its application." (*Id*. at p. 1086.) Here, plaintiffs seek preferential trial setting under this subdivision. There can be no question that plaintiffs have a substantial interest in the action here.

For demonstrating the party's age, admissible evidence is required. Admissible evidence includes a declaration by the party or admissible records showing the party is over 70 years old. (Weil & Brown, *Cal. Practice Guide: Civ. Proc. Before Trial* (TRG 2022) ¶12:247.3) An attorney's declaration is not sufficient. (Ibid.) Here, the evidence presented to demonstrate plaintiff Bettis' age, his own declaration, is sufficient to establish that he is 86 years old.

Plaintiff Bettis has also addressed his health conditions in his declaration and has specified that his health is deteriorating. Notably, the issue under Code of Civil Procedure section 36, subdivision (a) only requires a showing that the party's health is such that preference is necessary to prevent prejudicing the party's interest in the case. There is no requirement that an elderly litigant may die before trial or become disabled. (*Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 534.) Here, plaintiff Bettis' declaration describing his various health conditions shows that preference is necessary to prevent prejudicing his interest in the litigation.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 5/15/24.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Atlas v. Red Horse Trans Inc., et al.***
Superior Court Case No. 22CECG02721

Hearing Date: May 16, 2024 (Dept. 503)

Motion: by Defendant Bridgestone Americas Tire Operations, LLC for Summary Judgment

Tentative Ruling:

To deny the motion for summary judgment.

Explanation:

In ruling on a motion for summary judgment or summary adjudication, the court must "consider all of the evidence' and all of the 'inferences' reasonably drawn there from and must view such evidence and such inferences 'in the light most favorable to the opposing party." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843 (*Aguilar*).) In making this determination, courts usually follow a three-prong analysis: identifying the issues as framed by the pleadings; determining whether the moving party has established facts negating the opposing party's claims and justifying judgment in the movant's favor; and determining whether the opposition demonstrates the existence of a triable issue of material fact. (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.)

The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case ....' [Citation.]" (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.) Furthermore, "[t]o avoid summary judgment, admissible evidence presented to the trial court, not merely claims or theories, must reveal a triable, material factual issue. [Citations.] Moreover, the opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation." (*Wiz Technology, Inc. v. Coopers & Lybrand* (2003) 106 Cal.App.4th 1, 11.) In essence, if the party opposing summary judgment relies on inferences, those inferences must be "reasonably deducible" from the evidence. (*Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161.)

A court will liberally construe the evidentiary submissions of a party opposing summary judgment, but will strictly scrutinize the moving party's own evidence, "in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) However, "[c]ourts liberally construe declarations submitted in opposition to summary adjudication only to the extent the declarations are admissible." (*Esparza v. Safeway, Inc.* (2019) 36 Cal.App.5th 42, 57.) Finally, "an issue of fact can only be created by a conflict of evidence." (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 807.) "It is not created by speculation or conjecture." (*Ibid*.)

In this personal injury action plaintiff Dale Atlas alleges defendant Bridgestone Americas Tire Operations, LLC ("Bridgestone") manufactured and distributed the tires that were on the 2020 Freightliner truck-tractor he was operating on September 4, 2020 when the left front steer-axle tire blew out causing plaintiff to lose control of the vehicle and overturn, injuring plaintiff. Plaintiff's complaint alleges one cause of action for strict product liability and a second for negligence. Plaintiff alleges on information and belief that the tires contained a manufacturing defect, design defect, and did not include sufficient instructions and/or warnings of potential safety hazards. Plaintiff alleges that the defects in the design and/or manufacturing of the tire were the proximate cause of his injuries and damages. Plaintiff also alleges the failure to adequately warn of the potential risks of using the tires was a proximate cause of his injuries. Additionally, plaintiff alleges defendants failed to maintain and repair the Freightliner truck-tractor and tires, which was a proximate cause of his injuries.

"The elements of a cause of action for negligence are well established. They are '(a) a *legal duty* to use due care; (b) a *breach* of such legal duty; [and] (c) the breach as the *proximate or legal cause* of the resulting injury.'" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917 (emphasis in original), quoting *Evan F. v. Hugbson United Methodist Church* (1992) 8 Cal.App.4th 828, 834.) "The element of causation requires there to be a connection between the defendant's breach and the plaintiff's injury." (*Coyle v. Historic Mission Inn Corp.* (2018) 24 Cal.App.5th 627, 645.)

" ' "[S]trict liability has never been, and is not now, absolute liability. As has been repeatedly expressed, under strict liability the manufacturer does not thereby become the insurer of the safety of the product's user."'" (*Sanchez v. Hitachi Koki Co.* (2013) 217 Cal.App.4th 948, 956, citations omitted.) Rather, "[a] manufacturer, distributor, or retailer is liable in tort if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way." (*Soule v. GM Corp.* (1994) 8 Cal.4th 548, 560.)

> Under the Restatement, a product is defective if it: "(a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product; [¶] (b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe; [¶] (c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe." (Rest.3d Torts, Products Liability, § 2, p. 14.)

(*Brady v. Calsol, Inc.* (2015) 241 Cal.App.4th 1212, 1218–1219.)

In the motion at bench, defendant Bridgestone argues plaintiff cannot as a matter of law establish that the left steer-axle tire was defective and that its failure was caused by a defect in the tire because neither the subject tire nor any of its remnants are unavailable for visual and tactile inspection. (*Stephen v. Ford Motor Co.* (2005) 134 Cal.App.4th 1363, 1372.) For defendant to satisfy its initial burden in seeking summary judgment, it must show that "plaintiff does not possess needed evidence … [and] must also show that the plaintiff cannot reasonably obtain needed evidence." (*Aguilar, supra,* 25 Cal.4th at p. 854.)

Defendant's evidence shows the subject tire and/or its remnants were lost or misplaced and they cannot be retrieved. (UMF No. 1.) Due to the inability to physically examine the tire, the evidence available to determine the cause of the tire failure consists of photographs of the plaintiff's Freightliner and the accident scene obtained through discovery and subpoenas from the Vail Police Department, towing provider Mountain Recovery, and defendant Red Horse Trans Inc. (UMF No. 2.) Within the photographs obtained from the Vail Police Department there are five that appear to depict tire and/or tread remnants (Ballas, Exh. D, DSC0513, DSC0514, DSC0515, DSC0516, DSC0518) and one that appears to depict a full circumference of a tire tread (Ballas Decl., Exh. X, DSC0505 [misidentified as DSC0504 in the separate statement]). All photographs were obtained from the Vail Police Department.

Bridgestone's Director of Product Analysis and tire failure analysis expert, Brian J. Queiser, opines tire failure can be attributed to a variety of conditions other than a manufacturing or design defect and the photographs available lack sufficient detail and clarity to allow an expert to determine what caused the failure of the subject tire. (UMF No. 3; Queiser Decl., ¶¶ 9-10, 15-17.) Without a visual or tactile inspection of the subject tire and/or remnants, Mr. Queiser cannot render an opinion to a reasonable degree of scientific certainty regarding the cause of the tire's failure and opines no other qualified tire failure analyst could identify the cause of the alleged failure or rule out other possible causes of failure to a reasonable degree of certainty. (UMF No. 4; Queiser Decl., ¶ 18.)

The undisputed material facts do not address plaintiff's allegations that the tire was defective based on the failure to provide sufficient instructions and/or warnings of potential safety hazards and that this failure to warn was the proximate cause of plaintiff's injuries. (Complaint, ¶¶ 31, 37-39, 42, 50-51.) "It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." (*Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74; see also *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1132 ["On a motion for summary judgment or summary adjudication, the pleadings delimit the scope of the issues . . .."].)

The moving papers argue and present evidence that the subject tire may not have been a Bridgestone tire, but rather a Michelin tire. Any defense to the alleged insufficient warnings that may be presented by Bridgestone's lack of duty to warn consumers of dangers as to Michelin tires is not addressed in the separate statement and appears to be the subject of a factual dispute.

Accordingly, defendant's failure to address all bases of its liability as alleged in the complaint requires the motion be denied for failure to meet its burden. (Code Civ. Proc. § 437c, subd. (p)(2).

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 5/15/24.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***James Conquest v. Kathy Doe***
Superior Court Case No. 22CECG01521

Hearing Date: May 16, 2024 (Dept. 503)

Motion: Defendant Costco Wholesale Corporation's Motion to Disqualify Downtown L.A. Law Group

Tentative Ruling:

To grant the motion as to Anthony Werbin, personally. To deny the motion as to the Downtown L.A. Law Group firm.

To sustain the evidentiary objections to the Declaration of Leigh Ann Ruijters. (Evid. Code, § 702; *Osmond v. EWAP, Inc.* (1984) 153 Cal.App.3d 842, 850-851.)

Explanation:

The court may disqualify an attorney based upon a conflict of interest on the motion of another party. (Code Civ. Proc., § 128, subd. (a)(5); *In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 585; see also Cal. Rules Prof. Cond., rule 1.9(a).)

There is sufficient evidence presented for the court to find that Anthony Werbin ("Werbin") is disqualified from representing plaintiff in this matter. His own declaration establishes that while working at Manning & Kass, Elrod, Ramirez, Trester LLP ("M&K") from July 2017 to January 2020, he represented Costco in approximately 20 cases involving claimed injuries occurring at various Costco warehouse locations. Even if the injuries and how they occurred were different, and different Costco warehouses were involved, similar issues of premises liability negligence will be in play, *e.g.,* constructive notice sufficient to implicate Costco's liability for a dangerous condition. Therefore, the subjects of the prior and the current representations are linked in a rational manner.

Moreover, Werbin's declaration establishes that he had a direct relationship with his client, Costco: he stresses that he worked independently, receiving "no specific direction" from other attorneys at M&K, and that all litigation decisions were left to his own discretion. (Werbin Decl., ¶¶ 6-8.) Thus, it must be conclusively presumed that he received confidential information, and there can be no "delving into the specifics" of any such communications. (See *Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 709.) Therefore, the motion is sufficient as it relates to Werbin personally.

Whether Werbin's disqualification should be imputed to his entire firm depends upon the presence of effective ethical screening procedures. (Cal. Rules Prof. Cond., rule 1.10(s); (*Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 801.) Some typical elements that will be found to create an effective ethical screen include: (1) "physical, geographic, and departmental separation of attorneys;" (2) "prohibitions against and sanctions for discussing confidential matters;" (3) "established rules and

procedures preventing access to confidential information and files;" (4) "procedures preventing a disqualified attorney from sharing in the profits from the representation;" and (5) "continuing education in professional responsibility." (*Henriksen v. Great American Savings & Loan* (1992) 11 Cal.App.4th 109, 116, fn. 6.)

Plaintiff presents the declaration of Amira Rezkallah, the Human Resources Manager and Administrative Director at DTLA Law. Her duties require her to oversee administrative matters, which include the firm's software features. The declaration of Igor Fradkin, another firm member, says the DTLA attorneys are divided into teams, with each senior attorney heading a team. The teams have their own set of attorneys, paralegals, and office staff, and do not share team members. There is a firm policy in place that Mr. Werbin's team is not assigned any cases involving Costco, and this has been the practice since he began working for DTLA. The teams are geographically separated. The firm has prohibitions against and sanctions for discussing confidential matters, including but not limited to immediate dismissal. Mr. Werbin does not share profits (income or bonuses) that have been made on Costco cases. The firm requires continuing education in professional responsibility. All case information, documents, and files are stored electronically, and Mr. Werbin does not have access to any case files or information involving Costco cases. Files are password protected. In December 2021, the firm switched from AbacusLaw to a new software system named FileVine. AbacusLaw shielded Costco files from Mr. Wervin, but FileVine has a superior shielding mechanism: it allows only those with administrative roles at the firm, or those who have been assigned to a case to be able to view files associated with a case. This means that employees of the firm are unable to search a matter they are not assigned to. Anthony Werbin states that since beginning his employment with DTLA, he has not worked on any Costco case, in any capacity.

This is sufficient to show that an effective ethical screen has been put in place to prevent Mr. Werbin from sharing any confidential information concerning Costco. If he is not working on this case, and he is not sharing any knowledge he has about Costco, there is no basis for disqualification. [T]he purpose of a disqualification must be prophylactic; an attorney may not be disqualified purely as a punitive or disciplinary measure. (*Neal v. Health Net, Inc.* (2002) 100 Cal.App.4th 831, 844.) Therefore, the motion is denied as it relates to the firm.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 5/15/24.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***D.B. v. Central Unified School District***
Superior Court Case No. 22CECG02177

Hearing Date: May 16, 2024 (Dept. 503)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant. Order signed. No appearances necessary.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 5/15/24.
(Judge's initials) (Date)