

Tentative Rulings for May 29, 2026
Department 501

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.

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Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Pismo's of Fresno, LLC v. Villagio Shopping Center, LLC, et al.***
Superior Court Case No. 25CECG04448

Hearing Date: May 29, 2026 (Dept. 501)

Motion: by Villagio Shopping Center, LLC, to Disqualify Counsel

Tentative Ruling:

To deny.

Explanation:

This is a contract dispute between Villagio Shopping Center, LLC ("Villagio") and Pismo's of Fresno, LLC ("Pismo's") concerning the terms of the parties' commercial real estate lease. Villagio is represented in the action by Wanger Jones Helsley PC ("WJH") and Wild, Carter & Tipton ("WCT"). Pismo's is represented by Sarabian Law, A.P.C. Villagio moves to disqualify Sarabian Law after an associate at WJH (Joshua Jendian) left the firm and joined Sarabian Law.

Each court has the power to "control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." (Code Civ. Proc. § 128, subd. (a)(5).) This power permits courts to disqualify an attorney or a firm based upon a conflict of interest on the motion of another party. (*In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 585.)

"When faced with disqualifying an attorney for an alleged conflict of interest, courts have considered such interests as the clients' right to counsel of their choice, an attorney's interest in representing a client, the financial burden on the client of replacing disqualified counsel, and any tactical abuse underlying the disqualification proceeding." (*Id.* at p. 586.)

Preserving confidentiality of communications between attorney and client is fundamental to our legal system. The attorney-client privilege is a hallmark of Anglo-American jurisprudence that furthers the public policy of insuring 'the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and a proper defense.' One of the basic duties of an attorney is '[t]o maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.' To protect the confidentiality of the attorney-client relationship, the California Rules of Professional Conduct bar an attorney from accepting "employment adverse to a client or former client where, by reason of the representation of the client or former client, the [attorney] has obtained confidential information material to the employment except with the

informed written consent of the client or former client.' (Rules Prof. Conduct, rule 3-310(D).) *For these reasons, an attorney will be disqualified from representing a client against a former client when there is a substantial relationship between the two representations. When a substantial relationship exists, the courts presume the attorney possesses confidential information of the former client material to the present representation.*" (*Id.* at pp 586-587, emphasis added.)

California Rules of Professional Conduct, rule 1.9(b) provides,

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client (1) whose interests are materially adverse to that person; and (2) about whom the lawyer had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter; . . .

Where the potential conflict arises from an attorney's successive representation of clients with potentially adverse interest, the primary value at stake is client confidentiality. (*In re Charlyse C.* (2008) 45 Cal.4th 145, 161.) Under these circumstances, disqualification of the attorney is generally required "if the [former] client demonstrate[s] "substantial relationship" between the subjects of the antecedent and current representations." (*Ibid.*)

If a substantial relationship between the former and current representation exists, it is presumed that the attorney had access to confidential information in the first representation, which is relevant to the second representation. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283, emphasis added.)

A former client may seek to disqualify a former attorney from representing an adverse party by showing the former attorney actually possesses confidential information adverse to the former client. However, actual possession of confidential information need not be proved in order to disqualify the former attorney. It is enough to show a "substantial relationship" between the former and current representation. (*H.F. Ahmanson & Co. v. Salomon Bros., Inc.*, (1991) 229 Cal.App.3d 1445, 1452.)

There is scant evidence that Mr. Jendian represented Villagio while with WJH, and it is undisputed that he has done no work on the matter for Pismo's with either WJH or Sarabian Law. Scott Laird of WHJ states that he personally assigned Mr. Jendian to work on this matter, but can recall no substantive discussion regarding the case. Mr. Jendian states under oath that he has no recollection of being assigned to, briefed on, or asked to perform any work on the Pismo's matter at WJH. The court finds this recollection to be credible in light of the lack of evidence that Mr. Jendian billed a single minute on the case, had any client contact regarding the case, or produced a sentence of work product on the case.

Evidence is submitted that Mr. Laird had Mr. Jendian added to WJH's calendar for the Pismo's file. Mr. Jendian states that legal assistants, calendar clerks, and administrative

staff would add associates to the LSS calendar for matters as a purely administrative measure, often without any prior conversation with the associate, without any actual work assignment, and without the associate's knowledge at the time. Mr. Jendian was added to the LSS calendar for matters on which he performed no work. The calendar entry was, by Villagio's own evidence, generated by an email from Anita Ricardo to a calendar clerk — not by any communication with Mr. Jendian himself. Accordingly, this evidence submitted by Villagio does not show that Mr. Jendian actually worked on the matter or obtained any confidential information about it.

The motion truly hinges on one fact – on November 7, 2025, Mr. Jendian accessed a confidential mediation brief prepared by WJH for use in mediation with Pismo's. Villagio contends that this fact alone requires disqualification of Sarabian Law. There is no evidence that Mr. Jendian accessed any other document related to the Pismo's matter. Mr. Jendian states under penalty of perjury that he accessed this mediation brief because he had a mediation brief of his own due to the same mediator in an unrelated matter on November 10, 2025 — three days after the NetDocs entry. His regular practice when preparing a brief for a specific mediator was to search NetDocs for recent examples of briefs WJH had submitted in other matters, in order to confirm the firm's and the mediator's preferred formatting, caption style, and structural conventions. Mr. Jendian's practice was to open such a document, scan its caption page and overall layout, and not substantively review it. Mr. Jendian states that he did not read the substance of the Villagio mediation brief. He does not know what facts it recited, what legal positions it advanced, what settlement posture it reflected, or what mental impressions, conclusions, or strategies of Villagio's counsel it disclosed. He retained, and possesses today, no notes, mental impressions, or recollection of any of its substantive content.

The court finds Mr. Jendian's recollection to be credible due to the lack of any written work product resulting from viewing the mediation brief, and lack of a single billable minute associated with the viewing. The question is whether the simple fact of viewing this one document requires disqualification of Sarabian Law despite the substantial and effective firewall erected. (See Sarabian Decl. ¶¶ 18–20, Ex. 1; Bennett Decl. ¶ 5; Jendian Decl. ¶ 16(b).)

Ochoa v. Fordel, Inc. (2007) 146 Cal.App.4th 898 involved a motion to disqualify the law firm representing plaintiffs after an attorney that had previously been at the firm that was representing defendants joined the firm that was representing plaintiffs. The attorney attended weekly lunch meetings where case strategy was discussed and the attorney participated in them. An audit trail showed that the attorney reviewed six different files within the system, though the documents viewed did not contain confidential information. And there was an attorney declaration affirming there were two specific instances where the case was discussed with the conflicted lawyer. (*Id.* at 902-03.)

The court of appeal affirmed denial of disqualification, holding that “mere access to confidential information [does not] always creates a substantial relationship that mandates disqualification.” (*Id.* at p. 911, fn. 8.) It distinguished between “access” and “acquiring” confidential information, while noting that having accessed confidential information is inadequate to determine he acquired confidential information. (*Id.* at pp.

911-12.) The trial court properly credited the conflicted attorney's declaration despite substantial evidence from the moving party indicating case strategy was discussed, he reviewed the case file, and participated in strategy meetings.

Here, while *Ochoa* is distinguishable in that the sole case file document accessed by Mr. Jendian did in fact contain confidential information, crediting Mr. Jendian's testimony regarding that document, it appears that the conflicted attorney in *Ochoa* actually acquired more confidential information than Mr. Jendian.

Though Mr. Laird thinks he conveyed confidential information to Mr. Jendian, there is no showing that this actually occurred. Mr. Laird's belief that he would have done so is speculation, given his lack of actual recollection.

Moreover, an ethical screen "can suffice, in a proper case. The test is whether the individual attorney had any responsibility over matters related to the instant action or had acquired confidential information regarding the action and whether the firm had taken sufficient protective measures to screen the attorney from participation." (*Klein v. Superior Court* (1988) 198 Cal.App.3d 894, 909.) Here, Mr. Jendian has and had no responsibility over matters related to this action, does not appear to have actually acquired confidential information regarding the action, and the ethical screen in place is robust and more than adequate.

Accordingly, the court intends to deny the motion.

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 by: DTT **on** 5/25/2026 .
(Judge's initials) (Date)