Tentative Rulings for June 11, 2026
Department 403

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 begin at the next page)

Tentative Rulings for Department 403

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(47)

Tentative Ruling

Re: ***Gregory Smith v. Nationwide Mutual Insurance Company***
Superior Court Case No. 25CECG02550

Hearing Date: June 11, 2026 (Dept. 403)

Motion: By Defendant Lori Smith to Disqualify Plaintiff Gregory Smith's Attorney

Tentative Ruling:

To deny defendant Lori Smith's motion to disqualify plaintiff Gregory Smith's attorney Mary Elizabeth Ayala, and the law firm Miller & Ayala, LLP, from representing Gregory Smith in this case.

Explanation:

Plaintiff, Gregory Smith ("Mr. Smith" or "Plaintiff") asserts 18 causes of action, including against Lori Smith ("Ms. Smith") and/or her business, Visual Changes Skin Care International, Inc. ("Visual Changes"), as well as Nationwide Mutual Insurance Company. ("Nationwide.") All of these causes of action stem from Ms. Smith's alleged misconduct with respect to property located at 4676 W. Jacquelyn Avenue Fresno, California, 93722-6405 ("Covered Property") that is co-owned by plaintiff and Ms. Smith, and purchased during their marriage. (Ms. Smith's Additional Request for Judicial Notice, Exhibit I, Second Amended Complaint (SAC), ¶3.)

On January 16, 2026, both Visual Changes and Ms. Smith demurred to the fifth through fifteenth, and eighteenth causes of action to plaintiff's First Amended Complaint (FAC) because the Court lacks jurisdiction because the family court presiding over plaintiff's and Ms. Smith's marital dissolution has sole jurisdiction over the subject matter of plaintiff's claims. Visual Changes further demurred as to each of the aforementioned causes of action for various reasons.

On February 11, 2026, this Court sustained Visual Changes demurrer, while granting Mr. Smith leave to amend. Mr. Smith then filed his SAC on March 16, 2026.

Furthermore, this Court sustained Nationwide's demurrer to Mr. Smith's First Amended Complaint with respect to the 13th (nuisance), l4th (nuisance), and 18th (declaratory relief) causes of action, without leave to amend. (Ms. Smith's Request for Judicial Notice, Exhibit G, December 16, 2025 Minute Order.)

Ms. Smith brings forth this motion to disqualify attorney Mary Elizabeth Ayala ("Ms. Ayala"), and the law firm Miller & Ayala, LLP, ("Law Firm") from representing Mr. Smith in this case. Ms. Smith's basis for filing this is motion is that Ms. Ayala represents Mr. Smith in both the dissolution of marriage action between Mr. Smith and Ms. Smith (Fresno Superior Court Case No. 17CEFL04963), and this case, and is presenting claims on behalf of the community against Nationwide in this case. Ms. Smith argues that this form of

representation is a form of "successive representation," that should disqualify Ms. Ayala from representing Mr. Smith. (Ms. Smith's Moving Papers, pgs. 8:24-9:2.)

"A trial court's authority to disqualify an attorney derives from its inherent 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.'" (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 47, quoting Code Civ. Proc., § 128, subd.(a)(5).) "An attorney is required to avoid the representation of adverse interests and cannot, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment. (Rules Prof. Conduct, rule 3-310(E).)" (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 705.)

"[W]hether an attorney should be disqualified in a successive representation case turns on two variables: (1) the relationship between the legal problem involved in the former representation and the legal problem involved in the current representation, and (2) the relationship between the attorney and the former client with respect to the legal problem involved in the former representation." (*Jessen, supra,* 111 Cal.App.4th at p. 709.)

First, it is uncontested that Ms. Ayala has only ever represented Mr. Smith in this action, and does not represent the marital estate, Ms. Smith, VCSC, or any other party. Furthermore, Ms. Ayala has never represented Ms. Smith individually and does not possess any confidential information pertaining to Ms. Smith. Ms. Ayala has also never represented the marital estate. (Ms. Ayala Decl., ¶7.)

Second, based on the SAC, subject to the current litigation is the alleged tenancy in common between Mr. Smith and Ms. Smith. (SAC.) Ms. Smith's assertion that "[t]he Court already observed that all causes of action in this civil case relate to real property that is "community property" (Ms. Smith's Reply Papers, pg. 3:18-19) in reference to the December 16, 2025 minute order is irrelevant. The Court sustained Nationwide's demurrer to the FAC. The Court since then, sustained Visual Changes demurrer, with leave to amend. Mr. Smith then amended and filed his SAC. Trying to pin this Court's observation of the pleadings during a demurrer is not warranted, and in extremely poor taste. A demurrer tests the legal sufficiency of the pleadings and will be sustained only where the pleading is defective on its face. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.) "We treat the demurrer as admitting all material facts properly pleaded but not contentions, deductions or conclusions of fact or law. We accept the factual allegations of the complaint as true and also consider matters which may be judicially noticed. [Citation.]" (*Mitchell v. California Department of Public Health* (2016) 1 Cal.App.5th 1000, 1007; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604 ["the facts alleged in the pleading are deemed to be true, however improbable they may be"].)

Third, Ms. Smith analogizes her situation to *Jarvis v. Jarvis* (2019) 33 Cal.App.5th 113 ("*Jarvis*"). However, *Jarvis* is readily distinguishable from the present facts. In *Jarvis*, brothers Todd and James Jarvis each owned a 50 percent interest in a partnership and could not agree what to do with a parcel of land owned by the partnership. (*Jarvis,*

supra, 33 Cal.App.5th at pp. 122–123.) James filed an action for partition by sale against Todd and the partnership. (*Id*. at p. 123.) Todd approved attorney William P. Roscoe III to defend the partnership and James moved to disqualify Roscoe on grounds that a majority of the general partners did not approve Roscoe to represent the partnership. (*Id*. at p. 124.) The trial court granted the motion to disqualify Roscoe and the Court of Appeal affirmed. (*Id.* at pp. 127, 145.)

In affirming the disqualification order, the court in *Jarvis* determined the applicable partnership agreement and partnerships laws did not resolve whether the representation was authorized. (*Jarvis*, supra, 33 Cal.App.5th at pp. 135–139.) The court turned to the "values and interests at stake in a disqualification motion" and concluded the trial court did not abuse its discretion in disqualifying Roscoe. (*Id*. at pgs. 139, 144.) The court in *Jarvis* found no abuse of discretion because James "raised legitimate points regarding Roscoe's duty of loyalty" to the partnership (*Id*. at pp. 139.)

Unlike *Jarvis*, there is no dispute here regarding who has authority to retain counsel for a corporation, community or to direct its litigation strategy. Mr. Smith is pursuing his own separate claims independently. Furthermore, the logical extension of Ms. Smith's argument based on the present set of circumstances would mean Ms. Smith, as the sole owner of Visual Changes, could dictate the attorney Mr. Smith could hire to pursue his interests with respect to the Covered Property.

Ms. Smith also argues Ms. Ayala should be disqualified from representing Mr. Smith because "Ms. Smith will have Ms. Ayala testify at trial and propound discovery to her ahead of trial." (Ms. Smith's Moving Papers, pg. 12:6-7.) Ms. Smith seeks to disqualify Ms. Ayala because "Ms. Ayala wrote letters and emails, and received letters and emails, that bear directly on issues of notice, proper handling of insurance claims, securing real property from damage, and fulfillment of fiduciary duties." (Ms. Smith's Moving Papers, pg. 12:3-5.)

Rule 3.7 of the Rules of Professional Conduct states:

> (a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless:
> (1) the lawyer's testimony relates to an uncontested issue or matter;
> (2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or
> (3) the lawyer has obtained informed written consent from the client. If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.

(Rules of Professional Conduct, Rule 3.7, subd. (a)(1)–(3).)

"In exercising its discretion to disqualify counsel under the advocate-witness rule, a court must consider: (1) "'"whether counsel's testimony is, in fact, genuinely needed" '"; (2) "the possibility [opposing] counsel is using the motion to disqualify for purely tactical

reasons"; and (3) "the combined effects of the strong interest parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case." (*Doe v. Yim* (2020) 55 Cal.App.5th 573, 583).

Here, disqualification of Ms. Ayala is not warranted. The Court fails to see the necessity of calling Ms. Ayala as a witness "due to her personal knowledge and involvement in pre-litigation communications related to claims against Nationwide" (Ms. Smith's Reply Papers, pg. 11:26-27), where Ms. Smith can seek that information through alternative sources such as the testimony of Ms. Smith's divorce lawyer, who is not representing her in this litigation. (Ms. Smith's Decl., Ex's A-C.) Because the relevant facts can be established through independent sources, counsel's testimony is neither unique nor necessary. Second, the risk of confusing the trier of fact is low. The court is not concerned that it will confuse Ms. Ayala's discussion of pre-litigation emails as "personal knowledge or as an advocate of a position." (Ms. Smith Moving Papers, pg. 13:14-15.) Finally, Mr. Smith has a strong interest in counsel of his choice coupled with avoiding duplicate expense and time-consuming efforts in proceeding with a different advocate, who as Ms. Smith points out, has extensive knowledge of the claims Mr. Smith is asserting. "[I]t must be kept in mind that disqualification usually imposes a substantial hardship on the disqualified attorney's innocent client, who must bear the monetary and other costs of finding a replacement." (*Gregori v. Bank of* America (1989) 207 Cal.App.3d 291, 300.)

Accordingly, for all the reasons stated above, the court denies Ms. Smith's motion to disqualify Ms. Ayala and her firm from representing Mr. Smith.

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: lmg on 6-9-26.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Khaosaat v. American Honda Motor Co., Inc.***
Case No. 23CECG05081

Hearing Date: June 11, 2026 (Dept. 403)

Motion: Defendant's Motion for Summary Adjudication

Tentative Ruling:

To grant defendant American Honda Motor Co., Inc.'s motion for summary adjudication of the fifth cause of action for fraudulent inducement - concealment.

Explanation:

"The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact." (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40, citations omitted.)

"A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment)." (*Ibid*, citations omitted.)

"Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as 'between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances.' 'Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.'" (*Id*. at pp. 40–41, citations omitted; see also *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336–337.)

Here, the undisputed facts[1] show that defendant American Honda Motor Co, Inc. did not have any direct relationship with plaintiff at the time of the sale of the subject

[1] Plaintiff has not disputed most of defendant's undisputed material facts, and indeed, she concedes that defendant's facts are true. She has attempted argue that the facts are irrelevant or do not support the conclusions that defendant has asserted, but her contentions are nothing

van. Honda did not sell the van to plaintiff or negotiate the sale. Nor did it make any representations to plaintiff with regard to the van. (Defendant's Undisputed Fact Nos. 3-5.) Plaintiff purchased the van from Clawson Honda of Fresno. (UMF No. 7.) Plaintiff had no direct communications with American Honda Motor before or during the sale. (Vault decl., ¶ 23.)

Thus, there is no evidence that Honda and plaintiff had any direct relationship at the time that plaintiff purchased the van. Since there was no direct buyer and seller relationship between plaintiff and Honda, Honda had no duty to disclose any alleged defects in the van's collision avoidance system, and it cannot be liable for failure to disclose any such defects.

To the extent that plaintiff has argued that American Honda should be held liable based on any representations or concealment committed by the dealership because the dealership was acting as the agent of Honda, "[g]enerally, retailers are not considered the agents of the manufacturers whose products they sell." (*Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 1343, quoting *Murphy v. DirecTV, Inc*. (9th Cir. 2013) 724 F.3d 1218, 1232.) Plaintiff has not presented any evidence that would tend to raise a triable issue of material fact with regard to whether the dealership was acting as American Honda's agent at the time she purchased the van. Therefore, plaintiff has failed to show that American Honda had a duty to disclose the defects in the van.

In her opposition, plaintiff has argued that the Court of Appeal in *Dhital v. Nissan North America, Inc*. (2022) 84 Cal.App.5th 828 held that an auto manufacturer can be held liable for failing to disclose defects in its vehicles. However, *Dhital* was decided on demurrer, not summary adjudication, and the court simply found that, assuming that all of the complaint's allegations were true, plaintiff had alleged sufficient facts to state a claim for fraudulent concealment against the manufacturer.

"In its short argument on this point in its appellate brief, Nissan argues plaintiffs did not adequately plead the existence of a buyer-seller relationship between the parties, because plaintiffs bought the car from a Nissan dealership (not from Nissan itself). At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs' allegations are sufficient. Plaintiffs alleged that they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Dhital v. Nissan North America, Inc*., *supra*, at p. 844.)

Thus, the Court of Appeal in *Dhital* did not squarely address the issue of whether a manufacturer can be held liable for fraudulently concealing defects in its vehicles from a purchaser where there was no buyer-seller relationship between the manufacturer and the purchaser. The Court of Appeal simply held that, on demurrer, where the court must assume all properly pled facts in the complaint are true, and where the plaintiff alleged that the manufacturer issued an express warranty and the dealership was acting as the manufacturer's agent, the plaintiff had alleged enough facts to state a claim for fraudulent inducement. (*Ibid*.)

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more than argument rather than evidence of a genuine dispute of fact. Therefore, the court finds that defendant's facts are undisputed.

In the present case, however, Honda has brought a motion for summary adjudication, so the court does not have to assume that the plaintiff's allegations are true. Instead, the court must determine based on the admissible evidence presented by the parties whether there are any triable issues of disputed fact that support the plaintiff's fraud claim. Here, the undisputed evidence shows that American Honda had no duty to disclose the alleged defects in the subject vehicle because it had no direct buyer-seller relationship with the plaintiff at the time of the sale. In addition, there is no evidence that the dealership was acting as American Honda's agent at the time of the sale, so the court finds that American Honda had no duty to disclose the defects based on an agency relationship between American Honda and the dealership.

Plaintiff also argues that the fact that American Honda issued various warranties with the van means that it had the type of direct relationship with her that supports a fraudulent concealment claim. However, she cites to no authorities to support her contention. She only cites to *Dhital, supra*, which does not state that a manufacturer's issuance of a warranty with a new car is sufficient by itself to support a fraudulent concealment or inducement claim. *Dhital* merely held on demurrer that a plaintiff's complaint that alleged that the manufacturer issued a warranty and that the dealership was acting as the agent of the manufacturer at the time of the sale was sufficient to state a claim for fraudulent inducement. (*Id*. at p. 844.) Here, there is no evidence that the dealership was acting as the manufacturer's agent at the time of the sale, and plaintiff has not cited any authorities stating that the fact that manufacturer issued a warranty is enough, by itself, to support a fraudulent inducement claim.

Since American Honda did not have a duty to disclose the defects to plaintiff, it cannot be held liable for fraudulent inducement or concealment and the court intends to grant summary adjudication of the fifth cause of action in favor of American Honda.[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: lmg on 6-9-26.
(Judge's initials) (Date)

[2] Since the court finds that American Honda had no duty to disclose the defects to plaintiff, the court does not have to address defendant's alternative argument that plaintiff cannot show that she was damaged by the alleged fraud.

(29)

Tentative Ruling

Re: ***McIntosh v. Knight***
Superior Court Case No. 21CECG01109

Hearing Date: June 11, 2026 (Dept. 403)

Motion: Motion to withdraw

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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: lmg on 6-10-26 .
(Judge's initials) (Date)