Tentative Rulings for September 3, 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.

25CECG03207	***Duran v. Dunlop* is continued to Tuesday, September 15, 2026, at 3:30 p.m. in Department 403.**
23CECG01447	***Gutierrez v. Helena Agri-Enterprises, LLC* is continued to Thursday, October 15, 2026, at 3:30 p.m. in Department 403.**
24CECG05080	***Perez-Santillan v. American Honda Motor Co., Inc.* is continued to Thursday, October 15, 2026, at 3:30 p.m. in Department 403.**

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(34)

Tentative Ruling

Re: ***Calburton, Inc. v. Rojas, et al.***
Superior Court Case No. 24CECG05608

Hearing Date: September 3, 2026 (Dept. 403)

Motion: Cross-Complainant's Motion to Disqualify Counsel

Tentative Ruling:

To deny Cross-Complainant Francisco Rojas' motion to disqualify Mr. Gilmore and his law firm from representing cross-defendants Calburton, Inc. and Aaron Johnson in this action.

Explanation:

Defendant and cross-complainant Francisco Rojas moves to disqualify Mr. Gilmore and his law firm from representing Calburton, Inc. and Aaron Johnson based on an alleged conflict of interest arising out of Gilmore's representation of the corporation and its majority shareholder simultaneously. Rojas argues the claims of the cross-complaint are derivative in nature and Johnson's interests are adverse to the corporation. Rojas further argues that such representation creates a conflict of interest that requires the consent of the board of Calburton, Inc., which has not been given.

Under Rule of Professional Conduct 1.7, "A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter." (Cal. Rules Prof. Conduct, Rule 1.7, subd. (a).)

Also, under Rule 1.13, subdivision (g), "A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders." (Cal. Rules Prof. Conduct, Rule 1.13, subd. (g).)

First of all, it does not appear that Rojas has standing to move for disqualification of Mr. Gilmore or his firm, as Rojas has never been represented by Gilmore or his firm. To the extent Rojas is a shareholder of defendant Calburton, Inc., he may have vicarious standing to assert the conflict on behalf of Calburton, Inc. in the context of a derivative action. (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 486.) However, Rojas has not brought the cross-complaint as a derivative action.

"Standing generally requires that the plaintiff be able to allege injury, that is, an invasion of a legally protected interest. A 'standing' requirement is implicit in disqualification motions. Generally, before the disqualification of an attorney is proper, the complaining party must have or must have had an attorney-client relationship with that attorney." (*Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356, internal citations omitted.)

"Disqualification is not proper unless an attorney-client relationship exists between [the objecting party] and [the attorney]. '"Before an attorney may be disqualified from representing a party in litigation because his representation of that party is adverse to the interest of a current or former client, it must first be established that the party seeking the attorney's disqualification was or is 'represented' by the attorney in a manner giving rise to an attorney-client relationship. [Citations.]"'].) 'The burden is on the party seeking disqualification to establish the attorney-client relationship. [Citation.]'" (*Shen v. Miller* (2012) 212 Cal.App.4th 48, 56–57, internal citations omitted.)

Here, Rojas has not presented any evidence to support that he was ever represented by Mr. Gilmore or his firm. According to Gilmore's declaration, he has never represented Mr. Rojas, and because Mr. Gilmore was hired after Mr. Rojas' departure from the corporation, Gilmore did not represent him indirectly through his representation of Calburton, Inc.

On reply, Rojas contends he has standing as a shareholder of the corporation whose equity and derivative-type claims are directly affected by the alleged conflict. Although this relationship may support finding standing where a shareholder is bringing derivative claims on behalf of the corporation, Rojas is not bringing such claims.

Rojas contends that Mr. Gilmore has a conflict of interest in representing both Calburton, Inc. and its majority shareholder, Mr. Johnson because he is alleging "derivative-type claims" in the cross-complaint. In addition to eight causes of action premised on violations of the Labor Code, Rojas alleges causes of action for breach of fiduciary duty, dissolution of the corporation and unjust enrichment. Rojas characterizes these causes of action as alleging harm to the corporation by Johnson's actions and seeking recovery for the corporation from the "wrongdoing insider." However, the allegations of the cross-complaint do not support Rojas' characterization. None of Rojas' causes of action are derivative in nature but rather seek damages for himself not for the benefit of the corporation. (*Coldren v. Hart, King & Coldren, Inc*. (2015) 239 Cal.App.4th 237, 246-247.)

Rojas has not demonstrated that Calburton, Inc. and Johnson's interests are adverse in the causes of action in the cross-complaint. The reply highlights the causes of action for breach of fiduciary duty, dissolution of the corporation, and unjust enrichment as alleging harm to Calburton, Inc. Rojas's breach of fiduciary duty cause of action alleges Johnson as the majority shareholder owed a duty of loyalty to Rojas and the failure to have board meetings and his actions in furtherance of his own personal interest resulted in detriment to Rojas. (Cross-Complaint, ¶¶ 110, 112, 118.) The Cross-Complaint includes conclusory allegations that Johnson misappropriated funds for his own benefit in support of both the cause of action for breach of fiduciary duty [owed to Rojas] and the cause of action for involuntary dissolution of the corporation. (*Id*., ¶¶ 118, 125.) The allegations are alleged in the context that this misappropriation harmed Rojas because the funds were not used to pay a distribution to minority shareholders. These causes of action are additionally supported by allegations that Johnson falsified tax documents. (*Id*., ¶¶ 118, 125.) Those false documents allegedly showed greater income to Rojas than he actually received which obligated him to pay more in taxes. (*Id*., ¶¶ 130-133.) The harm alleged is not to Calburton, Inc. but solely to Rojas. The cause of action for unjust enrichment seeks disgorgement of profits from Calburton, Inc. based on Rojas having loaned money to the corporation. (*Id*., ¶¶ 145-146.) The harm alleged is, again, solely to Rojas and the remedy he seeks will harm the corporation. These are not derivative causes of action. Rather, Rojas is seeking to recover from the corporation and Johnson money to which he alleges he is entitled as a shareholder. The corporation and Johnson's interests are not clearly adverse in this cross-complaint.

Therefore, it does not appear that Rojas has vicarious standing to raise an objection to Gilmore's representation of Johnson and Calburton, Inc. in the present case.

Also, to the extent that Rojas argues that Calburton's board or officers would have to consent to the representation, which they have not done, such consent is not necessary in the absence of a conflict of interest. Rule 1.13(g) states that, "A lawyer representing an organization may also represent any of its constituents, subject to the provisions of rules 1.7, 1.8.2, 1.8.6, and 1.8.7. If the organization's consent to the dual representation is required by any of these rules, the consent shall be given by an appropriate official, constituent, or body of the organization other than the individual who is to be represented, or by the shareholders." (Cal. Rules Prof. Conduct, Rule 1.13, subd. (g).)

Here, Rojas is contending that there is a conflict of interest in Gilmore representing both Calburton, Inc. and Johnson, and that none of the other officers or board members of Calburton, Inc. have consented to the representation, so the representation is unauthorized. Yet, as discussed above, it does not appear that there is an actual conflict with Gilmore representing both cross-defendants in the present action, since their interests are essentially the same. Without a conflict of interest, there is no need for the members or officers of Calburton, Inc. to consent to the representation.

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: SMC on September 2, 2026 .
(Judge's initials) (Date)