

Tentative Rulings for February 24, 2022
Department 502

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

20CECG01193 *Rocha v. County of Fresno* is continued to Wednesday, May 18, 2022 at 3:30 p.m. in Dept. 502

21CECG01673 *Anguiano-Perez v. Magdalena Garnica* is continued to Thursday,
21CECL04732 March 3, 2022 at 3:30 p.m. in Dept. 502

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Tentative Rulings for Department 502

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(36)

Tentative Ruling

Re: ***Sarwar v. The Infusion Center, et al.***
Superior Court Case No. 21CECG02740

Hearing Date: February 24, 2022 (Dept. 502)

Motion: Plaintiff and Cross-Defendant's Motion to Disqualify Attorney

Tentative Ruling:

Plaintiff's motion to disqualify counsel is granted in part. Georgeson Law Firm is disqualified from representing The Infusion Center ("TIC"), but may continue to represent defendants Robert L. Calmes and Vickie A. Walton. If TIC wishes to take an active role in the action, it must obtain independent counsel to do so.

Explanation:

Plaintiff moves to disqualify Georgeson Law Firm from representing Calmes, Walton and TIC on the grounds that there is a current conflict of interest, in that Georgeson Law Firm is representing the corporation TIC, as well as its individual shareholders, Calmes and Walton, whose interests are adverse to TIC.

Conflict of Interest:

While an attorney may simultaneously represent a corporation or business entity and its constituents, the attorney is still subject to the requirements prescribed by the California Rules of Professional Conduct. (Rules Prof. Conduct, rule 1.13, subd. (g).)

"A lawyer shall not, without informed written consent from each client... represent a client if the representation is directly adverse to another client in the same or a separate matter." (Rules Prof. Conduct, rule 1.7, subd. (a).) Additionally, representation is permitted only if: "(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; and (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal." (*Id.*, subd. (d)(1); (d)(2); (d)(3).) Moreover, lawyers associated in a firm are prohibited from knowingly representing a client when anyone of them practicing alone would be prohibited from doing so under Rule 1.7 or Rule 1.9. (Rules Prof. Conduct, rule 1.10, subd. (a).)

"For example, in a derivative suit, the organization named as a defendant is actually a plaintiff and case law forbids dual representative in a derivative suit alleging fraud by the principals, because the principals and the organizations have adverse, conflicting interests." (*Gong v. RFG Oil, Inc.* (2008) 166 Cal.App. 209, 215 [internal citations omitted].) Moreover, even if no derivative suit was filed, joint representation may be prohibited where the shareholder's claim is derivative in nature—e.g., harm to the

corporation is alleged. (*Ibid.*) "A potential conflict, however, does not warrant automatic disqualification of joint counsel." (*Ibid* [internal citations omitted].) "The critical questions are the likelihood that a difference in interests exists or will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of each client." (Rules Prof. Conduct, rule 1.7, Comment [4].)

Here, plaintiff argues that Calmes and Walton's interests are directly adverse to TIC's, whereas defendants Calmes, Walton, and TIC (collectively, "Defendants") assert that Calmes and Walton's individual interests are aligned with those of TIC. Plaintiff, Calmes and Walton are each 1/3rd shareholders of TIC. Plaintiff's operative complaint seeks the judicial dissolution of TIC, distribution of TIC's assets and immediate access to TIC's books and records. Plaintiff also seeks damages from defendants for alleged breaches of fiduciary duties and misappropriation of funds. Defendants, on the other hand, allege that plaintiff resigned as a director and officer of TIC, and among other things, attempted to poach employees and patients from TIC, spoke negatively of TIC to patients, etc. While the allegations of the parties are directly contradictory to one another, there are sufficient allegations to conclude an actual conflict exists. Moreover, it is clear that the interests of TIC are directly adverse to both Calmes and Walton on one hand, and plaintiff on the other.

Automatic Disqualification:

"When confronted with a motion to disqualify an attorney based on representation of clients with conflicting interests, there are two standards. If any attorney represents a current client against a former client, the attorney will be subject to disqualification if there is a substantial relationship between the two representations... If an attorney simultaneously represents two clients with adverse interests, automatic disqualification is the rule in all but a few instances." (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 487 [internal citations omitted].) Despite this, defendants argue that "prior to an adjudication that the corporation is entitled to relief against its officers, or directors, the same attorney may represent both." (*Jacuzzi v. Jacuzzi Brothers, Inc.* (1966) 243 Cal.App.2d 1, 35-36.)

Once a published Supreme Court or appellate court decision becomes final, it is binding on lower courts under the doctrine of "stare decisis". (*Sierra Club v. San Joaquin Local Agency Formation* (1999) 21 Cal.4th 489, 503-505; see also *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455 [a court of appeal decision must be followed by all superior courts, regardless of which appellate district rendered the opinion.].) When there are conflicting court of appeal decisions on point, the trial court can choose to follow either of them. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456.)

Since "*Jacuzzi* has been [repeatedly] criticized as illogical and against the weight of authority[.]" the court declines to follow the lead of *Jacuzzi*, "because it purports to permit an attorney with an actual conflict to jointly represent a corporation and its insiders even absent a conflict waiver. Such a result is directly contrary to [California Rules of Professional Conduct, rule 1.7, formerly] rule 3-310 and [California Rules of Professional Conduct, rule 1.13, formerly] rule 3-600." (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 490 [internal citations omitted, brackets added]; see also *Forrest v.*

Baeza (1997) 58 Cal.App.4th 65, 75.) Here, Russell C. Georgeson is concurrently representing Calmes and Walton, as individuals, and TIC. As explained above, the interests of Calmes and Walton are directly adverse to those of TIC; thus, Mr. Georgeson, and by vicarious disqualification, Georgeson Law Firm, is subject to automatic disqualification.

Consent:

Moreover, where the attorney is representing both corporation and its constituent(s), the corporation's consent must be provided by an appropriate official or constituent other than the individual(s) to be represented by corporate counsel. (Rules Prof. Conduct, rule 1.13, subd. (g).) Here, because Calmes and Walton are both represented by Georgeson Law Firm, plaintiff is the only appropriate party who could have given consent to allow Georgeson Law Firm to represent TIC, which she has not done. Consequently, Georgeson Law Firm is subject to disqualification.

Disqualification as to Calmes and Walton:

Relying primarily on *Truck Ins. Exchange v. Fireman's Fund Ins. Co.* (1992) 6 Cal.App.4th 1050 ("*Truck Ins. Exchange*"), *Cal West Nurseries, Inc. v. Superior Court* (2005) 129 Cal.App.4th 1170 ("*Cal West Nurseries, Inc.*") and *Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477 ("*Blue Water, LLC*"), plaintiff argues that the actual conflict between the interests of all parties requires that Georgeson Law Firm take no further part in the litigation, namely that Georgeson Law Firm should be disqualified as both TIC's counsel and Calmes and Walton's counsel.

"In *Truck Ins. Exchange*, Crosby, Heafey, Roach & May (Crosby), the law firm contacted to represent Truck Insurance Exchange (Truck) in litigation against Fireman's Fund Insurance Company (Fireman's Fund) and others discovered it had been defending an entity related to Fireman's Fund in two wrongful termination suits. Crosby asked Fireman's Fund if it objected to the law firm representing Truck in the insurance coverage case and, in the alternative, offered to withdraw from the wrongful termination cases. Fireman's Fund objected to the concurrent representation and stated it wished to have the law firm continue its role in the wrongful termination cases. Crosby, however, accepted representation of Truck and moved to withdraw from the wrongful termination cases. Fireman's Fund filed a motion to disqualify Crosby from representing Truck in the insurance case, viewing the issue as a breach of the duty of loyalty in concurrent representation that required automatic disqualification. Truck maintained that because Crosby had withdrawn from the wrongful termination cases, Fireman's Fund was only the law firm's former client and disqualification was not required because Crosby possessed no confidential information that could be misused to Fireman's prejudice. *Truck Ins. Exchange* rejected Truck's analysis, concluding that 'a law firm that knowingly undertakes adverse concurrent representation may not avoid disqualification by withdrawing from the representation of the less favored client before hearing.'" (*Forrest v. Baeza* (1997) 58 Cal.App.4th 65, 79 citing *Truck Ins. Exchange* at 1057.)

In *Cal West Nurseries, Inc.*, a real party in interest, A.J. West Ranch, LLC ("Ranch") filed a cross-complaint against Cal West Nurseries, Inc. ("Cal West"). Ranch later designated the firm of Lewis Brisbois Bisgaard & Smith, LLP ("Lewis") as their co-counsel on

the cross-complaint. Concurrently, Lewis also represented Cal West in another, unrelated action. When Cal West objected to Lewis' representation of Ranch, Lewis filed a document entitled "Disassociation of Counsel" stating that it ceased representing Ranch as to its cross-complaint in the relevant action, but would continue to represent Ranch as to all other parties in the matter. "Factually this case differs from *Truck Ins. Exchange*. Here Lewis partially substituted out as counsel for Ranch in the present action rather than substituting out as counsel for Cal West in the other action. Although the law firm no longer represented Ranch insofar as the litigation involved causes of action between Ranch and Cal West, it remained in the action to represent Ranch against other parties." (*Cal West Nurseries Inc.*, *supra*, 129 Cal.App.4th 1170, 1176.) Lewis argued that by limiting its representation of Ranch, it cured any conflict between Ranch and Cal West. However, *Cal West Nurseries Inc.* rejected Lewis' argument, finding that "[a] client who learns that his or her lawyer is also representing a litigation adversary, even with respect to a matter wholly unrelated to the one for which counsel was retained, cannot long be expected to sustain the level of confidence and trust in counsel that is one of the foundations of the professional relationship.'" (*Ibid.*, citing *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 285.)

While these cases clearly stand for the proposition that dual representation of clients with adverse interests is impermissible (in the absence of informed consent) and requires automatic disqualification, "they do not, however, hold that the attorney is required to cease representation of *either* client. While that may have been the practical effect of *Truck Ins. Exchange*, as Crosby had withdrawn from representation of the first client before being disqualified from representing the second, [and *Cal West Nurseries Inc.*, as Lewis had withdrawn from representation of the second client only insofar as the litigation involved causes of action between the first and second client], this effect is a function of the particular facts of the case." (*Forrest v. Baeza* (1997) 58 Cal.App.4th 65, 80.) Thus, these cases do not suggest that Georgeson Law Firm, in representing both TIC and its officers, is precluded from continuing to represent those officers, rather, they are reinforcing the "'hot potato rule,' that is the bar on curing dual representation conflicts by the expedient of severing the relationship with the pre-existing client[.]" which is not the case here. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 288.)

Of the cases relied upon by plaintiff, *Blue Water, LLC* is the only authority that considered the issue of dual representation in the context of a shareholder's derivative action. Plaintiff argues that this case "stands for the proposition that [Georgeson Law Firm] cannot represent both TIC and Calmes and Walton[, and that] *Blue Water, LLC* holds that due the fact that [Georgeson Law Firm] has undertaken representation of TIC, Calmes and Walton, [Georgeson Law Firm] should be completely disqualified from representing all of the Defendants." (Reply, 2:27-28, 3:1-2.) However, *Blue Water, LLC* clearly concluded that the attorney representing both the limited liability companies and its insiders was disqualified from representing only the limited liability companies, but could continue to represent the insider and shareholder. (*Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 492.) Consequently, plaintiff has provided no authority to support its proposition that Georgeson Law Firm must be disqualified from representing Calmes and Walton.

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: RTM **on** 2/23/2022.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Summers v. Brown, et al.***
Superior Court Case No. 21CECG00453

Hearing Date: February 24, 2022 (Dept. 502)

Motion: Defendants Sukhvinder Brown and Kamaldeep Kaur's Motions to Compel Plaintiff's Responses to (1) Form Interrogatories; (2) Special Interrogatories; (3) Request for Production of Documents; and (4) Requests for Monetary Sanctions

Tentative Ruling:

To grant and to award monetary sanctions in the total amount of \$680 against plaintiff Rebekah Dayton Rae Summers, payable within 20 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Plaintiff shall serve verified responses without objections, to defendants Sukhvinder Brown and Kamaldeep Kaur's Form Interrogatories, Set One; Special Interrogatories, Set One; and Request for Production of Documents, Set One, no later than 15 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Interrogatories and Document Production:

Plaintiff had ample time to respond to the discovery propounded by defendants, and has not done so. Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and "work product" protection. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) Even though defendants were not required to do so, they gave plaintiff additional time to respond, but still plaintiff did not respond.

Monetary Sanctions:

Sanctions are mandatory unless the court finds that the party acted "with substantial justification" or other circumstances that would render sanctions "unjust." (Code Civ. Proc., §§ 2030.290, subd. (c) [Interrogatories], 2031.300, subd. (c) [Document demands].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The sanction amount awarded disallows the costs for Courtcall, as this proved unnecessary and allows an additional \$120 in motion fees. Therefore, the total amount of sanctions awarded against plaintiff is \$680 (\$500 in fees and \$180 in motion costs.)

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: RTM on 2/22/2022.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Great American Investments, Inc. v. Elalami et al.***
Superior Court Case No. 21CECG03674

Hearing Date: February 24, 2022 (Dept. 502)

Motion: by plaintiff on application for a preliminary injunction
after hearing on order to show cause

Tentative Ruling:

To grant. All parties shall be ordered to take no action or cause to be taken any action to further the purchase or sale of the premises located at 3854 North Blackstone Avenue, Fresno, California, pending resolution of the disputes pending in this and related actions. To order plaintiff to post an undertaking of \$100,000.

Explanation:

History

On December 13, 2021, plaintiff filed the instant action for, among other claims, breach of contract and fraud. Plaintiff alleges that it was given a right of first refusal on a commercial lease agreement which was not honored before a pending sale between defendants Zeyad and Mamdouh Elalami and Shashi Sharma. Further plaintiff alleges that a purported addendum to the commercial lease agreement was fraudulently made. On February 2, 2022, plaintiff filed an application for an order to show cause regarding why a preliminary injunction should not issue, and temporary restraining order pending hearing on the order to show cause. On February 3, 2022, plaintiff's application was heard ex parte and granted, and the present hearing on order to show cause regarding why a preliminary injunction should not issue was set.

Pertinent Facts

Plaintiff submits that it entered into a 30 year commercial lease agreement with defendants Zeyad and Mamdouh Elalami (collectively "Elalami"), with an addendum wherein it was given the right of first refusal to purchase the leased premises at 3854 North Blackstone Avenue, Fresno, California. (Declaration of A.J. Rassamni, ¶¶ 2-3.)¹ The right of first refusal addendum was as follows:

Tenant has the right of first refusal. If landlord has an offer to sell the property, landlord must give tenant a written notice of intent to sell and offer the property to tenant at fair market value. Tenant is entitled to 180 days to complete due diligence, get an appraisal, and secure funding. Due diligence period may be extended upon tenant request. (*Id.*, ¶ 4 and Ex. B.)

¹ Rassamni declared that he is the sole shareholder and Chief Executive Officer for plaintiff.

In or around February 2021, plaintiff became aware of an interested buyer of the leased premises. (Rassamni Decl., ¶ 7.) No written notice of intent to sell was served on plaintiff. (*Ibid.*) Due to a fire on the premises, the interest was suspended, but reaffirmed to be active in or around July 2021. (*Id.*, ¶¶ 8-10.) Following a meeting with the interested buyer, defendant Sharma, plaintiff advised Sharma of its right of first refusal and intent to exercise the same. (*Id.*, ¶ 10.) Plaintiff thereon advised Elalami of the same. (*Id.*, ¶ 11.)

On November 5, 2021, plaintiff was given a copy of a purported addendum to the commercial lease agreement. (Rassamni Decl., ¶ 14 and Ex. F.) The purported addendum, made between plaintiff and Elalami voided the commercial lease agreement, and stated plaintiff's intent to cooperate with vacating the leased premises upon sale of the property. (*Ibid.*) The purported addendum is dated March 1, 2019. (*Ibid.*) Rassamni, as the sole shareholder and officer of plaintiff, declared that he never executed, or prior to November 5, 2021, seen the purported addendum. (*Ibid.*)

Plaintiff maintains that all times relevant, plaintiff has been ready, willing, and able to purchase the leased premises. (Rassamni Decl., ¶ 18.)

Preliminary Injunction

A preliminary injunction may be granted any time before judgment upon affidavits that show sufficient grounds exist, demonstrating, among other reasons, that great or irreparable injury would occur. (Code Civ. Proc. § 527, subd. (a); *id.* § 526, subd. (a)(2).) A preliminary injunction is warranted on a showing that: (1) the interim harm that the applicant will sustain if the injunction is denied as compared to the harm to the defendant if the injunction issues; and (2) the likelihood of success on the merits at trial. (*Choice-in-Education League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415, 422.)

The applicant must demonstrate a real threat of immediate and irreparable injury due to the inadequacy of legal remedies. (*Triple A Machine Shop, Inc. v. State of Cal.* (1989) 213 Cal.App.3d 131, 138.) Where a breach of agreement is alleged regarding the transfer of real property, the law presumes that such breach cannot be adequately relieved by pecuniary compensation. (Civ. Code § 3387.) This presumption may be rebutted where the real property is not a single-family dwelling being sought for occupation. (*Ibid.*)

The court initially notes that only Sharma filed a response to the order to show cause, which sought merely to ensure that the proposed injunction enjoin all parties, rather than merely defendants, from taking or causing to be taken any action to further the purchase or sale of the leased premises.

Based on the Declaration of A.J. Rassamni and the lack of opposition to the facts presented by Rassamni, the court finds that the interim harm to plaintiff if the injunction were denied will be more than to defendants if the injunction issues. Plaintiff sufficiently states a basis for its claim for breach of contract, and potential fraud regarding the possible purchase of real property under a right of first refusal which is presumed inadequately relieved by pecuniary compensation.

Further, based on Rassamni's declaration, if proven true at trial, such would constitute a likelihood of success on the merits as to plaintiff's claims for breach of contract and fraud regarding an interest in real property. Plaintiff submits the declaration of A.J. Rassamni, who stated being the sole shareholder and officer of plaintiff. Plaintiff produced the document purported to have been executed by plaintiff to terminate the commercial lease agreement, which plaintiff's sole shareholder and officer declared having never executed.

Based on the above, the court finds that plaintiff makes a sufficient showing, and intends to sign the proposed order issuing a preliminary injunction. However, the court intends to amend the proposed order to enjoin all parties from taking or causing to be taken action to further the purchase or sale of the premises located at 3854 North Blackstone Avenue, Fresno, California.

Bond

In his response to the order to show cause, Sharma requested that a bond be set at \$200,000.

Where a preliminary injunction is granted, an undertaking or bond is required. (Code Civ. Proc. § 529, subd. (a).) The bond is meant to cover any injury to a party enjoined if it is determined that the applicant was not entitled to the injunction. (*Ibid.*) In fixing the amount, the court considers both the potential harmful effect, as well as the costs of defense. (*Abba Rubber Co. v. Seaquist* (1991) 235 Cal.App.3d 1, 15.) The likelihood of plaintiff's prevailing on the merits is irrelevant as a factor to fixing the amount. (*Id.*, at p. 16.)

Plaintiff made no argument as to its estimate on a sufficient bond. Though defendants seek a bond value of \$200,000, no evidence to support such a figure was given. The court intends to set bond at \$100,000.

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: RTM **on** 2/23/2022.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***In re: Milah Lopez***
Superior Court Case No. 21 CECG03794

Hearing Date: February 24, 2022 (Dept. 502)

Motion: Expedited Petition to Compromise Minor's Claim

Tentative Ruling:

To continue to Thursday, March 17, 2022, at 3:30 p.m. in Department 502, in order for petitioner to file the required declaration regarding the estate of the minor, as explained below. In the event oral argument is requested, the minor is excused from appearing.

Explanation:

Whereas the initial petition requested the minor's net award be deposited into a blocked account, the amended petition requests that the money be delivered to her parent pursuant to Probate Code sections 3401-3401. However, the court can only make such an order where it is assured that the minor's estate, including the net award, does not exceed \$5,000.00 (see petition form's language at Item 19b(4), last sentence). Therefore, the parent (petitioner) is required to file a verified declaration establishing this.

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: RTM on 2/23/2022.
(Judge's initials) (Date)