SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 09
JUDICIAL OFFICER: JOHN P DEVINE
HEARING DATE: 04/14/2025

ALL APPEARANCES WILL BE BY ZOOM

For matters where an appearance is required, the parties should appear by Zoom unless told to appear by another method. For all other matters, if argument is requested appearances will be by Zoom.

Please email Dept09@contracosta.courts.ca.gov and opposing counsel by 4:00 p.m. if oral argument is requested and include specification to be argued.

Zoom hearing information

https://contracosta-courts-ca.zoomgov.com/j/1602392251?pwd=WmE4bG5iK0J3WWtTOHpteVBjRlBMQT09

Law & Motion

1. 9:00 AM CASE NUMBER: C22-01036
CASE NAME: D. HADERER VS. M. HADERER
***HEARING ON MOTION IN RE: TO CONSOLIDATE**
FILED BY: HADERER, DAVID PORTER

Before the Court is Plaintiff's Motion to Consolidate Actions Pursuant to C.C.P. § 1048 (a).

The Motion is **denied** as moot.

Analysis

Plaintiff filed the instant motion on January 23, 2025, seeking to have this current matter consolidated with Case No. C24-01987, styled as *Michael Haderer and Morgan Ulery v. Dave Porter Haderer*. The 1987 case is pending in Department 18. That case involved a complaint for malicious prosecution and violation of the Concord Municipal Code.

On November 8, 2024, Defendant in that matter (who is Plaintiff in this matter) filed a special motion strike the complaint pursuant to California Code of Civil Procedure section 425.16 (i.e. an anti-slapp motion). Department 18 issued a tentative ruling on that motion on March 27, 2025, granting the motion in full. Oral argument was held on March 28, and after hearing from the parties, the Court adopted the tentative ruling, with a minor correction to a typographical error.

The prevailing party, Defendant David Porter Haderer was ordered to prepare the order. While the final order has not been entered at this time – the consequence of the ruling still stands, the complaint in that matter is being stricken. As such, there is no case to consolidate with the instant matter.

Conclusion

Based on the above, Plaintiff's motion to consolidate is **denied** as moot.

2. 9:00 AM CASE NUMBER: C22-01746
CASE NAME: ALBERT SEENO, JR. VS. ALBERT SEENO, III
***HEARING ON MOTION IN RE: TO STRIKE AND TO SEAL FILED BY DEFENDANT.**
FILED BY:
****TENTATIVE RULING:****

The Court previously continued this hearing for failure of the moving party to comply with the meet and confer requirements of the Code of Civil Procedure. The Court is now in receipt of the Supplemental Declaration of Charmaine G. Yu in support of Defendants and Cross-Complainants' Motion to Strike and Seal. However, the Court is not in receipt of Plaintiffs and Counter-Defendants' lodged Declaration of Pat Lundvall in Response.

The Court Notes that the parties frequent sealing of records puts a not insignificant strain on the Court's resources. Delay in resolution of motions is inevitable where there is delay in lodging sealed documents. Even when documents are promptly lodged, they must still be processed by Court staff before making it to the Department. The Court encourages the parties to consider the administrative burden of sealing documents when drafting their briefs and selecting their exhibits.

The hearing on the motion is continued to April 21, 2025. Plaintiffs are ordered to lodge an unredacted version of the Declaration of Pat Lundvall filed April 8, 2025 no later than April 15, 2025.

3. 9:00 AM CASE NUMBER: C23-00019
CASE NAME: BRIAN SOUZA VS. MANDAKINI PATEL, M.D.
HEARING ON SUMMARY MOTION
FILED BY: WEI, M.D., DAVID
****TENTATIVE RULING:****

Off-calendar.

4. 9:00 AM CASE NUMBER: C23-00738
CASE NAME: SIDHANT DHIR VS. SAEED KHAN
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL RE: S. ASHAR AGMED**
FILED BY: HOUSTON FOODIE, LLC
****TENTATIVE RULING:****

Plaintiff's counsel's motion to be relieved as counsel is granted.

5. 9:00 AM CASE NUMBER: C23-02000
CASE NAME: JAQUELINE BECCARI VS. ALLSTATE INSURANCE COMPANY
***HEARING ON MOTION FOR DISCOVERY TO QUASH AND /OR FOR A PROTECTIVE ORDER REGARDING SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS FROM LYFT, INC. AND FOR $1290 IN SANCTIONS AGAINST PLAINTIFF AND COUNSEL. FILED BY ALLSTATE**
FILED BY:
****TENTATIVE RULING:****

The court orders the production of the following from Lyft, Inc.:

1.The raw, unedited and complete "app information" from 10 which the document at Bates Stamp 0229 of Defendant's discovery is derived; 2. The raw, unedited and complete data underlying the document at Bates Stamp 0231-0232; 3. The identity and contact information for the rider "LeDondra"; 4. The data showing the time of LeDondra's ride being cancelled, the GPS coordinates for Plaintiff at that time, and the identity of the person who cancelled the ride; 5. The raw, unedited and complete "route breakdown supplemental" related to the accident involving Jaquline Moreno Beccari for a date of loss of 11/07/2021; 6. The raw, unedited and complete set of GPS data related to the accident involving Jaquline Moreno Beccari for a date of loss of 11/07/2021; 7. The raw, unedited and complete data from "internal tools" showing when and where Plaintiff's vehicle stopped from the time she dropped off her last ride until the time of the 911 call; 8. The raw, unedited and complete data underlying the"Driver Log-In" document at Bates Stamp 0239 (i.e., not the "shareable version"); and 9. Unredacted non-privileged documents, communications and data related to the accident involving Leslie Elsly for a date of loss of 11/07/2021, such as on Bates Stamp 0035.

As to all other matters pertaining to the pending Motion, including those for sanction, they are dismissed.

6. 9:00 AM CASE NUMBER: C23-02249
CASE NAME: JANE DOE VS. SETH WIENER, ESQ.
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL RE: JANCE M. WEBERMAN, ESQ.**
FILED BY: DOE, JANE
****TENTATIVE RULING:****

Off-calendar at request of plaintiff's counsel.

7. 9:00 AM CASE NUMBER: C23-03028
CASE NAME: SASHA NALEVANKO VS. FITZGERALD THOMAS J
***HEARING ON MOTION FOR DISCOVERY COMPEL MENTAL EXAMINATION**
FILED BY: PINOLE HOSPITALITY, LLC
****TENTATIVE RULING:****

Defendant's motion is granted. Plaintiff cites no legal authority in its opposition that would preclude

the examination.

Plaintiff is ordered to appear for the taking of her mental examination at a time and date mutually acceptable on or before May 30, 2025, under the terms and conditions set forth in the stipulation signed by Plaintiff's counsel on June 7, 2024, and attached as Exhibit B to Defendant's Motion.

8. 9:00 AM CASE NUMBER: C24-00919
CASE NAME: EBONY HODGE VS. DALINE LIM
***HEARING ON MOTION IN RE: TO SET ASIDE DISMISSAL**
FILED BY: HODGE, EBONY
****TENTATIVE RULING:****

The unopposed motion to set aside dismissal is granted for the reasons stated in the motion.

9. 9:00 AM CASE NUMBER: C24-01311
CASE NAME: JESSE MCCAFFREY VS. CITY OF RICHMOND
***HEARING ON MOTION IN RE: FOR LEAVE TO FILE UNTIMELY AMENDED PETITION FOR WRIT OF MANDATE AND COMPLAINT**
FILED BY: MCCAFFREY, JESSE
****TENTATIVE RULING:****

The unopposed motion to file an untimely amended petition for writ of mandate and complaint is granted for the reasons stated in the motion.

10. 9:00 AM CASE NUMBER: C24-01973
CASE NAME: DAVID WONG VS. JAFFE AND ASHER LLP
***HEARING ON MOTION FOR DISCOVERY TO COMPEL RESPONSES TO FORM INTERROGATORIES AND REQUESTS FOR ADMISSIONNS**
FILED BY: WONG, DAVID
****TENTATIVE RULING:****

Pursuant to Code of Civil Procedure section 1281.4 the court stays discovery in this matter in light of the court's recent order after hearing, filed on April 10, 2025. As a result, the court denies plaintiff's motion to compel.

Plaintiff make conduct discovery related to his false imprisonment cause of action still pending in this court.

11. 9:00 AM CASE NUMBER: C24-02956
CASE NAME: DARDAN REXHEPI VS. ROYIN STEVENSON
***HEARING ON MOTION IN RE: TO QUASH SERVICE OF SUMMONS**
FILED BY: STEVENSON, ROYIN
****TENTATIVE RULING:****

Defendant's unopposed motion to quash is granted for the reasons stated in the motion.

12. 9:00 AM CASE NUMBER: C24-03088
CASE NAME: SHEILA WOODRUFF VS. FCA US, LLC.
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: FCA US, LLC.
****TENTATIVE RULING:****

Defendants FCA US LLC and Future Chrysler Dodge Jeep Ram of Concord's demurrer to the sixth cause of action is **sustained with leave to amend.** Plaintiff may file and serve an amended complaint by April 28, 2025.

On June 10, 2021, Plaintiff purchased a 2021 Ram Promaster (where she purchased the vehicle is unclear). The vehicle was manufactured and/or distributed by FCA. (Comp. ¶10.) The vehicle has a defective engine. (Comp. ¶19.) Plaintiff sued for various claims under the Song-Beverly Consumer Warranty Act, negligent repairs (against Future), breach of implied warranty of merchantability and fraudulent inducement. Defendants have filed a demurrer challenging the cause of action for fraudulent inducement.

In cause of action six for fraudulent inducement, Plaintiff alleges that "FCA committed fraud by allowing the Subject Vehicle to be sold to Plaintiff without disclosing that the Subject Vehicle equipped with the 3.6L engine was defective, and which may result in loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine. It can suddenly affect the driver's ability to control the vehicle or cause a non-collision vehicle fire. Even more troubling, the Engine Defect can cause the vehicle to fail without warning while the Vehicle is moving at highway speeds." (Comp. ¶64.) Plaintiff alleges that FCA knew of the defect and had a duty to disclose it to Plaintiff. (Comp. ¶¶65-66.) Plaintiff alleges that FCA had information showing the engine was defective through pre and post-production testing, early consumer complaints made to FCA and its dealers, testing conducted by FCA in response to complaints, warranty claims, repairs and replacement parts data. (Comp. ¶22.) Plaintiff alleges that she interacted with sales representatives, considered FCA's advertisements and marketing materials concerning the vehicle prior to purchasing it. (Comp. ¶24.)

Here, FCA argues that Plaintiff has not alleged a duty to disclose and has not alleged that they were damaged by the alleged fraud. In reply, FCA also argues that the fraud claims was not alleged with sufficient particularity, but since this issue was not fairly raised in the moving papers it cannot first be raised on reply.

"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) the plaintiff sustained damage as a result of the concealment or suppression of the material fact. [Citations.] A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as the plaintiff's fiduciary or is in some other confidential relationship with the plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to the defendant, and the defendant knows those facts are not known or reasonably discoverable by the 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) the defendant actively conceals discovery of material fact from the plaintiff (i.e., active concealment). [Citations.] Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as 'between seller and buyer' …. ." [Citation.] (*Rattagan v. Uber Technologies, Inc.* (2004) 17 Cal.5th 1, 40; see also CACI no. 1901.) Fraud must be alleged with specificity. (*Id*. at 43.)

Dhital v. Nissan North America, Inc. (2022) 84 Cal.App.5th 828 addressed the sufficiency for concealment for pleading purposes. The *Dhital* court found that it was sufficient that plaintiffs alleged a transmission defect in numerous vehicles, including the plaintiff's, the defendant knew of the defect and the hazards they posed, defendant had exclusive knowledge of the defect and failed to disclose that information, defendant intended to deceive plaintiffs by concealing known defects, the plaintiffs would not have purchased the car if they had known of the defects, and they suffered damages on the sums paid to purchase the vehicle. (*Dhital v. Nissan North America, Inc., supra*, 84 Cal.App.5th at 833-835, 844.) As to the issue of the existence of a buyer-seller relationship between the parties that would give rise to a duty to disclose, the court found the following allegations 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. (*Id.* at 844.)

In *Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 312 the court held that there was no transaction and thus no duty to disclose between a patient and a medical device given to the patient by his doctor. In *Bader v. Johnson & Johnson* , 86 Cal.App.5th 1094, 1132 the court found that there was a sufficient transaction relationship between the plaintiff, who was exposed to a baby powder, and the product's manufacturer (J&J) because the plaintiff's parents kept J&J's baby powder in the house, plaintiff used it on herself and her siblings, and there was evidence that J&J was involved in retail sales of baby powder to consumers and profited therefrom.

Plaintiff has sufficiently alleged most of the elements for fraudulent concealment. As to the duty to disclose, the main issue is whether Plaintiff has alleged a sufficient transactional relationship with FCA such that a duty to disclose arose. The facts allege here are not a strong as those alleged in *Dhital*. Here, Plaintiff has alleged that FCA provided a warranty for the vehicle, but she did not allege that she purchased the vehicle from a FCA dealership or authorized agent. The Court is not convinced that a warranty, which exists for Plaintiff once she buys the vehicle, is sufficient by itself to show a transaction between Plaintiff and FCA sufficient to create a duty to disclose. Furthermore, unlike in *Bader*, Plaintiff has not alleged that FCA was involved in retail sales of its vehicles to consumers generally. The Court finds that Plaintiff has not alleged facts showing that FCA had a duty to disclose and therefore, the demurrer is sustained with leave to amend on this issue.

As to FCA's argument that Plaintiff was not damaged by the alleged fraudulent concealment, the Court finds that argument unpersuasive. Plaintiff alleged that she would not have purchased the vehicle or would have purchased it for a lower amount if she had known of the engine problems. That is sufficient at the pleading stages to show damages.

13. 9:00 AM CASE NUMBER: C24-03160
CASE NAME: DAVID SEENO VS. NORSAN FINANCIAL & LEASING, INC.
HEARING ON DEMURRER TO: COMPLAINT
FILED BY: NORSAN FINANCIAL & LEASING, INC.
TENTATIVE RULING:

Before the Court is Defendant Norsan Financial & Leasing ("Norsan") and Defendant Alsan Financial & Leasing ("Alsan") (collectively, "Defendants")'s Demurrer. The Demurrer relates to Plaintiff David T. Seeno ("DTS"), the David T. Seeno Revocable Trust Dated July 12, 2016 ("DTS Trust"), and Lionheart Homes, Inc. ("Lionheart") (collectively, "Plaintiffs") complaint for (1) Breach of Contract against Alsan, (2) Conversion against Norsan, (3) Breach of Contract against Norsan, (4) Promissory Estoppel against Norsan, (5) Common Count against Norsan, and (6) Negligent Misrepresentation against Norsan.

Defendant demurs to all Plaintiff's causes of action pursuant to Code of Civil Procedure ("CCP") § 430.10 on several grounds.

For the following reasons, the Demurrer is **sustained-in-part**, with leave to amend, and **overruled-in-part**.

Legal Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law." (*Holiday Matinee, Inc. v. Rambus, Inc*. (2004) 118 Cal.App.4th 1413, 1420.) A complaint "is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 ("*Doe*")), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099.) Legal conclusions are insufficient. (*Id*. at 1098–1099; *Doe* at 551, fn. 5.) The Court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Analysis

Second Through Sixth Causes of Action (Against Norsan)

Statute of Limitations

Defendants argue that Plaintiffs' causes of action against Norsan are all barred by the statute of limitations. Specifically, that because Plaintiffs allege Norsan's alleged acts occurred in 2018 and 2020 (and the complaint was not filed until November 2024), the causes of action against Norsan are barred by the three-year statute of limitations for conversion and breach of contract and the two-year

limitations period for promissory estoppel, common count, and negligent misrepresentation.

In opposition, Plaintiffs argue both that they are suing on Defendants' breach and misconduct "which began and continued long after the transactions" and that "[i]t is unnecessary to plead facts in a complaint preemptively to estop application of the statute where, as here, the defendants concealed facts supporting the causes of action." (Opp. at 7:20 and 7:23-24.)

On its face, the Complaint alleges two events with respect to Norsan: a March 21, 2018 transfer of $8 million that included an alleged $4,236,790 overpayment that was later characterized as a loan (Complaint at ¶¶ 16, 18), and a transfer of "Jointly Held Entities shareholder distributions in the amount of $3,320,875 from DTS to Norsan" thereby increasing the Norsan "Loan" by that amount. (Complaint at ¶ 20.) Both events occurred more than four years before Plaintiffs filed the instant Complaint.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.'" (*Fox v. Ethicon Endo-Surgery, Inc*. (2005) 35 Cal. 4th 797, 806 [quoting *Norgart v. Upjohn Co*. (1999) 21 Cal. 4th 383, 397].) An exception to this is the discovery rule. (*Id*. at p. 807 [the discovery rule "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discovery, the cause of action."].) "A close cousin of the discovery rule is the well accepted principle of fraudulent concealment." (*Bernson v. Browning-Ferris Indus*. (1994) 7 Cal. 4th 926, 931 [internal citation and alteration omitted].) This rule provides that a "defendant's fraud in concealing a cause of action against him tolls the applicable statute of limitations." (*Id*.) The doctrine of fraudulent concealment is generally "available in all cases," (see Regents of Univ. of California v. Superior Ct. (1999) 20 Cal. 4th 509, 533), including "actions based on negligence, malpractice, breach of written contract, and in various types of restitutionary actions brought under the common count to recover benefits tortuously acquired." (*Sears, Roebuck & Co. v. Blade* (1956) 139 Cal. App. 2d 580, 589; see also *Warner Constr. Corp. v. City of Los Angeles* (1970) 2 Cal. 3d 285, 293-94[fraudulent concealment may form the basis for an action in tort or in contract].)

Here, however, Plaintiffs' complaint is bereft of facts that would support the application of fraudulent concealment to toll the statute of limitations. Plaintiffs allegation that "[a]t the time of the transfer, neither DTS nor his agents fully understood the purpose of the transfer" is insufficient to support the application of the doctrine of fraudulent concealment to toll the statute of limitations.

To the extent that Plaintiffs argue that "they are suing on Defendants' breaches and misconduct, which began and continued long after the transactions" (Opp. at 7:19-20 [emphasis omitted]), that is not reflected by the allegations of the Complaint with respect to Norsan.

Because the Court concludes that Plaintiffs have not alleged facts sufficient to support fraudulent concealment with respect to their time-bared claims, or otherwise alleged breaches within the statute of limitations for their causes of action for conversion, breach of contract, promissory estoppel, common count, and negligent misrepresentation, it need not reach the separate grounds that Defendants raise with respect to each of these individual causes of action.

Defendants Demurrer to the second through sixth causes of action is **sustained**, with leave to amend.

Alsan Claim

Defendants demur to Plaintiffs' cause of action for breach of contract against Alsan on the grounds that Plaintiffs waived the right to seek payment on the Alsan Note. (Dem. at 18:17-19 [citing *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 569].) In opposition, Plaintiffs argue that "[t]he affirmative defense of waiver is a question of fact and not appropriate for resolution on demurrer."

(Opp. at 7:2-4 [citing *DRG/Beverly Hills Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd*. (1994) 30 Cal.App.4th 54, 60].)

Defendants' waiver argument is based on their contention that Plaintiffs' delay between the maturity date of the Alsan Note (December 26, 2021) and their first demand for payment (September 19, 2023) constitutes waiver of their right to enforce the right to payment.

Defendants' argument lacks merit. The Complaint does not allege facts that support Plaintiffs intended to relinquish their right to sue on the Alsan Note.

Defendants also demur to the Alsan claim on the grounds that Plaintiffs "request that the Court enforce the Alsan Note in isolation from the parties' other agreements is impermissible." (Dem. at 19:4-5.) However, none of the authority cited by Defendants supports sustaining a demurrer to a cause of action for breach of contract on the grounds that the parties have other agreements between them.

The Demurrer to first cause of action is **overruled**.

14. 9:00 AM CASE NUMBER: C24-03160
CASE NAME: DAVID SEENO VS. NORSAN FINANCIAL & LEASING, INC.
***HEARING ON MOTION IN RE: APPLICATION/MOTION TO APPEAR AS COUNSEL PRO HAC VICE**
FILED RE: PAT LUNDVALL
FILED BY: NORSAN FINANCIAL & LEASING, INC.
****TENTATIVE RULING:****

The motion to appear as counsel pro hac vice is granted.

15. 9:00 AM CASE NUMBER: MSC19-02076
CASE NAME: MAUREEN MBADIKE-OBIORA, MD VS. CENTRAL EAST BAY IPA, MEDICAL GROUP INC
HEARING IN RE: OSC RE: WHY PLAINTIFF HAS NOT PAID HER SHARE OF THE DISCOVERY REFEREE FEES
FILED BY:
****TENTATIVE RULING:****

The hearing is continued to May 19, 2025, at 8:30 a.m. in Department 9.

16. 9:00 AM CASE NUMBER: MSC21-00636
CASE NAME: THUAT TON-HARMON VS. FPI MANAGEMENT, INC.
***HEARING ON MOTION IN RE: FOR LEAVE TO FILE PLAINTIFF'S FIRST AMENDED COMPLAINT**

FILED BY: TON-HARMON, THUAT
TENTATIVE RULING:

Plaintiff Dwayne Harmon's Motion for Leave to File and Serve a First Amended Complaint is **granted**. Plaintiff has 14 days from the date of the hearing in which to file and serve an amended pleading.

Background

Plaintiffs Thuat Ton Harmon and Dwayne Harmon filed their initial complaint on April 2, 2021, asserting claims for general negligence, loss of consortium, and premises liability against FPI Management and KW Hilltop, LLC, dba Bella Vista at Hilltop. Thuat Ton-Harmon was a resident of the Bella Vista at Hilltop apartment complex located at 3400 Richmond Parkway, Richmond when she sustained injuries as the result of a trip and fall accident at the Property on April 9, 2019.

On April 1, 2022, plaintiffs filed a Doe amendment naming Signature Holdings, LLC, dba Coast Landscape Management and Brightview Holdings, Inc. Plaintiffs subsequently added C&R Landscape as a defendant on September 8, 2021. Plaintiff Mr. Harmon then filed a notice of death as to Thuat Ton-Harmon on April 15, 2024. Based on the allegation that the decedent's death resulted from injuries sustained in the April 9, 2019 accident, Mr. Harmon then filed this motion for leave to file a first amended complaint. Mr. Harmon seeks leave to amend to assert a wrongful death claim and to substitute himself as the decedent's successor-in-interest the survivorship claim.

Signature Holdings and C&R Landscape oppose the motion. For the reasons that follow, leave to amend is granted.

Legal Standards

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading[.]" (CCP § 473(a)(1).) "[T]riai courts are to liberally permit such amendments, at any stage of the proceeding[.]" (*Hirsa v. Superior Court* (1981) 118 Cal. App. 3d 486, 488-89.) "[I]t is an abuse of discretion to deny leave to amend where the opposing party was not misled or prejudiced by the amendment." (*Atkinson v. Elk Corp.* (2003) 109 Cal. App. 4th 739, 761.) " [I]t is irrelevant that new legal theories are introduced as long as the proposed amendments 'relate to the same general set of facts.'" (*Id*.) "[A] proposed amendment, by seeking recovery for the same accident and injuries as the original complaint, complies with that test." (*Id*.)

"Leave to amend may be denied if there is prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation." (*Kolani v. Gluska (*1998) 64 Cal. App. 4th 402, 412.)

"A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest… and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." (CCP § 377.30.) "On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest." (CCP § 377.31.) "The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent's successor in interest… shall execute and file an affidavit or a declaration

under penalty of perjury under the laws of this state" setting forth certain information to support the request. (CCP § 377.32.)

Discussion

Mr. Harmon's motion is accompanied by the declaration required by CCP 377.32 in which he states under penalty of perjury: "I am the surviving spouse of Decedent and a successor in interest as defined in Section 377.11 of the California Code of Civil Procedure and success to Decedent's interest in the action or proceeding," and the declaration includes the other statements required by the statute. As the decedent's surviving spouse, Plaintiff is entitled to bring a survival action under CCP section 377.30. Plaintiff submitted the required declaration pursuant to $ 377.32 and seeks to assert survival claims on behalf of the Decedent for the harms she suffered prior to her death. The declaration attaches a copy of the decedent's death certificate, indicating that she was married at the time of her death.

In opposing the motion, defendants appear to rely on hearsay statements in medical records that refer to the decedent as unmarried and defendants argue this undermines Mr. Harmon's standing. These statements are not conclusive proof of marital status that rebut Mr. Harmon's declaration statements. In addition, though not provided with the motion, Mr. Harmon's reply brief includes a copy of a marriage certificating indicating that he and the decedent were married on October 26, 2019.

Purported factual disputes regarding the marriage do not provide a basis for denying leave to amend. Courts generally do not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend, since grounds for demurrer or motion to strike are premature; after leave to amend is granted, the opposing party will have opportunity to attack the validity of the pleading. (See *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal. App. 3d 1045, 1048.)

Defendants also have not shown that filing a first amended complaint will result in prejudice to them. No trial date has been set in the case. Defendants have been actively involved in the litigation since appearing in the case. Importantly, the facts supporting survival action damages and proposed wrongful death claim were already alleged in the complaint and presumably have been the subject of ongoing discovery. On the other hand, Mr. Harmon will be prejudiced if his motion is denied, because plaintiffs would be precluded from seeking survival action damages, and Mr. Harmon precluded from seeking wrongful death damages, based on the decedent's death. Therefore, the Court finds good cause grant the motion.

17. 9:00 AM CASE NUMBER: MSC21-02074
CASE NAME: BANERJEE VS. SEECUBIC INC
***HEARING ON MOTION IN RE: FOR ATTORNEYS' FEES AND COSTS OF SUIT**
FILED BY: BANERJEE, KAUSHIK
****TENTATIVE RULING:****

Appearance required.

18. 9:00 AM CASE NUMBER: MSC21-02074
CASE NAME: BANERJEE VS. SEECUBIC INC
***HEARING ON MOTION IN RE: ENTER DEFAULT JUDGMENT AGAINST DEFENDANTS SEECUBIC, INC., SHAD STASTNEY, AND KRYSZTOF KABACINSKI**
FILED BY: BANERJEE, KAUSHIK
****TENTATIVE RULING:****

Appearance required.

19. 9:00 AM CASE NUMBER: N23-1935
CASE NAME: PETITION OF: STATES RESOURCES CORP.
***HEARING ON MOTION IN RE: APPLICATION FOR SALE OF DWELLING AND ISSUANCE OF AN ORDER TO SHOW CAUSE WHY THE ORDER FOR SALE OF DWELLING SHOULD NOT BE MADE.**
FILED BY:
****TENTATIVE RULING:****

Appearance required.

20. 9:00 AM CASE NUMBER: N25-0150
CASE NAME: CLAIM OF:KYRYLO BOGACHOV
HEARING IN RE: PETITION FOR APPROVAL OF COMPROMISE OF CLAIM FILED BY MARGARYTA BOGACHOVA ON 1/17/25
FILED BY:
****TENTATIVE RULING:****

The petition to approve a minor's compromise is granted.

21. 10:00 AM CASE NUMBER: MSL21-04761
CASE NAME: DEREK HOLLAND VS. ROGER BOYVEY
COURT TRIAL HEARING
FILED BY:
****TENTATIVE RULING:****

Appearance required.

22. 10:00 AM CASE NUMBER: L22-03765
CASE NAME: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS. ANJELICA CASTANEDA
COURT TRIAL HEARING
FILED BY:
TENTATIVE RULING:

Appearance required.

Law & Motion
Add On

23. 9:00 AM CASE NUMBER: N25-0645
CASE NAME: BRITTANY AYALA VS. KRISTIN CONNELLY
HEARING IN RE: WRIT OF MANDATE FILED BY BRITTANY AYALA
FILED BY:
TENTATIVE RULING:

Before the Court is petitioner, Brittany Ayala's petition for a peremptory writ of mandate prohibiting Respondent Kristin Connelly, in her official capacity as Clerk Recorder of Voters of Contra Costa County ("respondent"), from conducting the June 17, 2025 election for Martinez Unified School District, Area 3 – Governing Board until and unless the respondent accepts and utilizes petitioner's chosen ballot designation of "Educator" for the election ballot and any other places where the designation appears (e.g. voter information guide). The Court has read and considered the moving papers, the opposition, and the reply, and renders the following tentative decision to **grant** the writ.

Facts

Petitioner Brittany Ayala is a candidate for the Martinez Unified School District, Area 3 – Governing Board Member at the June 17, 2025 election. (Petition, ¶2.) Petitioner requested a ballot designation as "Educator" based on her full-time employment with the University of California, Berkeley, as a "community college transfer specialist." (Petition, ¶¶3-4; Request for Judicial Notice, Ex. A [Ballot Designation Worksheet].)

On March 24, 2025, respondent rejected petitioner's requested ballot designation of "Educator." (Petition, ¶5.)

In response, on March 26, 2025, petitioner requested reconsideration by respondent and approval of the "Educator" designation. (Petition, ¶5; Request for Judicial Notice, Ex. B.) In response, Jacob Stull, of respondent's office, again rejected the designation, asserting that because

petitioner is not "a professor or teacher who has a teaching credential or Ph.D. enabling them to teach college students," she may not use "Educator" as her ballot designation. (Petition, ¶6.)

Petitioner commenced this proceeding on March 28, 2025, alleging a single cause of action for mandamus pursuant to Code of Civil Procedure §§ 1085 and 1086 as well as Elections Code §§ 13107 and 13314. Petitioner alleges the respondent's rejection of her preferred designation is improper because her role "squarely falls within the broad common understanding of what constitutes an 'educator.'" (Petition, ¶7.) Petitioner argues the rejection does not take into account the "plain meaning" of the term "educator," as required by 2 Cal Code. Regs., § 20716(c). (Petition, ¶¶13-15.)

Petitioner argues that the Legislature has provided for the ballot and ballot materials as limited public fora, within which her speech is protected under the First Amendment, and the respondent's rejection of her chosen designation is improper censorship. (Petition, ¶16.)

Evidentiary Matters

Both sides request judicial notice.

The request by petitioner seeks notice of the ballot designation worksheet (Ex. A), email communications between petitioner's counsel and respondent (Ex. B and C), the job posting for petitioner's position at UC Berkeley (Ex. D), and the approved ballot designation of the term "Educator" for Daniel Nathan Heiss for the November 5, 2024 election (Ex. E). Respondent objects to the Court taking notice of this latter exhibit, arguing it is not relevant. The Court disagrees that prior interpretations of the same term are irrelevant. The request is **granted.**

Respondents request notice of a brief authored by petitioner's counsel in another case, before a different department of this Court (Ex. A), a copy of petitioner's application packet for the election (Ex. B), a copy of petitioner's profile on UC Berkeley's website (Ex. C), copies of other online profiles of employees serving as transfer specialists at UC Berkeley (Ex. D-F), and various dictionary and online definitions of the terms "Educator" and "Educate." (Ex. G-M.) The request is **granted.**

Respondent also objects to certain evidence presented by petitioner. The objections are **overruled**.

Ballot Designations

Ballot designations are governed by Elections Code section 13107. Subdivision (a) of this section provides in relevant part: "With the exception of candidates for Justice of the State Supreme Court or court of appeal, immediately under the name of each candidate, and not separated from the name by any line, […] may appear at the option of the candidate […] [¶¶] (3) No more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents."

Subdivision (e)(1) requires elections officials to reject ballot designations that "would mislead the voter." This limitation seeks to prevent "creative misuse of ballot designations by candidates." (*Andrews v. Valdez* (1995) 40 Cal.App.4th 492, 494, citing *Luke v. Superior Court* (1988) 199 Cal.App.3d 1360, 1362 [discussing predecessor statute to section 13107].)

The California Supreme Court has noted that "[a] major purport of the Elections Code is to insure the accurate designation of the candidate upon the ballot in order that an informed electorate may intelligently elect one of the candidates." (*Andal v. Miller* (1994) 28 Cal.App.4th 358,

364, quoting *Salinger v. Jordan* (1964) 61 Cal.2d 824, 826.) "To further this purpose, the Secretary of State has issued guidelines for selecting ballot designations." (*Andal, supra*, at 364.) Whether the regulations apply to local school district elections is unclear. (See California Code of Regs. tit. 2, § 20710 (e) [stating the regulations apply to elections in which the Secretary of State certifies returns]; compare Elections Code § 13107(b)(1) ["neither the Secretary of State nor any other election official shall accept a designation [that] … would mislead the voter" to Cal. Code Regs., tit. 2, § 20714 (c) [referring to Secretary of State and not "any other election officer"].) Since both parties appear to rely on the regulations, the Court turns to the regulations as well.

California Code of Regulations, title 2, section 20714 (c) states, "[i]n order for a ballot designation submitted pursuant to Elections Code 13107, subdivision (a)(3), to be deemed acceptable by the Secretary of State, it must accurately state the candidate's principal professions, vocations or occupations […]. Each proposed principal profession, vocation or occupation submitted by the candidate must be factually accurate, descriptive of the candidate's principal profession, vocation or occupation, must be neither confusing nor misleading, and must be in full and complete compliance with [the relevant statutes and regulations.]"

In determining whether a particular designation "would mislead voters," the Secretary of State must determine whether there is a substantial likelihood that a reasonably prudent voter would be misled as to the candidate's principal profession, vocation or occupation by the designation. (Cal. Code Regs., tit. 2, § 20716 (c).) "The determination shall take into account the plain meaning of the words constituting the proposed ballot designation and the factual accuracy of the proposed ballot designation based upon supporting documents or other evidence submitted by the candidate in support of the proposed ballot designation, pursuant to]20711 and 20717 of this Chapter." (*Ibid*.)

Respondent concluded the term "Educator" does not accurately describe plaintiff's principal profession, vocation or occupation, and therefore misleads voters.

Standard of Review

Elections Code section 13314 states, in relevant part:

> (1) An elector may seek a writ of mandate alleging that an error or omission has occurred, or is about to occur, in the placing of a name on, or in the printing of, a ballot, county voter information guide, state voter information guide, or other official matter, or that any neglect of duty has occurred, or is about to occur.
>
> (2) A peremptory writ of mandate shall issue only upon proof of both of the following:
>
> > (A) That the error, omission, or neglect is in violation of this code or the Constitution.
> >
> > (B) That issuance of the writ will not substantially interfere with the conduct of the election.

Accordingly, the Court must determine whether it was error to conclude that the term "Educator" does not fit petitioner's "principal profession, vocation or occupation."

Analysis

Petitioner contends a writ is justified here because, by denying her the use of her chosen designation as an "Educator," the respondent is committing an "error or omission" as set forth in

Elections Code section 13314. Specifically, she contends her statutory rights and constitutional rights will be irreparably injured if the proposed ballot designation does not appear on the June 17, 2025 ballot. She does not explicitly discuss the authorities that describe the referenced rights, but federal authority expressly addresses the rights at issue. In *Rubin v. City of Santa Monica*, the Ninth Circuit balanced state interests in rules governing ballot designations with a candidate's rights to free speech, and found in favor of California's rules regarding ballot designations. (See *Rubin v. City of Santa Monica* (9th Cir. 2002) 308 F.3d 1008, 1013-1019.) The Ninth Circuit found the laws do not impose an impermissible burden on a candidate's speech compared with the state's interest in preserving the fairness and integrity of the voting process. The challenge in *Rubin* was a facial challenge and does not resolve the abuse of discretion question here, but the authority is nonetheless helpful in explaining the specific rights to which petitioner refers generally. (See Memorandum of Points and Authorities in Support of Petition, 10:15-21.)

Unlike the "peace activist" ballot designation at issue in *Rubin*, however, the designation in this case is factually accurate. Petitioner here works for the Center for Education Partnerships at UC Berkeley. UC Berkeley is indisputably an educational institution. Petitioner also designs and delivers educational webinars that clearly explain the University's transfer requirements, application processes, academic planning, and support services. She visits community college classrooms to deliver personalized, student-centered presentations to aid understanding of the UC Berkeley transfer process. She educates students on an individual basis and in group settings in her capacity as a "transfer specialist."

Notably, petitioner does not seek to be designated as a "teacher," so while some dictionaries may describe an educator using that example, the meaning is distinct. Further, while respondent argues that there exist better terms to describe petitioner's job ("Admissions Counselor," etc., see Opposition, 4:21-21), that possibility does not automatically deprive the petitioner of her chosen designation of "Educator" if it the chosen designation does not mislead voters.

Focusing exclusively on the "profession" category of designations, respondent appears to ignore the option candidates have for their designation to reflect an "occupation." (See Reply, 3:11-4:9.) A ballot designation may reflect the candidate's "professions, vocations, *or* occupations." (Elec. Code, § 13107 (a)(3), emphasis added.) These options are stated in the alternative, such that these are separate ways to identify oneself. "Profession," in this context, means "a field of employment requiring special education or skill and requiring knowledge of a particular discipline." (Cal. Code Regs., tit. 2, § 20714 (a)(1).) "Vocation" includes "a trade, a religious calling, or the work upon which a person, in most but not all cases, relies for his or her livelihood and spends a major portion of his or her time." (*Id*. at (a)(2).) "Occupation means the employment in which one regularly engages or follows as the means of making a livelihood." (*Id*. at (a)(3).) None of the terms defined specifically reference "Educator," the designation at issue here. While the examples provided for "profession" do include "education," the examples are all *fields,* not roles and the form of the word "educator" distinguishes it from examples of "professions." The other two categories ("Vocation" and "Occupation") both invoke roles, supporting petitioner's classification of the word as an "Occupation."

Petitioner also presents evidence that respondent allowed another candidate in a previous school board election to use the term "Educator" despite his title being "International VP of Leadership & Education" for the "Phi Kappa Sigma Fraternity." (See Petitioner's RJN, Ex. E.) That candidate supported the designation by stating, "I travel to various higher educational institutions

and events and facilitate educational programs." He did not state that he had a teaching credential or a Ph.D. and, according to the petition, his duties and responsibilities parallel those of petitioner. This inconsistency weighs against the reasonableness of respondent's determination here. (See *General Chemical Corp. v. United States* (D.C. Cir. 1987) 817 F.2d 844, 846, 854, 260 U.S. App. D.C. 121 [agency "cannot have it both ways" by citing evidence as supportive of one conclusion, but disregarding the same evidence when making another finding].)

Respondent points out that Education Code, § 44013 (a) defines "Educator" as "a certificated person holding a valid California teaching credential or a valid California services credential issued by the commission who is employed by a local education agency or by a special education local planning area and who is not employed as an independent contractor or consultant." While this statutory definition would not encompass petitioner, who does not assert that she has a teaching credential or advanced degree, the definition is not one with which a "reasonably prudent voter" (Cal. Code Regs., tit. 2, § 20716 (c)) would be familiar. Nor is it a definition respondent must consider. (See Cal. Code Regs., tit. 2, § 20716 [requiring Secretary of State to consider "plain meaning," not statutory definitions or job titles].)

Respondent also argues that petitioner's counsel made arguments in another case that would seem to conflict with counsel's position here. There is no requirement that counsel take consistent positions when advocating for different clients. More importantly, a close review of that brief (Respondent's RJN,. Ex. A) indicates that the argument related primarily to timing. The teaching credential for the candidate had expired decades prior to her seeking election.

The Court finds that respondent erred in rejecting petitioner's chosen designation as an "Educator."

Add On

9:00 AM CASE NUMBER: C24-03001

CASE NAME: DONNA PRESS, AN INDIVIDUAL VS. COSTCO WHOLESALE CORPORATION, A WASHINGTON CORPORATION

***HEARING ON MOTION IN RE: TO DISQUALIFY PLAINTIFF'S COUNSEL DOWNTOWN L.A.GROUP. FILED BY COSTCO WHOLESALE CORPORATION, A WASHINGTON CORPORATION.**

FILED BY:

****TENTATIVE RULING:****

Before the Court is Defendant Costco Wholesale Corporation's Motion to Disqualify Plaintiff's Counsel Downtown L.A. Law Group.

Defendant's motion is **granted** for the reasons set forth below.

Request for Judicial Notice

Defendant Requests Judicial Notice of numerous court orders and filings in other state and federal cases. As to the court orders, "trial court orders hold no precedential value. [cite] Accordingly, we will neither rely upon, nor take judicial notice of, these orders." (*City of Bakersfield v. West Park Home Owners Assn. & Friends* (2016) 4 Cal.App.5th 1199, 1210.) For the same reasons, the Court

denies the request to take judicial notice of unpublished district court decisions. (See e.g. *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 765.) As such, the Request for Judicial Notice of Exhibits 1-11 of the RJN is **denied**.

As to the other court records, which consist of various filings in other legal proceedings, the Court can take judicial notice of their existence. (Cal. Evid. Code § 452 (d).) The Court can take judicial notice of the existence of these court documents, but not of any disputed facts in those documents. (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 988.) As such, the Request for Judicial Notice is **granted** as to the Dunn and Collier exhibits identified in the RJN.

Relatedly, Plaintiff attaches copies of, and quotes from a few trial court orders pertaining to other motions to disqualify – but does not request judicial notice of them. The Court does not refer to or rely on these cases for the same reasons set forth above.

General Factual Allegations

Plaintiff's counsel, Downtown LA Law Group ("DTLA"), filed the Complaint in this matter on November 7, 2024. She asserts personal injury claims related to an alleged slip and fall that occurred at a Costco warehouse in Concord, California on November 28, 2022.

On December 5, 2024, Defendant Costco filed the instant motion to disqualify DTLA from this matter. The motion is based on the fact that an attorney at DTLA previously worked as defense counsel for Costco in similar personal injury cases.

Standard

"A court's authority to disqualify a lawyer in a pending proceeding derives from its inherent power to regulate the conduct of court officers, including attorneys, in furtherance of the sound administration of justice." *City of San Diego v. Superior Court* (2018) 30 Cal.App.5th 457, 469.) "Whether an attorney should be disqualified is a matter addressed to the sound discretion of the trial court." (*Henricksen v. Great American Savings & Loan* (1992) 11 Cal.App.4th 109, 113.)

Disqualification, however, is "a drastic remedy that should be ordered only where the violation of the privilege or other misconduct has a 'substantial continuing effect on future judicial proceedings.'" (*Id.* at 462 quoting *Gregori v. Bank of America* (1989) 207 Cal.App.3d 291, 309.) "There must be a 'reasonable probability' and 'genuine likelihood' that opposing counsel has 'obtained information the court believes would likely be used advantageously against an adverse party during the course of the litigation.'" (*Ibid.*)

"Motions to disqualify counsel are especially prone to tactical abuse because disqualification imposes heavy burdens on both the clients and courts: clients are deprived of their chosen counsel, litigation costs inevitably increase and delays inevitably occur. As a result, these motions must be examined 'carefully to ensure that literalism does not deny the parties substantial justice.'" (*City of Santa Barbara v. Superior Court* (2004) 122 Cal.App.4th 17, 22 quoting *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144.)

Attorney Werbin's Work History

Attorney Anthony W. Werbin began working for DTLA in February 2020 and currently still works for DTLA. (Werbin Decl. ¶ 2.) Prior to joining DTLA, he was an associate at the firm of Manning & Kass,

Elrod, Ramirez, Trester LLP ("M&K) from approximately July 2017 to January 2020. (*Id.* ¶ 3.) While employed at M&K, Mr. Werbin represented Defendant Costco in 21 separate cases which involved personal injury claims, including slip-and-fall cases such as in this matter. (*Id.* ¶ 5; Johnston Decl. ¶ 2-3.) Mr. Werbin billed 1,195 hours working on Costco matters while at M&K. (Johnston Decl. ¶ 8.) This averages out to approximately 9 hours per week. (Ross Decl. ¶ 11.)

His work included Mr. Werbin being trial counsel for Costco in a personal injury case that went to trial in May 2019, with a verdict issued in June – *Guo Jun Chen v. Costco Wholesale Corporation* (Los Angeles Sup. Ct. Case No. BC654699). (Johnston Decl. ¶ 4.) According to Mr. Johnston, the Director of Claims for Costco, Mr. Werbin's handing of Costco's cases included developing strategy, reviewing confidential and privileged documents, and developing litigation strategy, among other things. (*Id.* ¶ 5.) He indicates that Mr. Werbin was also privy to Costco's pre-litigation strategies, case handling procedures, and information concerning Costco's operations, policies, and procedures. (*Id.* ¶ 6.)

While working at M&K, Mr. Werbin attended a day-long California Defense Counsel Conference that Costco held for its panel of California defense attorneys. (Johnston Decl. ¶ 7; Collier Decl. ¶ 2-3.) Mr. Werbin participated in the conference and contributed to email discussions regarding topics discussed therein following the conference. (Collier Decl. ¶ 2-3, Ex. A.) Lead defense counsel in this matter, Sharon Collier, personally gave a presentation that the conference on the tools and strategies to use in defense cases brought against Costco. (*Id.* ¶ 2.) She was also party to the email discussions following the conference. (*Id.* ¶¶ 2-3.)

Shortly after leaving M&K in January 2020 and joining DTLA in February 2020, Mr. Werbin "brought a case (the "Staats Case") against Costco to a successful resolution." (Werbin Decl. ¶ 11.) This occurred, as summarized by DTLA, "***prior to DTLA's establishment of the strict ethical wall now in place*** and shortly after Mr. Werbin's employment at M&K ended and his employment with DTLA began…." (Opp. at 8:8-11.)

In December 2021, DTLA implemented a change to its software and file management system which prohibited any attorney from accessing any case that they were not assigned to. (Ross Decl. ¶ 7.) This includes a firewall against Mr. Werbin accessing cases involving Costco. (*Ibid.*) All attorneys at DTLA are instructed of this screening and there is a well-known policy not to discuss Costco cases with Mr. Werbin. (*Id.* ¶ 8.)

In July 2024, Mr. Werbin's name appeared on a summons and complaint filed in San Bernardino County Superior Court, *Elizabeth Grimes v. Costco Wholesale Corporation*, case no. CIVSB 2420703. (Dunn Decl., ¶ 8-9; Ex. E.) That matter was also a slip and fall personal injury case brought against Costco. (*Ibid.*) DTLA explains that this was due to a clerical error wherein an administrative employee mistakenly switched the attorney names on two separate cases filed that same date. (Rezkallah Decl., ¶¶ 4-10.) Upon investigation of the issue, DTLA disciplined the administrative assistance and reconfirmed that Mr. Werbin did not, in fact, have any access to that matter. (*Ibid.*)

Analysis

Mr. Werbin's Potential Conflict

California Rules of Professional Conduct 1.9 pertains to the duties of attorneys to former clients. It

states, in pertinent part:

> A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's[ ] interests are materially adverse to the interests of the former client unless the former client gives informed written consent.

It is undisputed that Costco has not given informed written consent in this matter.

"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." (*H.F. Ahmanson & Co. v. Salomon Bros.* (1991) 229 Cal.App.3d 1445, 1452.) "However, it is well settled actual possession of confidential information need not be proved in order to disqualify the former attorney." (*Ibid.*) "It is enough to show a 'substantial relationship' between the former and current representation." (*Ibid.*) "If the former client can establish the existence of a substantial relationship between representations, the courts will conclusively presume the attorney possesses confidential information adverse to the former client." (*Ibid.*)

"A substantial relationship exists where the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation." (*Khani v. Ford Motor Co.* (2013) 215 Cal.App.4th 916, 920 citing *Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 710-11.) "If the relationship between the attorney and the former client is shown to have been direct - that is, where the lawyer was personally involved in providing legal advice and services to the former client - then it must be presumed that confidential information has passed to the attorney and there cannot be any delving into the specifics of the communications between the attorney and the former client in an effort to show that the attorney did or did not receive confidential information during the course of that relationship." (*Jessen*, supra, 111 Cal.App.4th at 709.)

"As a result, disqualification will depend upon the strength of the similarities between the legal problem involved in the former representation and the legal problem involved in the current representation." (*Ibid.*) "This is so because a direct attorney-client relationship is inherently one during which confidential information 'would normally have been imparted to the attorney by virtue of the nature of [that sort of] former representation,' and therefore it will be conclusively presumed that the attorney acquired confidential information relevant to the current representation if it is congruent with the former representation." (*Ibid.*)

Plaintiff argues that Costco has failed to show what 'confidential information' Mr. Werbin obtained and/or retains from his representation of Costco. Costco has no such burden. It is enough for Costco to show that there is a 'substantial relationship' between Mr. Werbin's former (conceded) representation of it and the current matter. Costco has presented evidence that Mr. Werbin represented it in 21 different cases while he worked for M&K. These cases included personal injury cases involving slip-and-falls, and other similar factual claims. This included serving as trial counsel in such a matter and taking that matter to trial and verdict. His work included being 'personally involved in providing legal advice and services to' Costco. He also obtained training specifically

related to how Costco handles such cases.

Based on the above, the Court finds that there is a substantial relationship between Mr. Werbin's former representation of Costco and the current matter. "When a substantial relationship between the two representations is established, the attorney is automatically disqualified from representing the second client." (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 848.)

Vicarious Disqualification of DTLA

"As a general rule in California, where an attorney is disqualified from representation, the entire law firm is vicariously disqualified as well." (*National Grange of Order of Patrons of Husbandry v. California Guild* (2019) 38 Cal.App.5th 706, 715 ("*Grange*"). This presumption "is a rebuttable one, which can be refuted by evidence that ethical screening will effectively prevent the sharing of confidences in a particular case." (*Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 801.)

"The specific elements of an effective screen will vary from case to case, although two elements are necessary: First, the screen must be timely imposed; a firm must impose screening measures when the conflict first arises. … Second, it is not sufficient to simply produce declarations stating that confidential information was not conveyed or that the disqualified attorney did not work on the case; an effective wall involves the imposition of *preventive measures* to guarantee that information will not be conveyed." (*Id.* at 810 italics in original.)

Timely imposition of screen

When Mr. Werbin started work at DTLA, there does not appear to have been any ethical wall in place to prevent him having access to and/or working on Costco matters. His own declaration makes clear that "prior to DTLA's establishment of the strict ethical wall now in place … I brought a case (the "Staats Case") against Costco to a successful resolution." (Werbin Decl. ¶ 11.) DTLA concedes that it wasn't until December of 2021, almost two years after Mr. Werbin started working at DTLA, that they "implemented a change to its software and file management system, prohibiting any attorney from accessing a case that he/she was not assigned." (Ross Decl. ¶ 7.) DTLA maintains that there is "a well-known firm policy that no cases involving [Costco] are assigned or discussed with Mr. Werbin," (*Id.* ¶ 8), but there is no indication as to when that policy was put in place. "[S]creening should be implemented before undertaking the challenged representation or hiring the tainted individual." (*Kirk*, supra, 183 Cal.App.4th at 810 fn. 30 quoting *In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 594.) "Screening must take place at the outset to prevent any confidences from being disclosed." (*In re Complex Asbestos Litigation* 232 Cal.App.3d at 594.)

DTLA has failed to present evidence establishing that the screen was "timely imposed."

Effectiveness of Screen

DTLA extols its implementation of the new software and file management system and the policy of not assigning or discussing Costco cases with Mr. Werbin. As noted above, however, the software change occurred almost two years after Mr. Werbin started working at DTLA and there is no

indication when DTLA implemented the stated policy. There is no evidence that Mr. Werbin did not have access to Costco cases and/or did not share confidential information during this time. In fact, it is clear he did since he admits handling a matter against Costco when he first started working at DTLA.

DTLA makes repeated references to the fact that it has been many years since Mr. Werbin joined DTLA and performed any work for Costco. They argue that the fact so much time has elapsed makes this motion to disqualify "entirely improper." (Opp. at 3:10-11.) DTLA does not cite any law to support their argument that time alone will cure a violation of the Rules of Professional Conduct, or that a disqualified firm can remove the grounds for disqualification just by waiting long enough. DTLA failed to implement a proper screen when Mr. Werbin was hired. They cannot remedy that failure by merely waiting some amount of time, then arguing that it has been long enough that such failure is now immaterial.

Conclusion

Defendant's motion to disqualify DTLA from prosecuting this case is **granted**. Plaintiff shall file notice with the Court by May 23, 2025, that she has retained new counsel or that she is proceeding pro se. The matter is **stayed** until May 23, 2025, or until such time as Plaintiff files a notice of substitution of counsel.