

TENTATIVE RULINGS

FOR: April 17, 2018

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. These proceedings include civil law and motion hearings. If counsel want their civil law and motion hearing reported, they must arrange for a private court reporter to be present. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Diane Price, Dept. C (Historic Courthouse) at 8:30 a.m.

Angelica De Vere, et al. v. Sullivan Vineyards Corporation, et al. **26-67976**

DEFENDANTS’ MOTION TO DISQUALIFY COUNSEL FOR PLAINTIFFS

TENTATIVE RULING: The Notice of Motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Defendants’ counsel is directed to contact Plaintiffs’ counsel forthwith and advise Plaintiffs’ counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If Defendants’ counsel is unable to contact Plaintiffs’ counsel prior to the hearing, Defendants’ counsel shall be available at the hearing, in person or by telephone, in the event Plaintiffs’ counsel appears without following the procedures set forth in Local Rule 2.9.

Defendants’ Motion is GRANTED. “[A] former client may seek to disqualify a former attorney from representing an adverse party by showing that the former attorney possesses confidential information adverse to the former client. [Citation.]” (*Henriksen v. Great American Savings & Loan* (1992) 11 Cal.App.4th 109, 113.) However, “[i]n order to seek disqualification, the former client need not establish that the attorney actually possesses confidential information. It is enough to show that there was a ‘substantial relationship’ between the former and the current representation. If the former client establishes the existence of a substantial relationship between the two representations the court will conclusively presume that the attorney possesses confidential information adverse to the former client and order disqualification.” (*Id.* at p. 114.) The Court considers three factors in determining whether a “substantial relationship” exists: “(1) factual similarities between the two representations, (2) similarities in legal issues, and (3) the nature and extent of the attorney’s involvement with the case and whether he was in a position to learn of the client’s policy or strategy.” (*Adams v. Aerojet-General Corp.* (2001) 86 Cal.App.4th

1324, 1332 (*Adams*), citing *H. F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal.App.3d 1445, 1455.)

The Third Amended Complaint for Damages in this case alleges causes of action against Sullivan Vineyards Corporation (“SVC”) for retaliation, wrongful termination, constructive discharge, breach of express and implied contract, and intentional infliction of emotional distress. The factual allegations in support of these claims detail conduct and disputes that began in April 2015 and continued through the fall of 2015, when Mr. Bertrand and Mr. Rose, both of the Buchalter law firm, were counsel for SVC. An engagement letter was executed between Buchalter and SVC on July 29, 2015, and on August 4, 2016, Mr. Bertrand and Mr. Rose filed a Complaint for Declaratory Relief (case number 26-67001) on behalf of SVC and Sullivan Vineyards Partners against Defendant Kelleen Sullivan seeking sale of the winery. Mr. Bertrand and Mr. Rose appeared at two court hearings in that case, on August 27, 2015 and September 18, 2015, before the case was dismissed by Mr. Bertrand on October 9, 2015.

Mr. Rose also filed a Petition for Workplace Restraining Orders on behalf of SVC on September 8, 2015 in case number 26-67240 (the “TRO”). The TRO was to protect Plaintiff Angelica de Vere, an SVC employee at that time, from Ms. Sullivan. Allegations made in the TRO proceeding are also made in the instant case. The TRO was granted, and at the hearing on September 28, 2015 for the permanent order, Mr. Rose and Mr. Bertrand appeared on behalf of SVC. All of the Plaintiffs in this case - Sonya Grabski, Elizabeth Matulich, Trinity Scott, and Ms. de Vere - testified, along with Ross Sullivan. The TRO and case 26-67240 were ultimately dismissed on October 28, 2015, and Mr. Bertrand substituted Buchalter out as counsel the same day.

Mr. Bertrand substituted in as counsel for Plaintiffs in this case on January 19, 2018. Plaintiffs are directly adverse to SVC in this case. There is a substantial relationship between this case and the TRO case in terms of factual similarities and legal issues surrounding Plaintiffs’ alleged treatment as employees of SVC and their subsequent termination. In addition, Mr. Bertrand and Mr. Rose represented SVC in court and advised SVC regarding the handling of the disputes between Plaintiffs and the Sullivans, and is now attacking the actions SVC took in handling disputes between Plaintiffs and the Sullivans. “If a substantial relationship is established, the discussion should ordinarily end. The rights and interests of the former client will prevail. Conflict would be presumed; disqualification will be ordered.” (*River West, Inc. v. Nickel* (1987) 188 Cal.App.3d 1297, 1308-1309.) As there was a substantial relationship between the prior representation of SVC and the current representation adverse to SVC, the Court need not determine whether Mr. Bertrand and Mr. Rose actually obtained SVC’s confidential information. Mr. Bertrand and Mr. Rose must be disqualified as counsel for Plaintiffs.

“It is now firmly established that where the attorney is disqualified from representation due to an ethical conflict, the disqualification extends to the entire firm [citations] at least where an effective ethical screen has not been established [citation].” (*Adams, supra*, 86 Cal.App.4th 1324, 1333.) Therefore, Buchalter must also be disqualified from this case.

Because the Motion can be granted based on the former representation of SVC alone, the Court need not reach the issue as to whether Mr. Bertrand and Ms. Sullivan formed an attorney-

client relationship. Thus, the Court will not be ruling on the evidentiary objections as the Court did not need to rely on the majority of the evidence objected to.

PROBATE CALENDAR – Hon. Rodney Stone, Dept. I (Criminal Courts Bldg.-1111 Third St.) at 2:00 p.m.

Estate of John Lund

17PR000261

1) PETITION FOR LETTERS OF ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

APPEARANCE REQUIRED

2) PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

APPEARANCE REQUIRED

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Estate of Dorothy Moody

18PR000055

PETITION FOR LETTERS OF SPECIAL ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: GRANT petition on the condition petitioner files the Duties and Liabilities form (DE-147).

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Conservatorship of Synthia S. Smith

26-63723

PETITION FOR REAPPOINTMENT OF CONSERVATOR OF THE PERSON

APPEARANCE REQUIRED