

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 07/26/2016
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA

CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Motion to Disqualify Attorney of Record (CLM)

CAUSAL DOCUMENT/DATE FILED: Motion to Disqualify Attorney of Record, 06/28/2016

The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m.

Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Christine Schaffels at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending a telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce's rules and procedures for law and motion matters, *ex parte* matters, telephonic appearances, trial rules and procedures, etc., please visit: <http://www.ventura.courts.ca.gov/Courtroom/C43>

The court's tentative ruling is as follows:

Deny the motion to disqualify counsel.

Discussion:

Plaintiff contends that Lewis Brisbois can no longer represent the individual defs because it is incapable of proving them complete and unbiased advice to protect their conflicting interests. According to PI, Mr. Fein's testimony at his deposition directly implicated Mr. Delgado and Ms Warnes in intentional conduct harming PQL.

As to Mr. Delgado's culpability, Mr. Fein testified that:

- Mr. Delgado stole a PQL customer list and took it to Revolution Lighting (Decl. of T. Randolph Catanses, ¶15, Ex. C, pg. 116-117);
- Mr. Delgado made it widely known at Revolution Lighting that he had the customer list (*Id.*);
- Mr. Fein strongly objected to Mr. Delgado's possession of the list (*Id.* at pg. 120-121);
- Mr. Delgado actively solicited existing PQL customers while at Revolution Lighting (*Id.* at pg. 163).

As to Ms. Warnes' culpability, Mr. Fein testified that:

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- Ms. Warnes compiled information about Welk Properties, a prospective PQL customer, and entered it in PQL's confidential database (*Id.* at pg. 160);
 - Ms. Warnes stole this confidential information and used it at Revolution Lighting to secure Welk Properties' business (See *Id.* at pg. 161 and 173);
 - The account secured a \$250,000 contract for Revolution Lighting (*Id.*).

According to movant, this represents a potential conflict. As noted in the motion, before Mr. Fein's deposition, the individual defs stood in unison with their former colleagues. After his deposition, it is argued that the individual defs need guidance from independent counsel since the clients' adverse positions create a zero sum game in which any benefit to one would adversely affect the interests of the others. In the opposition, Revolution disputes that a conflict even exists. The opposition explains that Lewis Brisbois substituted in as counsel for the individual defs on July 7, 2015. During the course of its representation, Lewis Brisbois obtained conflict-waiver letters from each of the individual defs.(Deborah Sirias declaration.) Before obtaining each conflict waiver, and at other junctures in this litigation, Lewis Brisbois continuously evaluated discovery responses, deposition testimony, documents produced by the parties in discovery, and communicated regularly with its clients to determine whether an actual or potential conflict exists. Lewis Brisbois concludes none exists.(Sirias decl., ¶3.)

On May 26, 2016, PQL took Fein's deposition, which was arranged by Fein's counsel in another case (the "Note" case, a separate action between Mr. Fein and Mr. Sreden.) Counsel for Fein in the present action (LB) attended the deposition. According to Lewis Brisbois, "surprisingly," none of PQL's inquiries related to the Note case. Instead, PQL's counsel elicited information from Fein regarding an instance in which Fein (who is no longer a def) "may have" seen a customer list being held by Delgado. (Motion, page 3, lines 21-24.) Fein also testified that Warnes did a job walk for a PQL client, Welk Resorts ("Welk") and "likely" used the data for a bid to Welk when she went to work for def Revolution Tech.(Motion, page 3, line 24 through page 4, line 2.)

Lewis Brisbois points out the PQL maintains that these two revelations "substantiate" the actual conflicts of interest between the individual defs. At most, the two incidents show that Fein may be mistaken about the customer list and his supposition about the job walk may be incorrect. In any event, according to Lewis Brisbois, Mr. Fein's conclusion re: Warnes job walk at Welk is not based on personal knowledge. As set forth in the declaration of Larry Welk, filed in connection with the individual defs' MSJ, Welk was a pre-existing clients of Warnes even prior to her employment with PQL and Warnes did not solicit Welk at Revolution.(see Welk Declaration attached to declaration of Sirias as Ex. A.)

Even assuming that PQL has standing, the court is not convinced that a conflict exists warranting recusal.