

October 12, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0003949 Creditors Adjustment Bureau, Inc., vs. Israel Garcia Tapia

No appearances required. In light of the proof of service of the Summons and Complaint filed on August 31, 2026, and on the Court's own motion, the OSC re Dismissal is hereby DISMISSED. In addition, in light of the default entered, the court trial set for March 27, 2027 is hereby VACATED. Plaintiff shall submit a proposed default judgment consistent with the indicated requests contained in their request for default.

2. CL0003956 Citibank, N.A. vs. Sonia Morales Cruz

Appearance required by Plaintiff to show cause as to why Plaintiff should not be sanctioned for failure to appear on August 24, 2026 and this case dismissed for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost seven (7) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and issue sanctions in the amount of \$500.00.

3. CU0001445 James B. House vs. Gregory Atchley et al

Plaintiffs James B. House and James B. House Living Trust's motion for summary adjudication is denied.

Legal Standard for Summary Adjudication and Summary Judgment

The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing such motions, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court's consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741. Code of Civil Procedure section 437c(f)(1) provides that, "A party may move for summary adjudication as to one or more causes of action within an action." Such "[a] motion for summary adjudication shall be granted only if it *completely* disposes of a cause of action...." Code Civ. Proc. § 437c(f)(1) (*italics added*).

"It is well established that the pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App. 4th 60, 74; see also *State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 2231 ("On a motion for summary judgment or summary adjudication, the pleadings delimit the scope of the issues ... ").

The ultimate burden of persuasion rests on the moving party. *Aguilar, supra*, 25 Cal.4th at 850. The initial burden of production is on the moving party to show, by a preponderance of the evidence it is more likely than not a given element cannot be established or a given defense cannot be established. *Ibid.* If the moving party carries this initial burden, the burden of production shifts to the party opposing the motion to show a triable issue of material fact exists. The opposing party does this if it can show, by a preponderance of the evidence, it is more likely than not a given element can be established or a given defense cannot be established. *Id.* at 850, 852.

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; see also *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900 (“Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion.”). A court generally cannot resolve questions about a declarant's credibility in a summary judgment proceeding.” *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065.

First Cause of Action – Recovery of Payments to Unlicensed Contractor (Bus. & Prof. Code § 7031(b))

Plaintiffs argue Defendants were paid for performing contracting services without a license and thus are entitled to summary judgment as a matter of law and disgorgement in the amount of \$441,988.43. The Court disagrees.

“Except as provided in subdivision (e), a person who utilizes the services of an unlicensed contractor may bring an action in any court of competent jurisdiction in this state to recover all compensation paid to the unlicensed contractor for performance of any act or contract.” Bus. & Prof. Code 7031(b). A plaintiff is entitled to recover all compensation paid to the unlicensed defendant regardless of any seeming injustice to the contractor. See *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995. “‘Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business outweighs any harshness between the parties, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . .’ ” *Ibid.* “[T]he authorization of recovery of ‘all compensation paid to the unlicensed contractor for performance of any act or contract’ means that unlicensed contractors are required to return all compensation received without reductions or offsets for the value of material or services provided.” *White v. Cridlebaugh* (2009) 178 Cal.App.4th 506, 520–521.

“Section 7026 plainly states that both the person who provides construction services himself and one who does so ‘through others’ qualifies as a ‘contractor.’ The California courts have also long held that those who enter into construction contracts must be licensed, even when they themselves do not do the actual work under the contract.” *Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 940-941.

At bar, Plaintiffs motion acknowledges the Property was a single-family residential home “in a state of partial completion” when Plaintiff first engaged Defendants. Mot., 4:7-8. Plaintiff’s Second Amended Complaint acknowledges the Contract describes Defendants’ role as a “consultant, as reflected in the language of the Contract”, but describes such as “false”. SAC, ¶ 30. The SAC contradicts itself by first stating, “Nothing in the Contract obligated Atchley or WSI to provide consulting expert services” and then by stating, “the Contract says that WSI would provide consulting services....” SAC, ¶¶ 32, 43. The Contract itself is entitled “Agreement for Construction Management Services” and states, “Consultant is not acting in the capacity of a General Contractor, as it is not licensed to do so in the State of California...” but “will put its considerable knowledge and experience...to the benefit of the Owner.” SAC, Ex. 1, § 1.1.16. Further, Defendants jointly deny Atchley ever contracted with Plaintiffs in his individual capacity, and they assert all payments were made to WSI as opposed to Atchley personally thereby creating an issue of fact as to whether or not Atchley has any individual involvement in the case at all. See, SSUF, pages 2-3.

Assuming, *arguendo*, Plaintiffs met their burden showing the elements of the cause of action have been established, Defendants have shown triable issues of material fact exists with respect to the scope of the contract and the parties to the contract. The essential factual elements of a claim under Bus. & Prof. Code § 7031(b) require a plaintiff to prove (1) Plaintiffs hired/contracted with Defendants to perform services for Plaintiffs; *and* (2) a valid contractor’s license was required *to perform these services*. See CACI 4560 (emphasis added). Bus. and Prof. Code section 7026 indicates “contractor” is “synonymous with ‘builder’.” This section goes on to list the services which define whether a person is acting as a “contractor”. While Plaintiffs may have established a contract for construction management services existed, they have not established as a matter of law that any or all services under the contract required a valid contractor’s license. Plaintiffs’ argument Defendants have admitted to performing contractor services, even if true, cannot result in entry of summary judgment in that issues of fact clearly exist in relation to when, how, in what proportion to the contract, etc. were such services performed, as well as what, if any, liability exists in relation to Atchley in his individual capacity.

Accordingly, Plaintiffs’ Motion for Summary Judgment is DENIED.

Given this disposition, the Court need not address the remaining arguments in favor of summary adjudication raised by Plaintiffs or the evidentiary objections raised by the parties.

4. CU0002690 The Golden Oaks Private Roadway Association, a California nonprofit mutual benefit corporation vs. Debbie Porter et al

Cross-Defendants Telliano and Street’s motion to disqualify Mona Lisa Wallace as counsel for Cross-Complainants Deborah Porter and Pamela Emick is granted.

Legal Standard

“A motion to disqualify a party's counsel may implicate several important interests. Consequently, judges must examine these motions carefully to ensure that literalism does not

deny the parties substantial justice. Depending on the circumstances, a disqualification motion may involve such considerations as a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification motion. Nevertheless, determining whether a conflict of interest requires disqualification involves more than just the interests of the parties.” *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1144–1145, citations and footnote omitted. The paramount concern “must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar,” and “[t]he important right to counsel of one’s choice must yield to ethical considerations that affect the fundamental principles of our judicial process.” *Id.* at 1145-1146.

A party ordinarily must have standing to bring a disqualification motion, usually based on a present or past attorney-client relationship with the challenged attorney. *Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356. But a party who was never the attorney’s client also has standing where the attorney owes that party a duty of confidentiality: “Standing arises from a breach of the duty of confidentiality owed to the complaining party, regardless of whether a lawyer-client relationship existed.” *DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 832; see *Great Lakes Construction, supra*, 186 Cal.App.4th at 1356-1357; *Moreci v. Scaffold Solutions, Inc.* (2021) 70 Cal.App.5th 425, 432-433.

No formal retainer or fee agreement is required before an attorney assumes fiduciary duties of loyalty and confidentiality; those duties “begin when attorney-client discussions proceed beyond initial or peripheral contacts.” *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc., supra*, 20 Cal.4th at 1148. “An attorney represents a client—for purposes of a conflict of interest analysis—when the attorney knowingly obtains material confidential information from the client and renders legal advice or services as a result.” *Id.* at 1148, citing *Beery v. State Bar* (1987) 43 Cal.3d 802, 812. The relationship may be implied from the parties’ conduct, and “[e]ven the briefest conversation between a lawyer and a client can result in the disclosure of confidences.” *Beery v. State Bar, supra*, 43 Cal.3d at 811-812.

Where an attorney successively represents clients with adverse interests and the subjects of the two representations are substantially related, “access to confidential information by the attorney in the course of the first representation . . . is presumed and disqualification of the attorney’s representation of the second client is mandatory.” *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283. Where the prior relationship was direct—i.e., the attorney personally provided legal advice—“it must be presumed that confidential information has passed” without inquiry into the specific communications, and disqualification turns on the similarity between the former and current matters. *Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 709-710. A homeowners or road association holds the attorney-client privilege as the entity that retained or was advised by counsel. *Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639, 642-644; *Seahaus La Jolla Owners Assn. v. Superior Court* (2014) 224 Cal.App.4th 754, 771.

Analysis

Cross-Defendants Telliano and Street seek to disqualify Ms. Wallace, counsel for Cross-Complainants Porter and Emick, pursuant to Rule of Professional Conduct 1.9(a) asserting Ms.

Wallace previously advised The Golden Oaks Private Road Association (“Association”) and its board members (including Cross-Defendant Telliano) on governance matters while reviewing confidential Association materials, and now represents former directors against the Association’s interests. Although Ms. Wallace has filed opposition denying any such relationship, the Court concludes, on the record before it, disqualification is warranted.

First, Cross-Defendants have standing. A movant need not have been the attorney’s client; standing exists where the attorney owes the movant a duty of confidentiality. *DCH Health Services Corp. v. Waite*, *supra*, 95 Cal.App.4th at 832; *Great Lakes Construction*, *supra*, 186 Cal.App.4th at 1356-1357. Mr. Telliano declares that, as a sitting board member, he personally “discussed with Ms. Wallace confidential Association matters under the belief that she was providing the Association . . . with free legal advice,” and that Ms. Wallace demonstrated knowledge of past and then-current confidential Association matters. Telliano Decl., ¶¶ 3-5. Those direct communications of confidential information to Ms. Wallace give rise to a duty of confidentiality owed to the disclosing board members and satisfy the standing requirement.

Second, the record supports a prior attorney-client relationship between Ms. Wallace and the Association. No formal engagement is required. *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.*, *supra*, 20 Cal.4th at 1148. Mr. Telliano declares, beginning with the 2023 annual meeting, Ms. Wallace presented her legal opinion on how the Board should respond to the December 2022 Department of Justice complaint, and it was apparent she had reviewed confidential Association documents in forming that opinion. Telliano Decl., ¶¶ 3-5. He further declares Ms. Porter repeatedly identified Ms. Wallace as the Board’s source of free legal advice, and Ms. Wallace acknowledged receiving Association materials from Ms. Porter or Ms. Emick in their capacity as directors. *Id.*, ¶¶ 4-5. Taken together, this evidence shows Ms. Wallace “knowingly obtain[ed] material confidential information from the client and render[ed] legal advice or services as a result.” *Speedee Oil*, *supra*, 20 Cal.4th at 1148; *Beery v. State Bar*, *supra*, 43 Cal.3d at 812. A board member who conveys confidential Association matters acts on the entity’s behalf; therefore, Ms. Wallace’s guidance ran to the Association, which holds the resulting privilege. *Smith v. Laguna Sur Villas Community Assn.*, *supra*, 79 Cal.App.4th at 642-644.

Third, the prior representation is substantially related to the present litigation. Ms. Wallace advised the Association’s board on governance matters; she now represents former directors Porter and Emick in defending against the Association’s claims for breach of fiduciary duty, breach of governing documents, and related causes of action, and in prosecuting an abuse-of-process cross-complaint arising from that same governance dispute. The subjects plainly overlap. Where, as here, the former relationship was direct, the Court must presume access to confidential information material to the current dispute passed to the attorney, and, as a result, disqualification is mandatory. *Flatt v. Superior Court*, *supra*, 9 Cal.4th at 283; *Jessen v. Hartford Casualty Ins. Co.*, *supra*, 111 Cal.App.4th at 709-710. (See also, *Rosenfeld Const. Co. v. Superior Court* (1991) 235 Cal.App.3d 566, 575 [“ ‘If a substantial relationship is established, the discussion should ordinarily end. The rights and interest of the former client will prevail. Conflict would be presumed; disqualification will be ordered.’ ”]) The Court need not—and under the conclusive presumption may not—require proof of the specific confidences disclosed. The Court has considered the authority on which Cross-Defendants principally rely, *Beery v. State Bar*, *supra*, 43 Cal.3d 802. *Beery* strengthens the motion. It confirms an attorney-client

relationship, and the attendant duties of loyalty and confidentiality, may arise without any retainer or fee and may be implied from informal consultation, so long as the attorney obtains material confidential information and renders advice as a result. *Id.* at 811-812. That principle answers Ms. Wallace’s central contention that the absence of a formal engagement defeats the motion. The limiting feature of *Beery*—that the relationship forms only where confidential information is in fact obtained and advice is in fact rendered—is satisfied here by Mr. Telliano’s declaration that Ms. Wallace received confidential Association materials and repeatedly furnished governance advice to the Board. Ms. Wallace’s September 21, 2026 email, which reflects knowledge of a communication between the Association’s property manager and its counsel, further corroborates her access to Association confidences. Schweikert Decl., ¶¶ 3-4 & Ex. A.

The Court is mindful of Ms. Wallace’s sworn denials, the declaration of Jessica Swindle and of Cross-Complainants’ interest in counsel of their choice. The Court is aware these pleadings were not timely filed, and movants request the reply be deemed an improper sur-reply and, as such, be stricken. See, Code of Civ. Proc. Section 1005(b); Notice of Sur-Reply Brief. Nevertheless, the Court chooses to consider the untimely filings in relation to the motion and finds no prejudice to movants in light of the Court’s ruling.

On a disqualification motion, the paramount concern is the integrity of the judicial process and the protection of former-client confidences, to which the right to chosen counsel must yield. *Speedee Oil, supra*, 20 Cal.4th at 1145-1146. Thus, the Court rules in favor of ensuring that integrity meaning the Court must give weight to movant’s sworn assertions of disclosure of confidential matters to Ms. Wallace. To do otherwise, would be to find movants’ assertions wholly without merit and opponents’ assertions completely true. The Court does neither. Rather, the Court finds the contents of the motion including Mr. Telliano’s and Mr. Schweikert’s declarations set forth prima facie evidence of an attorney/client relationship between Ms. Wallace and the Association prior to her representation of former directors in this matter which, the Court finds has not been successfully rebutted. (*Beery v. State Bar, Supra*, 43 Cal.3d at 811 [“When a party seeking legal advice consults an attorney at law and secures that advice, the relation of attorney and client is established *prima facie*.””])

Permitting counsel who advised the Association on governance to represent former directors against the Association in a substantially related matter would undermine confidence in the attorney’s duty of loyalty and risk the use of the Association’s confidences against it. Resolving the doubt in favor of protecting those confidences, the Court finds disqualification necessary. Accordingly, Cross-Defendants’ motion to disqualify counsel is GRANTED.

To avoid prejudice to Cross-Complainants, the Court will continue the hearings on the pending motions to strike (anti-SLAPP) for a reasonable period to permit Porter and Emick to retain substitute counsel or to elect to proceed in propria persona. As such, the hearings on these motions presently set for November 9, 2026 are continued such that they shall now be heard on January 11, 2027 at 1:30 p.m. in Department A, Truckee Branch.

Appearance required by Plaintiff to show cause as to why she should not be sanctioned for failure to appear as ordered on August 21, 2026. Appearance also required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendants despite the fact this case has been pending for almost seven (7) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and sanction Plaintiff the sum of \$250.00.

6, CU0002903 Annette Merriman et al vs. Daniel Fraiman Construction et al

Per the notice of reassignment, Petitioners Annette Merriman and Fred Isaak's petition to confirm arbitration award is continued to November 25, 2026 at 9:00 a.m. in Department 6 of the Nevada City branch of the court.

7. CU0002801 In the Matter of Irina Naduhovskaya

No appearance required. The application for appointment of guardian ad litem is approved and the proposed order shall issue. Based on the request filed by Petitioner, the Court continues this matter on its own motion to December 14, 2026 at 1:30 p.m. in Department A.