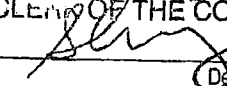


DEC 14 2020

CLERK OF THE COURT

BY:  Deputy Clerk

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6 Attorneys for Plaintiff GARY JOHNSON


7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN FRANCISCO**

10 GARY JOHNSON, individually and
derivatively on behalf of GREENSPAN
11 ADJUSTERS INTERNATIONAL, INC., a
corporation, and ADJUSTERS
12 INTERNATIONAL PACIFIC
NORTHWEST, INC., a corporation,
13
14 Plaintiff,

15 v.

16 GREENSPAN ADJUSTERS
INTERNATIONAL, INC.; ADJUSTERS
17 INTERNATIONAL PACIFIC
NORTHWEST, INC.; GORDON SCOTT, III;
18 STEVE SEVERAID; PAUL MIGDAL;
19 JAMES WARREN; CLAY GIBSON; DREW
LUCURELL; CHRIS LUCURELL; and
20 DOES 1 through 20, inclusive,
21
22 Defendants.

Case No. CGC-20-20583239


[PROPOSED] ORDER DENYING
DEFENDANTS MOTION TO
DISQUALIFY PERETZ & ASSOCIATES
AS COUNSEL FOR PLAINTIFF GARY
JOHNSON

Date: December 14, 2020
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Ethan P. Schulman

23 TO ALL PARTIES AND COUNSEL OF RECORD HEREIN:

24 Defendants GREENSPAN ADJUSTERS INTERNATIONAL, INC., ADJUSTERS
25 INTERNATIONAL PACIFIC NORTHWEST, INC., GORDON SCOTT, III; STEVE
26 SEVERAID, PAUL MIGDAL, JAMES WARREN, CLAY GIBSON, DREW LUCURELL, and
27 CHRIS LUCURELL's (collectively, "Defendants") Motion to Disqualify Plaintiff GARY
JOHNSON's ("Plaintiff") counsel, Peretz & Associates, from representing Plaintiff in this matter.

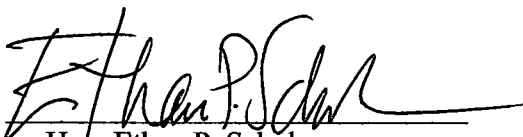
28 *Order Denying*
~~PLAINTIFFS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO DEFENDANTS' MOTION TO
DISQUALIFY PERETZ & ASSOCIATES AS COUNSEL FOR PLAINTIFF GARY JOHNSON~~

1 Defendants' motion to disqualify plaintiff's counsel, Peretz & Associates, is denied. Peretz
2 & Associates represents the plaintiff, Gary Johnson, former co-chairman, director, and
3 shareholder of the defendant company, Greenspan. Defendants seek to disqualify counsel solely
4 based on their current representation of Khan, another former employee of defendants who for a
5 period of time held the title of assistant general counsel and who has asserted his own claims
6 against Greenspan, which this Court recently ordered to arbitration. Defendants argue that Khan's
7 first amended complaint shows Peretz acquired confidential and privileged information through
8 its representation of Khan. Specifically, defendants assert that Khan made repeated complaints
9 about another employee, Fratkin, who was allegedly engaged in fraudulent activity. However,
10 Defendants provide no significant evidence to show that Khan has confidential information or
11 provided confidential information that is material to Johnson's lawsuit against Greenspan, but rely
12 primarily upon the allegations in unverified complaints filed on his behalf. The Court has
13 previously denied defendants' motion to seal Khan's complaints on the ground that defendants
14 failed to show that they refer on their face to confidential communications protected by the
15 attorney-client privilege. The Migdal and Fratkin declarations filed by defendants in federal court
16 establish at most the general proposition that Khan provided legal advice to Defendants on various
17 matters; they do not establish that any confidential or privileged information to which he had
18 access was material to the claims and allegations in the instant case. The mere fact that counsel
19 are representing one of defendants' former in-house counsel does not constitute grounds for
20 disqualification, nor does it meet defendants' burden to show that counsel have acquired
21 confidential or privileged information material to the present litigation. "The Supreme Court has
22 never held that the presumption of possession of confidential information and the automatic
23 disqualification rule applies when a non-lawyer client who may have access to privileged matters
24 retains an attorney. . . . The cases have consistently concluded that mere exposure to confidential
25 information of the opposing party does not require disqualification." (*Neal v. Health Net, Inc.*
26 (2002) 100 Cal.App.4th 831, 841 [fact that attorney who was representing former employee was
27 subsequently retained by employer's former legal secretary in employment discrimination action
28 against employer did not warrant attorney's disqualification from representing former employee];
(*Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 300-301.) In any event,
plaintiff's evidentiary showing conclusively rebuts defendants' unsupported assertions. (*See*
Johnson Decl., pars. 4, 6, 7, 16 [Johnson learned about Fratkin's criminal background and alleged

1 fraudulent conduct through his own employment, not from Khan]; *id.* pars. 2, 9, 10 [Khan never
2 provided legal advice to Defendants or Johnson regarding Fratkin]; *id.*, par. 12 [Johnson is not
3 aware of any legal opinion, communication, or advice by Khan that is in any way relevant to his
4 claims and allegations in the first amended complaint].) (*See Neal*, 100 Cal.App.4th at 843 [trial
5 court erred in disqualifying counsel where "there was no evidence that any information,
6 confidential or otherwise, concerning plaintiff's case was given to [counsel] by [his new client]".].)

7 **IT IS SO ORDERED.**

8 Dated: Dec. 14, 2020

9 By: 
10 Hon. Ethan P. Schulman
11 Judge of the Superior Court of California,
12 County of San Francisco

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~~Order Denies~~
~~PLAINTIFFS' SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN OPPOSITION TO DEFENDANTS' MOTION TO~~
~~DISQUALIFY PERETZ & ASSOCIATES AS COUNSEL FOR PLAINTIFF GARY JOHNSON~~