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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAMOS OIL RECYCLERS, INC. dba)
RAMOS ENVIRONMENTAL SERVICES,)
)
Plaintiff,)
)
v.)
AWIM, INC., JULIE C. NELSON,)
)
Defendants.)
)
AWIM, INC., JULIE C. NELSON,)
)
Counter-Claimants,)
)
v.)
)
RAMOS OIL RECYCLERS, INC. dba)
RAMOS ENVIRONMENTAL SERVICES,)
)
Counter-Defendant.)
)

2:07-cv-00448-GEB-DAD
ORDER

On February 5, 2009, Plaintiff filed a motion to disqualify Defendants' expert witness Charles Corcoran, arguing in essence that Corcoran, who is a state employee, is precluded from giving expert testimony by California Government Code § 19990. This section provides "[a] state . . . employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible,

1 in conflict with, or inimical to his or her duties as a state . . .
2 employee." However, this section also provides "[e]ach appointing
3 power shall determine . . . those activities which, for employees
4 under its jurisdiction, are inconsistent, incompatible or in conflict
5 with their duties as state . . . employees." "Appointing power" is
6 defined under California Government Code § 18524 as "a person or group
7 having authority to make appointments to positions in the State civil
8 service." In light of the appointing power's authority to determine
9 which activities violate § 19990, Plaintiff has not shown why its
10 motion on this ground is appropriate for decision by this Court.

11 Further, Plaintiff argues Corcoran should be disqualified
12 because Plaintiff anticipates that the testimony Corcoran will give
13 would constitute inadmissible legal conclusions. However, the
14 question whether an attorney seeks to have an expert "improperly [give
15 a] legal conclusion[]" can be decided "during trial" in response to an
16 objection. Lost Arrow Corp. v. Dedola Intern., Inc., No. CV 03-05797,
17 2005 WL 6124199, at *4 (C.D. Cal. June 16, 2005).

18 Therefore, the motion is denied.

19 Dated: April 15, 2009

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GARLAND E. BURRELL, JR.
United States District Judge