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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LUPE ARIAS and JAVIER ARIAS)	Case No. 2:18-cv-00392-JAM-AC
)	
Plaintiffs,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION TO DISQUALIFY
)	PLAINTIFFS' COUNSEL AND LAW
FCA US LLC,)	FIRM
)	
Defendant.)	

Lupe and Javier Arias ("Plaintiffs") sued FCA US, LLC ("Defendant" or "FCA") for violations of state and federal law related to defects in their motor vehicle. See Compl. Defendant now moves the Court to disqualify Plaintiffs' counsel and firm. ECF No. 8. For the reasons set forth below, the Court GRANTS Defendants' motion.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

On January 11, 2018, Plaintiffs sued FCA under the Song-Beverly Consumer Warranty Act (Cal. Civ. Code § 1790, et seq.) and Magnuson Moss Warranty Act (15 U.S.C. § 2301, et seq.) for defects

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for June 5, 2018.

1 that arose in their 2015 Jeep Cherokee. See Compl. Plaintiffs are
2 represented by Patrea Bullock and her law firm, the Law Offices of
3 Patrea R. Bullock, who they found through a Google search. Decl.
4 of Lupe Arias, ECF No. 9-2, pp. 3-4. FCA removed the case to this
5 court on February 20, 2018. See Notice of Removal, ECF No. 1.

6 On April 24, 2018, FCA filed a motion to disqualify Bullock
7 and her law firm. Mot., ECF No. 8. FCA submitted two declarations
8 with the motion: one from Matthew Proudfoot, a managing partner
9 with the law firm of Gates, O'Doherty, Gonter & Guy LLP (GOG&G),
10 and counsel of record for FCA US LLC ("FCA") and another from Jon
11 Universal, a partner in the law firm of Universal & Shannon, LLP
12 (U&S). ECF Nos. 8-1, 8-2. Bullock was employed as a senior
13 associate at U&S for eight months from fall 2016 to May 2017.
14 Bullock then worked as an independent contract employee for GOG&G
15 from June through October 2017. At both firms, Bullock represented
16 FCA on motor vehicle defect ("lemon law") cases for between 25% to
17 50% of her total billing.

18 According to Proudfoot and Universal, Bullock "personally
19 determined and advised FCA about how to respond regarding the
20 particular claim, evaluated the defenses available to FCA, overall
21 defense strategy, and engaged in regular contact with the client
22 regarding the defenses and strategies of various cases." Proudfoot
23 Dep. at ¶ 5; Universal Dep. at ¶ 6.

24 Bullock filed this case against her former client three months
25 after representing FCA in other lemon law cases.

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1 II. OPINION

2 A. Legal Standard

3 This District has adopted the State Bar of California's Rules
4 of Professional Conduct and applicable court decisions, as its own
5 standard of professional conduct. See E.D. Cal. L.R. 180(e).

6 Accordingly, California law governs motions to disqualify counsel.

7 In re Cty. of Los Angeles, 223 F.3d 990, 995 (9th Cir. 2000)

8 (applying state law in determining matters of disqualification).

9 California Rule of Professional Conduct 3-310(E) provides:

10 A member shall not, without the informed written consent
11 of the client or former client, accept employment
12 adverse to the client or former client where, by reason
13 of the representation of the client or former client,
the member has obtained confidential information
material to the employment.

14 Cal. R. Prof'l Conduct 3-310(E).

15 Disqualification of counsel lies within the sound discretion
16 of the district courts. Gas-A-Tron of Arizona v. Union Oil Co. of
17 California, 534 F.2d 1322, 1325 (9th Cir. 1976). "[W]hile
18 disqualification is a drastic measure and motions to disqualify are
19 sometimes brought by litigants for improper tactical reasons,
20 disqualification is not 'generally disfavored.'" M'Guinness v.
21 Johnson, 196 Cal. Rptr. 3d 662, 681 (Ct. App. 2015). In deciding a
22 motion for disqualification, the Court must balance parties' right
23 to counsel of their choice against the need to maintain ethical
24 standards of professional responsibility. See People ex rel. Dep't
25 of Corps. v. Speedee Oil Change Sys., Inc., P.2d 371, 378 (Cal.
26 1999).

27 In successive representation cases, a client moves to
28 disqualify his or her former counsel from representing a successive

1 client in current litigation adverse to the former client's
2 interests. M'Guinness, 196 Cal. Rptr. 3d at 670. The former
3 client must "demonstrate a 'substantial relationship' between the
4 subjects of the antecedent and current representation" to succeed
5 on a motion to disqualify counsel. Id. (quoting Flatt v. Superior
6 Court, 885 P.2d 950, 954 (Cal. 1994) (en banc)). "A substantial
7 relationship exists where 'the attorney had a direct professional
8 relationship with the former client in which the attorney
9 personally provided legal advice and services on a legal issue that
10 is closely related to the legal issue in the present
11 representation.'" Id. (quoting City & Cty. of San Francisco v.
12 Cobra Sols., Inc., 135 P.3d 20, 25 (Cal. 2006)). See also Morrison
13 Knudsen Corp. v. Hancock, Rothert & Bunshoft, 81 Cal. Rptr. 2d 425,
14 432 (Ct. App. 1999) (stating that the "substantial relationship"
15 test requires looking at the factual similarities, legal questions,
16 and nature and extent of attorney involvement).

17 "The paramount concern must be to preserve public trust in the
18 scrupulous administration of justice and the integrity of the bar."
19 California Self-Insurers' Sec. Fund v. Superior Court, 228 Cal.
20 Rptr. 3d 546, 550 (Ct. App. 2018), review denied (May 9, 2018).

21 B. Discussion

22 The most factually analogous case presented to the Court is
23 Khani v. Ford Motor Company, 155 Cal. Rptr. 3d 532 (Ct. App. 2013).
24 There, as here, an attorney who previously defended an automobile
25 company in lemon law cases switched positions and began to
26 represent vehicle owners suing his former client. Id. at 533-34.
27 The appellate court reversed the trial court's grant of the motion
28 to disqualify the plaintiff's counsel, holding that the trial court

1 erred in concluding that the cases were substantially related just
2 because they involved claims under the same statute. Id. at 536.

3 In this case, like Khan, the vehicle in question and its
4 repair history was not the subject of a prior lawsuit in which
5 Bullock represented FCA. However, unlike Khan, many factors unique
6 to this situation are closely related. The time between
7 representations is only mere months, rather than the four years in
8 Khan, and accordingly FCA's people, policies, and litigation
9 strategies remain the same. As FCA argued in its reply brief:

10 As it has only been a few months since Bullock has been
11 operating on her own (and she is already suing her
12 former client), little to nothing has changed about the
13 way FCA manages its cases—the same people are in charge,
14 with the same policies, and the same strategies.
15 Bullock knows exactly how FCA will evaluate and respond
16 to the claims filed against it under the Song-Beverly
17 Consumer Warranty Act. As Bullock was frequently
18 responsible for preparing for various depositions and
19 preparing FCA corporate representatives and expert
20 witnesses for those depositions, Bullock has obtained
21 knowledge and insight into the strengths and weaknesses
22 of those witnesses and pressure points FCA may have in
23 regard to their testimony. Further, how FCA "handles
24 cases; why it settles certain cases and not others; how
25 and why FCA responds to discovery, its perceived
26 vulnerabilities, how it defends the vulnerabilities, its
27 perception of its pressure points and how Plaintiffs'
28 firms exploit them" are, in fact, material to every
litigation of a lemon law case against FCA. This
materiality exists regardless of the model vehicle
involved.

22 Reply at 6. In her prior representation, Bullock participated in
23 the evaluation, defense, and settlement of cases for FCA. FCA
24 provided Bullock with the information necessary to conduct
25 investigations, defend depositions, and negotiate with plaintiffs.
26 Additionally, Bullock took part in a FCA training program and
27 signed a non-disclosure agreement as part of that training.

28 As other courts have noted, "[a] 'substantial relationship'

1 does not necessarily mean an exact match between the facts and
2 issues involved in the two representations." W. Sugar Coop. v.
3 Archer-Daniels-Midland Co., 98 F. Supp. 3d 1074, 1087 (C.D. Cal.
4 2015) (citing cases). Based on evidence submitted with this
5 motion, the Court finds that Bullock was personally involved in
6 providing legal advice and services on a legal issue that is
7 closely related to the legal issue in the present representation.
8 City & Cty. of San Francisco v. Cobra Sols., Inc., 135 P.3d 20, 25
9 (Ct. App. 2006). As a result, the Court also finds that Bullock
10 possesses confidential information because of her prior
11 representation. Id.

12 After weighing the interests of Plaintiffs' right to chosen
13 counsel and the prejudice they would face if Bullock were
14 disqualified against the paramount concern of preserving public
15 trust in the scrupulous administration of justice and the integrity
16 of the bar, the Court concludes that Bullock and her law firm must
17 be disqualified. Speedee Oil, 980 P.2d at 378. Although this
18 result may impose hardship on Plaintiffs, "the important right to
19 counsel of one's choice must yield to ethical considerations that
20 affect the fundamental principles of our judicial process." Id.

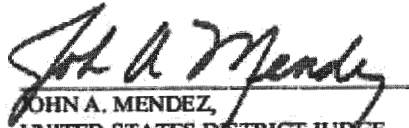
21 III. ORDER

22 For the reasons set forth above, the Court GRANTS Defendants'
23 Motion to Disqualify Plaintiffs' Counsel and law firm, the Law
24 Office Patrea R. Bullock. Plaintiffs shall have 45 days from the
25 date of this Order to find and retain a new attorney. If new
26 counsel does not enter an appearance within this 45-day time
27 period, Plaintiffs will be required to represent themselves. The
28 case would then be referred to Magistrate Judge Claire pursuant to

1 the Court's Local Rules. This case shall be stayed during this 45-
2 day time period, i.e. no discovery may be conducted and no motions
3 may be filed by any party.

4 IT IS SO ORDERED.

5 Dated: July 11, 2018

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7 JOHN A. MENDEZ,
8 UNITED STATES DISTRICT JUDGE
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