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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 VANKIET TRAN, an individual,
12 Plaintiff,
13 v.
14 COSTCO WHOLESALE
15 CORPORATION, a Washington
16 Corporation; TIM DOES, an individual
17 and DOES 1 to 50, inclusive,
18 Defendants.

Case No.: 23cv2057-GPC(BLM)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISQUALIFY
DOWNTOWN LA LAW GROUP AS
PLAINTIFF’S COUNSEL**

[Dkt. No. 4.]

19 Before the Court is Defendant’s motion to disqualify Plaintiff’s counsel,
20 Downtown LA Law Group. (Dkt. No. 4.) Plaintiff filed an opposition. (Dkt. No. 6.)
21 Defendant filed a reply. (Dkt. No. 7.) The Court finds that the matter is appropriate for
22 decision without oral argument pursuant to Local Civ. R. 7.1(d)(1). Based on the
23 reasoning below, the Court GRANTS Defendant’s motion to disqualify Downtown LA
24 Law Group as Plaintiff’s counsel.

25 **Factual Background**

26 On April 4, 2023, Plaintiff Vankiet Tran (“Plaintiff”) filed a complaint against
27 Defendant Costco Wholesale Corporation (“Defendant” or “Costco”) in San Diego
28 County Superior Court alleging causes of action for negligence and premises liability for

1 a slip-and-fall incident at Costco’s 2345 Fenton Parkway store, in San Diego, CA on
2 April 21, 2021. (Dkt. No. 1, Not. of Removal, Ex. A, Compl. ¶¶ 5, 8.) The case was
3 removed to this Court on November 7, 2023. (*Id.*)

4 Plaintiff is represented by Andrew Murray Morrow, III and Daniel Azizi of
5 Downtown L.A. Law Group (“DTLA Law”). Anthony Werbin (“Werbin”) is currently
6 an attorney at DTLA Law but is not counsel of record in this case. Prior to joining
7 DTLA Law, Werbin was an associate at Manning & Kass, Ellrod, Ramirez, Trester LLP
8 (“Manning”) where he was counsel for Costco on 21 cases from July 5, 2017 to January
9 16, 2020. (Dkt. No. 4-2, Ruijters Decl. ¶ 9.) Werbin billed 1,195 hours of time between
10 2017 and 2020 working on Costco matters. (*Id.* ¶ 15.) He represented Costco in matters
11 relating to personal injuries, including trip-and-fall, and slip-and-fall injuries. (*Id.* ¶ 10.)
12 In one case, Werbin served as one of Costco’s trial counsel in a personal injury matter
13 captioned, *Guo Jun Chen v. Costco Wholesale Corp.* (Los Angeles County Superior
14 Court, Case No. BC654699), which went to trial on May 29, 2019, with a verdict
15 rendered on June 4, 2019. (*Id.* ¶ 11.)

16 While representing Costco, Werbin was lead counsel and “handled virtually every
17 aspect of Costco’s file, which included, but was [] not limited to, developing strategy,
18 communicating with Costco employees as well as its claims administrator Gallagher
19 Bassett, reviewing confidential and privileged documents, preparing responses to
20 discovery, preparing witnesses to testify at depositions, defending numerous depositions
21 of Costco employees, and developing litigation strategy. (*Id.* ¶ 12.) When working for
22 Costco, “Werbin was privy to Costco’s pre-litigation strategies, case handling
23 procedures, attorney-client communications, confidential and proprietary information
24 about Costco’s operations, confidential client documentation, policies and procedures,
25 and trade secrets.” (*Id.* ¶ 13.) Further, on March 19, 2019, Werbin attended a one-day
26 California Defense Counsel Conference that Costco held for its panel of California
27 defense attorneys to discuss California litigation, provide information, and share defense
28 tools and strategies with its defense counsel. (*Id.* ¶ 14.) Werbin was an active participant

1 and even sent an email to other attendees sharing his thoughts on the defense strategy
2 after the conference. (*Id.*)

3 In response, Werbin declares that he has been an attorney at DTLA since February
4 2020 and has never worked at Tharpe & Howell, LLP.¹ (Dkt. No. 6-2, Werbin Decl. ¶¶
5 2, 3.) Previously, he was an associate at Manning from July 2017 to January 2020. (*Id.* ¶
6 3.) During the two and a half years at Manning, he worked on hundreds of insurance
7 defense cases and about 20 cases included Costco as a defendant. (*Id.* ¶¶ 4-5.) He asserts
8 he did not receive any specific guidance, nor was there any concerted effort to handling,
9 negotiating, and/or settling Costco claims from Manning. (*Id.* ¶¶ 6-7.) All decisions
10 were left to the attorney's own discretion. (*Id.* ¶ 8.)

11 Further, Werbin attests that he never received confidential or proprietary
12 information from Costco during his representation. (*Id.* ¶ 9.) Werbin avers that any
13 information that he may have regarding the defense of personal injury/premises liability
14 claims comes from his own personal knowledge and experience gained during his eight
15 years as a licensed attorney, not from handling claims for Costco. (*Id.* ¶ 10.)

16 Werbin acknowledges that in early 2020, after he left Manning, he filed a case
17 against Costco, the *Staats* case, to a successful resolution. (*Id.* ¶ 11.) In the *Staats* case,
18 Werbin worked directly with Jill Leathers, Costco's claims adjuster, whom he had
19 worked with while at Manning. (*Id.* ¶ 12.) Even though Costco knew about the adverse
20 successive representation in the *Staats* case, it did raise any formal objections. (*Id.* ¶ 13.)

21 Werbin asserts he has not represented Costco in this case, has never worked on any
22 cases involving Costco at 2345 Fenton Parkway, and has not represented Costco in over
23 four years. (*Id.* ¶¶ 15-19.) Since being employed with DTLA, he has not consulted with,
24 instructed or advised any other attorney or staff member of DTLA concerning any
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26
27 ¹ Despite his declaration signed under penalty of perjury, the Court notes that Anthony Werbin's
28 LinkedIn.com page states he was an attorney at Tharpe & Howell LLP from September 2012 to
February 2014. [https://www.linkedin.com/in/anthony-werbin-
95a67440?original_referer=https%3A%2F%2Fwww.google.com%2F](https://www.linkedin.com/in/anthony-werbin-95a67440?original_referer=https%3A%2F%2Fwww.google.com%2F) last accessed Mar. 22, 2024.

1 aspects of a Costco case. (*Id.* ¶ 20.) According to Werbin, DTLA attorneys are divided
2 into teams of attorneys, paralegals and office staff and the teams do not share team
3 members, workloads, or case files. (*Id.* ¶ 21.) Werbin’s team is not assigned any Costco
4 cases. (*Id.* ¶¶ 22, 23.)

5 According to DTLA Law’s Human Resources Manager and Administrator
6 Director, since the start of Werbin’s employment at DTLA, it was the policy to not assign
7 Werbin any Costco cases. (Dkt. 6-3, Rezkallah Decl. ¶ 3.) While no date is provided,
8 Rezkallah attests that there were procedures to create a “wall” to ensure there was no
9 sharing of confidential information and include “1) departmental separations of attorneys
10 and geographical locations of case materials; 2) established rules and procedures
11 preventing access to confidential information and files; 3) enacted prohibitions against
12 and sanctions for discussing confidential matters including, but not limited to immediate
13 dismissal; 4) enacted procedures to prevent Mr. Werbin from sharing in the profits from
14 the representation, i.e. Mr. Werbin does not derive any income or bonuses from profits
15 made by DTLA on COSTCO cases; and 5) required continuing education in professional
16 responsibility commensurate with the State Bar schedule.” (*Id.*)

17 When DTLA Law hired Werbin, it initially maintained its files in a way to prevent
18 Werbin from accessing Costco’s electronic files but later it password protected and
19 separately maintained the electronic files in response to suggestions in a court order. (*Id.*
20 ¶ 4.) Then, in mid-2021, in granting DTLA Law’s disqualification, another state court
21 order made specific observations and recommended that DTLA Law implement a
22 firewall so that only attorneys assigned a matter can view the file. (*Id.* ¶ 5.) Therefore, in
23 December 2021, DTLA Law implemented FileVine, a new firewall system, which
24 prevents employees from viewing case files, or accessing documents relating to a matter,
25 if they are not assigned to the case. (*Id.* ¶¶ 6-8.) Prior to using FileVine, it was DTLA
26 Law’s understanding that its prior software AbacusLaw shielded Costco files from
27 Werbin, but upon using FileVine, recognizes it provides superior shield protection. (*Id.* ¶
28

1 6.) Because Werbin is not assigned to any Costco cases, he cannot view any Costco case
2 files or access any documents. (*Id.* ¶ 9.)

3 **Discussion**

4 **A. Legal Standard on Motion to Disqualify**

5 In determining whether to disqualify counsel, the Court applies California law. *In*
6 *re Cnty. of Los Angeles*, 223 F.3d 990, 995 (9th Cir. 2000) (“Because we apply state law
7 in determining matters of disqualification, we must follow the reasoned view of the state
8 supreme court when it has spoken on the issue.”). District courts have discretion to
9 disqualify counsel. *See Trone v. Smith*, 621 F.2d 994, 999 (9th Cir. 1980); *People ex rel.*
10 *Dept. of Corps. v. Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1143-44 (1999)
11 (“Generally, a trial court's decision on a disqualification motion is reviewed for abuse of
12 discretion.”). “A trial court's authority to disqualify an attorney derives from the power
13 inherent in every court ‘[t]o control in furtherance of justice, the conduct of its ministerial
14 officers, and of all other persons in any manner connected with a judicial proceeding
15 before it, in every matter pertaining thereto.’” *Speedee Oil Change Sys., Inc.*, 20 Cal. 4th
16 at 1145 (quoting Cal. Civ. Code § 128(a)(5)).

17 Motions to disqualify counsel ultimately “involve a conflict between the clients’
18 right to counsel of their choice and the need to maintain ethical standards of professional
19 responsibility.” *Id.* In considering a disqualification motion, “[t]he paramount concern
20 must be to preserve public trust in the scrupulous administration of justice and the
21 integrity of the bar.” *Id.* Therefore, “[t]he important right to counsel of one’s choice
22 must yield to ethical considerations that affect the fundamental principles of our judicial
23 process.” *Id.*

24 “[W]hile disqualification is a drastic measure and motions to disqualify are
25 sometimes brought by litigants for improper tactical reasons, disqualification is not
26 ‘generally disfavored.’” *M’Guinness v. Johnson*, 243 Cal. App. 4th 602, 608, 627 (2015)
27 (rejecting district court cases stating disqualification is generally disfavored because,
28 *inter alia*, the cases did not rely on California law). “Indeed, when the circumstances of a

1 disqualifying conflict exist . . . disqualification is required.” *Id.* at 608. California courts
2 recognize that a motion to disqualify may be misused by a party to delay or increase
3 expense to an opponent, *Speedee Oil Change Sys., Inc.*, 20 Cal. 4th at 1145; therefore, in
4 cases where there is a potential for tactical abuse, disqualification motions “should be
5 subject[] to particularly strict judicial scrutiny.” *Shurance v. Planning Control Int’l, Inc.*,
6 839 F.2d 1347, 1349 (9th Cir. 1988) (quoting *Optyl Eyewear Fashion Int’l Corp. v. Style*
7 *Cos.*, 760 F.2d 1045, 1050 (9th Cir. 1985)).

8 **B. Analysis**

9 Costco moves to vicariously disqualify DTLA Law from representing Plaintiff in
10 this action because Werbin, an attorney at the firm, previously represented Costco while
11 employed at another firm. (Dkt. No. 4.) Specifically, it argues that Werbin possesses
12 confidential attorney-client information belonging to Costco that is substantially related
13 to these proceedings and DTLA Law failed to implement a screening policy until
14 December 2021. (*Id.* at 9-15.) DTLA Law responds that Werbin does not possess
15 Costco’s confidential information, and any knowledge he has about Costco’s overall
16 structure, business practices or litigation philosophy is merely “playbook” material and
17 not a basis for disqualification. (Dkt. No. 6.) Further, DTLA Law claims it implemented
18 an effective ethical wall, in December 2021, that prevents the need for the firm’s
19 disqualification. (*Id.*) In reply, Costco argues the late implementation of a software
20 system is not enough and DTLA merely provides a declaration that parrots the elements
21 of an ethical wall. (Dkt. No. 7 at 6.)

22 Whether DTLA should be vicariously disqualified depends on whether Werbin
23 would be disqualified from representing Plaintiff if he was involved in this case. *See*
24 *Sierra v. Costco Wholesale Corp.*, 630 F. Supp. 3d 1199, 1205 (N.D. Cal. 2022)

25 **1. Whether Werbin Would Be Disqualified**

26 “It is beyond dispute a court may disqualify an attorney from representing a client
27 with interests adverse to those of a former client.” *H.F. Ahmanson & Co. v. Salomon*
28 *Bros., Inc.*, 229 Cal. App. 3d 1445, 1451 (1991). In a case of successive representation,

1 [a] former client may seek to disqualify a former attorney from representing
2 an adverse party by showing the former attorney actually possesses
3 confidential information adverse to the former client. However, it is well
4 settled actual possession of confidential information need not be proved in
5 order to disqualify the former attorney. It is enough to show a ‘substantial
6 relationship’ between the former and current representation. If the former
7 client can establish the existence of a substantial relationship between
8 representations, the courts will conclusively presume the attorney possesses
9 confidential information adverse to the former client.

10 *Id.* at 1452; *see also* California Rules of Professional Conduct 1.9(a) (“A lawyer who has
11 formerly represented a client in a matter shall not thereafter represent another person in
12 the same or a substantially related matter in which that person’s interests are materially
13 adverse to the interests of the former client unless the former client gives informed
14 written consent.”) (effective Nov. 1, 2018).

15 “To determine whether there is a substantial relationship between successive
16 representations, a court must first determine whether the attorney had a direct
17 professional relationship with the former client in which the attorney personally provided
18 legal advice and services on a legal issue that is closely related to the legal issue in the
19 present representation.” *City & Cnty. of San Francisco v. Cobra Sols., Inc.*, 38 Cal. 4th
20 839, 847 (2006); *Flatt v. Superior Ct.*, 9 Cal. 4th 275, 284 (1994) (a former client may
21 disqualify an attorney by showing a “substantial relationship” between the subjects of the
22 prior and current representations); *Khani v. Ford Motor Co.*, 215 Cal. App. 4th 916, 920
23 (2013) (“A substantial relationship exists where ‘the attorney had a direct professional
24 relationship with the former client in which the attorney personally provided legal advice
25 and services on a legal issue that is closely related to the legal issue in the present
26 representation.’”).

27 “If the former representation involved [] a direct relationship with the client, the
28 former client need not prove that the attorney possesses actual confidential information.”
City & Cnty. of San Francisco, 38 Cal. 4th at 847. “Instead, the attorney is presumed to
possess confidential information if the subject of the prior representation put the attorney

1 in a position in which confidences material to the current representation would normally
2 have been imparted to counsel.” *Id.*; *see also Jessen v. Hartford Cas. Ins. Co.*, 111 Cal.
3 App. 4th 698, 709 (2003) (“If the relationship between the attorney and the former client
4 is shown to have been direct—that is, where the lawyer was personally involved in
5 providing legal advice and services to the former client—then it must be presumed that
6 confidential information has passed to the attorney and there cannot be any delving into
7 the specifics of the communications between the attorney and the former client in an
8 effort to show that the attorney did or did not receive confidential information during the
9 course of that relationship.”).

10 A substantial relationship exists “when the evidence before the trial court supports
11 a rational conclusion that information material to the evaluation, prosecution, settlement,
12 or accomplishment of the former representation given its factual and legal issues is also
13 material to the evaluation, prosecution, settlement or accomplishment of the current
14 representation given its factual and legal issues.” *Jessen*, 111 Cal. App. 4th at 713; *see*
15 *H.F. Ahmanson*, 229 Cal. App. 3d. at 1455 (courts should “focus on the similarities
16 between the two factual situations, the legal questions posed, and the nature and extent of
17 the attorney’s involvement with the cases. As part of its review, the court should examine
18 the time spent by the attorney on the earlier cases, the type of work performed, and the
19 attorney’s possible exposure to formulation of policy or strategy.”) (citation omitted).

20 However, “information such as the first client’s overall structure and practices,
21 litigation philosophy or key decision makers would not require disqualification unless it
22 were found to be material.” *Farris v. Fireman’s Fund Ins. Co.*, 119 Cal. App. 4th 671,
23 680 (2004) (internal citations omitted); *Khani*, 215 Cal. App. 4th at 922 (absent “any
24 showing of its materiality,” an attorney’s “exposure to playbook information” of a certain
25 area of case law is insufficient to disqualify he or her in a specific case.). However,
26 “[w]here an attorney acquires knowledge about the former client’s ‘attitudes,’ practices,
27 business customs, ‘litigation philosophy,’ strengths, weaknesses or strategy,
28

1 disqualification may be required for that reason alone.” *Knight v. Ferguson*, 149 Cal.
2 App. 4th 1207, 1215 (2007) (citing *Jessen*, 111 Cal. App. 4th at 712).

3 Here, while employed at *Manning*, it is not disputed that Werbin had a direct
4 attorney-client relationship with Costco as he served as Costco’s lead counsel in 21 cases,
5 involving personal injury cases, including taking one case through a trial. The disputed
6 question is whether there is a substantial relationship between the *subject* of Werbin’s
7 prior and current representation of Costco if he were counsel. *See City & Cnty. of San*
8 *Francisco*, 38 Cal. 4th at 847; *Jessen*, 111 Cal. App. 4th at 712-13 (defining “subject”
9 broader than the legal and factual issues in a case but also includes “information material
10 to the evaluation, prosecution, settlement or accomplishment of the litigation or
11 transaction given its specific legal and factual issues.”).

12 “The elements of a cause of action for premises liability are the same as those for
13 negligence.” *Castellon v. U.S. Bancorp*, 220 Cal. App. 4th 994, 998 (2013) (citing
14 *Ortega v. Kmart Corp.*, 26 Cal. 4th 1200, 1205 (2001)). A plaintiff must prove, “a legal
15 duty to use due care, a breach of such legal duty, and the breach as the proximate or legal
16 cause of the resulting injury.” *Beacon Residential Comm’y Ass’n. v. Skidmore, Owings*
17 *& Merrill LLP*, 59 Cal. 4th 568, 573 (2014) (citation and internal quotation marks
18 omitted).

19 In this negligence/premises liability case, similar to the ones Werbin had defended
20 while at *Manning*, the legal issue of Costco’s duty, whether Costco exercised reasonable
21 care in keeping the premises reasonably safe, and the elements of causation and breach,
22 whether Costco had actual or constructive knowledge of the dangerous condition, are the
23 same. *See e.g., Satamian v. Costco Wholesale Corp.*, Case No. 2:20-cv-05776-VAP-
24 ASx, 2021 WL 4805311, at *4 (C.D. Cal. June 25, 2021) (granting Costco’s summary
25 judgment motion on slip and fall case). Moreover, Costco has shown that Werbin was
26 privy to Costco’s pre-litigation and litigation strategies on whether to settle or litigate
27 these premises liability claims. *See Jessen*, 111 Cal. App. 4th at 712 (“Depending upon
28 the nature of the attorney's relationship with the former client, in the office or in the

1 courtroom, the attorney may acquire confidential information about the client or the
2 client's affairs which may not be directly related to the transaction or lawsuit at hand but
3 which the attorney comes to know in providing the representation to the former client
4 with respect to the previous lawsuit or transaction. For example, whether a lawsuit is
5 settled or contested may depend upon a myriad of considerations about the client's affairs
6 which might not be subject to discovery but which nonetheless determine the client's
7 course of action, such as a decision to settle an action or a particular claim or issue
8 because of the potential for unrelated adverse ramifications to the client were the case to
9 go to trial. The same might be true about the client's internal operations or policies, such
10 as one which favors the settlement of lawsuits filed in some locales but not others based
11 upon the client's history or perceptions about the inclinations of juries (or the capabilities
12 of the bench) in the particular venues.”). Finally, Werbin reviewed confidential and
13 privileged documents as well as trade secrets when he represented Costco. Therefore,
14 Costco has shown that Werbin had a prior direct attorney-client relationship where he
15 was exposed to confidential material that is substantially related to the current
16 representation if he were counsel.

17 While DTLA Law simply focuses on the fact that Werbin never worked on a
18 Costco case involving the Fenton Parkway location, the Court must look at all aspects of
19 the “subject” of the prior and current representation. *See Jessen*, 111 Cal. App. 4th at
20 712. Further, even if Werbin was privy to only “playbook” information, this information
21 warrants disqualification because it is material to the current case. *See Farris*, 119 Cal.
22 App. 4th at 680.

23 Therefore, the Court concludes, as other district courts have ruled, that Costco has
24 met its burden showing that Werbin had a direct relationship with Costco and that the
25 subject matter of the prior and current representation, if he were counsel, are substantially
26 related. *See Sierra v. Costco Wholesale Corp.*, 630 F. Supp. 3d 1199, 1206 (N.D. Cal.
27 2022) (“Here, Werbin's prior representations and the current case involve slip-and-fall
28 cases with similar constructive notice issues. This is not a tangential issue in the case, but

1 rather a central issue that may become dispositive. . . Werbin's learned knowledge of
2 Costco's internal policies, procedures, and strategies relating to constructive notice issues
3 creates a substantial risk his representation of Plaintiff in this action would involve
4 confidential information he previously acquired from Costco.”); *Noris-Barrera v. Costco*
5 *Wholesale Corp.*, Case No. 23-cv-05245-SI, 2023 WL 9181481, at *4 (N.D. Cal. Dec. 7,
6 2023) (finding Werbin had direct relationship with Costco and that the legal issues in
7 those cases are closely related to the legal issues in this case); *Reid v. Costco Wholesale*
8 *Corp.*, Case No. 23cv0255-FWS-JDE, 2023 WL 3432168, at *4 (C.D. Cal. Apr. 20,
9 2023) (knowledge possessed by Werbin concerning Costco’s strategies and tactics is
10 confidential); *Ramos v. Costco Wholesale Corp.*, Case No. CV 22-3579-MWF (AFMx),
11 2022 WL 18278604, at *2 (C.D. Cal. Nov. 8, 2022) (“Because Werbin possesses
12 confidential information regarding Costco, and because this action is substantially related
13 to cases Werbin previously worked on for Costco, Werbin's continued representation of
14 the Plaintiff threatens the fairness of these proceedings and undermines the integrity of
15 the legal system and judicial process.”); *Vaxmonsky v. Costco Wholesale Corp.*, Case No.
16 22cv0098-JVS-DFM, 2022 WL 20955638, at *4 (C.D. Cal. July 27, 2022) (“Since
17 Werbin's knowledge of Costco's warehouse procedures, safety practices, and legal
18 strategies would have a direct impact on the current litigation, that knowledge is
19 confidential and protected under the California Rules of Professional Conduct.”); *but see*
20 *Rodriguez v. Costco Wholesale Corp.*, 21cv4239-RGK-RAO, 2021 WL 4815017, at *2
21 (C.D. Cal. Aug. 30, 2021) (denying motion to disqualify DTLA Law because Costco
22 failed to establish the matter is substantially related to any previous matter). Therefore,
23 Werbin would be disqualified if he were counsel of record in this case.

24 **2. Whether DTLA Law Should be Vicariously Disqualified**

25 Because the Court has concluded that Werbin would be disqualified from
26 representing Plaintiff in this action, the question is whether Werbin’s disqualification is
27 imputed to DTLA Law.
28

1 Although vicarious disqualification is the general rule and courts should presume
2 knowledge is imputed to all members of a tainted attorney’s law firm, “in the proper
3 circumstances, the presumption [of vicarious disqualification] is a rebuttable one, which
4 can be refuted by evidence that ethical screening will effectively prevent the sharing of
5 confidences in a particular case.” *Kirk v. First Am. Title Ins. Co.*, 183 Cal. App. 4th 776,
6 801, 801-10 (2010) (discussing history of the law of vicarious disqualification and
7 recognizing case law is mixed on whether vicarious disqualification of the entire firm is
8 automatic). While the application of the rebuttable presumption is not entirely clear, *see*,
9 *e.g.*, *Mattel, Inc. v. MGA Entm’t, Inc.*, 408 Fed. Appx. 45, 47 (9th Cir. 2011) (“Given the
10 uncertainty as to the status of California law” on vicarious disqualification after *Kirk*,
11 “the district court wouldn’t have been clearly erroneous, whichever course it adopted on
12 the disqualification motion”), in this case, the parties apply the rebuttable presumption in
13 their analysis.

14 In such an analysis, the challenged law firm has the burden to establish “that the
15 practical effect of formal screening has been achieved.” *Kirk*, 183 Cal. App. 4th at 810.
16 Two elements are necessary for an effective screen. First, “the screen must be timely
17 imposed; a firm must impose screening measures when the conflict first arises.” *Id.* In
18 other words, “screening should be implemented before undertaking the challenged
19 representation or hiring the tainted individual.” *Id.* at 810 n. 31. Further, a firm should
20 not wait “until the trial court imposes screening measures as part of its order on the
21 disqualification motion.” *Id.* at 810.

22 Here, DTLA Law acknowledges that an effective screen was not timely imposed,
23 either before hiring Werbin in February 2020, or undertaking challenged representations
24 against Costco after February 2020, as the new software, FileVine, was not implemented
25 until December 2021. *See Noris-Barrera*, 2023 WL 9181481, at *5 (because DTLA Law
26 took almost two years to take action to screen off Werbin, in December 2021, DTLA
27 should be disqualified). DTLA Law effectively concedes the first element that the screen
28 was not timely imposed. Therefore, it has failed to meet its burden on the first element.

1 Second, the firm must show that it has implemented “*preventative measures*” that
2 guarantee that information will not be conveyed and the firm’s burden is not met simply
3 by producing “declarations stating that confidential information was not conveyed or that
4 the disqualified attorney did not work on the case.” *Kirk*, 183 Cal. App. 4th at 810
5 (emphasis in original). “The typical elements of an ethical wall are: [1] physical,
6 geographic, and departmental separation of attorneys; [2] prohibitions against and
7 sanctions for discussing confidential matters; [3] established rules and procedures
8 preventing access to confidential information and files; [4] procedures preventing a
9 disqualified attorney from sharing in the profits from the representation; and [5]
10 continuing education in professional responsibility.” *Id.* at 810-11 (quoting *Henriksen v.*
11 *Great Am. Savings & Loan*, 11 Cal. App. 109, 116 n. 6 (1992)). The court must consider
12 on a “case-by-case inquiry” . . . “whether the court is satisfied that the tainted attorney
13 *has not had and will not have any improper communication* with others at the firm
14 concerning the litigation.” *Kirk*, 183 Cal. App. 4th at 811 (emphasis added).

15 On this second element, DTLA Law simply provides a declaration by the Human
16 Resources Manager and Administrative Director, and the attorney of record, Mr.
17 Morrow, stating the firm has implemented the *Kirk* elements of an ethical wall without
18 providing specific details such as dates when the different measures to establish the
19 ethical wall were implemented and fails to provide specific policies and procedures or
20 other supporting documentation. (Dkt. No. 6-3, Rezkallah Decl. ¶ 3; Dkt. No. 6-1,
21 Morrow Decl. ¶ 8.)

22 One court of appeal explained that the target firm should “at the very least, provide
23 declarations from each member of its team working on the former client’s matter, plus
24 those attorneys (usually on the professional responsibility unit of a large firm) who
25 learned of the facts that prompted the erection of the ethical screen in the first place.”
26 *Fluidmaster, Inc. v. Fireman’s Fund Ins. Co.*, 25 Cal. App. 5th 545, 552 (2018). Relying
27 on *Kirk*, the court of appeal explained that the “target law firm needs to provide
28 declarations sufficient to exclude any possibility of shared confidences—the declaration

1 of the disqualified attorney is not sufficient.” *Id.* at 552; *see also State Compensation Ins.*
2 *Fund v. Drobot*, SACV 13-956 AG (CWx), 2014 WL 12579808, at *8 (C.D. Cal. July 11,
3 2014) (firm presented more than just declaration and included deposition transcript and
4 declaration regarding billing entries to show there was no discussion of work with the
5 tainted attorney); *Reid v. Costco Wholesale Corp.*, Case No.: 8:23-cv-00255-FWS-JDE,
6 2023 WL 3432168, at *5 (C.D. Cal. Apr. 20, 2023) (concluding DTLA Law has not
7 carried its burden to produce “evidence that ethical screening will effectively prevent the
8 sharing of confidences in [this] particular case,” with just declarations).

9 DTLA Law has failed to bear its burden to show that no confidential information
10 was exchanged between Werbin and other DTLA Law attorneys regarding Costco trip-
11 and-fall cases prior to December 2021. *See Signature MD, Inc. v. MDVIP, Inc.*, Case No.
12 CV 14–5453–DMG (SSx), 2015 WL 12781603, at *3 (C.D. Cal. Jan. 20, 2015) (screen
13 was implemented two days after the targeted firm was retained and although a two-day
14 period is very short, the plaintiff provided no evidence that preventive measures were in
15 place that ensured that no information was disclosed during that time); *Kirk*, 183 Cal.
16 App. 4th at 816 n. 38 (“Clearly, every Sonnenschein attorney who worked on the related
17 class actions, as well as any other member of the Sonnenschein firm whom Cohen is
18 claimed to have had reason or occasion to discuss information obtained from plaintiffs’
19 counsel, should provide testimonial evidence.”) (citing *SpeeDee Oil*, 20 Cal. 4th at 1152
20 n.5).

21 Considering that DTLA Law has been disqualified on a number of Costco cases
22 arising from Werbin’s prior representation of Costco, it is surprising that DTLA Law, by
23 presenting the almost identical Werbin and Human Resources Manager and Director
24 declarations, has not attempted to cure the deficiencies noted by other courts by providing
25 additional evidence to show that no confidential communication was exchanged between
26 Werbin and other members of the firm prior to December 2021. The omission of such
27 evidence is telling. Therefore, DTLA Law has failed to satisfy the second element by
28 providing sufficient evidence that it implemented preventative measures to satisfy the

1 Court that no confidential information regarding Costco cases was exchanged between
2 Werbin and other DTLA Law attorneys from February 2020 to December 2021.

3 Further, another deficiency noted by other courts, and now this Court, is the
4 reliability and credibility of the declarations and argument provided by DTLA Law. In
5 the opposition brief, DTLA Law asserts that the *Staats* case was handled after he left
6 Manning but “prior to his employment with DTLA.” (Dkt. No. 6 at 4.) In support,
7 DTLA Law provides two declarations from the attorney of record and the Human
8 Resources Manager and Director that both identically attest, “Since the beginning of
9 [Werbin’s] employment with DTLA, policies and procedures were set forth to create a
10 ‘wall’ to ensure there is no sharing of confidential information.” (Dkt. No. 6-1, Morrow
11 Decl. ¶ 8; Dkt. No. 6-3, Rezkallah Decl. ¶ 3.) Werbin also declares that he handled the
12 *Staats* case against Costco shortly after he left Manning. (See Dkt. No. 6-2, Werbin Decl.
13 ¶ 11.) In argument, DTLA Law claims that the “*Staats* case was brought after he left the
14 defense firm but prior to his employment with DTLA. In other words, that case was not a
15 case he handled as a DTLA lawyer.” (Dkt. No. 6 at 4.) While the declarations and
16 argument are consistent in this case,² they have not been in prior cases.

17 For example, Werbin filed a declaration in the *Noris-Barrera* case with the
18 Northern District of California stating, “In early 2020, shortly after my employment at
19 Manning ended I brought a case (the ‘Staats Case’) against Costco to a successful
20 resolution. The Staats case was brought when I was newly employed with DTLA. This
21 is the only COSTCO case I handled while employed by DTLA.” *Noris-Barrera v.*
22 *Costco Wholesale Corp.*, 23cv5245-SI, Dkt. No. 11-1, Werbin Decl. ¶ 11 (N.D. Cal. Nov.
23 6, 2023). The district court in *Noris-Barrera* noted that there was no explanation as to
24 the “glaring contradiction” in the declarations provided by DTLA Law. *Noris-Barrera*,
25 2023 WL 9181481, at *4 (“The fact that Werbin litigated a case against Costco after
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28 ² DTLA Law likely corrected the inconsistency noted by other courts.

1 joining DTLA Law belies representations by DTLA that an ethical screen was in place
2 when Werbin joined the firm.”). Moreover, in a state court order dated October 25, 2021,
3 *Cochran v. Costco Wholesale Corporation*, the court granted disqualification of DTLA
4 Law noting that DTLA Law’s evidence did not rebut the presumption noting that even
5 though DTLA Law made an effort to keep cases involving Costco away from Werbin,
6 Costco pointed out that Werbin admitted to prosecuting a case against Costco after his
7 employment with DTLA Law began. (Dkt. No 4-4, D’s RJN, Ex. A at 6.³) DTLA Law
8 does not affirmatively address these inconsistencies and is another reason why it has
9 failed to meet its burden to rebut the presumption of vicarious disqualification.

10 In sum the Court concludes DTLA Law has failed to rebut the presumption of
11 vicarious disqualification, and GRANTS Defendant’s motion to disqualify DTLA Law as
12 Plaintiff’s counsel.

13 Conclusion

14 Accordingly, the Court GRANTS Costco’s motion to disqualify DTLA Law.
15 DTLA Law Group is disqualified from representing Vankiet Tran in this action. The
16 Court STAYS this action until May 10, 2024. Plaintiff shall either inform the Court that

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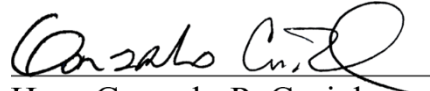
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23 ³ Defendant filed a request for judicial notice of three state court orders granting motions for
24 disqualification. (Dkt. No. 4-3.) Plaintiff did not oppose. The court may take judicial notice of a fact
25 “that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s
26 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy
27 cannot be reasonably be questioned.” Fed. R. Evid. 201(b). A court may take judicial notice of state
28 court orders. *See U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248
(9th Cir. 1992) (we “may take notice of proceedings in other courts, both within and without the federal
judicial system, if those proceedings have a direct relation to matters at issue.”). The Court finds the
state court orders are appropriate under Federal Rule of Evidence 201, and GRANTS Defendant’s
request for judicial notice.

1 she intends to proceed pro se or if Vankiet Tran retains new counsel, he or she must file a
2 notice of appearance. The hearing date set on April 12, 2024 shall be **vacated.**

3 IT IS SO ORDERED.

4 Dated: April 2, 2024


5 Hon. Gonzalo P. Curiel
6 United States District Judge

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