



1 Michael Rounds. Plaintiff's argument is based upon the Nevada Supreme Court's standard for  
2 determining whether counsel must be disqualified from representing a client that has interests  
3 materially adverse to the interests of a former client. The Nevada Supreme Court explained that a  
4 trial court must follow three steps in its inquiry:

5 (1) make a factual determination concerning the scope of the former representation, (2)  
6 evaluate whether it is reasonable to infer that the confidential information allegedly given  
7 would have been given to a lawyer representing a client in those matters, and (3)  
8 determine whether that information is relevant to the issues raised in the present  
9 litigation.

10 *Waid v. Eighth Judicial Dist. Court*, 119 P.3d 1219, 1223 (Nev. 2005). The court also explained  
11 that this inquiry does not require the moving party to divulge any confidential information:

12 [I]n proving that a prior representation is substantially related to present litigation,  
13 however, the moving party is not required to divulge the confidences actually  
14 communicated, nor should a court inquire into whether an attorney actually acquired  
15 confidential information in the prior representation which is related to the current  
16 representation. The court should instead undertake a realistic appraisal of whether  
17 confidences might have been disclosed in the prior matter that will be harmful to the  
18 client in the later matter.

19 *Id.* at 1222-23.

20 Based upon this authority, Plaintiff argues the magistrate erred by undertaking an analysis  
21 into whether confidential information was actually imparted to Michael Rounds in the prior  
22 matter. On the one hand, Plaintiff is correct that the magistrate discredited Robert Lauson's  
23 declaration that he and Michael Rounds discussed certain confidential information regarding In-  
24 N-Out Burgers. However, Plaintiff is incorrect that the magistrate's rejection of Lauson's  
25 declaration resulted in a "subjective" evaluation of whether confidential information was passed  
26 to Michael Rounds. The magistrate denied Plaintiff's motion on the basis that it was not  
reasonable to infer that the alleged confidential information was imparted to Michael Rounds  
given Watson Rounds' limited role in the prior matter. Thus, contrary to Plaintiff's assertion, the  
magistrate's inquiry was an objective one.

Finally, the court will address Plaintiff's Request for Judicial Notice (#39). This request is

1 unnecessary because the materials identified therein are subject to judicial notice without a formal  
2 request. The request will therefore be denied as moot.

3 IT IS THEREFORE ORDERED that Plaintiff In-N-Out Burgers' Motion to Set Aside the  
4 Magistrate Judge's July 24, 2008, Order Regarding Plaintiff's Motion to Disqualify Counsel (#38)  
5 is DENIED.

6 IT IS FURTHER ORDERED that Plaintiff In-N-Out-Burgers' Request for Judicial Notice  
7 (#39) is DENIED as moot.

8 IT IS SO ORDERED.

9 DATED this 18<sup>th</sup> day of February, 2009.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

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