SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (CRC 3.550) **WOOLSEY FIRE CASES** *DOUGLAS W. RICHARDSON, et al. v. SOUTHERN CALIFORNIA EDISON CO., et al.* (Case No. 19STCV10357)	Case No. JCCP 5000 / 19STCV10357 [Assigned to Hon. William F. Highberger, Dept. 10] **ORDER GRANTING DEFENDANT SOUTHERN CALIFORNIA EDISON COMPANY'S MOTION TO DISQUALIFY QUINN EMANUEL URQUHART & SULLIVAN, LLP**

Before the Court is Defendant Southern California Edison Company's ("SCE") Motion to Disqualify Quinn Emanuel Urquhart & Sullivan, LLP (the "Motion to Disqualify" or "Motion"). The Court, having considered the moving, opposition, and reply papers, including evidence submitted therewith, applicable law, argument by counsel, and all other matters presented to this Court on SCE's Motion to Disqualify, and good cause having been shown, HEREBY ORDERS that SCE's Motion to Disqualify is GRANTED in full.

I. BACKGROUND

Southern California Edison Company ("SCE") is an investor-owned utility ("IOU"). Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn") is a law firm who previously represented two of California's three major IOUs, Pacific Gas & Electric ("PG&E") and San Diego Gas & Electric ("SDG&E"), in wildfire defense litigation (and still represents SDG&E in connection with wildfire-related litigation). Opp. at 9:25-27.

SCE moves to disqualify Quinn on the basis that SCE provided material confidential information to Quinn: (1) at a December 2017 meeting of SCE, SDG&E, and PG&E representatives held pursuant to the IOUs' common interest/joint defense; (2) in follow-on calls between Quinn and Hueston Hennigan, SCE's counsel in the Thomas Fire Cases; and (3) in a December 2017 pitch meeting during which Quinn interviewed to represent SCE in connection with litigation arising out of the Thomas Fire, which ignited in December 2017. Quinn disputes that it received any confidential or privileged information, or that such information (if received) is material to the Woolsey Fire Cases such that Quinn should be disqualified.

II. LEGAL STANDARDS

A. A Non-Client Can Bring a Motion to Disqualify

In California, a party seeking to disqualify an attorney does not need to be a current or former client of such attorney to have standing to bring such a motion. *Meza v. H. Muelstein & Co., Inc.* (2009) 176 Cal.App.4th 969, 980-981 (affirming disqualification of plaintiff's firm brought by non-clients of side-switching attorney where firm had hired an attorney who worked for defense counsel on same group of cases, because common-interest privilege allowed any of co-defendants to make such a motion since they had shared information while this attorney was working on defense side);

see also Acacia Patent Acquisition, LLC v. Superior Court (2015) 234 Cal.App.4th 1091, 1098-1099 ("There are exceptions [ ] to the general rule that an attorney has no duty to preserve the confidences of nonclients . . . . A conflict of interest can . . . arise because of specific obligations, such as the obligation to hold information confidential, that the lawyer has assumed to a nonclient.") (internal quotations omitted); *O'Gara Coach Co. LLC v. Ra* (2019) 30 Cal.App.5th 1115, 1126; *Roush v. Seagate Technology, LLC* (2007) 150 Cal.App.4th 210, 219; *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1205 (disqualification of grandfather/attorney (i.e. ex-spouse's-father) on motion of mother in custody dispute affirmed even though movant had never been grandfather's client). Indeed, "[c]ase law abounds with examples of orders disqualifying counsel that have not been the product of motions by present or former clients." *Kennedy v. Eldridge*, 201 Cal.App.4th at 1204-05 ("It makes no sense for a court to stand idly by and permit conflicted counsel to participate in a case merely because neither a client nor former client has brought a motion.").

B. The Focus of the Inquiry Is on Access to Privileged/Confidential Information

Disqualification is proper where there is a "reasonable probability" that the challenged attorney obtained access to the moving party's confidential information which the Court believes the challenged attorney is likely to use to his client's advantage during the course of the litigation. *Kennedy*, 201 Cal.App.4th at 1205. The threat of such use of the moving party's confidential information is sufficient to justify disqualification. *O'Gara*, 30 Cal.App.5th at 1128 ("Nor is it necessary for the party seeking to protect its privileged information to make an affirmative showing of existing injury from the misuse of the privileged information; the threat of such use is sufficient to justify disqualification.").

California law recognizes the common interest doctrine. *Meza*, 176 Cal.App.4th at 981 (quoting *OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 889); *O'Gara,* 30 Cal.App.5th at 1115 (accord; reversing denial of motion to disqualify). Confidential information shared with an attorney for another client pursuant to joint-defense, common-interest privilege does not lose its privileged nature through this process. *Meza*, 176 Cal.App.4th at 982-983 (finding that sharing of information on the defense side was not a waiver of privilege, and non-clients of side-switching attorney had standing to object); *O'Gara,* 30 Cal.App.5th at 1128 (holding that if

the attorney-client privilege is not waived by the holder, lawyers representing an adverse party who have received such information knowing it is privileged "have an ethical duty not to use it. It does not matter whether the information has been provided deliberately or inadvertently").

C. Moving Party Must Show, Directly or by Reasonable Inference, that Challenged Attorney Acquired Material Confidential Information.

For disqualification purposes, the moving party must show directly or by reasonable inference that the challenged attorney acquired material confidential information. *Med-Tans Corp. v. City of California City* (2007) 156 Cal.App.4th 655, 668. The moving party can do so directly by showing that the challenged attorney "actually possesses [material] confidential information." *H. F. Ahmanson & Co. v. Salomon Bros., Inc.* (1991) 229 Cal.App.3d 1445, 1452. But this is not required. Indeed, "it is well settled actual possession of confidential information need not be proved in order to disqualify the former attorney"—rather "it is enough to show a 'substantial relationship' between the former and current representation." *Id.* Defendants do not have to reveal the specific confidential, privileged information which was shared in order to prevail but must show that the context in which the communications occurred makes it reasonably probable that material confidential information would be shared.

D. Access to Confidential Information Is Presumed If Substantial Relationship Exists.

"If an attorney is deemed to have a duty of confidentiality to a nonclient . . ., courts apply the substantial relationship test from successive representation doctrine to determine whether to disqualify counsel in a case against the nonclient." *Acacia Patent*, 234 Cal.App.4th at 1102; *In re Complex Asbestos Litig.* (1991) 232 Cal.App.3d 572, 587 (applying the substantial relationship test in a nonclient context). Thus, the relevant question is whether or not the confidential and privileged information obtained by the challenged attorney was in a matter with a "substantial relationship" factually and legally to the current matter. *Acacia Patent*, 234 Cal.App.4th at 1097-1098 ("In assessing whether there is a 'substantial relationship' between two matters, courts should focus on the similarities between the two factual situations, the legal questions posed, and the nature and extent

of the attorney's involvement with the cases.") (internal quotations omitted); *cf. Khani v. Ford Motor Co.* (2013) 215 Cal.App.4th 916, 920 (disqualification order in successive representation case reversed on grounds that past and future "Lemon Law" cases lacked substantial factual overlap).

Matters are substantially related if evidence supports a rational conclusion that "information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current representation given its factual and legal issues." *Jessen v. Hartford Cas. Ins. Co.* (2003) 111 Cal.App.4th 698, 713; *Khani*, 215 Cal.App.4th at 920-921 ("where the attorney had a direct relationship with the former client, the substantial relationship test requires that 'the evidence before the trial court support[] a rational conclusion that information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current representation given its factual and legal issues.'") (quoting *Jessen,* 111 Cal.App.4th at 713); *Openwave Sys., Inc. v. 724 Sols. (US) Inc.* (N.D. Cal. Apr. 22, 2010) 2010 WL 1687825, at *2 ("While the primary purpose of the substantial relationship test is to preserve the secrets and confidences communicated by a client to a lawyer, [disqualification] does not require the former client to demonstrate that confidential information *actually* was disclosed.") (emphasis in original).

Where there is a substantial relationship, the challenged attorney's possession of confidential and privileged information is presumed. *Acacia Patent*, 234 Cal.App.4th at 1106 ("Under these circumstances, it is unnecessary for a party seeking disqualification to pinpoint precise privileged documents as the basis for a potential unfair advantage. Like successive representation cases, the better rule here is to presume the possession of material confidential information and disqualify counsel in a substantially related action."); *Khani,* 215 Cal.App.4th at 920 ("A substantial relationship exists where 'the attorney had a direct professional relationship with the former client in which the attorney personally provided legal advice and services on a legal issue that is closely related to the legal issue in the present representation. [citation] If the former representation involved such a direct relationship with the client, the former client need not prove that the attorney possesses actual confidential information. [citation]' The attorney is conclusively presumed to possess

confidential information 'if the subject of the prior representation put the attorney in a position in which confidences material to the current representation would normally have been imparted to counsel.'") (internal citations omitted); *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283; *H. F. Ahmanson,* 229 Cal.App.3d at 1453.

If there is a substantial relationship, then disqualification is mandatory. *Meza*, 176 Cal.App.4th at 978. This presumption is "conclusive" and "justified as a rule of necessity, 'for it is not within the power of the [party seeking disqualification] to prove what is in the mind of the attorney.'" *Acacia Patent*, 234 Cal.App.4th at 1106 (alteration in original); *Flatt,* 9 Cal.4th at 283 (once a "substantial relationship" is established, access to confidential information "is *presumed* and disqualification of the attorney's representation of the second client is mandatory") (emphasis in original); *Talon Research, LLC v. Toshiba Am. Elec. Components, Inc.* (N.D. Cal. Feb. 23, 2012) 2012 WL 601811, at *1 (same).

E. If There Is a Substantial Relationship, a Balancing of Interests Is Not Appropriate

If a substantial relationship is found, there is no "balancing process" to be applied. "'[W]hen the substantial relationship of the matters is established, the inquiry ends and the disqualification should be ordered. If it were otherwise, a weighing process would be inevitable. . . . The purpose of the substantial relationship test is to avoid such an inquiry.'" *Rosenfeld Constr. Co. v. Superior Court* (1991) 235 Cal.App.3d 566, 575 (ordering trial court to grant disqualification if there is a substantial relationship).

While some appellate cases invoke a "balancing of interests" test when deciding disqualification motions, that consideration appears to be limited to circumstances where the alleged disqualification does not flow from access to the opposing party's confidential communications. *See, e.g., In re Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 562-565 (wife in community property dispute unable to challenge husband's attorney although she too had placed a call to another lawyer at the same firm to seek advice on her side of the case; trial court impliedly did not believe wife that she had provided any confidential information in screening call); *McPhearson v. Michaels Co.* (2002) 96 Cal.App.4th 843, 849 (disqualification of plaintiff's employment attorney because he represented

another client against same employer defendant in a confidential settlement does not support disqualification).

F. A Disqualification Motion Is "Too Late" Only When It Causes Extreme Prejudice to the Opposing Party

Equitable considerations may require denial of a motion to disqualify if the motion was brought "too late," but only if the opposing party can show *extreme* prejudice from any delay. *See In re Complex Asbestos*, 232 Cal.App.3d at 599-600 ("The evidence does not show that resolution of the asbestos case set for trial was substantially delayed. The only prejudice cited by the Harrison firm is that their clients lost the services of knowledgeable counsel of their choice, and were forced to retain new counsel. This is not the type of prejudice contemplated by our [precedent]. Rather, the Harrison firm has simply identified those client interests implicated by any disqualification motion. [citation]. We find no abuse of discretion by the trial court on this issue.").

In deciding whether a delay was unreasonable and extreme, courts consider several factors, including the stage of litigation at which the motion is made, the complexity of the case, and the possibility that the motion was brought as a delay tactic. *Id.* at 599. The nonmovant has the initial burden to make a prima facie showing that (1) there was unreasonable delay in bringing the motion, (2) the delay will cause prejudice to the nonmovant, and (3) both the delay and the prejudice are extreme. *Ontiveros v. Constable* (2016) 245 Cal.App.4th 686, 701; *see, e.g., Liberty National Enterprises L.P. v. Chicago Title Ins. Co.* (2011) 194 Cal.App.4th 839 (prejudice shown where motion was made after the trial on liability had already been completed); *Antelope Valley Groundwater Cases* (2018) 30 Cal.App.5th 602, 625 (10-year delay found to be extreme).

III. ANALYSIS & FINDINGS

A. Quinn Attorneys Obtained SCE's Confidential and Privileged Information

Though SCE was not required to prove that Quinn actually obtained SCE's confidential and privileged information, SCE has persuasively shown that material confidential information was provided to lawyers of Quinn (a) at the December 2017 joint-defense/common-interest meeting, (b) in the follow-on calls which flowed from the meeting in the weeks after, and (c) in the December 2017 "Pitch" meeting.

For example, Quinn and its attorneys had numerous confidential discussions and meetings with SCE pursuant to SCE's common interest with Quinn's clients, SDG&E and PG&E, regarding challenging the applicability of inverse condemnation to IOUs—a significant issue for IOU defendants in wildfire litigation, including this matter. These discussions and meetings include, as discussed below, (1) the joint IOU meeting in December 2017 ("Joint IOU Meeting"); (2) joint strategy calls between Quinn and SCE; and (3) the Pitch Meeting. The Court's basis for ruling in favor of SCE is not limited to these factual findings and instead is based on all of the factual arguments made by SCE, including but not limited to those made in SCE's briefs and at oral argument. Moreover, insofar as the Court needs to resolve disputed facts to decide this motion, the Court finds the SCE witnesses persuasive and the Quinn Emanuel witnesses unpersuasive.[1]

1. Joint IOU Meeting

SCE submitted evidence that Quinn received SCE's confidential inverse condemnation strategy at the Joint IOU Meeting. Mot. at 11; Cirucci Decl.¶¶ 7-8, 11-14, 16. SCE's evidence establishes that SCE representatives at the Joint IOU Meeting participated in the inverse condemnation strategy discussion prompted by Mr. Boozell's presentation on inverse and negligence claims in wildfire matters. Cirucci Decl. ¶¶ 7-8, 11-14, 16.

Mr. Boozell participated in the December 6, 2017 Joint IOU Meeting along with SCE representatives and states that the "in-house attorneys present generally discussed efforts and strategies for challenging inverse condemnation as applied to IOUs" including "how [IOUs] could or should seek to change the existing law on inverse condemnation." Boozell Decl. ¶¶ 4-6. Mr. Boozell also states that he responded to multiple questions at this meeting. Boozell Decl. ¶ 6. Mr. Boozell does not recall anything that was said by SCE, but he does not challenge the confidentiality of the meeting or of his presentation, or that the meeting was held pursuant to the parties' common interest. Cirucci Decl. ¶¶ 3-8, 11-13; Boozell Decl. ¶¶ 4-7. Neither Mr. Boozell nor any other Quinn declarant challenges the nature of the common interest between Quinn's clients and

[1] The Court does believe that attorney Chiate was proceeding in subjective good faith (believing that he and his Quinn colleagues had not been shown anything material in confidence), but that does not change the outcome.

SCE: to develop regulatory, legislative, and litigation strategy related to the application of the doctrine of inverse condemnation to IOUs. Cirucci Decl. ¶¶ 3-5.

2. Joint Strategy Calls

SCE submitted evidence that Hueston Hennigan shared SCE's confidential and privileged information, including its inverse condemnation strategy, with Quinn in a series of joint strategy calls. Mot. at 13. *See, e.g.,* Dixon Decl. ¶¶ 6-7, 11-13. Hueston and Quinn shared comments and strategy on one another's merits and amicus filings; discussed how best to present (or not present) legal arguments and anticipate plaintiffs' arguments; and discussed litigation strategy (e.g., timing, place, and substance of motion practice). *See, e.g.,* Dixon Decl. ¶¶ 6-7, 11-13. Indeed, "[b]ased upon these privileged and confidential discussions with Quinn, SCE revised the arguments in its demurrer" before filing in the Thomas Fire Cases. Dixon Decl. ¶ 11 ("Quinn also provided confidential advice on SCE's arguments and strategy for attacking inverse condemnation in the 2017 Thomas Fire litigation, including with respect to advancing (or avoiding) certain arguments."). Ms. Bird acknowledges that she "participat[ed] in several telephone conversations with lawyers from Hueston during 2018. The discussions related to strategies for defending against inverse condemnation claims." Bird Decl. ¶ 6. Further, Mr. Boozell—who was on those calls and knows what was discussed— corroborates Mr. Dixon's account of the calls between Hueston Hennigan and Quinn regarding SCE's inverse condemnation filings: he does *not* dispute that the calls were confidential or held pursuant to the common interest among SCE, SDG&E, and PG&E; and does not dispute that SCE shared its confidential inverse condemnation strategy. Dixon Decl. ¶¶ 6-7, 11-12; Boozell Decl. ¶¶ 19-23.

3. Pitch Meeting

In December 2017, SCE invited Quinn to pitch to represent SCE in connection with litigation arising out of the Thomas Fire, which had ignited in early December 2017. Swartz Decl. ¶ 3. At the December 2017 Pitch Meeting, Quinn presented and distributed a privileged and confidential slide deck titled "Potential Wildfire Litigation Strategies for Southern California Edison Company" and discussed inverse condemnation, along with other issues such as class actions, with SCE. *See* Hasbrouck Decl. ¶¶ 3-10; Shigekawa Decl. ¶¶ 3-11; Swartz Decl. ¶¶ 3-7; Boozell Decl. ¶¶ 10-15;

Chiate Decl. ¶¶ 8-9. SCE's General Counsel, Mr. Swartz, advised Quinn that SCE would share privileged and confidential information at that meeting. Hasbrouck Decl. ¶ 4; Shigekawa Decl. ¶ 4; Cirucci Decl. ¶ 14; Swartz Decl. ¶ 4. Quinn declarants state they cannot recall any confidential information that SCE shared, in contrast with the specific and more persuasive recollections of SCE's in-house attorneys who participated in that meeting, including those who retained their contemporaneous notes. Hasbrouck Decl. ¶¶ 3-10; Shigekawa Decl. ¶¶ 3-11; Swartz Decl. ¶¶ 3-7; Boozell Decl. ¶¶ 9-17; Chiate Decl. ¶¶ 7-13, 20-21; Tayback Decl. ¶¶ 6-7; Cole Decl. ¶¶ 6-12. The Court finds the Quinn witnesses not credible and the SCE witnesses credible.

Quinn's attorneys acknowledge that Quinn discussed inverse condemnation with SCE. For example, Ms. Cole and Mr. Tayback state that inverse condemnation issues were discussed during Quinn's presentation. Cole Decl. ¶ 6; Tayback Decl. ¶ 7; Chiate Decl. ¶ 20. And Mr. Boozell confirms that Quinn offered its "observations[] and *recommendations* with respect to all of those issues" in the presentation, including inverse condemnation. Boozell Decl. ¶ 14 (emphasis added). Quinn also confirms that it offered its "observations" on the topics identified by SCE's in-house attorneys: strategy for addressing class action complaints, issues regarding the settlement of subrogation claims, and issues related to insurance. Cole Decl. ¶¶ 8-9.

4. Summary

Considering all of the facts presented by SCE, including those noted above regarding the discussions and meetings of the Joint IOU Meeting, joint strategy calls, and the Pitch Meeting; Quinn's declarations and submissions; and the nature of the issues, including but not limited to the continuing dispute over the validity of the inverse condemnation theory of liability in a situation where cost-sharing is impeded or prevented by the relevant regulators, which would reasonably be discussed and were discussed during these three related but separate points of contact (as sworn under oath by SCE's witnesses); the evidence and circumstances are such that the Court finds that disclosure of SCE's confidential and privileged information to the Quinn lawyers did occur.

Though Quinn argues that any confidential information discussed with SCE regarding inverse was manifested in the final versions of the briefs that were publicly filed (Opp. at 18), SCE's taking a public position does not reveal all the underlying strategic and confidential considerations involved,

and—in any event— those witnesses who recall discussions with SCE do not claim that the entirety of their confidential discussions were revealed by any subsequent filing. Boozell Decl. ¶¶ 20-21, 23; Bird Decl. ¶ 7. *See Diva Limousine, Ltd. v. Uber Technologies, Inc.* (N.D. Cal., Jan. 9, 2019) 2019 WL 144589, at *11 (consistency in a public position does not reveal the anticipated challenges to that position, "which likely engendered frank discussion of legal and factual issues").

B. Substantial Relationship

SCE has shown that a "substantial relationship" exists between the subject matters of the three communications and the newly filed Woolsey Fire Cases. *Acacia Patent*, 234 Cal.App.4th at 1097-1098 ("In assessing whether there is a 'substantial relationship' between two matters, courts should focus on the similarities between the two factual situations, the legal questions posed, and the nature and extent of the attorney's involvement with the cases.") (internal quotations omitted).

1. Factual Similarities

The "substantial relationship" here arises in part due to overlapping factual issues. To begin with, the fact of the CPUC's denial of SDG&E's WEMA petition—and the characterization of that fact—relates to the continuing dispute over the validity of the inverse condemnation theory of liability in a situation where cost-sharing is impeded or prevented by the CPUC. *See, e.g.*, SCE's Demurrer (Thomas Fire) (Chiate Decl. Ex 25 at 12); PG&E's writ petition (Hayden Decl. Ex. 31 at 96-97); SDG&E's cert petition (Hayden Decl. Ex. 27 at 6-7). Indeed, plaintiffs' counsel in the Woolsey Fire Cases has conceded that the "subtleties" of these issues related to the denial of the WEMA petition may be the basis for its objections to certain of SCE's facts and arguments in support of its forthcoming demurrer to inverse condemnation claims. May 14, 2019 Transcript at 95:3-16 ("So there are subtleties to the issues, and we will be briefing those, and we will be objecting to certain evidence, depending on what they put in.").

There is also significant factual overlap between the Thomas Fire Cases (which Quinn discussed with SCE pursuant to confidential and privileged communications) and the present Woolsey Fire Cases. While, as Quinn argues, the Woolsey Fire and the Thomas Fire were indeed two distinct fires that started at different times and in different places, Quinn's complaints in the Woolsey matter and the complaints filed in the Thomas matter demonstrate that these cases implicate

the same SCE policies and practices that, according to Quinn, led to the start of both fires. *See Morrison Knudsen Corp. v. Hancock, Rothert & Bunshoft* (1999) 69 Cal.App.4th 223, 235 ("[T]he facts of cases are never entirely alike, and no cases would ever be 'substantially related' if they could be distinguished on such narrow grounds. The court could reasonably find that there was a substantial relationship between the factual situations in the two matters."). According to a comparison of the complaints, these factual issues include:

- the cause of the fire (*compare* Ramos Decl., Ex. 16 ("Thomas") ¶ 31 ("SCE's . . . power lines . . . and/or transformers . . . arced thereby igniting the first ignition point for the Thomas Fire.") *with* Ramos Decl., Ex. 17 ("Woolsey") ¶ 6 ("SCE's power lines and/or transformers ignited the Woolsey Fire."));
- SCE's allegedly aging infrastructure (*compare* Thomas ¶ 11 ("SCE . . . knowingly operating aging, overloaded, and/or improperly maintained infrastructure.") with Woolsey ¶ 8 ("SCE . . . knowingly operating aging, overloaded, and/or improperly maintained infrastructure."));
- SCE's risk evaluation methodology and practices (*compare* Thomas ¶¶ 11, 125 ("[SCE] knowingly and habitually underestimated the potential the risk, including fire risk, its systems posed" and SCE "could and should have . . . obtain[ed] an independent audit of its risk management systems to ensure . . . effectiveness") *with* Woolsey ¶¶ 8, 46 ("[SCE] knowingly and habitually underestimated the potential risk, including fire risk, that their systems posed" and SCE "could and should have . . . obtain[ed] an independent audit of their risk management programs . . . to ensure their comprehensiveness and effectiveness.").

These factual issues also include SCE's purported failure to:

- "design, construct, . . . monitor and/or maintain high voltage . . . distribution lines" (*compare* Thomas ¶ 200(7) *with* Woolsey ¶ 105(b));
- "keep equipment in a safe condition at all times to prevent fire[s]" (*compare* Thomas ¶ 200(9) *with* Woolsey ¶ 105(e));

- "de-energize power lines during fire prone conditions" (*compare* Thomas ¶ 200(10) *with* Woolsey ¶ 105(h)) and "after the fire's ignition" (*compare* Thomas ¶ 200(11) *with* Woolsey ¶ 105(h));
- "properly train and . . . supervise employees and[/or] agents responsible for maintenance and inspection of the distribution lines" (*compare* Thomas ¶ 200(12) *with* Woolsey ¶ 105(i));
- "conduct . . . reasonably prompt, proper . . . and[/or] frequent inspections of the electrical [] lines" (*compare* Thomas ¶ 200(6) *with* Woolsey ¶ 105(a));
- "install the equipment necessary and/or to inspect and repair the equipment installed, to prevent electrical [] distribution lines from improperly sagging, operating, and[/or] making contact with" (*compare* Thomas ¶ 200(8) *with* Woolsey ¶ 105(d)).

In short, the factual issues that overlap are many, which is sufficient for purposes of the substantial relationship test. *Zimmerman*, 16 Cal.App.4th at 564 n.1 (explaining that the substantial relationship test is satisfied if the two matters are similar or related, but not necessarily identical); *Trone v. Smith* (9th Cir. 1980) 621 F.2d 994, 1000 ("The substantial relationship test does not require that the issues in the two representations be identical.").

2. Legal Issues Posed

Further, there are many legal issues overlapping between the subject matters of SCE and Quinn's communications, and the newly filed Woolsey Fire Cases. These legal issues include the ongoing dispute involving the validity of the inverse condemnation theory of liability in a situation where cost-sharing is impeded or prevented by the relevant regulators. Such issues were concededly the subject of confidential discussions between SCE and Quinn, as addressed *supra*, in Section III.A.

The overlapping legal issues are not limited to those involving inverse condemnation. They also include the economic loss rule, which is at issue in both the Thomas and Woolsey fires, *see* Dixon Decl. Ex. 23 at 16; Dixon Decl. Ex 22 at 20, and class treatment, which was the subject of confidential and privileged discussions between Quinn and SCE. Shigekawa Decl. ¶ 7; Swartz Decl. ¶ 7; Boozell Decl. ¶¶ 13-14.

3. Nature and Extent of Quinn's Involvement

Additionally, Quinn's role in challenging the validity of inverse condemnation, including on the basis of the fact of the denial of SDG&E's WEMA petition, has been extensive. Quinn was and remains extensively involved in the IOUs' challenge of inverse condemnation. *See, e.g.*, PG&E's Writ Petition, *Pacific Gas & Electric Co. v. Superior Court (Abu-Shumays)* No. C087071 (Cal. App. May 9, 2018), No. S249429 (Cal. filed June 8, 2018) (2015 Butte Fire) (Hayden Decl. ¶ 18, Ex. 31); PG&E's Renewed Motion for a Legal Determination of Inverse Condemnation Liability (Hayden Decl. ¶ 16, Ex. 30). Indeed, Quinn's work continues today at the U.S. Supreme Court. *See* Petition for a Writ of Certiorari, *SDG&E Co. v. PUC of State of California* (Hayden Decl. ¶ 9, Ex. 27), filed Apr. 30, 2019 by Quinn attorney J. Boozell. This extensive involvement also belies Quinn's argument that nothing about inverse condemnation could possibly be confidential because inverse condemnation is "settled law" (Opp. at 18).

C. Balancing of Interests

The Court need not apply a "balancing test" because SCE has shown quite persuasively that a "substantial relationship" exists between the subject matters of the three communications and the newly filed Woolsey Fire Cases. *Rosenfeld*, 235 Cal.App.3d at 575. However, the Court has, in the alternative, conducted such a balancing test and finds that SCE is entitled to prevail because the balance overwhelmingly favors disqualification. In balancing the interests, "'[t]he paramount concern must be to preserve public trust in the scrupulous administration of justice and the integrity of the bar.'" *Acacia Patent*, 234 Cal.App.4th at 1107 (quoting *People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc.* (1999) 20 Cal.4th 1135, 1145). Thus, "'[t]he important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process.'" *Id.*

Quinn argues that it has "extensive experience in wildfire cases and complex litigation generally." Opp. at 21. That may be so. But Quinn neglects to mention its equally experienced co-counsel, Engstrom Lipscomb & Lack ("Engstrom"). There is no need to find replacement counsel

here, as each of Quinn's clients is also represented by Engstrom.[2]

Quinn also argues that it has "devoted in excess of 2,500 hours of attorney and paralegal time," worth $2.3 million, to the case. Opp. at 21; Chiate Decl. ¶ 46. Quinn's investment of time is irrelevant. What matters is financial hardship or prejudice *to the client*. *See McPhearson,* 96 Cal.App.4th at 849. And as Quinn's evidence makes clear, Quinn is working on a contingency basis. *E.g.*, Blake Decl. ¶ 6.

Quinn further contends that its purported ethical wall tips the balance in its favor. Opp. at 21. Screening does not work, or apply, in these circumstances. The most obvious problem is Mr. Chiate himself. He participated in confidential communications with SCE and is not screened. The only case Quinn cites in support of the use of an ethical screen—*Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776—involves a lawyer switching firms, not a firm switching sides. Quinn also does not explain how artificially walling off one part of its wildfire defense team from another in December 2018, and circulating an internal memorandum in February 2019, could be effective here. Prior to that, Quinn attorneys communicated freely while at least some of them were participating in common interest communications, including in the Joint IOU meeting, the Pitch Meeting, and the strategy discussions with SCE's counsel, Hueston Hennigan. Chiate Decl. ¶¶ 8, 22, 53-54; Boozell Decl. ¶¶ 4-6, 9-10, 12, 19, 21, 24-25; Bird Decl. ¶¶ 6, 8-9; Dixon Decl. ¶¶ 6-8, 11-13. Quinn's argument at page 11, line 11 of its Opposition that a year after Mr. Boozell attended the joint IOU meeting, "Ms. Bird and Mr. Boozell stopped communicating with Mr. Chiate and QE Partner Jeff McFarland, who planned to work with Mr. Chiate if QE pursued the Woolsey Fire cases, about any confidential information regarding QE's representation of SDG&E or PG&E" concedes too much since this implies that communications about the joint defense meeting a year earlier had already occurred.

Nor can Quinn cure its conflict by promising not to "consult with co-counsel" on inverse condemnation. Opp. at 9, 12, 22. The law does not require SCE to depend upon Quinn's promise.

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[2] SCE, and the Court, are satisfied that Quinn did not pass SCE's confidential information to Engstrom, and has no concern with Engstrom continuing to represent the plaintiffs in the instant action. Waters Decl. ¶¶ 11, 14.

See Adams v. Aerojet-Gen. Corp. (2001) 86 Cal.App.4th 1324, 1334–1135 ("No amount of assurances or screening procedures, no 'cone of silence,' could ever convince the opposing party that the confidences would not be used to its disadvantage....No one could have confidence in the integrity of a legal process in which this is permitted to occur without the parties' consent"). Thus, because no wall is possible, the entirety of Quinn's firm must be disqualified. *Pound v. DeMera Cameron* (2005) 135 Cal.App.4th 70 ("[D]isqualification of the firm is required, even if the firm erects an ethical wall around the attorney who possesses the opponent's confidences."); *see also, e.g., Meza*, 176 Cal.App.4th at 978-979.

Finally, the prejudice to plaintiffs resulting from Quinn's disqualification is minimal. *See Emp'rs Ins. of Wausau v. Albert D. Seeno Constr. Co.* (N.D. Cal. 1988) 692 F.Supp. 1150, 1165 (stating that courts will consider possible prejudice to non-moving party). Plaintiffs here are also represented by competent co-counsel, Engstrom, and could easily seek representation by numerous other experienced firms already active in these proceedings. Equally significant, these cases are in their very early stages: SCE has not responded to any complaints and discovery has yet to begin. On the other hand, SCE potentially faces substantial prejudice if Quinn is not disqualified and is instead free to use SCE's confidential information against it in this litigation. And, ultimately, the integrity of the legal system is implicated by Quinn's conduct. Quinn's ethical breach "so infects the litigation" that it impacts SCE's interest in a just and lawful outcome. *Colyer v. Smith* (C.D. Cal. 1999) 50 F.Supp.2d 966, 971; *see also Kennedy*, 201 Cal.App.4th at 1205. If left unchecked, the public nature of Quinn's side-switching would likely undermine the public's trust in the scrupulous administration of justice and integrity of the bar. *See SkyBell Technologies, Inc. v. Ring, Inc.* (C.D. Cal., Sept. 18, 2018) 2018 WL 6016156, at *12.

D. SCE Did Not Delay in Moving to Disqualify Quinn

Quinn contends that SCE's Motion is tactical because SCE allegedly "sat idle" while Quinn "filed multiple complaints," thus "lulling victims of the Woolsey Fire into believing they would be able to maintain [Quinn] as their counsel." Opp. at 8, 22. To deny SCE's Motion on the basis of any alleged "delay," Quinn must demonstrate "extreme" delay and prejudice, which it cannot do. *See, e.g., In re Complex Asbestos*, 232 Cal.App.3d at 599 (affirming grant of disqualification motion

where the motion was brought on the eve of trial because the disqualified firm failed to show that the delay caused "extreme prejudice"). Quinn claims SCE waited "*five months*" to file the instant motion, Opp. at 8, but Quinn did not file its first complaint until February 25, 2019, so SCE could not have filed this Motion until *after* Quinn filed that complaint. And as this Court made clear during the Initial Status Conference, it was not even possible to file the Motion before this Court prior to the coordination of at least one Quinn-filed complaint. *Id.* ¶ 12. Quinn conceded at oral argument that not only did this Court expedite this proceeding, so as to mitigate any potential delay, but also that Quinn is not able to identify any authority stating that SCE needed to file a request for declaratory relief, or take any other action, to bring forward the present Motion before a Quinn-filed complaint was coordinated. In short, the Court finds that SCE proceeded with commendable dispatch to get this Motion before the Court and did not unfairly delay.

Liberty National, 194 Cal.App.4th at 839, cited by Quinn, is factually distinguishable since the motion there was made after the trial on liability had already been completed. Likewise, the failed motion to disqualify in *Antelope Valley Groundwater Cases*, 30 Cal.App.5th at 625, was brought after a delay of 10 years. SCE's authorities, on the other hand, demonstrate that even if there was a "delay" here, which the Court does not believe there was given that SCE filed before this Court just three days after the case was coordinated, that "delay" is insufficient to overcome Quinn's disqualification. *See W. Cont'l Operating Co. v. Nat. Gas Corp.* (1989) 212 Cal.App.3d 752, 764 (affirming grant of disqualification motion filed a year after service of the complaint because "the delay was not extreme or unreasonable"); *Ontiveros*, 245 Cal.App.4th at 701-02 (finding delay in bringing motion to disqualify was not "extreme" and that the "proper focus is on the stage of the litigation").

E. Evidentiary Objections

Though not dispositive of its decision today (either individually or collectively), the Court overrules all of Quinn's objections to the Cirucci Declaration, and sustains all of SCE's objections to the Parker Declaration and Simon Declaration.

IV. CONCLUSION

Attorney disqualification implicates many delicate and overlapping policy considerations. The specter of such a motion means that a lawyer might have violated the ethical rules, that a client might lose a trusted counselor, and that the merits of the case will not be reached until the disqualification questions are resolved. The Court, having read the parties' briefs, conducted its own independent research, and carefully listened to all sides' oral arguments, has determined that Quinn was provided SCE's confidential and privileged information, that a substantial relationship exists between the prior points of contact and the current litigation, and that—even though it is not required—a balancing test would favor disqualification. The Court hereby grants SCE's Motion to Disqualify Quinn.

IT IS SO ORDERED.

Dated: June 14, 2019

/s/ WF Highberger

Hon. William F. Highberger
Judge of the Superior Court