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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

APPLE INC.,

Plaintiff,

v.

GERARD WILLIAMS III,

Defendant.

Case No. 19-cv-352866

DEFENDANT GERARD WILLIAMS III'S REQUEST FOR RECONSIDERATION OF THE COURT'S ORDER CONCERNING POTENTIAL RECUSAL

Date: February 16, 2023
Time: 1:30 p.m.
Dept.: 1
Judge: Hon. Sunil R. Kulkarni

Date Filed: August 7, 2019

Trial Date: October 2, 2023

Defendant Gerard Williams respectfully requests that the Court reconsider certain aspects of its March 28, 2023 Order Concerning Potential Recusal ("March 28 Order"), including whether a conflict actually exists that might warrant recusal and, if so, whether Apple should be allowed to participate in the decision whether to waive that conflict. Given that this case has been pending for over three years—with a fast approaching discovery deadline and trial date—and given the Court's familiarity with the parties, the case history, and the applicable law, the Court's recusal decision has the potential to be prejudicial and disruptive. Williams therefore respectfully requests that this Court give further consideration to this issue prior to asking for the parties to submit their joint position on waiver.

As part of this Order, the Court instructed the parties, by April 7, to file a joint status report on their position on the Court's potential recusal. *Id.* at 2. In that joint status report, if *both parties decided to waive disqualification/recusal*, then the Court instructed the parties to state the basis for the disqualification/recusal, state that the parties are waiving the issue, and have all parties and their attorneys sign the statement. *Id.* If, however, only one party wanted to waive the potential conflict, then the Court instructed the parties not to identify the party in favor of waiver in its filing. *Id.* at 3. The parties have not yet met and conferred in advance of the joint status report. Williams has not declared, and is not stating herein, what his position will be on recusal. And Williams does not know Apple's position on the matter. As discussed below, Apple's position should not matter.

"A judge has a duty to decide any proceeding in which he or she is not disqualified." Code Civ. Proc. § 170. In fact, "[t]he duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified." *United Farm Workers of Am. v. Sup. Ct.*, 170 Cal. App. 3d 97, 100 (1985) (noting that "the proper performance of judicial duties does not require a judge to withdraw from society and live an ascetic, antiseptic and socially sterile life" nor does it "require shrinking every time an advocate asserts the objective and fair judge *appears* to be biased").

A judge is only relieved of that obligation under specific circumstances, including if the judge believes "his [] recusal would further the interests of justice" and "there is a substantial

doubt as to his [] capacity to be impartial," or "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Code Civ. Proc. § 170.1, subds. (a)(6)(A)(i)-(iii). "The appearance-of-partiality standard must not be so broadly construed that it becomes, in effect, presumptive so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or prejudice." *Haworth v. Sup. Ct.*, 50 Cal. 4th 372, 389 (2010) (internal citations omitted); *see also Livingston v. Marie Callender's, Inc.*, 72 Cal. App. 4th 830, 840 (Ct. App. 1999) (noting that "the power to disqualify a judge under Code of Civil Procedure [] should be used sparingly and only where the interests of justice require it"). To the contrary, disqualification is only mandated "if a reasonable [person] would entertain doubts concerning the judge's impartiality." *Bassett Unified School District v. Sup. Ct. of L.A. Cnty.*, 350 Cal. Rptr. 647 (Ct. App. 2023). Because "judges are drawn from the ranks of the legal profession, [] prior [professional] relationships" between a presiding judge and counsel "are neither unusual nor dispositive." *People v. Carter*, 36 Cal. 4th 1215, 1243 (2005). Further, "the need for disqualification decreases by the extent to which the judge's rulings in the case are limited to purely legal matters," *United Farm Workers*, 170 Cal. App. 3d at 104, like in cases such as this one that will be tried to a jury.

None of the circumstances in this case come close to meeting the disqualification standard. As the Court recited in its March 28, 2023 order, this potential conflict was one created by Plaintiff Apple, Inc. ("Apple") more than three years into this case and weeks before the close of fact discovery, when it added new counsel from the firm of Morrison & Foerster LLP ("MoFo"). *See* March 28 Order at 1. Though the Court once worked for MoFo, his employment there ended over a decade ago. *Id.* And while the Court does not "reflexively recuse from cases where MoFo was involved," it was considering doing so here due to having "occasional social interactions" with two of the MoFo attorneys who had entered appearances in this case. *Id.* The Court, however, declined to describe the MoFo attorneys as "close friends," and did not otherwise indicate any reason why the Court believed he could not be impartial in this case in light of the presence of these two MoFo attorneys. *Id.* at 2.

Faced with these facts, no reasonable person would "entertain a doubt" as to the Court's impartiality. *Carter*, 36 Cal. 4th at 1241. And the minimal social contacts the Court discloses as having with two MoFo attorneys who recently entered appearances in this case certainly do not on their own create an appearance of partiality mandating recusal. *See Carter*, 36 Cal. 4th at 1240-44 (finding no appearance of partiality where trial judge officiated wedding of prosecutor's daughter months before the judge presided over death penalty trial brought by the same prosecutor); *Leland Stanford Junior Univ. v. Sup. Ct.*, 173 Cal. App. 3d 403, 407-09 (1985) (declining to conclude that disqualification was appropriate in case filed against Stanford University where trial judge had been President of the Stanford Law Society more than a decade prior and had only attended graduate gatherings since then).

The U.S. Supreme Court, analyzing a similar recusal statute to California's, has concluded that the mere appearance of bias, rather than the demonstration of actual bias, is sufficient to warrant recusal ***only in limited circumstances***: (1) where the judge has a "direct, personal, substantial pecuniary interest in reaching a conclusion against [one of the litigants]," *Tumey v. Ohio*, 273 U.S. 510, 523 (1927), (2) where the judge becomes "embroiled in a running, bitter controversy" with one of the litigants, *Mayberry v. Pennsylvania*, 400 U.S. 455, 465 (1971), (3) where the judge acts as "part of the accusatory process," *In re Murchison*, 349 U.S. 133, 137 (1955), and (4) where one litigant was a large donor to the judge's election campaign, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872 (2009). However, none of these situations apply here, particularly where the facts bearing on the potential disqualification are unrelated to the claims in the case. *See Stanford*, 173 Cal. App. 3d at 408.

Even if a conflict existed that *might* warrant recusal, the procedure imposed by the Court—allowing the party that introduced the "conflict" and would theoretically stand to benefit from it—to decide whether to waive it is inconsistent with basic rules of fairness and due process. Williams has been defending this case for more than three years. The current trial date was set more than a year ago. Fact discovery is set to close this month, and trial is set for October. While Apple is, of course, allowed to be represented by the counsel of its choice, Apple should not be allowed to associate in new counsel, at this late stage, whom it knew might trigger a recusal from

the Court; and then be allowed to decide whether or not to waive recusal. *See People v. Horton*, 11 Cal. 4th 1068, 1106 (1995) (concluding that defendant's filing of a bar complaint against his own counsel did not create an actual conflict necessitating counsel's withdrawal because allowing defendant to manufacture a conflict would create a dangerous precedent).

Such a procedure would set a dangerous precedent for judge-shopping in the middle of a case: any party, at any time, could recruit former colleagues of a sitting judge and then force his or her recusal.

Mr. Williams is not suggesting that was Apple's intent. And, as noted above, Williams does not know what Apple's ultimate position will be. But it would threaten the fundamental fairness of proceedings if a party could so easily force the Court into recusal.

Accordingly, Mr. Williams respectfully requests that the Court reconsider its position on whether any conflict requiring recusal exists prior to asking for the parties' position on waiver.

Dated: April 6, 2023

By: _____

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