



NO.: NNH-CV-14-6050848-S

ZHAOYIN WANG,	:	SUPERIOR COURT
Plaintiff,	:	
	:	
v.	:	J.D. OF NEW HAVEN
	:	AT NEW HAVEN
BETA PHARMA, INC., DON ZHANG AND	:	
ZHEJIANG BETA PHARMA CO., LTD.,	:	
Defendants.	:	JUNE 18, 2016

**CORRECTED MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO DISQUALIFY OPPOSING COUNSEL**

Defendants Beta Pharma, Inc. (“Beta Pharma”) and Don Zhang (“Zhang”) (together, “Defendants”) hereby file this Memorandum of Law in support of their Motion to Disqualify Opposing Counsel (filed herewith). Defendants move to disqualify Jonathan Katz, Esq. (“Katz”) from representing plaintiff Zhaoyin Wang (“Plaintiff”) because Katz has teamed up with Lance Liu, Esq. (“Liu”), Defendants’ former attorney (and Director of Legal Affairs), who counseled Defendants on the very matters at issue in this case. Katz’s associations with Liu have created multiple opportunities for Liu to disclose Defendants’ confidential and privileged information to Katz. Thus, Katz must be disqualified from representing Plaintiff.

**I. STATEMENT OF THE CASE**

This matter presents the question of “whether private counsel in a civil law suit . . . should be disqualified for his having consulted with an attorney who changed sides.” Goldenberg v. Corporate Air, Inc., 189 Conn. 504, 506 (1983), overruled in part on other

grounds Burger & Burger, Inc. v. Murren, 202 Conn. 660 (1987). In Goldenberg, the Supreme Court of Connecticut has already answered yes.

Lance Liu, Esq. (“Liu”), a lawyer barred in other states, previously provided Beta Pharma with comprehensive legal representation, had broad access to confidential information, and even counseled Defendants<sup>1</sup> on the purported 2010 agreement (the “2010 Agreement”) that is the basis of this breach of contract action.<sup>2</sup> He worked on a draft revision to the 2010 Agreement, dissolving the 2010 Agreement, and related tax issues. Indeed, in an email to Zhang dated July 30, 2012, Plaintiff confirmed Liu’s involvement in Plaintiff’s purported agreements with Beta Pharma, as he wrote, “I had a chat with your legal advisor (Mr. Liu) today, and it looks like that we have to change all of our previous agreement [sic].” The next day, Zhang wrote an email to Plaintiff, copying Liu, and stated, “[v]ery fortunately, we have Dr. Lance Liu take care [sic] of our legal affairs.” Ironically, Beta Pharma was anything but fortunate to have Liu representing it on these matters.

After terminating his attorney-client relationship with Defendants, Liu switched teams. He began consulting with Katz in this lawsuit, which concerns the very issues on which Liu advised Beta Pharma, and, with Katz, began jointly representing the plaintiffs in two other actions against Defendants.

Connecticut law dictates that, by forming these relationships with Katz, Liu “infected” Katz. That is, Liu created an opportunity for the disclosure of Defendants’

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<sup>1</sup> Liu provided legal services to Beta Pharma and to Don Zhang, as president of Beta Pharma. He did not counsel Zhang in his individual capacity.

<sup>2</sup> Defendants do not concede the validity or legality of any alleged agreement between Plaintiff and any Defendant.

confidential and privileged information to Katz. As a result of that opportunity for disclosure, Connecticut law irrebuttably presumes that confidential information was disclosed and, therefore, requires that Katz be disqualified from representing Plaintiff in this action. Liu poisoned the well, and this Court can remove Liu's taint only by removing Katz. This Court should, therefore, disqualify Katz.

## II. STATEMENT OF FACTS

### A. Background on Parties and Their Alleged Relationship

Beta Pharma is a drug discovery company focusing on oncological drugs. Affidavit of Dr. Don Zhang, Ph.D. (copy attached as Exhibit A) ("Zhang Aff."), at ¶ 4.<sup>3</sup> Zhang is Beta Pharma's CEO and President. Id. at ¶ 3.

Plaintiff alleges that, in March 2010, he entered into an agreement (the "2010 Agreement") that had two components. First, he would become Beta Pharma's Chief Scientific Officer in exchange for a salary and a portion of Beta Pharma's stock in a Chinese company. Complaint, First Count, ¶ 10. Second, Plaintiff contends that the contract contemplated the establishment of Beta Pharma Canada ("BPC"), a Canadian corporation in which Plaintiff would own 51% of the stock and Zhang would own 49%. Id. at ¶ 11. According to Plaintiff, Beta Pharma and Zhang breached the 2010 Agreement by, among other things, failing to pay Plaintiff his salary and stock, and by discontinuing funding of BPC. Id. at ¶ 12; Complaint, Second Count, ¶ 15.

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<sup>3</sup> The Zhang Affidavit, together with the exhibits attached to it, was filed on April 21, 2015 in support of the version of this Motion that was filed in the present action when it was pending before the federal court and, therefore, bears the federal-court caption and top-margin identifiers.

## **B. Liu's Representation of Defendants**

Liu is an attorney who is licensed to practice law in New Jersey. Zhang Aff., ¶ 5.<sup>4</sup> Liu represented Beta Pharma from approximately July 2011 until November or December 2012.<sup>5</sup> Id. at ¶ 6. When Liu formed an attorney-client relationship with Beta Pharma, he also entered into a “Mutual Non-Disclosure and Non-Use Agreement,” which provides that Liu would not disclose Beta Pharma’s Confidential Information. Id. at ¶ 7, Exh. 1.<sup>6</sup>

Liu provided comprehensive legal services to Beta Pharma. These services included rendering legal advice regarding intellectual property issues, real estate leases, taxation issues, employment issues, contract issues and corporate and stock issues.<sup>7</sup> Id. at ¶ 9. Liu had a Beta Pharma email address, billed Beta Pharma in excess of \$126,000.00 for legal services, which Beta Pharma paid, and was introduced by Zhang to another company as the “Director of Legal Affair[s] [sic.] of BetaPharma, Inc.” Id. at ¶ 11, Exh. 2-3.

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<sup>4</sup> Liu is not, and has never been, licensed to practice law in Connecticut.

<sup>5</sup> Liu purported to terminate the attorney-client relationship in November 2012, but continued to be involved in Beta Pharma’s legal matters. Zhang Aff., at ¶ 6.

<sup>6</sup> Liu never provided Beta Pharma with a written retainer agreement and never provided any other documents setting forth the scope of the representation or how he intended to charge for his legal services. Id. at ¶ 8.

<sup>7</sup> The details of much of the work Liu performed for Beta Pharma are confidential and protected from disclosure by the Rules of Professional Conduct, see Conn. R. Prof. Conduct 1.6, and by the attorney-client privilege and/or work product doctrine. As discussed further below, Courts do not inquire whether confidential information was in fact used, but rather, where it can reasonably be said that an attorney might have acquired such information, the attorney must be disqualified. Goldenberg, 189 Conn. at 512 (“[C]ourts will not inquire whether the lawyer has, in fact, used confidential information to the client’s detriment because such inquiry would require the revelation of the very information the canon is designed to protect.”).

During the representation, Liu received broad access to Beta Pharma's corporate information, including highly confidential and proprietary business information such as research projects, business contracts, investor information, financial information, tax filings and related information, employee information and settlements, and proposed stock valuations. Id. at ¶ 12. Liu also received confidential and privileged requests for legal advice from Beta Pharma, and rendered confidential and privileged legal advice on various issues, including contract issues. Id.

**C. Liu Represented Beta Pharma in Connection with Plaintiff's Alleged Agreement with Beta Pharma**

During the representation, Liu counseled Beta Pharma on the purported 2010 Agreement. Id. at ¶ 13.

On July 28, 2012, Plaintiff sent Dr. Jirong Peng, Ph.D., Vice-President of Beta Pharma, an email attaching a draft "Shareholder's Agreement." Zhang Aff., Exh. 4. That draft agreement reflected Zhang's and Plaintiff's purported obligations and ownership interests in BPC. Id. Peng forwarded that email to Zhang. Id. Zhang then forwarded Plaintiff's July 28, 2012 email and the attached agreement to Liu. Affidavit of Jack Kolpen (copy attached as Exhibit B) ("Kolpen Aff."), Exh. 1, reference # 1. The contents of this communication, and others related to the 2010 Agreement, are protected by the attorney-client privilege.<sup>8</sup> Id. Subsequently, Liu counseled Beta

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<sup>8</sup> Defendants file herewith a Motion for Entry of a Protective Order for Motion to Disqualify Counsel. If an Order is entered permitting disclosure of these privileged materials without effectuating a waiver of privilege, Defendants will file them with the Court under seal.

Pharma on the 2010 Agreement, BPC, and a possible revision<sup>9</sup> to the 2010 Agreement. Zhang Aff., at ¶ 13; Kolpen Aff., Exh. 1, reference # 2.

Additionally, on July 30, 2012, Plaintiff himself confirmed Liu's involvement with any and all purported agreements between Plaintiff and Beta Pharma. On that date, Plaintiff wrote an email to Zhang, stating: "I had a chat with your legal advisor (Mr. Liu) today, and it looks like that we have to change all of our previous agreement [sic]." Zhang Aff., Exh. 5 (emphasis added). One day later, Zhang responded to Plaintiff by email, stating, "[v]ery fortunately, we have Dr. Lance Liu take care of our legal affairs . . . So at this point, please feel free to pass our agreements to him and also explain your problems, concerning and so on to him. The bottom line is to comply with IRS regulations and clearly resolve our past and sign a new agreement as you requested." Id. Zhang copied Liu on that email. Id. The same day, after speaking with Plaintiff, Liu sent Plaintiff an email asking for a copy of his purported agreement with Zhang. Kolpen Aff., Exh. 2. Liu billed Beta Pharma for his work on the 2010 Agreement and related issues. Zhang Aff., at ¶ 13; Kolpen Aff., Exh. 1, reference # 3-4.

Plaintiff also testified<sup>10</sup> that Liu provided Beta Pharma with other legal services in connection with the alleged 2010 Agreement. He testified that, in 2012, he sent

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<sup>9</sup> Defendants have a copy of the draft revision, which Liu wrote, but cannot submit it to this Court without revealing attorney-client and work product information. While the Court has ample evidence before it to disqualify Katz, to the extent that the Court has any question about Liu's services on the 2010 Agreement, upon the granting of Motion for Entry of a Protective Order, Defendants will submit the draft revision, and other evidence of the conflict, under seal.

<sup>10</sup> Defendants deposed Wang in Beta Pharma, Inc., et al. v. Liu, Docket No. L-2040-14 (Superior Court of New Jersey, Law Division) (the "Liu Action"), an action in which Defendants are suing Liu for engaging in attorney misconduct.

the 2010 Agreement to Liu, at Zhang's direction, because Zhang wanted to dissolve the 2010 Agreement. Kolpen Aff., Exh. 3, 68:3-6. Liu also reviewed the 2010 Agreement in September 2012 and provided legal advice to Beta Pharma in connection with BPC and associated tax issues. Zhang Aff., at ¶ 16; Kolpen Aff., Exh. 1, reference # 5-9.

Put simply, during and as a part of the representation of Defendants, Liu had confidential, attorney-client communications with Defendants about the 2010 Agreement, including issues regarding BPC, taxes, a possible revision to the 2010 Agreement, and dissolving the 2010 Agreement. Zhang Aff., at ¶ 13, 16; Kolpen Aff., Exh. 3, 68:3-6.

**D. Liu Threatens Beta Pharma and Zhang**

During his representation of Beta Pharma, Liu proposed that Beta Pharma enter into a business relationship with him to start a generic drug business. Zhang Aff., at ¶ 17. Beta Pharma considered Liu's proposals, but ultimately declined them. Id. at ¶ 18. During November 2012, Liu purported to terminate his attorney-client relationship with Beta Pharma by e-mail, but continued to involve himself in Defendants' legal issues. See id. at ¶ 6.

Thereafter, Liu engaged in a campaign to destroy Beta Pharma and Zhang because they refused to enter into a business deal with him. See id. at ¶ 19-21. Liu threatened Zhang with criminal prosecution by the United States Attorney's Office if Zhang did not, among other things, pay Liu money and give Liu shares of another company's stock owned by Beta Pharma. Id. at ¶ 19. Liu also made written statements to business associates of Beta Pharma accusing Zhang of criminal activity. Id. at ¶ 20.

**E. Liu Switches Sides and Assists Katz in Suing Beta Pharma and Zhang**

Plaintiff filed this action in the Superior Court on November 10, 2014. Beta Pharma and Zhang removed the action to federal court and filed a motion to disqualify Katz. Before the federal court decided that motion, it remanded this case.

Plaintiff's allegations go directly to the 2010 Agreement and the issues on which Liu advised Beta Pharma. As explained above, Plaintiff alleges, among other things, that Beta Pharma and Zhang breached the 2010 Agreement with Plaintiff by, inter alia, not paying Plaintiff's salary, not transferring to Plaintiff shares in Beta Pharma and another company, and not funding BPC. Complaint, First Count, ¶ 12; Complaint, Second Count, ¶ 15.

Counsel of record for Plaintiff in this case is Jonathan Katz, Esq. and the law firm of Jacobs & Dow, P.C. In connection with this action, Liu has acted as a "consultant" and a liaison between Katz and Plaintiff.

In particular, on April 26, 2014, Liu executed a retainer agreement with Katz pursuant to which Liu agreed to act as a "non-disclosed expert for Jacobs & Dow, LLC" and provide consultation to the firm in connection with various Beta Pharma matters. Kolpen Aff., Exh. 4. The retainer agreement provides that Liu would "act as liaison between [Jacobs & Dow] and the clients [it] represent[s] who have matters against Beta Pharma, Inc., Don Zhang and other potential defendants," and that Liu would "assist them in seeking and obtaining representation from [Jacobs & Dow], and assist [Jacobs & Dow] in representing them, including dealing with international, cultural and linguistic matters." Id. In exchange, Liu will receive 24% of any recovery that Jacobs & Dow

obtains from Beta Pharma. Id. Katz concedes that he and Liu entered this consulting agreement. Affidavit of Jonathan Katz dated November 18, 2014 (“Katz Aff.”), at ¶ 11-12 (copy attached as Exhibit C).<sup>11</sup>

Less than three weeks after Liu signed that retainer agreement, on May 14, 2014, Plaintiff sent Liu an email titled “My case against Don(betaPharma),” delineating the facts of the present lawsuit. Kolpen Aff., Exh. 5. Plaintiff’s May 14, 2014 email stated, among other things, that: Plaintiff founded BPC; he owned 51% of BPC, and Zhang owned 49%; and “Don breached the agreement without fulfill[ing] [sic.] his obligation to [Plaintiff].” Id. The May 14 email included the 2010 Agreement as an attachment. Id. Katz concedes that, after Plaintiff emailed the facts of this lawsuit to Liu, “it is likely that Liu told [Katz] the contents of Wang’s email to Liu...re ‘My case against Don(betaPharma).’”<sup>12</sup>

On May 16, Liu sent an email to Wang attaching a representation agreement dated May 15, 2014 for Katz to represent Liu in this lawsuit. Kolpen Aff., Exh. 6. The representation agreement indicated that another “lawyer” – Liu – would receive a portion of any recovery that Katz obtains for Plaintiff: “Your case was referred to us by another lawyer. In consideration of the referral we will pay that lawyer a forwarding fee of 24% of any contingent fee (8% of the recovery) that we may earn from representing you.” Id.

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<sup>11</sup> This affidavit was submitted in a federal action in which Katz represents other parties against Beta Pharma, Shao et al. v. Beta Pharma, Inc., et al., No. 3:14CV01177.

<sup>12</sup> Katz made that concession when opposing Defendants’ Motion to Disqualify that they previously filed while this case was pending before the District Court for the District of Connecticut. [D.E. 76-3 in Case No. 3:14CV1790 (VLB), ¶ 16].

On May 24, 2014, Plaintiff sent an email to Zhang stating, “I am under pressure to sign an attorney service agreement and it would be irreversible once I sign the service contract with the attorney. I certainly hope we can resolve everything by some other means instead of going through legal procedures.” Zhang Aff., Exh. 6.

Ultimately, Plaintiff filed this lawsuit against Zhang and Beta Pharma. On July 31, 2014, Plaintiff wrote an email to Liu in which he stated, “I have decided to start the suit against Don and BetaPharma according to the proposal by Jonathan.” Kolpen Aff., Exh. 7. Plaintiff asked for Liu’s advice about this lawsuit. Id. Further, that email referenced the May 14, 2014 representation agreement. Id.

Liu therefore acted as a liaison for Katz and assisted Katz in bringing this action against Beta Pharma and Zhang.

**F. Liu Has Teamed Up with Katz in Several Cases Against Beta Pharma**

Beyond the present matter, Liu has teamed up with Katz in other cases to sue Beta Pharma and Zhang, Liu’s former clients. With Katz, Liu is or was jointly representing the plaintiffs in two other actions against Beta Pharma and Zhang: Xie v. Beta Pharma, Inc., et al., No. X06-UWY-CV13-6025526-S (Superior Court of Connecticut) (the “Xie Action”) and Shao, et al., v. Beta Pharma, Inc., et al., No. 3:14-CV-01177 (D.Conn. 2014) (the “Shao Action”). Specifically, Liu has represented that he: (i) has an attorney-client relationship with the Shao plaintiffs and Xie relating to the claims in the Shao and Xie Actions; (ii) with Katz, is or was jointly representing the Shao plaintiffs and Xie in those cases; and (iii) is or was represented by Katz with respect to his own claims. See Non-Party Deponent’s Motion to Quash and Objections to Production of Documents Under Subpoena, filed in the Xie Action on August 20, 2014

(without exhibits), at pp. 8–9 (copy attached as Exhibit D). Further, as in this case, Liu is or was consulting with Katz in those actions.<sup>13</sup>

**G. Katz and Liu Have Communicated Regarding the Various Actions**

As a result of working together against Beta Pharma on all these claims, Katz and Liu have had many opportunities to communicate regarding these actions. Indeed, under the April 2014 consulting agreement, Liu had an obligation to communicate with Katz and prospective plaintiffs, like Wang, to facilitate lawsuits against Beta Pharma. Kolpen Aff., Exh. 4. As Plaintiff admitted, he sent Liu the factual basis for his claims against Defendants. Id., Exh. 5. He ultimately entered into a representation with Katz. Id., Exh. 6-7. Liu served as the liaison between Plaintiff and Katz, and the information found its way into the Complaint in this case.

Between 2013 and 2014, Liu undeniably communicated directly with Katz. Liu’s cell phone records reflect that, between November 2013 and August 2014, Liu communicated with Katz for over 600 minutes. Kolpen Aff., Exh. 8; see also J. Katz email to G. Duhl dated October 1, 2014 (copy attached as Exhibit F) (Katz states, “Lance Liu has nonprivileged, discoverable information material to [Xie’s] case in Connecticut” and thus confirms he has communicated with Liu or received information from Liu); Katz Aff. (Exh. C), at ¶ 7 (Katz states that, on October 30, 2013, he attended a meeting among himself, Xie, and Liu).

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<sup>13</sup> Neither Liu nor Katz voluntarily disclosed to Defendants that Liu was working with Katz to jointly represent the plaintiffs in any of these cases. Zhang Aff., at ¶ 23. Further, neither Liu nor Katz ever disclosed to Defendants that Liu was consulting with Katz and the plaintiffs regarding this action, or the Shao and Xie Actions. Id. Neither Liu nor Katz ever requested a conflict waiver, and Defendants have not consented to Liu’s joint representation or consulting relationship with Katz in any of these cases. Id. Nor have Defendants consented to Liu’s disclosure of confidential information to Zhaoyin Wang, Xie, the Shao plaintiffs, or their counsel. Id.

Liu also concedes that he introduced Katz to certain purchasers of Beta Pharma's stock – that is, prospective and actual plaintiffs in the Shao Action. See relevant portion of Liu's Answer in the Liu Action, ¶ 51 (copy attached as Exhibit E) (“[Liu] admits that he introduced certain Buyers to Katz”).

**H. The Superior Court of New Jersey Has Enjoined Liu From Continuing to Disclose Beta Pharma's Confidences**

As a result of Liu's misconduct, Defendants brought the Liu Action<sup>14</sup> in the Superior Court of New Jersey, seeking to recover damages and to enjoin Liu's disclosure of their confidences. See Verified Complaint filed on September 16, 2014 (without exhibits) (copy attached as Exhibit G). On September 26, 2014, after a hearing, the Honorable Paul Innes, P.J.Ch., entered an Order to Show Cause with Temporary Restraints (the “Restraining Order”) against Liu, enjoining Liu from communicating with the Shao plaintiffs or Xie, or their counsel (Katz), regarding the Shao and Xie Actions.<sup>15</sup> See Order to Show Cause entered on September 26, 2014 (copy attached as Exhibit H); excerpt of transcript of September 26, 2014 hearing (copy attached as Exhibit I) (“Hr'g Tr.”). In entering the Restraining Order, Judge Innes found

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<sup>14</sup> This was the second time Liu's misconduct necessitated the filing of a lawsuit. Previously, Defendants had requested that Liu return all client files. Liu refused. Thus, Defendants commenced an Order to Show Cause on June 27, 2014 directing Liu to turn over the client files. Liu then provided some (but not all) of his files, yet represented that he had turned over all of his files. Based on that representation, Defendants dismissed that Order to Show Cause on July 30, 2014. Subsequently, Defendants and their counsel confirmed that Liu had withheld documents, as Defendants provided documents to their counsel related to the representation that Liu had not turned over. In particular, Liu withheld communications with Beta Pharma that demonstrate that he had conflicts of interest that precluded him from having an adverse relationship with Defendants. Further, Liu has admitted deleting emails related to his representation of Defendants. See excerpt of Liu July 29, 2014 affidavit in the Liu Action, at ¶ 30 (“Any other e-mails I may have sent or received on my Yahoo account relating to legal work for Beta Pharma have been deleted.”) (copy attached as Exhibit J).

<sup>15</sup> The application and the Restraining Order specifically refer to the Shao (“Buyers”) Action and Xie Action, and not this case, because this case had not yet been filed.

that Liu had represented Beta Pharma, and that Liu subsequently had disclosed its confidential information. See Hr'g Tr. (Exh. I), at p. 33 (“Mr. Liu was the attorney for Beta Pharma, Incorporated and Beta Pharma Scientific, Incorporated and now finds himself in an adversarial relationship with those entities and there has been a showing to the Court that Mr. Liu has used privileged and confidential information in connection with his representation in other matters and in connection with his controversies with [Defendants].”) (emphasis added). Liu was present at the hearing, and consented to the restraints imposed by the New Jersey Court, barring him from communicating with Katz, the Shao plaintiffs, or Xie. Id., at pp. 26–27.

Subsequently, on January 14, 2015, the New Jersey Court entered an Order (on the consent of the parties) continuing the restraints for the remainder of the action. See Jan. 14, 2015 Consent Order Entering Preliminary Injunction (copy attached as Exhibit K). The Consent Order further precludes Liu from disclosing Beta Pharma’s confidential information. Id. at ¶ 3(e). It also bars Liu from soliciting any party to bring a legal claim against Beta Pharma. Id. at ¶ 3(b). That case is still pending, and the injunction remains in full effect. Liu later consented to extend the injunction to the present matter. The Amended Consent Order Entering Preliminary Injunction, issued on April 15, 2015 (copy attached as Exhibit L), bars Liu from communicating directly or indirectly with Katz or Wang about this lawsuit.

### **III. LEGAL ARGUMENT**

“Every client has a right to expect that his lawyer will not disclose his secrets.” Goldenberg, 189 Conn. at 512. Where a conflicted lawyer, like Liu, teams up with a second lawyer to sue the conflicted lawyer’s prior client in the same matter as the prior

representation, the second lawyer likewise becomes conflicted and must be disqualified. Id. at 512-513. Here, Liu had access to Defendants' information and secrets, including information concerning the 2010 Agreement, and he advised Defendants on that Agreement and all purported agreements between Plaintiff and Beta Pharma. Liu now has switched sides. He is or was consulting with Katz, and is or was assisting Katz in bringing claims against Beta Pharma, in this case. In such circumstances, the opportunity for disclosure of Defendants' confidential and privileged information is overwhelming. Disqualification of Katz is therefore required to preserve and protect confidential, attorney-client privileged, and/or attorney work product confidences, and in accordance with the Rules of Professional Conduct.

**A. Disqualification of Katz is Required to Preserve Confidences**

The Superior Court has exclusive and inherent authority over the admission and regulation of attorneys in Connecticut. Heiberger v. Clark, 148 Conn. 177 (1961); see also, e.g., Massameno v. Statewide Grievance Committee, 234 Conn. 539, 553–54 (1995). This includes the authority to disqualify counsel. American Heritage Agency, Inc. v. Gelinis, 62 Conn. App. 711, 724 (2001) (“The Superior Court has inherent and statutory authority to regulate the conduct of attorneys who are officers of the court. . . . We accord wide discretion to a trial court’s ruling on a motion for disqualification of counsel for conflict of interest”), quoting Fiddelman v. Redmon, 31 Conn. App. 201, 210 (1993).

“Disqualification of counsel is a remedy that serves to enforce the lawyer’s duty of absolute fidelity and to guard against the danger of inadvertent use of confidential information.” Bergeron v. Mackler, 225 Conn. 391, 397 (1993) (internal quotation marks

omitted). “The competing interests at stake in the motion to disqualify . . . are: (1) the defendant’s interest in protecting confidential information; (2) the plaintiffs’ interest in freely selecting counsel of their choice; and (3) the public’s interest in the scrupulous administration of justice.” American Heritage, 62 Conn. App. at 725 (citing Goldenberg, 189 Conn. at 507).

Where, as here, an attorney (Katz) has the opportunity to receive confidential information regarding adverse parties (Beta Pharma and Zhang) as a result of a consultation with a person who previously acquired such information from those parties (Liu), the Rules of Professional Conduct require disqualification of the attorney.

**B. Liu’s Consulting Relationship with Katz Violates Rules of Professional Conduct 1.6 and 1.9**

Under Connecticut Rule of Professional Conduct 1.6, Liu has a duty to maintain Defendants’ confidences. Rule 1.6(a) provides, in relevant part: “A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by subsection (b), (c), or (d).” RPC 1.6(a).

To make sure confidences are preserved, Rule 1.9(a) specifically prohibits attorneys, such as Liu, from representing parties adverse to former clients, such as Defendants, in the same or a substantially related matter. See RPC 1.9(a). Likewise, Rule 1.9(c) prohibits Liu from using confidential information relating to his representation of Defendants against Defendants. The relevant sections of Rule 1.9 provide:

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing. . . .

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client. . . .

RPC 1.9. Accordingly, “an attorney should be disqualified if he has accepted employment adverse to the interests of a former client on a matter substantially related to the prior representation.” American Heritage, 62 Conn. App. at 726.

Liu counseled Defendants on the same matter that forms the basis of the Complaint. Liu counseled Defendants directly on the 2010 Agreement, a revision to that Agreement, dissolving the Agreement, and related tax issues. Liu then associated with Katz and formed relationships adverse to Defendants’ interests.

Because Liu has switched sides, RPC 1.9 (and controlling law) requires Katz’s disqualification. The Official Commentary to RPC 1.9 states that, “[w]hen a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited.” That is exactly what happened here. Liu counseled Defendants directly on the 2010 Agreement and subsequently formed relationships adverse to Defendants’ interests.

Even if they were not the same matter – and they are – Liu’s advice to Defendants is “substantially related” to this case. The Official Commentary to RPC 1.9 explains that “[m]atters are ‘substantially related’ for the purposes of this Rule [1] if they involve the same transaction or legal dispute or [2] if there otherwise is a substantial risk

that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." Here, Liu counseled Defendants on the purported Agreement between BP and Plaintiff and, in doing so, gained knowledge of the Agreement and its legal ramifications. His representation of Defendants concerned a substantially related matter because his services "involve[d] the same transaction," and since there "is a substantial risk" that information normally obtained "would materially advance" Plaintiff's positions.

Once a substantial relationship between the matters is demonstrated, the receipt of confidential information that would potentially disadvantage the former client is irrebuttably presumed, and the moving party need not show that confidential information actually changed hands. "[C]ourts will not inquire whether the lawyer has, in fact, used confidential information to the client's detriment because such inquiry would require the revelation of the very information the canon is designed to protect." Goldenberg, 189 Conn. at 512. As a federal court explained when applying the same principle under federal precedents, courts do not analyze what information the side-switching lawyer received because doing so "would put the former client to the Hobson's choice" of "disclos[ing] his privileged information in order to disqualify his former attorney" or "refrain[ing] from the disqualification motion altogether." Government of India v. Cook Indus., Inc., 569 F.2d 737, 740 (2d Cir. 1978).

RPC 1.9 precludes Liu's consulting relationship with Katz in this case. Plaintiff's claims in this action arise from alleged breaches of the 2010 Agreement. Specifically, Plaintiff alleges that he contracted with Beta Pharma to become Beta Pharma's Chief Scientific Officer, and, in exchange, would receive a salary, along with stock in Beta

Pharma and another company. Complaint, First Count, ¶ 10. Also, Plaintiff contends that the contract contemplated the establishment of BPC, a Canadian corporation, in which Plaintiff would own 51% of the stock and Zhang would own 49%. Id. at ¶ 11. According to Plaintiff, Beta Pharma and Zhang breached the 2010 Agreement by, among other things, failing to pay Plaintiff his salary and stock, and by discontinuing funding of BPC. Id. at ¶ 12; Complaint, Second Count, ¶ 15. The Complaint therefore specifically raises issues regarding the 2010 Agreement and BPC.

As detailed above, Liu advised Beta Pharma on precisely these issues. Liu advised Beta Pharma on the 2010 Agreement and a possible revision to that Agreement. Zhang Aff., at ¶ 13. He advised Beta Pharma on BPC and related tax issues. Id., at ¶ 13, 16. He advised Beta Pharma on dissolving the 2010 Agreement. Kolpen Aff., Exh. 3. He advised Beta Pharma on all of its alleged agreements and its relationship with Plaintiff. Zhang Aff., at ¶ 13 and Exh. 5.

Liu's work drafting a revision to the 2010 Agreement is one example of Liu's work on this matter for Beta Pharma. As explained above, on July 28, 2012, Plaintiff sent an email to Jirong Peng, Beta Pharma's Vice President, attaching a draft "Shareholder's Agreement," which reflected Zhang's and Plaintiff's purported obligations and ownership interests in BPC. Zhang Aff., Exh. 4. Beta Pharma then forwarded that email and the attached agreement to Liu. As a result, two days later, Liu counseled Beta Pharma on the 2010 Agreement, BPC, and a possible revision to the 2010 Agreement. Zhang Aff., at ¶ 13; Kolpen Aff., Exh. 1, ref #2.

Thus, Liu's representation of Beta Pharma and Zhang concerned the same matter as this lawsuit. Because Liu represented Beta Pharma on the same matter as –

or one which is substantially related to – the matter at issue in this action, he cannot be adverse to Beta Pharma in this action through his consulting relationship with Katz. The Appellate Court upheld disqualification in similar circumstances. See, e.g., American Heritage, 62 Conn. App. at 724–27 (disqualifying defense attorney who previously represented plaintiff in related matters).

**C. Katz’s Consulting Relationship with Liu in this Action, and Relationships with Liu in Other Cases, Require Katz’s Disqualification**

Katz’s many relationships with Liu, including Katz’s consulting relationship with Liu in this case, require Katz’s disqualification. Liu has confidential, privileged information from Beta Pharma and Zhang relating to this action. It would completely defeat the purpose of the rules if Katz were permitted to affiliate with Liu and use Liu’s confidential knowledge in representing Plaintiff against Beta Pharma and Zhang. Moreover, attorneys have an ethical obligation to protect client confidential information and should not participate in assisting another lawyer in the breach of that obligation. See RPC 8.4 (1), (4). Accordingly, Katz cannot assist Liu in breaching his obligations to Beta Pharma and Zhang.

The Connecticut Supreme Court’s decision in Goldenberg requires disqualification in this case. In Goldenberg, the Court addressed the issue of “whether private counsel in a civil law suit and his firm should be disqualified for his having consulted with an attorney who changed sides during the pendency of the litigation.” 189 Conn. at 506. The case involved an airplane accident; “[m]ultiple suits followed against various defendants [including] [Corporate Air], lessee and operator of the aircraft involved in the accident, and [Avco], manufacturer of the two engines which powered the plane.” Id.

There was an adverse relationship between Corporate Air and Avco because “Avco contend[ed] that the accident resulted from operational or pilot error while Corporate Air contend[ed] that defective equipment manufactured by Avco caused the accident.” *Id.*

Joseph Flaherty worked for Avco’s insurer as a staff attorney. Flaherty “represented Avco in regard to its defense of any tort claims arising out of the crash” and “was given total access to all Avco records, documents, tests, correspondence and personnel to assist him in formulating that defense.” *Id.* Subsequently, Flaherty left Avco’s insurer and began working for an insurance adjusting firm that represented the insurance underwriting company for Corporate Air. *Id.* at 507. William Moller, the attorney for Corporate Air, consulted with Flaherty about the accident. *Id.*

Upon motion by Avco, the trial court disqualified Moller and his office from representing Corporate Air and “rendered a further order designed to insulate Flaherty and his information from successor counsel.” *Id.* The Supreme Court affirmed the trial court’s disqualification of Moller based upon his consultation with Flaherty. *Id.* at 512.

In its analysis of the motion to disqualify, the Court explained that the first step was to determine whether an attorney-client relationship existed between Flaherty and Avco. *Id.* at 508–509. The Court concluded that Flaherty “participated in discussions designed to formulate Avco’s trial plan and played an active role in structuring its defenses. [Flaherty’s] intimate knowledge of Avco’s affairs received in the course of the attorney-client relationship subjected him to a fiduciary responsibility.” *Id.* at 509.

The Supreme Court then determined that, because Moller (counsel for Corporate Air) consulted with Flaherty (former counsel for Avco), Moller was in a position to receive confidences concerning Avco and thereby become “infected.” *Id.* at 512. The

Court held expressly: “This possibility is sufficient to disqualify Moller,” id. at 512–513, and that it was “immaterial” that Moller had acted properly at all times and was unaware of Flaherty’s past relationships. Id. at 513. The Supreme Court stated: “No person is immune from the spread of infection by reason of his good conduct or pure heart. Although it is unfortunate that Moller, through no fault of his own, must be precluded from representing Corporate Air . . . in the present litigation, no other result consistent with the [rules of professional conduct] is appropriate.” Id. at 513.

The Court emphasized that there need not be a showing that the attorney (Moller in Goldenberg; Katz in the present case) actually received the confidential/privileged information in order to disqualify him. Id. at 512–13. To the contrary, “where the opportunity for disclosure of confidential information to an adversary is shown, the breach of confidence . . . is presumed in order to preserve the spirit of the [Rules of Professional Conduct].” Id. at 512. The Court stated:

Every client has a right to expect that his lawyer will not disclose his secrets. To protect this right, courts will not inquire whether the lawyer has, in fact, used confidential information to the client’s detriment because such inquiry would require the revelation of the very information the [rule] is designed to protect. . . . Where the opportunity for disclosure of confidential information to an adversary is shown, the breach of confidence would not have to be proved; it is presumed in order to preserve the spirit of the [rules of professional conduct].

Id. at 512 (citations omitted) (emphasis added). Because the consultations between Flaherty (former counsel for Avco) and Moller (counsel for Corporate Air) concerning the airplane accident put Moller “in a position to receive relevant confidences concerning Avco,” the Court concluded that disqualification of Moller was required. Id. at 512–13.

Just as Flaherty represented Avco, Liu had an attorney-client relationship with Beta Pharma. See Zhang Aff., at ¶ 6; Hr’g Tr. (Exh. I), at p. 20. And, just as Moller

(representing Corporate Air, adverse to Avco) consulted with Flaherty (former counsel for Avco) in Goldenberg, Katz (representing Plaintiff, adverse to Defendants) has consulted with Liu (former counsel for Defendants). Kolpen Aff., Exh. 4; see also Kolpen Aff., Exh. 5-8.

In addition, Katz and Liu have formed other associations, including a joint representation and a consulting relationship in the Shao Action and the Xie Action, and an attorney-client relationship, with Katz representing Liu. See Liu Motion to Quash (Exh. D), at pp. 8–9. Beyond these relationships, Katz concedes that he has communicated with Liu. See Katz 10/1/14 email (Exh. F) (where Katz states, “Lance Liu has nonprivileged, discoverable information material to [Xie’s] case in Connecticut,” and thus confirms he has communicated with Liu or received information from him); Katz Aff. (Exh. C), ¶ 7 (Katz admits that, on October 30, 2013, he attended a meeting amongst himself, Xie, and Liu).

Likewise, Liu admits that he introduced Katz to prospective or actual plaintiffs in the Shao Action. See Answer in Liu Action (Exh. E), ¶ 51. Furthermore, Liu’s phone records reflect that, between November 2013 and August 2014 alone, Liu communicated with Katz for over 600 minutes. Kolpen Aff., Exh. 8.

As a result, Katz was and is in a position to receive attorney-client confidences regarding Defendants. This is true even if Katz has acted at all times with the utmost propriety; where, as here, “the opportunity for disclosure of confidential information to an adversary is shown, the breach of confidence . . . is presumed in order to preserve the spirit of the rules.” Goldenberg, 189 Conn. at 512. Just as it was necessary to

disqualify Moller from representing Corporate Air, Katz must be disqualified from representing Plaintiff in the present case. See id. at 512–13.

The Superior Court disqualified a law firm under similar circumstances in ARJ Trucking, Inc. v. Emery Worldwide and Consolidated Freightways, Inc., 1992 WL 189367 (Conn. Super. Ct. Jul. 29, 1992). In ARJ Trucking, ARJ’s counsel, Cohen and Wolf, secured an affidavit from Emery’s former general counsel wherein he revealed, inter alia, facts relating to a contract between ARJ and Emery that was at issue in the lawsuit and that he had negotiated as Emery’s general counsel. The court disqualified Cohen and Wolf because there was an opportunity for disclosure of Emery’s confidential information when Cohen and Wolf took that affidavit. The disclosure of such confidential information was presumed under Goldenberg. Id. Much the same opportunity for disclosure of confidential information arose when Liu consulted with Katz in this case (and in the Shao and Xie Actions), about their joint representations in the Shao and Xie Actions, and about Liu’s projected claims against Beta Pharma.

A federal case from the Eastern District of New York confirms this analysis. In Gerffert Co., Inc. v. Dean, 2011 WL 683963 (E.D.N.Y. Feb. 16, 2011), Attorney Horowitz had previously represented Gerffert and the Bonellas. He obtained a waiver from the Bonellas to represent Gerffert in a business transaction with the Bonellas. Id. at \* 1. The waiver was limited, however, and explicitly stated that Horowitz would not represent either side in the event a dispute arose between them. Id. at \*2. Gerffert, represented by separate counsel, Attorney Magnotti, ultimately sued the Bonellas. Id. at \*4. Unbeknownst to the Bonellas, however, Horowitz was involved in the case behind the scenes before ultimately entering a notice of appearance on behalf of

Gerffert. Id. at \*9. The Court disqualified both Horowitz and Magnotti, noting that “the risk that confidential information has already passed between them would remain and taint the fairness of the proceedings.” Id. at \*10. In making its ruling, the Court particularly emphasized the failure to disclose that Horowitz had been working on the matter. Id. at \*11.

Just as in Gerffert, Katz has affiliated with former counsel for his adversary. Just as in Gerffert, Liu did not make an appearance in this case (or in the Xie and Shao cases). Just as in Gerffert, this relationship was not immediately disclosed; instead, Beta Pharma discovered the consulting relationship in this case only after suing Liu for attorney misconduct and conducting discovery in the Liu Action. Just as in Gerffert, the risk that Liu has shared Beta Pharma’s confidences with Katz taints the proceeding and requires disqualification.

Because Katz has consulted and associated with Liu (who previously represented Defendants with respect to facts and issues in controversy in this action), Katz was and is in a position to receive confidences concerning Defendants regarding the subject matter of this case. As this opportunity for disclosure of confidential information exists, a breach of confidence is presumed and disqualification is required.

Goldenberg, 189 Conn. at 512; ARJ Trucking, 1992 WL 189367, at \*3.

**D. If the Court Balances the Interests Involved, They Weigh In Favor of Disqualification**

While granting this Motion will protect Defendants’ confidences and avoid the appearance of impropriety, it will not unduly prejudice Plaintiff, because Defendants filed the original version of this Motion (when this action was in federal court) early on, and Plaintiff certainly can find another lawyer to handle this breach of contract action.



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**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2016, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/  
Michael G. Caldwell (juris no. 421880)