

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

ZHAOYIN WANG,  
Plaintiff,

v.

BETA PHARMA, INC., DON ZHANG,  
AND ZHEJIANG BETA PHARMA  
CO., LTD.,  
Defendants.

No. 3:14CV1790 (VLB)

MARCH 24, 2015

**REPLY TO MEMORANDUM IN OPPOSITION TO  
DEFENDANTS' CLAIM FOR EMERGENCY RELIEF REGARDING  
DEFENDANTS' EMERGENCY MOTION FOR PROTECTIVE ORDER**

Pursuant to Rule 7(d) of the Local Rules of this Court, defendants Beta Pharma, Inc. ("Beta Pharma") and Don Zhang ("Dr. Zhang") (collectively, "Defendants") hereby file this Reply Brief in response to Plaintiff's Memorandum in Opposition to Defendants' Claim for Emergency Relief Regarding Defendants' Emergency Motion for Protective Order ("Plaintiff's Memorandum" or "Pl. Memo."), filed on March 23, 2015 [D.E. #50]. Plaintiff filed that Memorandum to oppose the request for expedited consideration that Defendants made within their Emergency Motion for Protective Order for Motion to Disqualify Counsel, filed on March 20, 2015 (the "Motion for Protective Order" or "Mot. Prot. Ord.") [D.E. #49]. Thus, this Reply Brief does not argue the substance of the Motion for Protective Order, but rather explains why the Court should grant expedited consideration to that Motion, and shows that Plaintiff's arguments on that subject are unavailing. Defendants now specifically request that the Court issue an Order requiring

Plaintiff to file his substantive Memorandum in opposition to the Motion for Protective Order no later than March 31, 2015, and requiring Defendants to file their Reply Brief in response to that Memorandum no later than April 6, 2015.

I. Introduction

This issue arises from Defendants recently uncovering of documents showing that Beta Pharma's former attorney, Lance Liu ("Liu"), who is associated with and consulting Plaintiff's attorney, Jonathan Katz, Esq. ("Katz"), worked for Beta Pharma on the subject matter of Plaintiff's action. See Mot. Prot. Ord. at 3-5. As further explained in the Motion for Protective Order, Defendants will file a Motion to Disqualify Counsel (the "Motion to Disqualify"); with that Motion, Defendants seek to submit to the Court, without waiving the attorney-client privilege, work product protection, or attorney-client confidentiality under Rule of Professional Conduct 1.6, the documents they have uncovered establishing that Liu worked on the same matter.

In order to do so, Defendants moved for the issuance of a Protective Order that would supplement the Court's Standing Protective Order and govern the disclosure of documents in connection with the Motion to Disqualify. Defendants request expedited consideration of the Motion for Protective Order because they cannot file the Motion to Disqualify until the Protective Order issue is settled; in the meantime, Defendants remain subject to the risk that their confidential and privileged information will be disclosed and used against them.

**II. Relevant Facts**

As the Motion for Protective Order explains, Defendants have already moved to disqualify Katz from representing other plaintiffs against them in two actions, Xie v. Beta Pharma, Inc., et al. No. NNH-CV-13-6035116 (Conn. Super. Ct.) (the “Xie Action”) and Shao v. Beta Pharma, Inc., et al., No. 3:14-CV-01177 (D. Conn.) (the “Shao Action”). Those motions are based on work that Liu performed for Beta Pharma, when he was its attorney, on the subject matter of those actions, and Katz’s multiple associations with Liu. Mot. Prot. Ord. at 4-6. Significantly, in the Shao Action, Judge Haight entered a Protective Order, over Katz’s objection, substantially identical to the Protective Order Defendants seek here, to allow Defendants to demonstrate the existence of the conflict without waiving the attorney-client privilege, work product protection, or attorney-client confidentiality under R.P.C. 1.6. Protective Order for Motion to Disqualify Counsel, dated January 16, 2015, attached to Motion for Protective Order as Exhibit E.

While Defendants have been aware for some time of the associations between Liu and Katz, and of the work that Liu performed for Beta Pharma on the subject matter of the Xie and Shao Actions, until March 13, 2015, Defendants had not uncovered documents unequivocally establishing that Liu had worked for Beta Pharma on the subject matter of this action. Concerned that the same conflict issues that exist in the Xie and Shao Actions may also exist in this case, Defendants diligently searched years of email communications. On March 13, 2015, they uncovered emails and documents establishing that Liu had worked on

the alleged 2010 Agreement and drafted a related agreement. Mot. Prot. Ord. at 3-4.<sup>1</sup> On making that discovery, Defendants immediately asked Katz to withdraw from his representation of Plaintiff. Katz declined to do so. This left Defendants with no option but to file the Motion to Disqualify as soon as possible. In order to expedite the Motion to Disqualify, Defendants quickly filed the Motion for Protective Order, asking the Court to issue exactly the same Protective Order that Judge Haight issued under the same circumstances in the Shao Action.

III. Argument

A. The Motion for Protective Order Merits Expedited Consideration

Defendants seek expedited consideration of the Motion for Protective Order because they wish to file the Motion to Disqualify, and thereby end the risk of disclosure of their confidential and privileged information as soon as possible. A motion to disqualify a party's counsel is an urgent matter, on which consideration should be expedited rather than delayed. See Sharma v. VW Credit, Inc., 2013 WL 1163801, \*5-6 (C.D. Cal. Mar. 20, 2013) (noting need to bring motions promptly on disqualification); Skyy Spirits, LLC v. Rubyy, LLC, 2009 WL 3762418, at \*4 (N.D. Cal. Nov. 9, 2009) (it is "prudent and productive" to bring a motion to disqualify "as soon as possible"). For that reason, courts sometimes consider motions to disqualify through expedited proceedings. See Baird v. Hilton Hotel Corp., 771 F.Supp. 24, 25-27 (E.D.N.Y. 1991) (motion to disqualify

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<sup>1</sup> Although Liu purportedly provided Beta Pharma with his complete Beta Pharma legal file in 2014 when Beta Pharma sued him for the return of the file in New Jersey state court, he in fact provided only a part of the file, and he did not include the documents revealing his work on the 2010 Agreement and related issues.

granted upon motion for order to show cause); Comtech, Inc. v. Rector, 1986 WL 6829, \*1 (S.D.N.Y. Sept. 17, 2009) (because resolution of motion to disqualify was urgent, court considered it at a preliminary injunction hearing).<sup>2</sup>

In this case, the longer Katz continues to represent Plaintiff, the longer Liu's misconduct taints Katz's representation of Plaintiff and undermines the integrity of this lawsuit. Further, as long as Katz continues to represent Plaintiff, the danger that Defendants' confidential and privileged information will be disclosed to Katz and/or used against Defendants continues. These reasons alone justify hearing the Motion for Protective Order on an expedited basis. Also, the Court will be aided in carrying out expedited consideration of the Motion for Protective Order by the fact that Judge Haight already issued the identical Order in the Shao Action under the same circumstances.

The issue is not merely theoretical. As Plaintiff himself observes, Plaintiff's current attorney has issued a subpoena to Teplitzky & Company ("Teplitzky"), Beta Pharma's former accountants, seeking Beta Pharma's past income tax returns and other sensitive documents. Pl. Memo. at 10. Such documents are highly sensitive and confidential. See, e.g., Donald Williams Fairbanks Architect, P.C. v. Fairfield County Contractors LLC, 2014 WL 7271933 (D. Conn. Dec. 18, 2014) (discovery of income tax records is permitted only when the plaintiff shows a compelling need for them) In response to requests from Defendants, Plaintiff's

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<sup>2</sup> Indeed, Defendants sued Liu in New Jersey Superior Court by way of an order to show cause alleging attorney misconduct, and the New Jersey court entered a temporary restraining order enjoining Liu from, inter alia, communicating the Katz, Xie, or the Shao plaintiffs about the Xie and Shao Actions. If expedited consideration of Liu's misconduct and improper association with Katz was appropriate there, there is no reason not to grant expedited consideration here.

counsel has refused to withdraw that subpoena while the disqualification issue is resolved. The need for expedited consideration is a real one, to avoid the disclosure of sensitive documents to a conflicted lawyer.

**B. Plaintiff's Arguments Against Expedited Consideration Are Unavailing and Constitute Red Herrings**

Plaintiff's main argument against expedited consideration of the Motion for Protective Order is that Defendants have failed to seek disqualification for some time, because they have "had full knowledge of the Lance Liu issues since last year." Pl. Memo. at 4. But in fact, Defendants have only very recently uncovered the information that requires them to seek Katz's disqualification.

Liu's former representation of Beta Pharma creates a conflict only if he worked on the "same or substantially the same matter" as the present action. See Conn. R.P.C. 1.9(c); Mot. Prot. Ord. at 7. The need for disqualification arises only if the attorney worked on a matter that is "substantially related" to the present action. Goldenberg v. Corporate Air, Inc., 189 Conn. 504, 512 (1983), overruled in part and on other grounds Burger & Burger, Inc. v. Murren, 202 Conn. 660 (1987). Defendants became aware of the need for disqualification when they recently uncovered documents revealing that Liu had worked for Beta Pharma on the same matter as the present matter. While Defendants have known about Liu's association with Katz for some time, they discovered that Liu had worked for Beta Pharma on the subject matter of the present action only on March 13, 2015, exactly one week before they filed the Motion for Protective Order. Mot. Prot. Ord. at 11. Further, after uncovering documents showing Liu's work on the issues in this case, Defendants' counsel immediately asked Katz

whether he would terminate his representation of Plaintiff. Katz's refusal to do so necessitated this emergent motion.

The fact that Defendants previously filed well-supported motions to disqualify Katz in the Xie and Shao Actions does not mean that they previously had enough evidence to file a motion to disqualify Katz in this action. Nor does the fact that Defendants previously filed an action against Liu in New Jersey state court, and obtained a restraining order based on his misconduct in other actions, mean that they possessed, at that time, enough evidence to move to disqualify Katz in this action. Now that Defendants have uncovered information showing that Liu worked for Beta Pharma on the subject matter of Plaintiff's complaint, however, they seek to move promptly to disqualify Katz in Plaintiff's action. Defendants should not be punished for making the effort to develop sufficient supporting evidence specific to this case before filing a Motion to Disqualify.

Plaintiff asserts that Defendants' prior knowledge of the basis for the Motion to Disqualify is evidenced by an email from Plaintiff to Dr. Zhang dated May 24, 2014, in which Plaintiff stated that he was "under pressure to sign an attorney service agreement." Mot. Prot. Ord. Ex. C; Pl. Memo. at 5. Plaintiff argues that the full email chain shows that Defendants knew of Liu's involvement with Plaintiff between June and December, 2014. Pl. Memo. at 5. But Plaintiff's argument is irrelevant to Defendants' recent discovery of the conflict. The recent discovery that required Defendants to seek disqualification was about another fact -- Liu's work for Beta Pharma on its transactions with Plaintiff during the

period when he was Beta Pharma's attorney, in late 2011 and 2012. Mot. Prot. Ord. at 3-4.

Plaintiff seeks to cast doubt on Defendants' assertion that they recently discovered such evidence by saying that Defendants do not explain why they only found the documents recently. Pl. Memo. at 6. However, Defendants are not obliged, in order to protect their rights, to disclose such facts about their litigation process.

Plaintiff further argues that nothing that Liu re-drafted for Beta Pharma in 2011 and 2012 could have changed the terms of an agreement the parties signed in 2010. Pl. Memo. at 6. But the terms of the alleged 2010 Agreement are not the only issue in this action. On the contrary, Plaintiff's Complaint makes allegations about events occurring after the date of the 2010 Agreement, and certainly post-2010 events are highly relevant to Plaintiff's allegations about Defendants' failure to perform duties under the 2010 Agreement, and to such issues as what duties Plaintiff performed for Defendants and what other transactions occurred between the parties. See, e.g., Complaint, First Count ¶¶ 12-15. Because Liu provided legal services to Beta Pharma directly related to the transactions with Plaintiff that are the subject of the Complaint, he worked on the subject matter of the present action.

Plaintiff's remaining arguments concern, not the request for expedited consideration, but the merits of the Motion for Protective Order itself. Pl. Memo. at 7-9. Such arguments are not relevant to the issue of expedited consideration, the only one that Plaintiff placed before the Court in his Memorandum. The

Memorandum asks the Court for an opportunity to file “a substantive response to defendants expressed need for a ... protective order,” Pl. Memo. at 1. Since Plaintiff evidently has not yet made his substantive response, his arguments on the merits of the proposed Protective Order miss the point. If Plaintiff does file his substantive response, Defendants will reply to such response as appropriate.

Plaintiff also alleges that Defendants have an “ulterior motive” in seeking expedited consideration, based on Plaintiff’s effort to subpoena Beta Pharma’s income tax forms and other information and documents from Teplitzky. Pl. Memo. at 9-11. But there is nothing “ulterior” here. The Teplitzky subpoena merely underscores the importance of expedited consideration and, in fact, the importance of the Motion to Disqualify itself. Plaintiff persists in seeking to obtain discovery (indeed, especially sensitive discovery) regarding Defendants even while Plaintiff continues to be represented by a conflicted attorney. The Teplitzky subpoena is an example of the reasons why the Motion to Disqualify should be considered as soon as possible. Defendants should not be subjected to sensitive discovery regarding tax returns while Plaintiff is represented by the conflicted attorney who has access, through Liu, to Defendants’ confidential information.

For all these reasons, Defendants respectfully request that the Court grant expedited consideration to the Motion for Protective Order. Specifically, Defendants request that the Court issue an Order requiring Plaintiff to file his substantive Memorandum in opposition to the Motion for Protective Order no

later than March 31, 2015, and requiring Defendants to file their Reply Brief in response to that Memorandum no later than April 6, 2015.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2015 a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. 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/

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