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KINSELLA WEITZMAN ISER KUMP LLP
Howard Weitzman (SBN 38723)
hweitzman@kwikalaw.com
Jonathan P. Steinsapir (SBN 226281)
jsteinsapir@kwikalaw.com
Suann MacIsaac (SBN 205659)
smacisaac@kwikalaw.com
Aaron Liskin (SBN 264268)
aliskin@kwikalaw.com
Katherine T. Kleindienst (SBN 274423)
kkleindienst@kwikalaw.com
808 Wilshire Boulevard, Third Floor
Santa Monica, California 90401
Telephone: 310.566.9800
Facsimile: 310.566.9850

Attorneys for Defendants MJJ Productions, Inc., and MJJ Ventures, Inc.

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES - WESTERN DISTRICT

WADE ROBSON, an individual,

Plaintiff,

vs.

MJJ PRODUCTIONS, INC., a California corporation; MJJ VENTURES, INC., a California corporation; and DOES 4-50, inclusive,

Defendants.

Case No. BC 508502
[Related to Case No. BP117321 and Case No. BC545264]

Assigned to Hon. Mark A. Young, Dept. M

DEFENDANTS' RESPONSE AND OPPOSITION TO PLAINTIFF'S REQUEST THAT THE HON. MARK A. YOUNG BE RECUSED PURSUANT TO CODE OF CIVIL PROCEDURE §170.3; AND DECLARATION OF JONATHAN P. STEINSAPIR

Dept.: M

Action Filed: May 10, 2013
Trial Date: June 14, 2021

OPPOSITION TO MOTION TO RECUSE

Defendants MJJ Productions, Inc., and MJJ Ventures, Inc., hereby oppose Plaintiff's request that Judge Young recuse himself from this matter and the related *Safechuck* proceedings (Case No. BC545264). Plaintiff's request is not just without merit, it is utterly frivolous.

A. Recusal Cannot Be Based on Judicial Rulings

The demand that Judge Young recuse himself is based solely on the declaration of Alex Cunny ("Cunny Decl."). Roughly half of that declaration, paragraphs 4 through 20, complains about the merits of a number of rulings made ten days ago. These paragraphs are irrelevant. It is well-established that allegations of judicial bias, or the reasonable appearance thereof, must be based on something "other than rulings, opinions formed or statements made by the judge during the course of" a case. *United States v. Holland*, 519 F.3d 909, 914 (9th Cir. 2008). *See also People v. Perez*, 4 Cal.5th 421, 441(2018) (affirming denial of recusal motion: "a trial judge may hear a case even if he or she has expressed an adverse impression of a party that was based upon actual observance of the witnesses and the evidence given during the trial of an action."). In other words, "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994). Arguments that a judge erred in rulings are "grounds for appeal, not for recusal." *Ibid.* "When making a ruling, a judge interprets the evidence, weighs credibility, and makes findings. In doing so, the judge necessarily makes and expresses determinations in favor of and against parties. How could it be otherwise?" *Moulton Niguel Water Dist. v. Colombo*, 111 Cal.App.4th 1210, 1219 (2003) (rejecting recusal request based on bias).

In short, Plaintiff's criticisms of rulings that Judge Young has made in this case are no basis for a demand that he recuse himself and have no place in such a request.

B. Judge Young's Wife's Attenuated Connection to Completely Unrelated Cases, Pending Before a Different Judicial Officer, Is No Basis for Recusal

The remainder of Mr. Cunny's declaration discusses various cases, presided over by Judge Carolyn Kuhl downtown, involving "allegations of sexual abuse, and racial harassment by Tyndall, a gynecologist who worked at the USC Health Center for decades." Cunny Decl. ¶ 27. (We refer to these cases in this brief as "the Tyndall cases.") Apparently, Judge Young's wife or

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

her law firm represents USC and/or certain witnesses associated with USC (but she is not counsel of record in the Tyndall cases). Defendants and their counsel have nothing to do with those cases. But Plaintiff's counsel in this case apparently represents parties who are adverse to USC and/or these witnesses in the Tyndall cases. Plaintiff also points out—with bold and italics no less—that "Judge Young is a graduate of USC himself." Cunny Decl. ¶ 34 (emphasis removed).

This is all completely irrelevant. To be sure, Judge Young might have been required to recuse himself in the Tyndall cases *had they been assigned to him*. The assertion, however, that he is somehow required to recuse himself in *these cases* makes no sense. The Tyndall cases have *nothing whatsoever* to do with this case or the related *Safechuck* proceedings. This case and the *Safechuck* case involve (false) allegations that the late Michael Jackson molested two boys in the late 1980s through the late 1990s. Those allegations have *nothing* to do with the allegations in the Tyndall cases. That Judge Young's wife may be tangentially involved in the Tyndall cases, and that Judge Young is a graduate of USC, have nothing to do with anything in *these unrelated cases*.

As best we can understand it, Plaintiff apparently believes that because Judge Young's wife represents a party and witnesses involved in *completely unrelated cases* where some of Plaintiff's counsel's other clients (but *not* the parties in this case) are adverse to his wife's clients, this fact requires recusal under CCP section 170.1. But Plaintiff never explains why that is the case. That is not surprising: there is no conceivable reason these circumstances could require recusal. How could Judge Young make rulings in *these cases* that could undermine the cases against USC or others in the Tyndall cases? Judge Young has no power over those cases. Likewise, the fact that unrelated parties in the Tyndall cases supposedly served a subpoena on Judge Young's wife's law firm (notably *after* Judge Young made rulings against Plaintiff in this case) is also irrelevant. Law firms are served with subpoenas all the time; it is hardly out of the ordinary. But in any event, how would Judge Young's ruling in *these cases* affect any issues relating to that subpoena in the *unrelated Tyndall cases*? To state the obvious, Judge Young's rulings in *these cases* can have *no possible effect whatsoever* on Judge Kuhl's rulings in the unrelated *Tyndall cases*.

Moreover, the claim that because a judge is married to a lawyer who represents parties who

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

may be adverse to Firm X's clients must recuse himself or herself from all cases involving Firm X is absurd. Under such a standard, every law firm appearing before such a judge would need to investigate and disclose every single matter they have where a client may be adverse to a client of the judge's spouse's firm (even if the lawyer-spouse is not counsel of record in the matters, as Judge Young's wife is apparently not counsel of record in the Tyndall cases). Law firms literally deal with scores, if not hundreds, of other law firms every week (even individual lawyers often deal with dozens of firms every week). Such a rule would all but preclude judges married to lawyers from being able to act at all in *thousands* of cases (if not more) and would inappropriately penalize judges for marrying or living with other lawyers. Such a rule would also raise serious issues relating to attorney-client privilege and client confidentiality, as the identity of a lawyer's clients is often itself privileged and confidential (for example, where a client is consulting with a firm about a non-public matter or about whether or not to file litigation against another party).

Not surprisingly, Plaintiff does not cite a single case supporting such an absurd rule. In fact, California courts have appropriately refused to recuse where a connection between a judge's spouse and a case are *much more* direct than those here. In *United Farm Workers of Am. v. Superior Court*, 170 Cal.App.3d 97 (1985), for example, a judge's wife had worked for two days as a "strikebreaker" for an employer in a lawsuit between the employer and a union involving *that very* strike. *Id.* at 100-01. The Court of Appeal nevertheless affirmed a ruling that the judge's wife's work for the employer would *not* cause a reasonable person to infer that the judge would be biased against the union in a case involving *that very strike*. *Id.* at 105 ("Whatever may have been true in years past, it is now simply impossible and unwarranted to treat women as mere shadows of their husbands' identities."). If recusal was not required there, Plaintiff's contention that it is required here cannot be taken seriously.

C. A Judge Has a Duty Not to Recuse Where Recusal is Not Required, Particularly Given Plaintiff's Counsel's History of Accusing Another Judicial Officer in These Very Cases of Improper Conduct

Given that recusal is not required, the demand that Judge Young recuse himself ***must*** be denied. "A judge has a duty to decide any proceeding in which he or she is not disqualified." Code

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

Civ. Pro. § 170. "Judicial responsibility does not require shrinking every time an advocate asserts the objective and fair judge appears to be biased. *The duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified*." *Wechsler v. Superior Court*, 224 Cal.App.4th 384, 391 (2014) (emphasis added, some internal punctuation omitted, and quoting *Haworth v. Superior Court*, 50 Cal. 4th 372, 392 (2010)).

Finally, it must be noted that this is not the first time that plaintiff's counsel has improperly accused a judge of acting out of improper motive in these cases. Specifically, in its briefs in the Court of Appeal in the related *Safechuck* matter, counsel mused that "perhaps" Judge Beckloff, the prior judge in these proceedings, had ruled against the plaintiff because the judge was "distracted by [Michael] Jackson's notoriety." (Steinsapir Decl., Ex. A (excerpt of Safechuck's opening appeals brief).[1] Given this history, Plaintiff is likely to misinterpret *any* adverse decision as being based on a judge's supposedly improper motives. Simply put, *even if* Judge Young did recuse, counsel will almost certainly accuse the next judge of some sort of inappropriate motive once that judge inevitably rules against plaintiffs on an issue. *Cf. Wechsler*, 224 Cal.App.4th at 391 ("The 'reasonable person' [for purposes of evaluating whether there is an appearance of partiality under CCP § 170.1(a)(6)] is not someone who is 'hypersensitive or unduly suspicious,' but rather is a 'well-informed, thoughtful observer.'"). Under these circumstances, where counsel has made *multiple* improper accusations of impropriety against *multiple* judges in the same cases, the court's "duty… to sit where not disqualified," *id.* at 391, is even stronger than it is in other cases.

D. Conclusion

For all these reasons, we urge the court to summarily deny the request to recuse so that this

[1] The accusation was frivolous: Judge Beckloff's prior dispositive rulings on these and the *Safechuck* proceedings was based solely on a straightforward interpretation of the prior version of CCP section 340.1(b)(2) (repealed Jan. 1, 2020). That statute was substantially amended, and made retroactive to cases on appeal, as of January 1, 2020. Judge Beckloff's rulings in these matters were reversed *solely* on account of the Legislature's intervening change of the law and on no other basis. And in light of Judge Beckloff's exhaustive rulings in these cases involving *seven different demurrers and two motions for summary judgment*, Steinsapir Decl. ¶ 3, where he grappled with numerous legal issues under the Probate Code and the Code of Civil Procedure in hundreds of pages of detailed legal analysis over four years, the contention that he was "distracted by [Michael] Jackson's notoriety" is just plain silly (and, not to mention, patently offensive).

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

case can proceed to its conclusion.

DATED: October 5, 2020

Respectfully Submitted:

KINSELLA WEITZMAN ISER KUMP LLP

By: _____

Howard Weitzman
Attorneys for Defendants MJJ Productions, Inc., and MJJ Ventures, Inc.

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

DECLARATION OF JONATHAN P. STEINSAPIR

I, Jonathan P. Steinsapir, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Kinsella Weitzman Iser Kump LLP, attorneys of record for the Defendants MJJ Productions, Inc., and MJJ Ventures, Inc. ("the Corporations" or "Defendants"). If called as a witness, I could and would competently testify to the following facts.

2. Attached as **Exhibit A** hereto is a true and correct copy of an excerpt from the opening appellate brief on James Safechuck in the California Court of Appeal, Second Appellate District, Division 8 (Appeal No. B284613). I understand that the entire brief is also on file in the Superior Court in the case, Case No. BC 545264.

3. The *Safechuck* and *Robson* proceedings involved both civil cases (Case No. BC 545264 and Case No. BC 508502, respectively), and petitions to file late creditor's claims in the probate proceedings administering the Estate of Michael Jackson, Case No. BP 117321. Until reassignment to Judge Young, all of those matters were assigned to Judge Beckloff. Over the course of roughly four years, Judge Beckloff adjudicated seven different demurrers (two on the *Safechuck* probate petition, three in the *Safechuck* civil case, and two in the *Robson* civil case) and two motions for summary judgment (one on the *Robson* probate petition and one in the *Robson* civil case). Between them, Judge Beckloff issued numerous, detailed written rulings, constituting well over one-hundred pages, single-spaced.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 5, 2020, in Santa Monica, California.

Jonathan P. Steinsapir

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

EXHIBIT A

B284613

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION 8

JAMES SAFECHUCK,
Plaintiff and Appellant,

v.

MJJ PRODUCTIONS, INC., ET AL.,
Defendants and Respondents.

CASE NO. BC545264
HON. MITCHELL L. BECKLOFF, TRIAL JUDGE
LOS ANGELES COUNTY SUPERIOR COURT

APPELLANT'S OPENING BRIEF

MANLY, STEWART & FINALDI
John C. Manly, SBN 149080
Vince W. Finaldi, SBN 238279
Alexander E. Cunny, SBN 291567
19100 Von Karman Avenue, Suite 800
Irvine, California 92612
Telephone: (949) 252-9990
Email: jmanly@manlystewart.com
vfinaldi@manlystewart.com
acunny@manlystewart.com

ESNER, CHANG & BOYER
Andrew N. Chang, SBN 84544
*Holly N. Boyer, SBN 221788
Joseph S. Persoff, SBN 307986
234 East Colorado Blvd., Suite 975
Pasadena, California 91101
Telephone: (626) 535-9860
Email: achang@ecbappeal.com
hboyer@ecbappeal.com
jpersoff@ecbappeal.com

Attorneys for Plaintiff and Appellant

Received by Second District Court of Appeal

Perhaps distracted by Jackson's notoriety, the court reasoned that because Jackson was the "sole shareholder" of the entities, ***there was nothing Defendants could have done*** to "take reasonable steps" or "implement reasonable safeguards" to protect Plaintiff from such foreseeable sexual abuse. (See AA 250, 256.) Conflating the issues of duty and timeliness under subsection (b)(2) of Section 340.1, the court held that there can be no duty to protect a child from sexual abuse where the abuse is at the hands of a person in charge of the company and thus Defendants' actions could not, *ipso facto*, fall under subsection (b)(2).

Employing such a perverse interpretation of section 340.1, where a third-party entity defendant who has caused or contributed to the sexual abuse of a child can escape all liability simply because the perpetrator was the president or sole shareholder of the entity, defies not only the plain language of Section 340.1(b)(2) but also the very intent and spirit of the law.

By virtue of the special relationship that existed between them, Defendants had an affirmative duty to do something to protect Plaintiff from such rampant sexual abuse. Defendants did nothing. As explained below, the court's analysis fails to appreciate the nature of the affirmative duty at issue and the claims alleged against Defendants. Contrary to the court's sweeping characterization, the negligence claims are not predicated on the supposed failure to *fire* Jackson. The dispositive issue is not whether Defendants could control

CONCLUSION

For all the aforementioned reasons, the trial court's order sustaining Defendants' demurrer without leave to amend should be reversed.

Dated: May 17, 2018

MANLY, STEWART & FINALDI

ESNER, CHANG & BOYER

By: *s/ Holly N. Boyer*
Holly N. Boyer
Attorneys for Plaintiff and Appellant

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, CA 90401.

On October 5, 2020, I served true copies of the following document(s) described as **DEFENDANTS' RESPONSE AND OPPOSITION TO PLAINTIFF'S REQUEST THAT THE HON. MARK A. YOUNG BE RECUSED PURSUANT TO CODE OF CIVIL PROCEDURE §170.3; AND DECLARATION OF JONATHAN P. STEINSAPIR** on the interested parties in this action as follows:

John C. Manley
Vince W. Finaldi
Manly, Stewart & Finaldi
19100 Von Karman Ave., Suite 800
Irvine, CA 92612

Attorneys for Plaintiff Wade Robson
Phone: 949-252-9990
Fax: 949-252-9991
Email: vfinaldi@manlystewart.com
jmanly@manlystewart.com
kfrederiksen@manlystewart.com

☒ **BY E-MAIL OR E-SERVICE:** (Code Civ. Proc. § 1010.6, Cal. Rules of Court, rule 2.251) I caused the document(s) to be sent from e-mail address choffman@kwikalaw.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY MAIL:** I caused the document(s) to be enclosed in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY OVERNIGHT DELIVERY:** I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed above or on the attached Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 5, 2020, at Los Angeles, California.

Candace Hoffman

10386-00226/709222

KINSELLA WEITZMAN ISER KUMP LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850