

May 31, 2023

[Client 1]

[Client 2]

Re: [Case name]

Dear [Clients]:

You have asked my firm to represent your interests in the claim referenced above. Because we will be representing both of you (clients names) jointly as plaintiffs in this matter, the California Rules of Professional Conduct require that we make certain disclosures to you and obtain your written consent to our representation of both of you together, or else a waiver of such representation. Although (Client 1 –if corporation) has the controlling interest and decision-making authority for the corporation, the Rules specifically require that where one of the parties being represented is an organization and the other is an officer or director of that organization, someone other than the individual being represented must sign the waiver of conflict of interest on behalf of the organization. That is the reason that (Client 1 officer) is being asked to be a signatory on this letter, in order to assure that an independent representative of the organization– in this case (Corporate client).– agrees to waive the potential conflict of interest between the two clients.

At this time, I do not believe there is an actual conflict of interest between you. However, to the extent that [Defendant(s) name(s)] could raise defenses as to [Client 1] that they could not raise as to [Client 2] there *may* be a potential conflict. There also is a potential conflict of interest as to the apportionment of damages between you which may be received by way of settlement or arbitration award, if any, against the defendants. Since I represent both of you individually, I would not be able to represent either one of you on any claims you may have against the other should the above scenario occur.

Another way in which a conflict of interest could occur is if we receive conflicting instructions from you. For example, if [Client 1] instruct us to take certain actions on his/her behalf which would be detrimental to [Client 2]’s best interests, we would be placed in a position where we could not follow one of the instructions without injuring the other client. That situation, if unresolved, could create a conflict of interest that would require you to seek separate attorneys for each of you. It is therefore important that we receive a *common set of instructions* from you that we can follow without harming one client by benefitting the other, so that a conflict of interest does not arise that might require our withdrawal. For example, if one of you wanted to file for bankruptcy and stay all legal proceedings, and the other of you wants to proceed to trial, this could present an actual conflict of interest which might require you to retain separate attorneys to negotiate a deal between the two of you, or to take over your separate representation. Or if it is in the best interests of one of you to settle and not the other’s, a conflict of interest could arise. It is very unlikely that the defense would agree to settle with one of you

and not have a “global” resolution of the claims against them, so an unresolvable disagreement between you could result in one of you being very unhappy about the possible resolution of the case.

A conflict of interest could arise if, in the course of litigation, you develop inconsistent defenses or objectives. For example, if one of you wants to pursue a course of action that could adversely affect the interests of the other, a conflict of interest would exist that could require us to withdraw as your counsel. If one of you wants to settle, and the other insists on proceeding to arbitration/trial, a conflict of interest would exist that would require you to each hire separate attorneys. The same is true if the two of you can’t agree on the amount of settlement we should accept to resolve the matter. It will, therefore, be important during the course of our engagement to make sure that we are pursuing common objectives and defenses for each of you so that we will not be required to withdraw later. At the same time, if you determine that pursuing a common objective is not in your best interests, we may be required to withdraw from representing one or both of you. If we are required to withdraw from the dual representation and you are each required to retain separate and independent attorneys, the cost of doing so will be substantial. Your new attorneys could be required to spend a large amount of time to catch up on the status of the litigation, which will be costly and duplicative of work my firm will have already done.

Also, you need to know that anything either of you says to me is not privileged communication as to the other of you. In other words, there is no attorney/client privilege between just me and [Client 1] that [Client 2] isn’t entitled to know about, nor is there an attorney/client between me and [Client 2] that [Client 1] isn’t entitled to know about. As to the rest of the world, the communications between us is absolutely privileged, and I am not permitted to reveal the confidence to anyone. However, there is no attorney/client privilege between the two of you and me; you should not tell me anything in confidence that you would not want the other to know about.

Speaking of communications, what you tell me and what I tell you is highly confidential. I have sworn an oath to protect your interests and to keep your secrets and confidences, at every peril to myself, which I take to mean even if threatened with death or severe bodily harm. However, if either of YOU tell anyone outside of the three of us something that I or you have discussed between us, that information is not privileged and the privilege will be held to have been waived. Please do not discuss this case or my advice to you in it with anyone besides me or each other.

With that said, it is my duty to instruct you as to the potential conflicts of interest as outlined above, and to obtain a written waiver and consent to both of you being jointly represented by this firm. You should know that if an actual conflict of interest arises between you during our representation of you in this matter, the result *may* be that we would not be able to represent either one of you, and that you will have to obtain separate counsel to continue with the matter. At this point, I view the possibility of an actual conflict of interest between you in this matter to be extremely remote. Naturally, I will keep you advised if the situation changes during the course of our representation.

At present, it does not appear that any of these conflict of interest situations exist. Nonetheless, we cannot rule out the possibility that these conflicts could arise during the course of the representation. Since changing counsel in the midst of litigation can be expensive and detrimental to your interests, it is important that you are comfortable with us representing both of you together in light of these potential conflicts of interest. In addition, we will need you to work with us throughout the course of the litigation to keep these potential conflicts of interest from becoming real.

Please forgive the relative length and formality of this letter. However, we want to be certain that you are fully informed about these important issues and that you are comfortable proceeding with our representation of you both together. Please do not hesitate to call if you have any questions about this letter or the nature of the disclosures set forth herein.

Once you have had an opportunity to review this letter, please sign and date the enclosed copy where indicated below, and return the signed copy to me in the enclosed, self-addressed, stamped envelope. By signing this letter, you are agreeing to our representing both of you jointly in light of the disclosures above, and waiving any potential conflicts of interest between you.