SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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JONY HEREDIA, as the Administrator of the Estate of ROSANNA MONTEAGUDO, and individually and derivatively on behalf of LANCO BROKERAGE CORP.,

Plaintiffs

Index No.: 654613/2025

-against-

LANCO BROKERAGE CORP., JESUS ACOSTA, KENIA TAVAREZ, et al.,

Defendants.

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY DEFENDANTS' COUNSEL FROM REPRESENTING LANCO BROKERAGE CORP.

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Issue:

The legal question addressed is whether Gusrae Kaplan and Nusbaum PLLC ("GKN") should be disqualified from representing Lanco Brokerage Corp. ("LANCO") in this derivative action due to unwaivable conflicts of interest arising from the concurrent representation of both the corporation and the individual defendants accused of wrongdoing.

Relief Sought:

Plaintiffs respectfully request that the Court enter an order disqualifying GKN from representing LANCO in this action.

Summary of Arguments:

GKN's representation of both LANCO and the individual defendants in a derivative action where the corporation's interests are directly in conflict with those of the individual defendants violates the New York Rules of Professional Conduct and established case law. The conflict is nonconsentable because here, Plaintiffs do not consent, and the individuals who would provide consent on behalf of the corporation are themselves the accused wrongdoers. This dual representation prejudices the corporation and its shareholders, undermines the integrity of the proceedings, and creates at least the appearance of impropriety. The right to counsel of one's choosing is not absolute and must yield to the need to avoid conflicts of interest and preserve public confidence in the legal system. These proceedings are at an early stage and there is no prejudice to anyone here other than LANCO and Plaintiffs.

STATEMENT OF FACTS

Factual Background

The Parties:

LANCO is a New York corporation. Plaintiffs, which includes the Estate of Rosanna Monteagudo is a shareholder of LANCO, and bring this action individually and derivatively on behalf of the corporation. The individual defendants are directors and/or officers of LANCO, accused of engaging in conduct detrimental to the corporation, as set forth in the Complaint.

Nature of the Derivative Action:

In addition to the individual claims, this is also a shareholder derivative action in which the Plaintiffs seeks to enforce rights belonging to LANCO that the corporation itself has failed to pursue. The Complaint alleges that the individual defendants engaged in self-dealing, wasted corporate assets, engaged in unauthorized activities, breached fiduciary duties, and caused financial harm to LANCO. The relief sought includes recovery of damages for the corporation and the implementation of reforms to prevent future harm.

The Conflicted Representation:

GKN currently represents both LANCO and the individual defendants in this action. The same law firm is thus tasked with defending the individuals against claims brought on behalf of the corporation, while also purporting to represent the corporation's interests.

Summary of Statement of Facts Supporting Causes of Action

I. Ownership and Management of LANCO

LANCO Brokerage Corp. ("LANCO") is a closely held insurance brokerage business. In 2019, Rosanna Monteagudo completed the purchase a 50% interest in LANCO. Defendant Jesus

Acosta purchased a 35% interest and Defendant Kenia Tavarez purchased the remaining 15% (Complaint, Par. 15-17). At the time of her death in 2023, Ms. Monteagudo was still a shareholder, officer, and director of LANCO (Complaint, Par. 18). Upon her passing, her husband, Jony Heredia, became the administrator and sole distributee of her estate, inheriting her 50% interest in LANCO (Complaint, Par. 24).

II. Exclusion from Management and Withholding of Information

Soon after Ms. Monteagudo passed away, Defendants Acosta and Tavarez demanded that Jony Heredia return all copy equipment and documents that Ms. Monteagudo had in her home. (Complaint, Par. 55). Thereafter Defendants have exercised total control over LANCO, excluding Mr. Heredia and the Estate from management and decision-making. Plaintiffs have not been permitted to participate in the management of LANCO or to access its books, records, and financial information, despite repeated requests. Defendants have also failed to provide a full accounting of LANCO's business affairs (Complaint, Par. 38, 54-59, 104-105).

III. Life Insurance Proceeds and Financial Misconduct

Prior to her death, Ms. Monteagudo was the insured under a life insurance policy with death benefits of approximately $500,000, for which LANCO was the beneficiary. (Complaint, Par. 32). After her death, LANCO received the insurance proceeds which remain under the control of Defendants. (Complaint, Par. 33). Plaintiffs, as 50% shareholders, have demanded payment of a commensurate portion of the proceeds to the Estate, but Defendants have refused. Defendants have also failed to provide an accounting of the use of these funds (Complaint, Par. 36-38).

IV. Self-Dealing, De Facto Dividends, and Corporate Waste

Defendants have hired their relatives, including their sons, as employees and officers of LANCO, paying them salaries and benefits without notice to or consent from Plaintiffs. (Complaint, Par. 1, 39-49). Defendants have caused LANCO to pay themselves de facto dividends in various forms, including loans, personal use of company vehicles, and other benefits, while failing to pay Plaintiffs their share. Defendants have also used LANCO's assets for personal expenses, including credit card charges for personal consumption. These actions were taken without calling shareholder meetings or obtaining authorization from Plaintiffs (Complaint, Par. 34-43).

V. Denial of Access to Books and Records

After Ms. Monteagudo's death, Defendants visited Plaintiff's home and took possession of all LANCO-related documents and equipment from Ms. Monteagudo's home. (Complaint, Par. 55). Plaintiffs have requested access to LANCO's books and records to ascertain the value of the Estate's shares and to facilitate a potential sale, but Defendants have refused to provide full access, only producing a single tax return for 2023 and the Profit and Loss and Balance Sheet reports from 2019 to 2024 (Complaint, Par. 54-59, 104-105).

VI. Breach of Fiduciary Duty and Oppressive Conduct

Defendants, as officers and directors, owe fiduciary duties to LANCO, Plaintiffs, and the Estate (Complaint, Par. 60-63). They breached these duties by engaging in self-dealing, misappropriating corporate assets, excluding Plaintiffs from management, and failing to distribute profits or dividends commensurate with Plaintiffs' ownership interest (Complaint, Par. 32-53, 71-77).

VII. Unjust Enrichment

Defendants have been unjustly enriched by their receipt of the insurance proceeds, de facto dividends, and other benefits from LANCO, to the detriment of Plaintiffs and LANCO. The benefits received by Defendants have come at the expense of Plaintiffs and the corporation, and it would be against equity and good conscience to allow Defendants to retain these benefits (Complaint, Par. 111-116).

VIII. Corporate Waste and Mismanagement

Defendants' actions—including unauthorized hiring of family members and payment of compensation to said family members, and use of corporate assets for personal benefit, constitute waste and mismanagement of LANCO's assets. These actions are causing substantial financial harm to the corporation and its shareholders (Complaint, Par. 32-53).

IX. Demand for Accounting and Judicial Relief

Plaintiffs have demanded a full accounting of LANCO's business, assets, income, expenses, and liabilities, but Defendants have failed to provide such an accounting (Complaint, Par. 1, 31, 54). Plaintiffs seek judicial intervention for an accounting, inspection of books and records, declaration and payment of dividends, appointment of a receiver, and, if necessary, judicial dissolution of LANCO to protect their interests and those of the corporation (Complaint, Par. 162-164).

X. Conflict of Interest in Representation

Defendants have retained counsel to represent both LANCO and the individual defendants, despite the clear conflict of interest arising from the derivative claims against Acosta

and Tavarez for breach of fiduciary duty and self-dealing. This dual representation is improper and prejudicial to the interests of LANCO and Plaintiffs.

LEGAL ARGUMENTS

A party to litigation has the right to select an attorney of his or her choosing. However, this right is not absolute or limitless. *See Greene v. Greene*, 47 NY2d 447, 453 [1979]. The right to counsel of choice may be overridden where necessary to protect a compelling public interest after careful scrutiny. *See S&S Hotel Ventures Ltd. Partnership v 777 S.H. Corp.*, 69 NY2d 437, 443 [1987]. The Court of Appeals has held that an "attorney may not accept employment in violation of a fiduciary relationship and may not allow his own interests to conflict with those of his client. To hold otherwise would be to ignore the overriding public interest in the integrity of our adversary system." *Greene at 453.* In *Greene,* the Court of Appeals further stated that:

> It is a long-standing precept of the legal profession that an attorney is duty bound to pursue his client's interests diligently and vigorously within the limits of the law. For this reason, a lawyer may not undertake representation where his independent professional judgment is likely to be impaired by extraneous considerations. Thus, attorneys historically have been strictly forbidden from placing themselves in a position where they must advance, or even appear to advance, conflicting interests. This prohibition was designed to safeguard against not only violation of the duty of loyalty owed the client, but also against abuse of the adversary system and resulting harm to the public at large."

Id. (citations omitted).

Whether a lawyer has a conflict of interest is not dependent on the outcome of the factual question at issue. *Chang v. Chang*, 190 A.D.2d 311, 317 [1st Dept 1993]. It is the integrity of the fact-finding process itself that is protected by the ethical guidelines governing attorneys, which require independent and vigorous representation of a client's interests. *Id.* Disqualification rests upon the sound discretion of the Court and will not be overturned absent a showing of abuse, and any doubts as to the existence of a conflict must be resolved in favor of disqualification. *Schmidt v. Magnetic Head Corp.*, 101 AD2d 268, 278 [2nd Dept. 1984].

New York Rules of Professional Conduct Related to Conflict of Interest

The New York Rules of Professional Conduct, codified at 22 NYCRR1200NYCRR 1200.0, govern conflicts of interest in legal representation. Under Rule 1.13, "[a] lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7 (Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.13[d]). If the organization's consent to the concurrent representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders." Id. 1200.1.13(d).

Here, GKN may not represent LANCO as well as Acosta and Tavarez at the same time because GKN would be representing differing interests involving claims by LANCO against Acosta and Tavarez. Rule 1.13 is clear that consent should be given by an appropriate official other than the individuals who are to be represented or by the shareholders. Thus, Acosta and Tavarez cannot consent in this case. Here, there is no appropriate individual to provide consent on behalf of LANCO except for the Plaintiffs. However, Plaintiffs, as a 50% shareholders, do not consent.

Prohibition Against Conflict & Exceptions Rule 1.7(a) and (b)

Rule 1.7(a) prohibits a lawyer from representing a client if, among other reasons, a reasonable lawyer would conclude that the representation involves differing interests, unless all of the conditions under Rule 1.7(b) are met. *See* Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.7[a]). Under Rule 1.7(b), if a reasonable lawyer were to believe that "the representation will

involve the lawyer in representing differing interests," then a lawyer may still represent a client if:

> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) each affected client gives informed consent, confirmed in writing.

Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.7(b).

Thus, the first inquiry is to determine whether a conflict exists, and if there is a conflict, then whether all of the conditions for an exception are met. Here, GKN's representation requires that GKN assert claims on behalf of LANCO and against Acosta and Tavarez in the same proceedings. Thus, a conflict exists. The affected parties, namely LANCO and the Estate of Rosanna Monteagudo, as a 50% interest owner, have not given their informed consent in writing.

POINT I:
GKN SHOULD BE DISQUALIFIED FROM REPRESENTING LANCO BECAUSE LANCO'S INTEREST IN THIS ACTION ARE IN CONFLICT WITH THE INTERESTS OF DEFENDANTS ACOSTA AND TAVAREZ AND THE REPRESENTATION INVOLVES THE ASSERTION OF CLAIMS BY ONE PARTY AGAINST THE OTHER

An attorney for a corporate entity may not represent the individual defendants "in an action in which his interests would be adverse to the [corporate entity] and other members of the [entity] . . ." *Campbell v. McKeon*, 75 AD3d 479, 480 [1st Dept 2010]. In *Campbell*, the First Department elaborated that:

> Counsel for an organizational client is required to act as is reasonably necessary in the best interests of the client when an individual associated with the client may have violated legal duties which are likely to result in substantial injury to the organization. Any doubts as to the sufficiency of the showing of an asserted conflict of interest were properly resolved in favor of disqualification.

Id.

In *Zedeck v. Derfner Mgmt. Inc.*, 98 AD3d 925 [1st Dept 2012], the First Department had the opportunity to decide a case substantially similar to the LANCO case. It reversed the lower court's decision finding that there was a conflict of interest and that there was no consent by the estate that held a 50% interest in the corporation. The Court noted as follows:

> In particular, the interests of the Estate of Harold Derfner, which holds a 50% interest in the corporations on whose behalf the derivative claims are brought, differ from the interests of Lieberman and his wholly owned entities, DMI, JayPen Associates, Inc., and Dapper Duds Laundromat, Inc. And there is no evidence in the record that Lieberman and the Estate's personal representative, Peter Derfner, as individuals and as interest holders in the various other defendants-respondents, gave their "informed consent, confirmed in writing" to concurrent representation.

Id.

Here, the Estate of Rosanna Monteagudo is the owner of 50% of the shares of stock of LANCO. The Complaint in this case alleges that Acosta and Tavarez took control of the $500,000 proceeds of an insurance policy against the life of Rosanna Monteagudo, now deceased, and have been paying themselves de facto dividends and engaging in self-dealing. They have also hired family members to work for LANCO, have held elections and appointed their family members as officers of LANCO, have been engaged in self-dealing, mismanagement, and waste, and have failed to provide Plaintiffs access to the business and its

books and records. The Complaint seeks a judgment against Acosta and Tavarez for reasons that include their unjust enrichment, breach of fiduciary duty, corporate waste, and failure to account.

"Where serious charges of self-dealing and usurpation of corporate opportunity by a director, and officers of the Corporation, are alleged, a conflict exists between the Corporation and the individual" shareholders." *Lengyel-Fushtmi v. Bellis*, 2022 NY Slip Op 30862(U), Index 512764/2021, Page 5 [Sup Ct Kings County, 2022].

In an action where derivative claims are made, such as the one in this case, the corporation's interest is to hold the individual defendants accountable for their alleged misconduct, recover damages, and implement reforms. The individual defendants' interest is to defend themselves and avoid personal liability. GKN's duty in the present case is to zealously advocate for each client. Such a duty is fundamentally compromised when it must defend the Acosta and Tavarez defendants against claims brought on behalf of LANCO, while also purporting to represent LANCO's interests.

In connection with the derivative claims in this case, Defendants' counsel cannot properly advocate on behalf of LANCO because, in doing so, GKN would be advocating against Acosta's and Tavarez's interest. In *Schmidt v. Magnetic Head Corp.*, 101 A.D.2d 268 [2nd Dept 1984] the Court had the opportunity to rule on the disqualification of a firm that purported to represent a corporation which had rights to make claims against the individual defendant but failed to do so. Reversing the lower court's decision, the Court reasoned:

> As noted by plaintiff, the corporations also have the right to assert claims and cross claims against the individual defendant directors. They have not done so and, presumably, the attorneys for the corporations would not recommend such action as they are also the attorneys for the defendant directors. Thus, there is a clear potential conflict between the interests of the corporations and

> those of the individual defendants, notwithstanding the practical problems which might be encountered as a result of ordering disqualifications.

Id at 279. *See also Schwartz v. Guterman*, 109 Misc 2d 1004, 1006 [Sup Ct, NY County 1981] (finding that "Since the individual defendants manage the business entity, fair inquiry into the merits of the action may be foreclosed without separate representation from the outset. If the corporation or partnership assumes an active role in the litigation, or if settlement negotiations are undertaken, separate counsel is advisable"); *see also Poretsky v. Bartleby & Sage, Inc*., 203 AD3d 523, 523-524 [1st Dept 2022](holding that disqualification was warranted when the lawyer "previously served as counsel for the corporate defendants and now purports to represent those defendants as well as their majority shareholder in an action brought against them by their minority shareholder and derivatively on their own behalf.").

Here, GKN cannot represent LANCO. Instead, separate representation of LANCO is required in this case. *See Garlen v. Green Mansions, Inc.*, 9 AD2d 760 [1st Dept. 1959]("While a corporation is usually a passive litigant in a stockholder's derivative action, it may well be that the equitable relief sought in the complaint requires an appearance and answer by the corporate defendant. However, such appearance must be by independent counsel whose interests will not conflict with those of the individual defendant."); *See also 1186 Broadway Tenant LLC v. Friedman*, 2019 NY Slip Op 33463(U), INDEX NO. 655038/2018, Third-Party Index No. 595995/2018, Page 5 [Sup Ct, NY County 2019] ("Nevertheless, a corporate litigant should appear by independent counsel in certain instances. *See Russo v Zaharko*, 53 AD2d 663, 665 [2d Dept 1976]. For instance, counsel may be disqualified from concurrently representing defendants sued in a derivative action where their interests conflict.")

For the foregoing reasons, GKN should be disqualified from representing LANCO in this case and Plaintiffs' motion for disqualification should be granted.

POINT II:
GKN SHOULD BE DISQUALIFIED FROM REPRESENTING LANCO BECAUSE LANCO'S INTERESTS IN THIS ACTION ARE IN CONFLICT WITH THE INTERESTS OF DEFENDANTS ACOSTA AND TAVAREZ AND LANCO CANNOT GIVE INFORMED CONSENT IN WRITING

The Irreconcilable Conflict of Interest

The concurrent representation here violates Rule 1.7 and 1.13, which prohibit representation involving differing interests or a significant risk of impaired professional judgment, unless the conflict is consentable and all affected clients give informed written consent. (Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.7, 1.13). The definition of "informed consent" requires that the client be given sufficient information to make an informed decision, including an explanation of material risks and alternatives. (Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.0[j]). Rule 1.8 further restricts representation in aggregate settlements without informed written consent from each client (Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.8[g])). The purpose of these rules is to ensure undivided loyalty and the integrity of the attorney-client relationship. (*See generally Kelly v. Greason*, 23 NY2d 368 [1968]) .

In *Zedeck v. Derfner Mgmt. Inc.*, 98 AD3d 925 [1st Dept 2012], the First Department found that disqualification was warranted in light of the conflict of interest and the lack of written consent. In the context of concurrent representation, where a law firm represents both a corporation and individuals accused of wrongdoing against the corporation in the same litigation, the conflict is by its very nature nonconsentable warranting disqualification. *See Lengyel-Fushimi v. Bellis*, 2022 NY Slip Op 30862(U), Index No. 512764/2021, Page 5 [Sup Ct, Kings County, 2022](Explaining, "Thus, simultaneously representing both a corporation and a director,

officer or shareholder of that same corporation can create conflicts, but if the conflicts are consentable, then the conflicts[] can be cured by obtaining informed consent from each affected client, confirmed in writing").

Where the representation involves the assertion of a claim by one client against another in the same litigation, the conflict is non-consentable. *See 1186 Broadway Tenant LLC v. Friedman*, 2019 NY Slip Op 33463(U), INDEX NO. 655038/2018, Third-Party Index No. 595995/2018, Page 5 [Sup Ct, NY County 2019]. The institutional interest in vigorous advocacy for each client precludes waiver, and the law firm cannot ethically represent both sides. (*See Schmidt v. Magnetic Head Corp.*, 101 A.D.2d 268 [2nd Dept 1984]). A reason why the conflict is nonconsentable in a derivative action such as the present one is that, while informed written consent is required under Rule 1.7(b)(4) and Rule 1.13(d), the party bringing the action has not consented and the corporation, which is also affected, has also not given its informed written consent. In a derivative action, the individuals who would provide consent on behalf of the corporation—the Defendants in this case—are the very individuals accused of wrongdoing. Rule 1.13(d) prevents them from consenting. Furthermore, the Estate of Rosanna Monteagudo, as shareholder, has not consented either as required by Rule 1.13(d) which states that "[i]f the organization's consent to the concurrent representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders." Moreover, the defendants' interests here are directly in conflict with those of the corporation's, making any purported consent invalid.

"Rule 1.7(b) (3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients

are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding." *1186 Broadway Tenant LLC v. Friedman*, 2019 NY Slip Op 33463(U), INDEX NO. 655038/2018, Third-Party Index No. 595995/2018, Page 5 [Sup Ct, NY County 2019] (quoting Comment to Comment 17 of the NY State Bar Association rev. 2018).

This case presents facts and circumstances that the Courts and the Rules of Professional Conduct seek to avoid in order to protect the interests of the parties. LANCO requires counsel, independent of the counsel representing the defendants-individuals, to properly and zealously develop its position on behalf of itself and its shareholders, unbound by considerations for the other individual defendants.

For the foregoing reasons, Plaintiffs' motion to disqualify GKN from representing LANCO should be granted because LANCO's interests are in conflict with those of Acosta and Tavarez and neither LANCO nor the Estate of Rosanna Monteagudo have consented in writing to GKN's representation.

POINT III:
GKN SHOULD BE DISQUALIFIED FROM REPRESENTING LANCO BECAUSE LANCO'S INTERESTS IN THIS ACTION ARE IN CONFLICT WITH THE INTERESTS OF DEFENDANTS ACOSTA AND TAVAREZ AND EVEN THE APPEARANCE OF IMPROPRIETY MUST BE AVOIDED HERE.

Even the appearance of impropriey is sufficient to warrant disqualification. *See Matter of Kelly*, 23 NY2d 369[1968]. In *Matter of Kelly*, the Court of Appeals stated:

> The representation of conflicting or adverse interests may constitute professional misconduct because a lawyer, as one in a confidential relationship and as any fiduciary, is charged with a high degree of undivided loyalty to his client. Thus, with rare and

> conditional exceptions, the lawyer may not place himself in a position where a conflicting interest may, even inadvertently, affect, or give the appearance of affecting, the obligations of the professional relationship.

Id. at 943 *(citations omitted).*

In cases involving imputed disqualification, the Court of Appeals continues to reinforce this principle stating that *"*[i]n addition to ensuring that attorneys remain faithful to the fiduciary duties of loyalty and confidentiality owed by attorneys to their clients, the rule of imputed disqualification reinforces an attorney's ethical obligation to avoid the appearance of impropriety." *Kassis v Teacher's Ins. &Annuity Assn.*, 93 N.Y.2d 611, 616 [1999].

Any doubts as to the sufficiency of the showing of an asserted conflict of interest are to be resolved in favor of disqualification. *Lammers v. Lammers*, 205 AD2d 432, 432 [1st[s] Dept 1994]; *Schmidt v. Magnetic Head Corp.*, 101 A.D.2d 268 [2nd Dept 1984].

Here, even at first blush, it is apparent that GKN cannot faithfully represent LANCO while also defending Acosta and Tavarez. The appearance of impropriety looms greatly over this case and must be avoided by disqualification.

POINT IV:
GKN SHOULD BE DISQUALIFIED FROM REPRESENTING LANCO IN ORDER TO AVOID PREJUDICE TO THE PARTIES.

A. GKN's Continued Representation Will Prejudice LANCO

Concurrent representation in the context of derivative claims is, by its very nature, prejudicial to the corporation. The corporation's prosecution and defense of the claims in the action is impaired because its counsel is simultaneously defending the alleged wrongdoers. The

law firm cannot ethically advise the corporation to pursue claims or settlements adverse to the individual defendants, nor can it explore remedies that would hold them personally liable. *See Schmidt v. Magnetic Head Corp.,* 101 AD2d 268, 279 [2nd Dept., 1984] ("As noted by plaintiff, the corporations also have the right to assert claims and cross claims against the individual defendant directors. They have not done so and, presumably, the attorneys for the corporations would not recommend such action as they are also the attorneys for the defendant directors."). *See also Poretsky v. Bartleby & Sage, Inc.*, 2023 NY Slip Op 30967(U)(Trial Order) [Sup Ct NY County, 2023]("[R]egardless of whether the disqualified attorney actually obtained and disseminated confidential information in connection with his former representation of the appellants, they are entitled to freedom from apprehension and to certainty that [their] interests will not be prejudiced.")(Citations omitted).

Likewise, the shareholders of the corporation in this case, more particularly the Estate of Rosanna Monteagudo, will be prejudiced because the attorney concurrently representing LANCO and the individual defendants alleged of wrongdoing will not be able to raise or prosecute the claims in favor of LANCO without violating their obligations to Acosta and Tavarez. Additionally, Plaintiffs face even greater prejudice than normal where they have been excluded from all company business and where the alleged wrongdoers are in full control of the corporation and all of its records. Fundamental fairness warrants disqualification as the Plaintiff should not be burdened with constantly watching for additional conflicts to arise as representation proceeds, when another attorney can properly assume that role. As such, GKN should be disqualified from representing LANCO.

CONCLUSION

The concurrent representation by Gusrae Kaplan and Nusbaum PLLC of both LANCO and the individual defendants in this derivative action creates an irreconcilable, nonconsentable conflict of interest under New York law. The conflict is structural and cannot be cured by purported consent, as the individuals who would provide consent on behalf of the corporation are themselves the accused wrongdoers. The law firm's dual representation undermines the integrity of the proceedings, prejudices the corporation and its shareholders, and creates at least the appearance of impropriety. The right to counsel of one's choice is not absolute and must yield to the need to avoid conflicts of interest and preserve public confidence in the legal system.

For the foregoing reasons, the moving party respectfully requests that the Court enter an order disqualifying GKN from representing LANCO in this action.

Dated: New York, New York
September 30, 2025

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AFFIRMATION RELATED TO WORD COUNT

N.Y. Comp. Codes R. & Regs. tit. 22 § 202.8-b
N.Y. Comp. Codes R. & Regs. tit. 22 § 202.70.17

William A. Garcia, an attorney duly admitted to practice law in the State of New York affirms the following under penalty of perjury that the word count for the within document is 5195 of 7000, inclusive of the cover/caption, table of content, table of authority, signature line, and this affirmation.

Dated: New York, New York
September 30, 2025

Respectfully Submitted,

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