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# [***Cox v. Alliant Ins. Servs.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PSX-FCF1-F04F-J55K-00000-00&context=)

United States District Court for the Eastern District of Washington

September 19, 2017, Decided; September 19, 2017, Filed

NO. 2:16-cv-00362-SAB

**Reporter**

2017 U.S. Dist. LEXIS 175683 \*

CHRISTIAN COX, a married man; JOSEPH A. MAYO IV, a married man; PACIFIC COAST FIBER FUELS LLC, a Washington limited liability company, Plaintiffs, v. ALLIANT INSURANCE SERVICES, INC., d/b/a MOLONEY + O'NEILL, a Delaware corporation; DAN ROMAIN and JANE DOE ROMAIN, a marital community; FARMIN ROTHROCK & PARROTT, INC., a Washington corporation; and KELLY EGAN and JANE DOE EGAN, a marital community, Defendants.

**Subsequent History:** Reconsideration denied by, Stay denied by, As moot, Motion granted by [*Cox v. Alliant Ins. Servs., 2017 U.S. Dist. LEXIS 171702 (E.D. Wash., Oct. 16, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PRF-VCP1-F04F-J4RY-00000-00&context=)

**Core Terms**

parties, settlement, disqualification motion, settlement agreement, representation of a defendant, former client, disqualified, terms, Seal, motion to enforce, current client, matters, motions, mutual

**Counsel:** **[\*1]**For Christian Cox, a married man, Plaintiff: Christopher M Foster, Thomas W McLane, LEAD ATTORNEYS, Randall & Danskin PS, Spokane, WA.

For Joseph A Mayo IV, a married man, Pacific Coast Fiber Fuels, LLC, a Washington limited liability company, Plaintiffs: David J Groesbeck, LEAD ATTORNEY, David J Groesbeck, PS, Spokane, WA; John Ray Nelson, Foster Pepper PLLC - SPO, Spokane, WA.

For Alliant Insurance Services Inc, a Delaware corporation, doing business as Moloney + O'Neill, Dan Romain, a marital community, Jane Doe Romain, a marital community, Farmin Rothrock & Parrott Inc, a Washington corporation, Kelly Egan, a marital community, Jane Doe Egan, a marital community, Defendants: Alexandria Tina Drake, Richard T Wetmore, Robert A Dunn, LEAD ATTORNEYS, Dunn Black & Roberts PS, Spokane, WA; Julian Dayal, Kasey F Dunlap, Scott A Meyers, LEAD ATTORNEYS, PRO HAC VICE, Akerman LLP, Chicago, IL.

For Dunn & Black PS, Interested Party: James Bernard King, Evans, Craven & Lackie, PS, Spokane, WA.

**Judges:** Stanley A. Bastian, United States District Judge.

**Opinion by:** Stanley A. Bastian

**Opinion**

**ORDER**

Before the Court are Plaintiffs' Motion to Disqualify Defendants' Counsel, ECF No. 26; Plaintiffs' Motion Re: Waiver of Attorney Client**[\*2]** Privilege, ECF No. 81; Plaintiff Christian R. Cox's Motion to Enforce Settlement, ECF No. 91; and Plaintiff's Motion for Leave to File Under Seal, ECF No. 95. Also before the Court is Plaintiffs Joseph Mayo IV and Pacific Coast Fiber Fuels' [*FRCP 41(a)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=) Motion for Voluntary Dismissal of Actions, ECF No. 88. A hearing was held on September 14, 2017 in Spokane, Washington. Plaintiff Christian Cox was represented by Thomas McLane and Plaintiffs Joseph Mayo IV and Pacific Coast Fiber Fuels by David Groesbeck. Defendants were represented by Robert Dunn and James King. This Order memorializes the Court's oral ruling.

**Background**

On October 12, 2016, Plaintiffs Christian Cox ("Cox") and Pacific Coast Fiber Fuels, LLC ("PCFF") filed a Complaint for Damages and Declaratory Relief against Defendants Alliant Insurance Services Inc. d/b/a Moloney + O'Neill ("Alliant"), Dan Romain, Jane Doe Romain, Farmin Rothrock & Parrott, Inc., Kelly Egan, and Jane Doe Egan. Cox seeks a declaratory judgment that any non-compete agreement is void as a matter of law, and asserts claims for breach of contract, breach of the covenant of good faith and fair dealing, tortious interference with a business expectancy, retaliation,**[\*3]** wrongful termination, and willful failure to pay wages. ECF No. 1. Cox and PCFF jointly assert causes of actions against Defendants for breach of contract, civil conspiracy, vicarious liability, unjust enrichment, federal ***antitrust*** violations, and violations of the Washington Consumer Protection Act, [*Wash. Rev. Code § 19.86.010, et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5BB3-VX31-66P3-24HR-00000-00&context=) *Id.*

Before filing its Answer, Alliant moved to disqualify Plaintiffs' counsel Kevin Roberts ("Roberts") and his law firm of Roberts | Freebourn, PLLC and sought an Order requiring both to immediately withdraw from this case. ECF No. 11. Plaintiffs opposed the motion. ECF No. 42. On November 8, 2016, Plaintiffs filed their First Amended Complaint, adding Joseph A. Mayo IV ("Mayo") as a plaintiff in this matter. ECF No. 22. Mayo joined in several causes of action previously asserted by Cox and PCFF. ECF No. 22. On November 15, 2016, Plaintiffs filed a Motion to Disqualify Counsel, seeking an Order disqualifying Defendants' lawyers Robert Dunn ("Dunn"), Alexandria Drake ("Drake"), Richard Wetmore ("Wetmore"), and the law firm of Dunn & Black, P.S. ("Dunn & Black") from this case. ECF No. 26. Defendants opposed the motion and the Court stayed this case. ECF Nos. 47, 59.

A hearing was held on**[\*4]** December 15, 2016 regarding the parties' motions to disqualify. The Court informed the parties that an evidentiary hearing would be required. Accordingly, the Court deferred ruling on the motions and counsel conferred with their clients. Subsequently, counsel informed the Court that the parties wished to proceed with the evidentiary hearing and receive a decision on their motions; a hearing was scheduled for March 16, 2017. On February 13, 2017, Plaintiffs filed a Motion Re: Waiver of Attorney Client Privilege in preparation for the hearing. ECF No. 81. Plaintiffs sought an Order finding that Alliant waived attorney-client privilege by allowing Dunn & Black to file attorney-client information in the public record.

The evening prior to the March 16 hearing in Spokane, counsel informed the Court that the parties had reached a settlement. However, at the hearing, counsel represented that no settlement had been reached. It was King's belief that the proposed settlement agreement provided for the dismissal of all claims against all Defendants. Plaintiffs' counsel contended that the proposed agreement only dismissed Plaintiff Cox's claims against Defendants; Plaintiffs Mayo and PCFF remained**[\*5]** in the case. The parties also agreed that the matter be referred to Senior United States District Judge Lonny R. Suko for mediation. That same day, Plaintiffs Mayo and PCFF filed a [*Fed. R. Civ. P. 41*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=) Motion for Voluntary Dismissal of Actions, ECF No. 88. Defendants oppose dismissal of these Plaintiffs.

On March 17, 2017, Plaintiff Cox filed a Motion to Enforce Settlement, ECF No. 91, and related Motion for Leave to File Under Seal, ECF No. 95. On April 26, 2017, Plaintiffs filed a Motion for Leave to Withdraw and Substitute Counsel, ECF No. 101; Roberts would withdraw as attorney of record in this case and Thomas McLane would represent Cox and David Groesbeck would represent Mayo and PCFF. The Court granted the Motion mooting Defendants' motion to disqualify. ECF Nos. 105, 106.

Judge Suko held a settlement conference on June 13, 2017. No settlement was reached. Accordingly, the Court held a telephonic status conference to discuss the pending motions. The Court ordered counsel to submit in writing by July 24, 2017 their respective positions regarding the pending motions. On July 27, 2017, the Court lifted the stay of proceedings for the sole purpose of resolving all pending motions; the stay remained in**[\*6]** place for the purpose of conducting discovery on the underlying claims.

**Discussion**

As an initial matter, the Court must determine the status of the parties. On March 16, 2017, Plaintiffs Mayo and PCFF filed a Motion for Voluntary Dismissal pursuant to [*Fed. R. Civ. P. 41(a)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=). ECF No. 88. [*Rule 41(a)(1)(i)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=) allows a party to dismiss an action without court order by filing a notice of dismissal before the opposing party serves an answer or motion for summary judgment. [*Rule 41*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=), however, does not permit a plaintiff to dismiss some claims in a multi-claim lawsuit without dismissing any defendant. [*Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1392 (9th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XKT0-001B-K33Y-00000-00&context=). Rather, [*Fed. R. Civ. P. 15(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F103-00000-00&context=) is the appropriate mechanism "[w]here a plaintiff desires to eliminate an issue, or one or more but less than all of several claims, but without dismissing as to any of the defendants." *Id.* Here, two Plaintiffs seek to utilize [*Rule 41*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=) to dismiss their claims without prejudice. However, because the purported notice of dismissal does not dismiss any Defendant from this case, the notice is ineffective. Mayo and PCFF are not dismissed from this action.

**Plaintiffs' Motion to Disqualify Defendants' Counsel**

Plaintiffs seek to disqualify Dunn, Drake, Wetmore, and the law firm Dunn & Black from representing Defendants. Plaintiffs suggest that Dunn & Black is**[\*7]** barred from representing Defendants against former client Cox and current clients Mayo and PCFF. Plaintiffs' motion is denied.

**Standard**

The Court is primarily responsible for controlling the conduct of lawyers practicing before it. "In determining whether an attorney's representation of a particular client violates the attorney's ethical responsibilities, the Court first refers to the local rules ***regulating*** the conduct of members of its bar." [*Best v. BNSF Ry. Co., 2008 U.S. Dist. LEXIS 5640, 2008 WL 149137 (E.D. Wash. Jan. 10, 2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4RPF-K000-TXFS-41RS-00000-00&context=) (citing [*Paul E. Iacono Structural Engineer, Inc. v. Humphrey, 722 F.2d 435, 439 (9th Cir. 1983))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-09D0-003B-G00D-00000-00&context=). [*Local Rule 83.3*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SM0-004G-P03K-00000-00&context=) provides that the Court "may impose discipline on any attorney practicing before this Court, whether or not a member of the bar of this Court, who engages in conduct violating applicable Rules of Professional Conduct of the Washington State Bar." Thus, the Washington Rules of Professional Conduct (RPCs) apply to this action. "[D]isqualification is a drastic measure and [the Court] must consider the danger of a motion to disqualify opposing counsel as a litigation tactic." [*FMC Techs., Inc. v. Edwards, 420 F. Supp. 2d 1153, 1157 (W.D. Wash. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4JKS-GN40-TVXC-42FV-00000-00&context=). Thus, the burden of proof rests "upon the firm whose disqualification is sought." *Id.* (citing [*Amgen, Inc. v. Elanex Pharms., Inc., 160 F.R.D. 134 (W.D. Wash. 1994))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4N-K800-003B-V147-00000-00&context=).

**Christian Cox**

[*RPC 1.9*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KF-00000-00&context=) provides,

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**[\*8]** that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

"Under [*Rule 1.9(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KF-00000-00&context=), the significant elements are (1) that the conflict involves a former client; (2) that the subsequent representation is materially adverse to the former client; and (3) that the matters are substantially related." [*FMC Techs., Inc., 420 F. Supp. 2d at 1159*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4JKS-GN40-TVXC-42FV-00000-00&context=). "The existence of an attorney/client relationship is a question of fact, the essence of which may be inferred from the parties' conduct or based upon the client's reasonable subjective belief that such a relationship exists." [*Teja v. Saran, 68 Wn. App. 793, 795, 846 P.2d 1375*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-X2K0-003F-W02V-00000-00&context=) (citing [*Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-VYV0-003F-W32F-00000-00&context=).

[*Rule 1.9*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KF-00000-00&context=) does not define "substantially related." However, the Ninth Circuit has noted that "[s]ubstantiality is present if the factual contexts of the two representations are similar or related." [*Trone v. Smith, 621 F.2d 994, 998 (9th Cir. 1980)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CH10-0039-W4TJ-00000-00&context=). Whether two matters are substantially related is an issue of fact. In order to determine whether two matters are substantially related, the Court must "(1) reconstruct the scope of the facts of the former representation; (2) assume the lawyer obtained confidential information from the client about all these facts; and (3) determine whether any former factual matter is sufficiently similar to a current one that**[\*9]** the lawyer could use the confidential information to the client's detriment." [*Sanders v. Woods, 121 Wn. App. 593, 598, 89 P.3d 312 (2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CB1-J120-0039-40BV-00000-00&context=) (citing [*State v. Hunsaker, 74 Wn. App. 38, 43, 873 P.2d 540 (1994)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-X0K0-003F-W4JD-00000-00&context=); [*RPC 1.9*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KF-00000-00&context=)). "The decision turns on whether the lawyer was so involved in the former representation that he can be said to have switched sides." *Id.*

Roberts used to be affiliated with Dunn & Black and was an attorney at the firm. During Roberts' tenure, Cox contacted the firm in connection with adversarial negotiations regarding a partial asset sale between Moloney, O'Neill, Corkery & Jones (MOCJ), where Cox was employed, and Alliant. In his representative capacity, Cox requested that Roberts draft separation agreements for MOCJ shareholders who indicated that they intended to retire when the asset sale was complete. He also asked Roberts to evaluate MOCJ's potential liability for wrongful termination of MOCJ employees if they were not hired by Alliant. The bills from Roberts to Cox indicate that MOCJ was being billed for corporate work, not individual work. The written agreement was for that corporate relationship between MOCJ as represented by Cox. There is nothing in the record to show a formal written agreement between Cox and Roberts as far as Cox's individual leg concerns that would give rise**[\*10]** to an attorney-client relationship. To the extent that there was a private agreement between Cox and Roberts, there is nothing in the record to suggest that Roberts told his partner, Dunn, or the firm of that agreemen Accordingly, as it relates to Cox, Dunn & Black and its attorneys are not disqualified from representing Defendants in this matter.

**Joseph A. Mayo IV and Pacific Coast Fiber Fuels, LLC**

[*RPC 1.7*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KC-00000-00&context=) provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if (1) the representation of one client will be directly adverse to another client." "Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent." [*RPC 1.7 cm 6*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KC-00000-00&context=). Accordingly, "a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." *Id.* However, "simultaneous representation in unrelated matter of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute**[\*11]** a conflict of interest and thus may not require consent of the respective clients." [*RPC 1.7 cmt. 6*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SR0-004G-P1KC-00000-00&context=).

Dunn & Black has represented Mayo and PCFF in the past, but not in any matter substantially related to the present case. Mayo and PCFF contend that they are current clients of Dunn & Black and therefore disqualified from representing Defendants in this action. The Court disagrees. Dunn & Black did represent Mayo personally in a personal injury matter that has since concluded. Dunn & Black has also represented Mayo's other companies, which were asked to enter into new engagement letters with isolated exceptions. Although Mayo asserts that he regularly discloses confidences to Dunn and considers Dunn & Black to be his lawyers, there is no indication that Dunn & Black are currently representing Mayo in his individual capacity. Mayo also suggests that, as Dunn's neighbor, they have socialized from time to time and discussed legal matters. However, the nature of this friendship is not entirely clear. There is nothing in the record to indicate to the Court that Mayo was expecting an attorney-client relationship to arise because of this social contact. Because Mayo is not a current client, Dunn**[\*12]** & Black are not barred from representing Defendants against him in this matter. Mayo suggests that he is a former client of Dunn & Black and has disclosed confidences relating to the operations and practices directly at issue in this case. The record does not support this assertion.

Dunn & Black had a general file for PCFF in 2013 regarding a lease agreement. The file was later closed by Roberts while at Dunn & Black and formally administratively closed in February 2015. PCFF offers no other evidence supporting its claim that it is a current client and it is undisputed that Dunn & Black's prior representation of PCFF is not substantially related to the present action. Accordingly, Dunn & Black is not disqualified from representing Defendants against PCFF. Because no impermissible conflict exists, Plaintiffs' Motion to Disqualify Defendants' Counsel, ECF No. 26, is **denied**.

**Cox's Motion to Enforce Settlement**

After Mayo and PCFF attempted to withdraw from this case without prejudice, Cox filed a motion to enforce settlement. Because no enforceable settlement agreement was made, Cox's motion is denied.

The Court has inherent power to enforce settlement agreements. [*In re Suchy, 786 F.2d 900, 902-03 (9th Cir. 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CH40-0039-P29K-00000-00&context=). "An agreement to settle**[\*13]** a legal dispute is a contract and its enforceability is governed by familiar principles of contract law." [*Jeff D. v. Andrus, 899 F.2d 753, 759 (9th Cir. 1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8S80-003B-53MR-00000-00&context=). In determining whether an agreement was reached it is essential that the parties "manifest to each other their mutual assent to the same bargain at the same time." [*Pac. Cascade Corp. v. Nimmer, 25 Wn. App. 552, 555-56, 608 P.2d 266 (1980)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-XVX0-003F-W4TR-00000-00&context=). "Mutual assent generally takes the form of an offer and an acceptance." [*Id. at 556*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-XVX0-003F-W4TR-00000-00&context=). There is no valid contract until an offer is accepted; acceptance is an expression of the intention to be bound by the offer's terms. *Id.* "A contract exists when the intention of the parties is plain and the terms of a contract are agreed upon even if one or both of the parties contemplated later execution of a writing. *Id.*

The party moving to enforce a settlement agreement has the "burden of proving that there is no genuine dispute over the existence and material terms of the agreement." [*Brinkerhoff v. Campbell, 99 Wn. App. 692, 696-96, 994 P.2d 911 (2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YTB-RK50-0039-422C-00000-00&context=). "The court must read the parties' submissions in the light most favorable to the nonmoving party and determine whether reasonable minds could reach but one conclusion." [*Id. at 697*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YTB-RK50-0039-422C-00000-00&context=).

On March 8, 2017, Roberts sent a letter to defense counsel King stating that "the parties" should be able to reach a settlement agreement. On March 13, 2017, King responded with a counteroffer**[\*14]** proposing that the parties will enter into a mutual release of all claims and dismiss with prejudice the pending action. Roberts agreed, later sending a counteroffer wherein Cox would receive severance pay and attorneys' fees. King rejected the offer stating that Alliant will agree to abstain from exercising its immediate right to repurchase Cox's equity in Alliant. On March 14, 2017, Roberts sent another letter, stating that "the parties" would agree to enter into a mutual release of "all claims" and dismiss the pending action with prejudice. The parties would pay their own fees. It was only on March 15, 2017 that he indicated that he was negotiating settlement terms on behalf of Cox only, sending another letter that Cox would settle this case on the included terms. King agreed. Counsel then suggested that the Court be informed of the settlement as there would be no need for an evidentiary hearing on the parties' motions to disqualify the next day. However, at the March 16, 2017 hearing, the parties informed the Court that no settlement agreement had been reached. King believed that all plaintiffs were party to the settlement agreement and that all claims would be dismissed with prejudice.**[\*15]** Roberts at last clarified that he was only negotiating on behalf of Cox.

Although the terms were finally agreed to, there was no meeting of the minds as to whom those terms applied. Roberts' use of the terms "the parties" and "my clients" would suggest to a reasonable attorney that Roberts was referring to all plaintiffs. King is found to be reasonable in his interpretation as such. There was never mutual assent to the same bargain at the same time and no enforceable settlement agreement was reached. Accordingly, Cox's motion is **denied**.

**Cox's Motion for Leave to File Under Seal**

Cox seeks to file two unredacted versions of documents related to the settlement agreement under seal. [*Fed. R. Civ. P. 5.2(f)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0Y7-00000-00&context=) provides that a person making a redacted filing may also file an unredacted copy under seal. No Court action is required and Cox's motion is **denied**.

Accordingly, **IT IS HEREBY ORDERED**:

1. Joseph A. Mayo IV and Pacific Coast Fiber Fuels, LLC's [*Fed. R. Civ. P. 41*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F026-00000-00&context=) Motion for Voluntary Dismissal, ECF No. 88, is ineffective pursuant to Ninth Circuit case law. All Plaintiffs **shall** remain in the case at this time.

2. Plaintiffs' Motion to Disqualify Defendants' Counsel, ECF No. 26, is **DENIED**.

3. Plaintiffs' Motion Re: Waiver of Attorney Client**[\*16]** Privilege, ECF No. 81, is **DISMISSED AS MOOT**.

4. Plaintiff Christian R. Cox's Motion to Enforce Settlement, ECF No. 91, is **DENIED**.

5. Plaintiff's Motion for Leave to File Under Seal, ECF No. 95, is **DENIED**.

6. The stay of this case entered on December 2, 2016 is hereby **LIFTED**. The Court will hold a telephonic scheduling conference at a later date.

**IT IS SO ORDERED**. The District Court Executive is hereby directed to file this Order and provide copies to counsel.

**DATED** this 19th day of September 2017.

/s/ Stanley A. Bastian

Stanley A. Bastian

United States District Judge

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