

1 RAVIN GLOVINSKY LLP
WILLIAM W. RAVIN (#052722)
2 JASON L. GLOVINSKY (#141027)
THOMAS W. FERRELL, JR. (#115605)
3 401 B Street, Suite 2450
San Diego, California 92101-4245
4 (619) 233-9800 – Telephone
(619) 233-9801 – Facsimile
5
6 Attorneys for Defendant
David M. Peters

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10
11 ZACHARY R. SMITH, an individual; JAMES) Case No.: 37-2018-54719-CU-PP-NC
R. MCCORMICK, an individual; KYLE E.)
12 LAKIN, an individual; and CHRISTINA)
BAINE DEJARDIN, an individual,)
13 v.) **DAVID M. PETERS' RESPONSE TO**
) **APPLICATION FOR A TRO AND OSC**
14) **RE PRELIMINARY INJUNCTION;**
) **REQUEST FOR DATE FOR TRO AND**
15) **OSC, ALTERNATIVELY FOR**
) **APPOINTMENT OF ARBITRATOR /**
16) **REFEREE TO HANDLE REQUESTS FOR**
) **PROVISIONAL RELIEF**
17)
) Judge: Hon. Jacqueline M. Stern
) Dept. N-27
18)
) Hearing Date: November 15, 2018
19) Time: 8:30 a.m.
)
20) Complaint filed: October 29, 2018
) Trial Date: Not assigned.

21
22 **Introduction**

23
24 At bench are two agreements – a Partnership Agreement and a Buy-Out Agreement
25 Package – each of which has an arbitration clause. Petitioners have sought interlocutory
26 equitable relief (provisional remedies) in the form of Temporary Restraining Orders (TROs)
27 and Orders to Show Cause (OSCs), correctly noting that even when the contracts at bench

1 contain arbitration provisions, it may be proper to seek provisional remedies from the
2 Superior Court.

3 Respondent David M. Peters (Peters) does not dispute Petitioners' rights to seek such
4 provisional remedies in the Superior Court. Indeed, Peters may seek his own date for his own
5 application for provisional relief.

6 But, in light of the arbitration provisions in the two contracts, Peters suggest that it
7 would be appropriate for this Court to order the parties to complete their choosing of an
8 arbitrator and have such arbitrator perform the function of a referee in connection with the
9 provisional relief each side of the case may seek.

10 Once the arbitrator is chosen, he or she can handle the provisional relief applications,
11 wait until the contracted-for mediation is completed, and then resolve the entire controversy
12 in compliance with the arbitration provisions in each contract.

13 **Background**

14 On October 25, 2018, with no notice or warning to Peters, Petitioners filed a Statement
15 of Dissolution of Peters & Freedman LLP (the Partnership) with the California Secretary of
16 State. On October 29, 2018, Petitioners filed in this Court a Petition for Provisional Relief
17 Pending Arbitration. (Docket item No. 1.)

18 Under Corp. Code 16802 sub (a), even if dissolution has commenced, the Partnership
19 still exists until all of its business has been wound up. The Partnership has scores of clients,
20 hundreds of active matters and should be engaged in the winding up process. Nevertheless,
21 the Petitioners simultaneously created a separate law firm, excluding Peters, and are right now
22 diverting all business and clients of the Partnership to their new law firm.

23 Petitioners are ignoring their ethical obligations to Partnership clients. In their new
24 11/14/2018 Application for TRO and OSC Re Preliminary Injunction, Petitioners make the
25 outrageous demand that the Court order a client's settlement money be paid into a Peters &
26 Freedman bank account, contrary to the express instructions of the client that the money be
27 paid into a related counsel's trust account in order that the funds not be embroiled in the
28 Petitioners' dissolution machinations. (Declaration of David M. Peters (Peters Declaration),

1 ¶1 and Ex. 1.) Petitioners cannot ignore the direct instructions of clients, who are rightly
2 concerned about their settlement funds, given that after the November 1 hearing in this Court,
3 Petitioners have made the appalling statement to those clients (and the world) that the
4 Partnership “will no longer be engaged in the practice of law.” (Peters Declaration, ¶ 2,
5 Ex. 2.)

6 **Petitioners’ Actions; What Peters Seeks**

7 Petitioners sought a TRO an OSC regarding a preliminary injunction against Peters,
8 claiming he had engaged in financial misconduct and would not cooperate in the winding up
9 of the Partnership unless this Court forced him. Notwithstanding his partners’ claims, Peters
10 did cooperate and, without resort to this Court, the five partners agreed to a mutual restraining
11 order on October 31st, maintaining the status quo. This Court signed the Order on November
12 1st. (Peters Declaration ¶ 3, Ex. 3.)

13 The November 1, 2018 Temporary Restraining Order expires on November 21, 2018.
14 As is discussed in more detail below, Peters would like to see restraints extended throughout
15 the winding up process, supervised by an Arbitrator/Referee under the terms of the
16 Partnership Agreement and the September 1, 2016 David Peters Buy-Out Agreement Package
17 (Buy Out Package), which Petitioners conveniently failed to reveal to the Court in their first
18 Application for relief. (Peters Declaration ¶ 4, Ex. 4.) If anything, restraints should be
19 enlarged because of misconduct by Petitioners who have taken control of the Partnership, are
20 raiding its client base, and are appropriating its operating assets for their own new law firm.

21 Petitioners’ dissolution of the Partnership and petitions to this Court are nothing more
22 than an attempt by three junior partners – Zachary Smith, Christina DeJardin, Kyle Lakin and
23 one senior partner, James McCormick – to avoid the hard-earned rights of Peters as set forth
24 in the Partnership Agreement and the Buy-Out Package, to which they all agreed.

25 In spite of Corp. Code 16802 sub (a)’s mandate that the Partnership is not terminated
26 until “the winding up of its business is complete,” and in spite of the Buy Out Package’s
27 requirement that pending matters be brought to conclusion so Peters can receive his agreed-
28

1 upon compensation, Petitioners want to treat the Partnership as terminated and divert pending
2 matters to themselves.

3 By late 2016 and in consultation with his partners, Mr. Peters decided to sell his
4 partnership interest to his partners. In exchange for committing that he "shall" retire no later
5 than December 31, 2018, Petitioners entered into the Peters Buy-Out Package. (Peters
6 Declaration ¶ 5, Ex 4.) Petitioners withheld the Buy-Out Package in their first Application.

7 Its provisions include:

8 1. Peters receives 54% of the gross Partnership contingency recoveries from
9 settlements of all construction defects cases including lawyer and expert fees and costs.

10 2. Peters decides how and when to distribute the other 46%.

11 3. Peters remains an employee of the Partnership which will pay him \$90,000 per
12 year for 5 years, his duties being general oversight and mentoring.

13 4. The Partnership must pay his health insurance premiums, worth \$20,000 per
14 year for five years. The Petitioners agreed the value of this was (and is) \$100,000. The
15 Partnership continues to owe this amount it even if Peters ceases being a Partnership
16 employee.

17 5. Petitioners expressly acknowledged Peters uses firm credit cards for items that
18 are not firm expenses. They acknowledged the amounts attributable to those personal items
19 were always deducted from Peters' draws. Petitioners acknowledged Peters has historically
20 allocated payments to the other partners which payments he (Peters) was entitled to take for
21 himself. Petitioners stated Peterson did this "to be fair." Perhaps most importantly,
22 Petitioners agreed Peters has taken far less remuneration/compensation from the Partnership
23 than he was entitled to take to provide him flexibility to pursue charitable or other personal
24 matters. Petitioners promised Peters would never "hear even a question about an item he
25 took."

26 6. Petitioners promised to provide Peters a secretary for five years.

27 7. Petitioners promised to provide Peters with legal malpractice insurance for 5
28 years.

1 8. Peters is entitled to charges of up to \$15,000/year for five years on the firm
2 credit card; which benefit has an agreed-upon \$50,000 buyout value.

3 9. Petitioners promised to provide Peters an office for three years.

4 10. Petitioners are obligated to provide Peters with the firm's existing car
5 allowance during retirement.

6 In consideration of these promises, Peters released the Partnership from "any claim by
7 Peters for additional compensation owing Peters by Peters & Freedman under prior
8 partnership agreements." Peters and all four Petitioner Partnership members signed the
9 agreement on 9/1/2016. (Peters Declaration ¶ 7, Ex. 4, pp. 1-3.)

10 Petitioners decided to dissolve the Partnership just 62 days before Mr. Peters'
11 mandatory resignation. At present, the gross contingency recoveries expected by the
12 Partnership and subject to the Buy-Out Package are several millions of dollars, of which
13 Peters is entitled to 54%. The additional benefits owed to Peters total roughly \$600,000.
14 Dissolving the Partnership to exclude Peters from the practice when he is set to retire at year
15 end is Petitioners' clumsy attempt to avoid their promises to Peters in the Buy-Out Package
16 and capture the business and clients of the Partnership for themselves and their new firm.

17 On October 31, 2018 at 10:00 a.m., Petitioners announced, by e-mail to all Peters &
18 Freedman personnel that the partnership had dissolved. (Peters Declaration ¶ 8, Ex. 6.) The
19 employees of the Partnership were left in the dark as to their future, rights, obligations, health
20 insurance and employment with the firm. Thus they were more susceptible to entreaties to
21 work for Petitioners' new firm.

22 Petitioners commenced operating a new law firm, Delphi Law Group LLP, *out of the*
23 *offices of Peters & Freedman*. Delphi Law Group has a post office box at a postal drop site
24 and a website. It has no other office facility. Petitioners are using the Partnership's offices,
25 employees, equipment and resources to divert and service the Partnership's clients in the
26 name of their new law firm. (Peters Declaration ¶ 9, Ex. 7.)

27 Petitioners have made false (and frightening) statements to the public, and to
28 Partnership's clients to attract those clients to Petitioners' new law practice. (See for example

1 the November 5, 2018 notice to one homeowner association client falsely stating that
2 “effective October 28, 2018, the law firm of Peters & Freedman, LLP has been dissolved *and*
3 *will no longer be engaging in the practice of law.*” (Peters Declaration ¶ 10, Ex. 2.)

4 (Emphasis added.)

5 Petitioners’ false statements about the Partnership no longer practicing law prompted
6 one very prominent management service to distribute the following scare alert to dozens of
7 clients and others.

8 All, I have just learned that Peters and Freedman had to abruptly dissolve
9 the firm due to the partners suing the founding member, Dave Peters, for
10 mishandling funds and for many other unethical, abusive and financial
11 reasons. If any of you use P&F for legal and/or collections you will need to
12 find new representation. If any of you are interested in knowing, 4 of the
13 P&F partners have formed a new firm called Delphi Law Group and you
14 can find them at www.delphillp.com I know no one wants to go too
15 long without legal representation

16 (Peters Declaration ¶ 11, Ex. 8.)

17 Petitioners are scaring Partnership clients, telling them the Partnership is no longer
18 servicing their cases and urging the clients to move their cases to Delphi Law Group.
19 Petitioners do this knowing full well the Buy-Out Package they signed entitles Mr. Peters to
20 remuneration from at least current cases that the Partnership is handling. (Peters Declaration
21 ¶12, Ex. 4, p.1, §1.)

22 **Peters’ Equities**

23 In considering the propriety, or lack thereof, in Petitioners attempts to “dissolve” and
24 thereby avoid the Buy-Out Package, the following should be considered.

25 Peters made the Partnership very successful through cases he originated, mentored,
26 worked up, prosecuted and concluded with no involvement from the Petitioners McCormick
27 and DeJardin, and minor involvement from Petitioners Smith & Lakin. The timing of
28 DeJardin, Smith and Lakin becoming partners is telling. The two largest cases set forth in the
Petitioners’ ex parte applications have been ongoing since 2013. Partner DeJardin become a
partner in 2014 and had no involvement in the cases whatsoever. Smith and Lakin became
partners in 2017. The largest case resolved in October of 2017 at which time partners Smith

1 and Lakin had been part of the firm for approximately ten months. As of date of the filing of
2 the Statement of Dissolution, Smith and Lakin had been partners for less than 22 months.
3 Notwithstanding the facts, Petitioners want much more than they are entitled to under the
4 Partnership Agreement. (Peters Declaration ¶ 13.)

5 **Distributions to the Petitioners by Peters, and the “Extras”**

6 **1. McCormick.** Since 2012, Attorney McCormick has received in excess of
7 \$4,300,000.00 in distributions. (Peters Declaration ¶ 14.) And, there are the enormous
8 “extras.” Peters has only been able to review the past fourteen months of McCormick’s
9 takings from the Partnership (and the investigation is ongoing). But it has been learned that
10 during these last 14 months, McCormick has charged over \$317,000 on the firm credit card,
11 including \$18,500 for wine since October 15, 2018. (Peters Declaration ¶ 15, Ex. 9.) The
12 other charges comprise personal gym equipment, fitness memberships, family vacations,
13 dining, etc. Only a small portion of these enormous charges had some nexus to the business
14 of Peters & Freedman. (*Id.*)

15 One of the more confused allegations made by Petitioners concerns Peters’ purchase
16 of an automobile for \$60,000. This claim stood out because Peters, for more than 20 years,
17 has been purchasing, every 1-2 years, a modest mid-level, semi-luxury vehicle, e.g. Infiniti
18 G37 or similar Lexus, appropriate for attorneys and staff to drive to and from client meetings
19 and other business meetings. The Petitioners failed to disclose that on June 18, 2018, James
20 McCormick purchased a BMW M-5, in his own name, using a Peters & Freedman check at a
21 cost of \$137,738.00. (Peters Declaration ¶ 16, Ex. 10.)

22 Peters has also discovered McCormick’s misuse of Partnership funds and experts or
23 vendors. Investigations to date have uncovered McCormick expended Partnership funds on
24 his house which expenditures are in the neighborhood of \$70,000. Peters even discovered
25 that over \$10,000 for stone for McCormick was paid for from Peters & Freedman funds on
26 November 11, 2018. (Peters Declaration ¶ 17, Ex. 11.)

1 **2. Smith.** Since becoming a partner in 2017 and through mid-2018 Smith has
2 received in excess of \$700,000 and although not entitled to more under the Partnership
3 Agreement would have received more if this controversy had not been started. The
4 accusations by Petitioners caused Peters to review checks and reimbursements. Peters
5 discovered that Peters & Freedman had been paying for Smith's truck payments, vehicle
6 insurance, mileage and gasoline, large cell phone bills and payments towards Smith's children
7 youth programs. Peters probably would have approved and condoned most, if not, all of the
8 expenditures, if DeJardin and Lakin had been similarly remunerated. (Peters Declaration ¶ 18,
9 Ex. 12.)

10 **3. DeJardin.** Since 2016 through mid-2018, DeJardin has received distributions in
11 excess of \$1,100,000. DeJardin also has had use of the firm's credit card and took advantage
12 of that privilege, albeit not remotely to the degree of McCormick. A sample of monthly
13 expenditures by DeJardin are contained in Exhibit 13 to the Peters Declaration ¶ 19. DeJardin
14 has also had her considerable cell phone bills and reimbursements paid.

15 **4. Lakin.** Since becoming a partners in 2017, through mid-2018, Lakin has received
16 in excess of \$700,000 and although not entitled to more under the Partnership Agreement
17 would have received more. Peters appreciates Lakin had conferred more value to Peters &
18 Freedman. It also does not take much imagination to recognize that when Peters distributed
19 more to Lakin, as deserved, the other Petitioners would react angrily. (Peters Declaration ¶
20 20.)

21 Peters is also uncovering instances of one or more of the Petitioners giving
22 instructions to staff to make large cash withdrawals from Partnership accounts, with the cash
23 presumably going to the particular Petitioner who issued the instructions. (Peters Declaration
24 ¶ 21, Ex. 14.)

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Peters' lack of communication with his partners

Peters holds himself responsible for his lack of communication to the other partners. But it is also true that no one asked Peters for information. Peters, trusting his partners, failed to keep tabs of their expenditures. (Peters Declaration ¶ 22.)

Conclusion

The Court should continue the extant, mutual restraining order pending a hearing at a future date at which Peters may seek his own provisional relief. Alternatively, the Court should order the matters of provisional relief to be heard by an arbitrator / referee.

November 14, 2018

Ravin Glovinsky LLP

By  _____

William W. Ravin
Thomas W. Ferrell
Attorneys for Respondent David M. Peters