

CIVIL COMPLEX CENTER

DEPARTMENT CX103

Judge Lon F. Hurwitz

Procedural guidelines for several types of motions and dismissals handled regularly in this department are set forth here. The guidelines appear after the Tentative Rulings.

TENTATIVE RULINGS

Date: March 28th, 2025

Time: 2:00PM

The Court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by emailing her as soon as possible. The email should be directed to CX103@occourts.org. When sending emails to the department, make sure to CC ALL SIDES as to avoid any sense of ex parte communication. The Court will not entertain a request for continuance nor filing of further documents once the ruling has been posted.

If appearing **remotely** on the date of the hearing, log into ZOOM through the following link and follow the prompts:

<https://acikiosk.azurewebsites.us/advisement?dept=CX103>

OTHER INFORMATION ABOUT THIS DEPARTMENT

HEARING DATES/RESERVATIONS: Except for Summary Judgment and Adjudication Motions, **no reservations are required for Law and Motion matters**. Call the Clerk to reserve a date for a Summary Judgment or Adjudication Motion. Regarding all other motions, the parties are to include a hearing date (Friday at 1:30PM) in their motion papers. The date initially assigned might later be continued by the Court if the assigned date becomes unavailable for reasons related to, among other things, calendar congestion.

COURT REPORTERS AND TRANSCRIPTS: Court reporters are not available in this department for *any* proceedings. Please consult the Court's website at www.occourts.org concerning arrangements for court reporters. If a transcript of the proceedings is ordered by *any* party, that party must ensure that the Court receives an electronic copy by email as mentioned above.

SUBMISSION ON THE TENTATIVE

If a tentative ruling is posted and **ALL** counsel intend to submit on the tentative without oral argument, please advise the clerk by emailing the department at CX103@occourts.org as soon as possible. When sending emails to the department, make sure to **CC ALL SIDES** as to avoid any sense of ex parte communication. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give Notice of Ruling. If there is no submission or appearance by either party, the court will determine whether the matter is taken off calendar or will become the final ruling.

ORDERS

The court's **minute order will constitute the order of the court** and no further proposed orders must be submitted to the court **unless** the court or the law specifically requires otherwise. **Where an order *is* specifically required by the court** or by law, the parties are required to do so in accordance with California Rules of Court, rule 3.1312(c) (1) and (2).

BOOKMARKS

Bookmarking of exhibits to motions and supporting declarations - **The court requires strict compliance with CRC, rule 3.1110 (f) (4)** which requires electronic exhibits to include electronic bookmarks with the links to the first page of each exhibit, and with bookmarked titles that identify the exhibit number or letter and briefly describe the exhibit. CRC, rule 3.1110 (f) (4).

The court may continue a motion that does not comply with rule 3.1110 (f) (4) and require the parties to comply with that rule before resetting the hearing.

		Tentative
#1	Balt USA, LLC vs. Treadstone Medical LLC 30-2021-01237081	<p>MOTION FOR RECONSIDERATION</p> <p>Moving Party: Plaintiff Balt USA, LLC</p> <p>Responding Party: Defendant Single Pass, Inc.</p> <p>SERVICE: February 3, 2025, by electronic transmission</p> <p>RELIEF SOUGHT: Plaintiff seeks reconsideration of the Order of January 24, 2025, sustaining without leave to amend the Demurrer to the Second Amended Complaint filed by Defendant.</p> <p>UPCOMING EVENTS:</p> <ol style="list-style-type: none">1. Motion to Quash Service – April 24, 20252. Motion to Strike/Tax Costs – May 15, 20253. Pretrial Conference – July 25, 20254. Jury Trial – August 25, 2025 <p>FACTS/OVERVIEW: This is a business dispute. On December 17, 2021, Plaintiff Balt USA, LLC (“Balt”) filed a Complaint against Defendants Treadstone Medical LLC, Treadstone Holdings LLC, M4D LLC, Infinity Neuro LLC (China), StoneWall, Vtail Medical LLC, David Ferrera, Dawson Le,</p>

Randall Takahashi, and Charles Yang.¹
(ROA 2). The Complaint asserts claims for:

1. Breach of Fiduciary Duty (Self Dealing) [against the Individual Defendants];
2. Aiding and Abetting Breach of Fiduciary Duty [against M4D and Treadstone Medical];
3. Fraudulent Concealment [against the Individual Defendants and M4D];
4. Breach of Fiduciary Duty (Usurpation of Corporate Opportunities) [against the Individual Defendants];
5. Aiding and Abetting Breach of Fiduciary Duty [against the Non-Individual Treadstone Defendants];
6. Tortious Interference with Contract [against Treadstone Medical, Treadstone Holdings, VTail, and Individual Defendants Ferrera, Yang, and Le];
7. Declaratory Judgment [against the Individual Defendants];
8. Breach of Contract (Failure to Disclose Inventions) [against Individual Defendant Takahashi];
9. Breach of Contract (In-term Competitive Conduct) [against the Individual Defendants]; and
10. Unfair Competition [against all Defendants].

On May 29, 2024, pursuant to stipulation and order, Balt filed the First Amended

Complaint (FAC) alleging the same 10 causes of action. (ROA 623.) The FAC added Defendants Sonorous Neurovascular, Inc.; RC Medical, LLC; and Single Pass, Inc. to the action.

On July 8, 2024, Defendant Single Pass, Inc. (“Single Pass”) filed a demurrer to the FAC on the grounds the FAC failed to state facts sufficient to constitute a cause of action against Single Pass, and the allegations in the FAC were uncertain because they failed to distinguish any actionable conduct by Single Pass apart from other defendants. (ROA 666.) At the hearing on September 13, 2024, the Court sustained the demurrer with leave to amend. (ROA 822.)

On October 14, 2024, Balt filed the operative Second Amended Complaint (“SAC”). (ROA 867.) The SAC alleged the same 10 causes of action, with the sixth cause of action now also alleged against Defendants Infinity Neuro and Infinity Neuro China. On November 13, 2024, Single Pass filed a demurrer to the SAC on the same grounds as asserted in the demurrer to the FAC. (ROA 935.) At the hearing on January 24, 2025, the Court sustained the demurrer without leave to amend. (ROA 1025.)

On February 3, 2025, Balt filed the current Motion for Reconsideration. (ROA 1056.) Single Pass opposes the Motion (ROA 1108), and Balt replies (ROA 1130).

CONTENTIONS AND ANALYSIS:

Statement of the Law

Code of Civil Procedure section 1008, subdivision (a), is the exclusive means for a party to seek the revocation, modification, or amendment of an order. The statute provides that a motion for reconsideration must be: (1) brought before the same judge that made the order; (2) made within 10 days after service upon the party of notice of entry of the order; and (3) based on new or different facts, law, or circumstances than those before the court at the time of the original ruling. The limitations for bringing a motion to reconsider as stated in the statute are expressly jurisdictional. (*Morite of California v. Superior Court* (1993) 19 Cal.App.4th 485, 490, abrogated on other grounds.) Once judgment is entered, the court cannot entertain or decide a motion for reconsideration. (*Branner v. Regents of Univ. of Calif.* (2009) 175 Cal.App.4th 1043, 1048; *APRI Ins. Co. v. Superior Court* (Schatteman) (1999) 76 Cal.App.4th 176, 181.)

The motion must be supported by a declaration identifying the previous order, the judge that made the order, and the new or different facts, circumstances, or law claimed to exist. (Code Civ. Proc., § 1008, subd. (a).) The moving party must offer the court some fact, law or circumstance not previously considered, and a satisfactory explanation as to why the evidence was not produced at an earlier time. (*Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500; *Lucas v. Santa*

Maria Public Airport Dist. (1995) 39 Cal.App.4th 1017, 1028, citing Mink v. Superior Court (1992) 2 Cal.App.4th 1338.)

However, motions for reconsideration cannot be based on an argument the court misinterpreted the law or failed or refused to consider evidence previously presented in its prior ruling. (Gilberd v. AC Transit, supra, 32 Cal.App.4th at p. 1500; Jones v. P.S. Development Co., Inc. (2008) 177 Cal.App.4th 707.)

With a motion for reconsideration, the moving party's burden is the same as that of a party seeking a new trial on the grounds of "newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial." (Code Civ. Proc., § 657; see also, Baldwin v. Home Savings of America (1997) 59 Cal.App.4th 1192, 1198.) Moreover, the new or different facts, circumstances or law on which a motion for reconsideration may be granted must be more than a litigant disagreeing with the ruling of the trial court and citing "different" law to reiterate the litigant's position. (Gilberd v. AC Transit, supra, 32 Cal.App.4th at p. 1500.) If the moving party has not met the statutory requirements for reconsideration, however, the court may reaffirm its original order. (Corns v. Miller (1986) 181 Cal.App.3d 195.)

Merits

In its Demurrer to the Second Amended Complaint, Single Pass asserted that it did not

exist at the time the Individual Defendants allegedly breached their fiduciary duties to Balt. Pointing to judicially-noticed document regarding Single Pass's Articles of Incorporation, Single Pass asserted that it did not come into existence until December 21, 2020—almost seven months after the last Individual Defendant terminated his relationship with Balt.

Single Pass also challenged Balt's allegations in the SAC that Single Pass had a predecessor entity known as "First Pass, LLC", and that First Pass—along with Treadstone Medical—maintained an interest in Single Pass upon its formation. (See, SAC, ¶¶ 24, 105.) However, Single Pass pointed to another judicially-noticed document—First Pass's Articles of Incorporation filed with the Arizona Corporation Commission—and asserted that First Pass is a separate and distinct entity that is owned and controlled by individuals who are not affiliated with Single Pass or any of the Individual Defendants in the instant litigation. (See, ROA 929, RJN, Exh. B.) As argued by Single Pass, it is not a continuation entity of First Pass, LLC, and there were no allegations in the SAC that First Pass somehow merged with, converted into, was assigned, or was otherwise transformed into Single Pass. In addition, Single Pass argued that even to the extent First Pass was converted into Single Pass, Balt had not alleged that First Pass exerted control over Single Pass or substantially assisted the Individual Defendants in any alleged breaches of fiduciary duties to Balt. As a result, Single Pass argued that Balt could not allege facts sufficient to support any cause of

action against Single Pass—including any claim for aiding and abetting, breach of fiduciary duty, or unfair competition.

In opposing the Demurrer, Balt argued that Single Pass used to be known as “First Pass, LLC”. According to Balt, it had adequately alleged, on information and belief, that the Individual Defendants collaborated with Treadstone Medical and First Pass, and Single Pass “was formed as a mere continuation” of First Pass. (SAC, ¶¶ 24, 105.) Balt asserted that Single Pass then assumed the corporate operations previously performed by First Pass, and that First Pass and Treadstone Medical became Single Pass’s shareholders.

Balt also argued that Single Pass could be liable for aiding and abetting the Individual Defendants’ breach of fiduciary duty even if they left Balt before Single Pass was incorporated. According to Balt, it had adequately alleged that Single Pass “existed” as an “unincorporated association” that was formerly known as “First Pass” at the time the Individual Defendants allegedly breached their fiduciary duty to Balt. Balt asserted that since Single Pass “existed” at the time of the breach, and it is a “mere continuation” or “de facto merger” of First Pass, then under a successor liability theory, Single Pass could be held liable for aiding and abetting the Individual Defendants in breaching their fiduciary duty to Balt.

At the January 24, 2025 hearing, the Court found Balt’s arguments to be unavailing. The Court first noted that the SAC did not allege

that Single Pass “existed” as an “unincorporated association”, but rather, only alleged that Single Pass “is a corporation organized and existing under the laws of the State of Delaware.” (ROA 1025.) The Court then found that the SAC had alleged in conclusory fashion that Single Pass’s predecessor entity was First Pass, LLC, and that Single Pass was a “mere continuation” of the collaboration between Treadstone Medical and First Pass. (Ibid.) In addition, the Court found that judicially-noticed documents demonstrated that First Pass was formed as an Arizona corporation in June 2015 by persons wholly unrelated to the Individual Defendants, and that nothing in the incorporation documents for First Pass linked it to Balt, the Individual Defendants, or any of the other Defendant Entities. (ROA 929, RJN, Exh. B.)

The Court again noted that the fiduciary duty of loyalty may not continue after an officer leaves his corporation, and although an officer who is suddenly stripped of discretion or management power still owes a fiduciary duty to the corporation, an officer who resigns or is removed from office may be divested of that duty. (See, *GAB Business Services, inc. v. Lindsey & Newsom Claim Services, Inc.* (2000) 83 Cal.App.4th 409, 421 [disapproved on other grounds by *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1154].)

As a result, the Court found that since the SAC did not sufficiently allege that Single Pass existed in any capacity at the time the Individual Defendants worked for Balt, then it had not been established that any of the

Individual Defendants still owed Balt a fiduciary duty at the time Single Pass was incorporated or that any actionable misconduct was imputed to Single Pass. Therefore, the Court sustained Single Pass's demurrer without leave to amend. (ROA 1025.)

Now, in the current Motion, Balt seeks reconsideration of the Court's ruling. According to Balt, there are recently-produced documents that contain additional facts linking Single Pass to First Pass and which show that Single Pass is the "mere continuation" of First Pass. Balt asserts that on January 15, 2025, Single Pass served its third production of documents after Balt had filed its opposition to the Demurrer. Regarding this production and Single Pass's earlier production of documents, Balt contends they were comprised of jumbled and undated pdfs that lacked metadata and were not readily viewable. (ROA 1058, Declaration of Thomas Martin ("Martin Decl."), ¶¶ 6, 7.)

Balt states that in Single Pass's third production, there were several notable documents, including: (1) the January 2021 Limited Liability Company Agreement of Single Pass LLC showing First Pass as a Member and Treadstone and First Pass as shareholders; (2) Single Pass "pitch decks" showing that Individual Defendants Yang and Takahashi are part of the management team at Single Pass, and that Drs. Kevin Sunenshine and Peter Hirsch—the owners of First Pass—are also the founders of Single Pass; and (3) several documents establishing

that the First Pass electrocautery device became the device that Single Pass is purportedly pursuing, and which show that First Pass assigned the technology to Single Pass, LLC and then to Single Pass, Inc. (Martin Decl., Exhs. G and H.) Balt argues that since these documents demonstrate that Single Pass is a “mere continuation” entity of First Pass, it should be given an opportunity to amend its allegations against Single Pass.

In opposition, Single Pass notes that none of the documents referenced in Balt’s Motion are “newly discovered” evidence. According to Single Pass, all of the documents identified in the instant Motion were available to Balt before it filed its opposition to the Demurrer and before it filed the SAC. For instance, Single Pass asserts that it previously produced its LLC Agreement in response to a subpoena on June 28, 2024. (ROA 1110, Declaration of Scott Lieberman (“Lieberman Decl.”), ¶ 8.) Single Pass also contends that it is obvious Balt reviewed this document and others because information from those documents—such as ownership percentages of Single Pass members—was included in the SAC. Similarly, Single Pass contends the “pitch decks” referenced by Balt in the instant Motion have also been available to Balt for several months and were previously produced by other defendants. (Lieberman Decl., ¶ 9.) Single Pass argues that since Balt has not provided a valid reason for not discovering these documents earlier, then the instant Motion must fail.

Single Pass also notes that some of these “new” facts upon which Balt relies in the

Motion were raised by Balt during the January 24, 2025 hearing on the Demurrer. As argued by Single Pass, since Balt delayed in raising this information until the end of the hearing, then it cannot be considered as the type of “new” facts that would justify reconsideration of the Court’s ruling.

Balt concedes that during the hearing on the Demurrer, it verbally raised some of the facts discovered in Single Pass’s January 15, 2025 document production. (See, Motion, p. 4, fn. 3.) Balt notes, however, since the hearing was conducted remotely, no documents were presented to the Court. (Martin Decl., ¶ 15.) In reply, Balt also concedes that Defendant RC Medical produced documents on October 30, 2024, that included some of the documents upon which Balt now relies in bringing the instant Motion. According to Balt, Single Pass’s contention that reconsideration is precluded because the documents were previously produced by a different party is little more than a “form over substance” argument. Moreover, Balt notes that the RC Medical October 2024 production, like Single Pass’s January 2025 production, occurred after Balt filed the SAC. As a result, Balt argues there is nothing improper about seeking reconsideration of the Court’s ruling.

In addition, Balt asserts that California has a strong policy of favoring the amendment of pleadings to allow disputes to be decided on the merits, and Single Pass has not provided an adequate reason to deviate from that policy. Balt also notes that since the case is not set to go to trial under the end of August

2025, and several depositions have not been taken, there is no prejudice to Single Pass if an amendment to the SAC is allowed.

Balt's arguments are unavailing. First, the Court notes that Balt admits it had obtained some of the cited documents in an earlier production from RC Medical. This late admission from Balt, stated only after the issue was raised by Single Pass, is concerning to the Court. Although the documents were produced by RC Medical rather than Single Pass, Balt was not precluded from using the information in those documents to craft its allegations as to Single Pass. Balt was also not precluded from referencing those documents, to the extent they were relevant, in its opposition to the Demurrer. In the instant Motion, Balt does not assert that the format of the documents produced by RC Medical suffered from the same purported deficiencies, such as lack of metadata, as those produced by Single Pass. Therefore, it appears that Balt may have been less than diligent in examining the documents produced in discovery before filing the SAC and before opposing Single Pass's demurrer.

It is also noted that during oral argument on Single Pass's Demurrer on January 24, 2025, Balt did raise some of the purportedly "new" facts upon which the instant Motion is based. Thus, it is clear that this information was not only brought before the Court, but it was considered by the Court in making its ruling on January 24, 2025. Presumably, Balt's argument in this regard was not sufficient to convince the Court that further amendment to the complaint would result in sufficient

allegations to state a cause of action against Single Pass.

Balt has not demonstrated that there are facts not previously considered by the Court, nor has Balt adequately explained why it did not discover some of these documents earlier.

The Court is also concerned that Balt apparently decided not to wait for the hearing on the instant Motion, and instead filed a Third Amended Complaint on March 17, 2025, without leave of Court. (See, ROA 1117.) Such action by Balt is improper and will not affect the Court's ruling on the merits on the instant Motion.

Balt has not met the requirements of Section 1008(a). Therefore, Balt's Motion for Reconsideration is denied.

RULING:

Plaintiff Balt USA, LLC's Motion for Reconsideration is **DENIED**.

Plaintiff is ordered to give notice of this ruling.

If the parties intend to submit on the tentative ruling, please inform the clerk by emailing her before 12:00 p.m. on the day of the hearing at CX103@occourts.o