COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

SUFFOLK, ss. Civil Action No. 2484CV02931

DANY ABOUELHKIER, Pro Se
Plaintiff,

v.

VIRTUAL FULFILLMENT CENTER, LLC,
MOHAMED KASSEM,
OMAR NEAMATALLA,
MOHAMED ALI, and
AHMED KASEM,
Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF'S MOTION TO DISQUALIFY ATTORNEY ALEXANDER W. LEVINE

I. FACTUAL BACKGROUND

This dispute arises from an internal conflict within Virtual Fulfillment Center, LLC ("VFC"), a Massachusetts manager-managed LLC founded by Plaintiff Dany Abouelkhier, who was and remains the only recorded founder on file with the Secretary of the Commonwealth.

A. Plaintiff Founded VFC and Acted as Its Manager and Principal From Inception

The Certificate of Organization (Exhibit 1) identifies Plaintiff as the founder, the initial and only manager when founded, and the person authorized to act for the LLC.

No Operating Agreement exists. Accordingly, the governance of VFC is controlled by the default provisions of G.L. c. 156C, under which the manager has exclusive authority to bind and act for a manager-managed LLC.

For years, all major decisions—including licensing, budgeting, hiring, build-out approval, vendor arrangements, and communication with the City of Boston—were made jointly among Plaintiff and the individuals he later added as members/managers, consistent with their own shared understanding that "manager" meant owner/member. (Exhibit 2: WhatsApp communications stating "manager = owner," "LLC titles are manager," and similar.)

Plaintiff also opened and maintained the primary business bank account, further demonstrating his role as the LLC's controlling founder and principal. Defendants never removed Plaintiff from that bank authority, even while now attempting to retroactively label him an "independent contractor."

B. No Meeting, Vote, Notice, or Consent Was Ever Held to Remove Plaintiff or Retain Attorney Levine

Defendants have conceded—and their own filings confirm—that no Operating Agreement exists, no meeting was held, no notice was issued, no written consent exists, and no valid corporate action was taken removing Plaintiff as manager or authorizing Attorney Levine.

Thus, under G.L. c. 156C §§ 22–24, the LLC never authorized Attorney Levine's retention or the filing of Counterclaims. The only person with statutory authority to authorize representation on behalf of VFC is Plaintiff, as the recorded manager.

C. Business Counsel (Scanlon & Barnosky) Represented the Company, and Plaintiff Confirmed That Representation

Prior to Attorney Levine's appearance, VFC was represented for licensing matters by Attorney Kristen Scanlon and Attorney Adam Barnosky. Plaintiff expressly advised Attorney Barnosky that they represented the company (and not any individual). Those attorneys understood that they were counsel to VFC as an entity, not personal counsel to any member.

Their communications, including Attorney Scanlon's October 31 message requesting confirmation of "which principal" she should take direction from (Exhibit 3), show that:

- they understood Plaintiff to be a principal and manager, and
- they were unaware of any vote removing him.

This reinforces that the LLC had no lawful internal act authorizing Levine or restructuring its management.

D. Secret Plan: Ahmed's Email Confirming That Attorney Levine Was Hired to "Remove Dany" and "Oversee Structural Changes"

The most significant fact appears in Exhibit 4, an October 31, 2025 email written by Defendant Ahmed Kasem to Attorneys Scanlon and Barnosky:

"Alexander will be overseeing the changes to our company structure…

and the removal of Dany from the manager role.

We already submitted updates to the Secretary of State."

Plaintiff was not copied. He was not notified. He was intentionally excluded from the communications and this email establishes:

- A covert internal takeover plan;
- Attorney Levine's knowing participation in that plan;
- Structured actions taken without authority;
- A direct conflict between Levine's clients;
- A violation of fiduciary duties among co-managers/members; and
- A clear ethical conflict under Rules 1.7 and 1.13(g).

It also proves that the very purpose of retaining Attorney Levine was to restructure the company without Plaintiff, remove Plaintiff from authority, and file actions against Plaintiff in the LLC's name.

This is per se unethical and non-waivable in a manager-managed LLC dispute.

E. The Independent Contractor Narrative Is Demonstrably False

Within hours of the secret email to business counsel describing Plaintiff's "manager role," Defendants sent Plaintiff a contradictory message asserting that he was "just an independent contractor." (Exhibit 5.)

This contradiction reveals deliberate misrepresentation, concealment of corporate actions, an attempt to mask a hostile takeover, and a complete lack of good faith.

More importantly independent contractors cannot be "removed from a manager role" independent contractors are not part of "company structure", independent contractors cannot authorize or be removed from LLC governance, independent contractors do not open LLC bank accounts as signatories; and independent contractors are not listed with the Secretary of the Commonwealth in governance filings.

Thus, the "independent contractor" narrative is legally and factually impossible given Defendants' own actions and communications.

F. Attorney Levine Is a Necessary Fact Witness

Because Attorney Levine was retained during the hostile takeover, communicated with Defendants about "restructuring" and "removing Dany", was involved in the alleged "changes to structure", submitted filings based on those communications and participated in the plan to remove Plaintiff, he will necessarily be a witness in this litigation.

Under Massachusetts law, this alone supports disqualification under Mass. R. Prof. C. 3.7 (lawyer as witness), in addition to the conflicts discussed below.

G. Attorney Levine's Own Opposition Confirms the Internal Conflict and Lack of Authority

In their Opposition to Plaintiff's Motion to Dismiss Counterclaims, Attorney Levine and Defendants make several key admissions:

- They confirm that VFC and the individual defendants are all asserting claims against Plaintiff and are represented by the same counsel;
- They state that the Counterclaims were "authorized and approved by the VFC Parties," not by any manager acting for the LLC;
- They invoke Rule 1.13(g) to justify joint representation, while ignoring the rule's requirements of no conflict and valid organizational consent; and
- They assert that internal "attorney-client communications" about authorization need not be pleaded, signaling an intent to shield the circumstances of retention and authorization behind a privilege claim.

These admissions are addressed in the Argument section below, but they further confirm that this is an internal governance dispute, counsel is representing directly adverse clients; and no valid corporate authorization exists for his role.

II. LEGAL ARGUMENT

Attorney Levine must be disqualified because his representation violates three separate and independent rules of the Massachusetts Rules of Professional Conduct:

1. Rule 1.7(a) — directly adverse concurrent conflict;

2. Rule 1.13(g) — dual representation of entity + constituents without proper consent;

3. Rule 1.16(a)(1) — mandatory withdrawal where representation violates the rules.

Any one of these grounds mandates disqualification. Here, all three apply simultaneously.

A. Rule 1.7(a): Attorney Levine Represents Clients Whose Interests Are Directly Adverse Mass. R. Prof. C. 1.7(a)(1) provides:

"A lawyer shall not represent a client if the representation involves a directly adverse conflict with another client."

A conflict is non-waivable where the parties' interests are fundamentally opposed. See *Borman v. Borman*, 378 Mass. 775, 787 (1979).

Here, Attorney Levine purports to represent VFC (the entity) and the individual defendants, who accuse the entity's manager-founder of misconduct and seek to remove him. These interests are diametrically opposed the LLC's legal interests require defending the manager's authority and actions, the individual defendants' interests require attacking that authority and removing the manager.

One lawyer cannot ethically represent the LLC's lawful governance while also representing the people attempting to unseat and replace that governance. This is the exact scenario Rule 1.7 forbids.

Massachusetts courts repeatedly hold that where a lawyer attempts to represent an organization and an internal faction attacking its management, disqualification is mandatory. See *Smaland Beach Ass'n v. Genova*, 461 Mass. 214 (2012) (attorney disqualified where representation created adversity among members in management dispute).

Here, the conflict is even worse because Levine was hired for the purpose of aiding one faction in a takeover, Levine participated in the alleged removal attempt, Levine filed Counterclaims on behalf of a manager-managed LLC against its own manager; and Levine is advocating a position that would invalidate Plaintiff's legal authority as manager/founder.

This is structural, not technical. It cannot be waived and must result in disqualification.

B. Rule 1.13(g): No Valid Consent Exists for Dual Representation of the LLC and Individual Members

Rule 1.13(g) permits an attorney to represent an organization and its constituents only if:

1. No conflict exists, and
2. Consent is obtained from an appropriate official of the organization.

Where no such neutral official exists, dual representation is prohibited as a matter of law.

Here:

1. A conflict plainly exists: There is a major internal dispute over, who the manager is, who has authority to speak and act for the LLC., whether Plaintiff was validly removed, whether Counterclaims are authorized and who controls the company's "structure." Thus Rule 1.13(g) cannot permit dual representation.

2. No "appropriate official" exists to give consent: Under G.L. c. 156C §24(b), the only official with authority to consent on behalf of a manager-managed LLC is the manager.

The Secretary of State's records (Exhibit 1) confirm that the Plaintiff is the only recorded manager at the inception of the LLC, No amendment validly removed him, No vote occurred and No written consent exists.

Defendants cannot claim to override the statute by secretly "promoting themselves" or by retroactively labeling Plaintiff an "independent contractor." There is no Operating Agreement giving them such authority, and there are no minutes or consents showing a valid corporate action.

Thus:

- No non-conflicted person existed to authorize Levine;
- Levine's retention was structurally impossible under Rule 1.13(g);
- Any purported "consent" from Defendants is invalid; and
- Dual representation is strictly prohibited.

Massachusetts courts disqualify attorneys when representation of an organization and an internal faction creates directly adverse interests. See *Smaland Beach Ass'n v. Genova*, 461 Mass. 214, 223–25 (2012) (attorney disqualified where representation placed lawyer in the middle of an internal governance dispute, creating non-consentable conflicts under Rule 1.7).

C. Rule 1.16(a)(1): Levine Must Withdraw Because His Representation Violates the Rules

Rule 1.16(a)(1) mandates withdrawal where:

"Representation will result in violation of the rules of professional conduct."

Because Levine's representation violates both Rule 1.7 and Rule 1.13(g), Rule 1.16(a)(1) imposes a mandatory duty to withdraw.

Additionally, his representation is unauthorized:

- There was no vote;
- There was no meeting;
- There was no written consent;

- There was no corporate authorization by the manager;
- Any engagement letter (if it exists) is invalid; and
- His role, by Defendants' own admission, was to facilitate removal of the manager and "oversee structural changes."

An attorney who accepts representation from persons with no authority to engage him as counsel to an LLC, and then files pleadings purporting to bind the LLC, is acting in clear violation of Rule 1.16(a)(1).

Thus, Rule 1.16 makes withdrawal mandatory.

D. Attorney–Client Privilege Cannot Shield Lack of Authority or Cure a Structural Conflict

To the extent Attorney Levine attempts to rely on "attorney–client communications" or privilege to avoid disclosing how he was retained or authorized, that argument fails as a matter of law.

Under Massachusetts law, the client in this context is the organization, not the individual members. See *Smaland Beach Ass'n v. Genova*, 461 Mass. 214 (2012). Privilege belongs to the LLC, and is exercised by those with lawful authority to act for the entity—in a manager-managed LLC, that is the manager.

Because Plaintiff is the only recorded founding manager:

- Plaintiff controls any corporate privilege;
- Unauthorized factions of members cannot create or assert privilege to conceal their actions from the lawful manager; and

- Communications concerning the plan to remove Plaintiff, restructure the company, and retain counsel against him cannot be privileged as against him.

Any assertion of privilege to withhold LLC communications from its only recorded founding manager would itself concede the core issue—namely, that Attorney Levine represents a faction of individuals adverse to the LLC, not the LLC itself. That conflict is structurally non-waivable and independently requires disqualification under Rules 1.7(a) and 1.13(g).

Moreover, if Levine's retention was unauthorized, no valid privilege could arise at all between the LLC and counsel. Unauthorized agents cannot create privilege on behalf of an entity.

E. Attorney Levine's Own Opposition Confirms the Conflict and Lack of Authority

In opposing Plaintiff's Motion to Dismiss the Counterclaims, Attorney Levine makes several critical admissions which support this Motion:

1. He confirms that he represents both VFC and all individual defendants in asserting claims against Plaintiff. This is an explicit admission of direct adversity in an internal LLC dispute.

2. He argues that the Counterclaims were "authorized and approved by the VFC Parties," rather than by a manager acting for the LLC. This confirms that authorization, if any, came from the very individuals whose interests are adverse to Plaintiff, not from any neutral corporate decision-maker.

3. He invokes Rule 1.13(g) as a shield, claiming joint representation is "explicitly permitted," but he identifies no non-conflicted official who consented and does not dispute that no Operating Agreement, no vote, and no written consent exist.

4. He suggests that the LLC need not plead "internal attorney–client communications" about authorization, signaling an intent to rely on privilege to shield the very facts that this Court must review to determine whether his appearance is lawful.

These statements do not cure the conflict; they confirm it. They reinforce that:

- this case is an internal governance dispute;
- authority is contested;
- counsel represents multiple clients with opposing interests; and
- there is no lawful corporate basis for his role.

In attempting to justify his dual representation and the Counterclaims, Attorney Levine has supplied the Court with admissions that make disqualification even more clearly required.

F. Attorney Levine Is a Necessary Witness Under Rule 3.7

Given his direct involvement in:

- the decision to "oversee changes to our company structure";
- the plan and communications to "remove Dany from the manager role";
- submissions to the Secretary of the Commonwealth; and
- the drafting and filing of Counterclaims allegedly on behalf of VFC,

Attorney Levine is a necessary fact witness. Mass. R. Prof. C. 3.7 prohibits a lawyer from acting as advocate at a trial in which the lawyer is likely to be a necessary witness on a contested issue, absent narrow circumstances not applicable here.

His testimony will be relevant to:

- who retained him and on what terms;
- whether any authority or consent was given;

- whether he understood he was participating in an internal takeover; and
- whether he knew Plaintiff was the only recorded manager at the time.

This is an independent basis for disqualification, in addition to the conflicts under Rules 1.7, 1.13, and 1.16.

III. REQUEST FOR COURT-ORDERED EVIDENTIARY SUBMISSION OF ATTORNEY LEVINE'S AUTHORITY

Because Attorney Levine's authority to represent VFC is directly and substantively challenged, and because this issue is a threshold matter affecting the validity of all filings made on behalf of the LLC, Plaintiff respectfully requests that the Court order Attorney Levine to submit for in camera review or filing with the Court all documents that allegedly authorized his retention and the filing of Counterclaims.

This request is not discovery. It is a judicial inquiry into attorney authority, which Massachusetts courts have inherent power to require. See *Smaland Beach Ass'n v. Genova*, 461 Mass. 214 (2012).

Because VFC has no Operating Agreement, and because Defendants admit no vote, no meeting, and no written consent occurred, the only way for the Court to verify Attorney Levine's authority is to require submission of the relevant documents.

Plaintiff therefore requests the Court order Attorney Levine to submit:

1. Any voting records, minutes, resolutions, written consents, or authorizations from VFC approving:

- his retention;
- any "structural changes";

- removal of Plaintiff from the manager/ownership role; or
- authorization for the filing of Counterclaims.

2. Any engagement letter, fee agreement, or retention document allegedly executed on behalf of the LLC.

3. Any communications purporting to grant consent under Mass. R. Prof. C. 1.13(g) to jointly represent the LLC and its adverse constituents.

4. Any documents submitted to the Secretary of the Commonwealth reflecting the "updates" referenced in Exhibit 4.

5. Any communications between Attorney Levine and the individual defendants regarding the plan to:

- "remove Dany from the manager/ownership role";
- "oversee structural changes"; or
- file Counterclaims on the LLC's behalf.

If no such documents exist, the legal consequences are mandatory:

- The retention was unauthorized as a matter of law;
- The dual representation violates Rule 1.7(a);
- Consent is impossible under Rule 1.13(g); and
- Rule 1.16(a)(1) requires withdrawal.

Accordingly, disqualification becomes automatic.

IV. CONCLUSION

Attorney Levine's participation in this matter violates multiple, independent, mandatory rules governing attorney conduct in Massachusetts:

- Rule 1.7(a) — directly adverse concurrent conflict;
- Rule 1.13(g) — no lawful consent to dual representation;
- Rule 1.16(a)(1) — mandatory withdrawal when representation violates the Rules; and
- Rule 3.7 — lawyer as necessary witness.

The facts are undisputed:

- VFC is a manager-managed LLC.
- Plaintiff is the only original recorded manager and founder.
- There is no Operating Agreement.
- No vote, notice, or written consent ever occurred removing Plaintiff or authorizing counsel.
- Attorney Levine was retained in secret, to facilitate a hostile internal takeover, and to "remove Dany from the manager role/owner."
- Attorney Levine is a necessary witness to those events.
- His dual representation is structurally non-waivable.

For these reasons, disqualification is not discretionary — it is required.

Plaintiff respectfully requests that this Court:

1. Disqualify Attorney Alexander W. Levine from representing VFC or any individual defendant in this action; and
2. Require Attorney Levine to submit, for in camera review or filing with the Court, all documents that allegedly authorized his retention or the filing of Counterclaims, including but not limited to:

- voting records, minutes, resolutions, or written consents;

- any engagement letters or fee agreements;
- communications purporting to grant consent under Rule 1.13(g);
- documents submitted to the Secretary of the Commonwealth; and
- any communications relating to Plaintiff's removal or to "structural changes."

If no such documents exist, Attorney Levine's retention was unauthorized, his conflict is non-waivable, and withdrawal is mandatory.

Respectfully submitted,

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Date: December 5 , 2025

/s/ Dany Abouelkhier
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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2025 a copy of the foregoing was served via electronic mail on all counsel of record.

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Respectfully submitted,

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/s/ Dany Abouelkhier
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