

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 11-2454 CBM (RZx)	Date	July 19, 2011
Title	<i>Kathleen Miller, et al. v. Palm Desert Investments, et al.</i>		

AMENDED ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS’ MOTION TO DISMISS

Present: The Honorable	CONSUELO B. MARSHALL		
	Joseph M. Levario		n/a
	Deputy Clerk		Court Reporter / Recorder
	Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
	n/a		n/a

**Proceedings:** IN CHAMBERS/OFF THE RECORD

The matter before the Court is Defendants’ Motion to Dismiss (“Motion”). [Doc. No. 14.]

The Court hereby ORDERS as follows: Defendants’ Motion to Dismiss Plaintiff’s Co-fiduciary claims, Count V as to Defendant McGuire, and all Counts as to Defendant Swanson is GRANTED without prejudice for failure to state a claim. The Motion to Dismiss Count III is GRANTED with prejudice, as ERISA explicitly permits fiduciaries to have dual capacities despite potentially conflicting loyalties. *See* 29 U.S.C. § 1108(c). The Motion to Dismiss Counts V as to Defendants PDI and Bank, Count I, Count II, Count IV, and Count VI is DENIED.

IT IS SO ORDERED.

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Initials of Preparer JL

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