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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANDREWS FARMS and GREG PALLA, a
sole proprietor doing business as Greg
Palla Farming Company,

CASE NO. CV-F-07-0464 LJO SKO

Plaintiffs,

ORDER TO SHOW CAUSE

vs.

CALCOT, LTD., EADIE AND PAYNE, LLP,
and ROBERT W. NORRIS,

Defendants.

In a May 28, 2010 Order on Defendants' Motion to Amend Class Certification ("May 28 Order"),
the Court ruled:

This Court agrees that an irreconcilable conflict of interest exists between former board members and non-board members. Plaintiffs' claims that Calcot's real estate activities were unauthorized creates a conflict of interest between former board members—who authorized the real estate activities—and non-board members. Accordingly, this Court grants Calcot's motion to amend the class definition and to clarify that the "managing agents and officers" exclusion specifically excludes former board members. *See, e.g., Radell v. Towers Perrin*, 172 F.R.D. 317, 320-21 (N.D. Ill. 1997) (holding that former board member is an inappropriate class representative where a breach of fiduciary duty is involved, and plaintiffs challenge the actions of the board).

May 28 Order, p. 12. In addition, this Court found that class certification was defeated for the subclass of former board members because the subclass of former board members also lacks commonality and typicality with non-board members. *Id.* at 13-15. Accordingly, the Court certified the following class definition:

1 All persons or entities who, as of May 21, 2009, were former members of Calcot who
2 marketed their cotton with Calcot in the Seasonal Pool at any time between January 1,
3 1983 up to and including August 31, 2004 (the "Class Period"). Specifically excluded
4 from this definition are: (1) any person who served as a member of Calcot's Board of
5 Directors and/or served as an officer of Calcot at any time during the Class Period; (2)
any persons or entities who as of May 21, 2009, were then presently marketing or selling
their cotton or other products with Calcot; and (3) any persons or entities who fall within
this definition but since May 21, 2009, have rejoined Calcot to market or sell their cotton
or other products with Calcot.

6 May 28 Order, p. 16. In addition, the Court ordered:

7 Plaintiffs to file and serve, no later than June 9, 2010, a motion to add the former board
8 members as a subclass, if any. Such motion must be accompanied by points and
9 authorities and shall be set for hearing according to this Court's local rules. Plaintiffs are
under no obligation to file the motion, and the parties may proceed with class definition
certified in this order.

10 *Id.* Plaintiffs filed no motion on or before June 9, 2010.

11 On July 14, 2010, defendant Eadie & Payne, LLP ("Eadie") filed the instant motion to decertify
12 the class. Eadie submits that plaintiffs' counsel are inadequate, and should be disqualified from
13 representing plaintiffs, because they currently represent both Mr. Palla and the remainder of the
14 class-clients who are in a direct conflict of interest.

15 **ORDER FOR PLAINTIFFS TO SHOW CAUSE**

16 Named plaintiff Greg Palla, doing business as Greg Palla Farming Company ("Mr. Palla") is a
17 former board member. This Court's May 28 Order excluded former board members from the class
18 definition. Plaintiffs failed to file a motion to propose a subclass of former board members on or before
19 June 9, 2010. As the May 28, 2010 Order stated: "Plaintiffs [were] under no obligation to file the
20 motion, and the parties may proceed with class definition certified in this order." Because no motion
21 was filed, the class is defined as:

22 All persons or entities who, as of May 21, 2009, were former members of Calcot who
23 marketed their cotton with Calcot in the Seasonal Pool at any time between January 1,
24 1983 up to and including August 31, 2004 (the "Class Period"). Specifically excluded
25 from this definition are: (1) any person who served as a member of Calcot's Board of
26 Directors and/or served as an officer of Calcot at any time during the Class Period; (2)
any persons or entities who as of May 21, 2009, were then presently marketing or selling
their cotton or other products with Calcot; and (3) any persons or entities who fall within
this definition but since May 21, 2009, have rejoined Calcot to market or sell their cotton
or other products with Calcot.

27 As a former board member, Mr. Palla does not fall within this class definition. Accordingly, this Court
28 ORDERS plaintiffs to show cause why this Court should not terminate Mr. Palla as a plaintiff in this

1 action. **Plaintiffs are ordered to show cause in writing, no later than July 22, 2010, why this Court**
2 **should not terminate Mr. Palla from this action. This Court shall discharge this show cause order**
3 **if, before July 22, 2010, plaintiffs file appropriate dismissal papers to dismiss Mr. Palla.**

4 **ORDER FOR EADIE & PAYNE TO SHOW CAUSE**

5 Former board members are excluded from the class definition. As set forth above, the May 28
6 Order unequivocally ruled that former board members were excluded from the class definition, but
7 allowed plaintiffs to propose the creation of a subclass of former board members by June 9, 2010.
8 Plaintiffs waived their opportunity to propose a subclass of former board members in choosing not to
9 file the motion by June 9, 2010. In addition, the decision not to file the motion indicates plaintiffs'
10 acceptance of the class definition set forth in the May 28 Order—a class definition that excludes Mr.
11 Palla. Above, this Court ordered plaintiffs to show cause why this Court should not terminate Mr. Palla
12 as a plaintiff in this action. Because this Court finds that Mr. Palla is no longer a party to this action,
13 this Court ORDERS Eadie to show cause why this Court should not dismiss as moot the pending motion
14 to decertify the class. **Eadie is ordered to show cause in writing, no later than July 22, 2010, why**
15 **this Court should not dismiss as moot the pending motion to decertify the class based on the above**
16 **facts. This Court shall discharge this show cause order if, before July 22, 2010, Eadie files**
17 **appropriate papers to establish that: (1) Mr. Palla continues to be a party in this action; and (2)**
18 **plaintiffs' counsel continues to represent Mr. Palla and his interests in this action.**

19 IT IS SO ORDERED.

20 **Dated: July 16, 2010**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE

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