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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CARMELO ANTHONY; MELO
ENTERPRISES, INC.; and CHOSEN ONE PROPERTIES, LLC, NO. CIV. 2:09-2272 WBS KJM

Plaintiffs, ORDER OF RECUSAL

v.

LARRY HARMON aka LARRY W.
HARMON aka LAWRENCE HARMON;
LARRY HARMON & ASSOCIATES,
P.A.; HARMON-CASTILLO, LLP;
FRANK CASTILLO; KELLY RUNKLE;
SORA BARNES; KENNY CRUZ aka
KENNETH CRUZ; KC DEVELOPMENT,
LLC; VITALIS PARTNERS, LLC;
PROFESSIONAL PARTNERS, LLC;
and MCG PARTNERS,

Defendants. _____/

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This matter was before the court on plaintiffs' motion for leave to file a Second Amended Complaint on October 12, 2010. The court fully intended to hear oral arguments on the motion. However, when the case was called counsel for plaintiffs appeared but counsel for defendants was not present. Wrongly assuming

1 that defense counsel's absence was either intentional or
2 negligent, the court announced that it would grant the motion on
3 its merits.

4 As it was, defendants' attorney had been locked out of
5 the courtroom and was waiting at the doors when his case was
6 called. By the time defense counsel's presence was determined,
7 plaintiffs' attorney had already left the building and was on his
8 way back to Beverly Hills. It is the court's responsibility to
9 assure that the doors to the courtroom are open while court is in
10 session and that parties and their attorneys are not locked out
11 of proceedings in their case. It was thus the fault of the
12 court, not counsel, that defendants' attorney was not allowed to
13 be heard before the court announced an opinion on plaintiffs'
14 motion. Given this unfortunate occurrence, the court is
15 uncomfortable deciding the motion.

16 If the matter were to be rescheduled for argument, any
17 decision I might make now would be tainted by the perception that
18 I had already made up my mind before hearing the arguments of
19 counsel. Conversely, if the matter were to be simply submitted
20 without arguments, both sides would be denied arguments which the
21 record clearly indicates the court intended to hear. The
22 institutional integrity of the federal courts requires scrupulous
23 protection of public confidence in the judicial process. United
24 States v. Bosch, 951 F.2d 1546, 1551 (9th Cir. 1991)
25 (O'Scannlain, J., dissenting).

26 Accordingly, the court has determined that the most
27 prudent course is to have the matter heard by another judge who
28 has not prematurely expressed an opinion on the merits of the

1 pending motion. Cf. United States v. Ouach, 302 F.3d 1096, 1104
2 (9th Cir. 2002) ("In light of [the judge's] comments [at
3 sentencing], we conclude that remand to a different judge would
4 preserve the appearance of justice in light of the district
5 judge's 'potential bias'"); Haines v. Liggett Group Inc.,
6 975 F.2d 81, 97-98 (3d Cir. 1992) (reassigning the case when an
7 order addressing attorney-client privilege appeared to express an
8 opinion on the ultimate merits of the claims).

9 IT IS THEREFORE ORDERED that the Clerk of the Court
10 reassign this case to another judge for all further proceedings,
11 making appropriate adjustments in the assignments of civil cases
12 to compensate for such reassignment. All dates pending before
13 the undersigned are hereby vacated.

14 DATED: October 20, 2010

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16 WILLIAM B. SHUBB
17 UNITED STATES DISTRICT JUDGE
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