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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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SECURITIES AND EXCHANGE
COMMISSION,

NO. 2:09-cv-2421 FCD-KJM

Plaintiff,

v.

MEMORANDUM AND ORDER

DAVID A. SOUZA and D.A. SOUZA
INVESTMENTS, LLC,

Defendants.

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This matter is before the court on the motion of Roger V. Jaffe, Esq. ("Jaffe"), to withdraw as attorney of record for defendants David A. Souza and D.A. Souza Investments, LLC. Counsel brings this motion on the grounds that he represented defendants solely for the purpose of negotiating a possible settlement and never intended to appear on behalf of defendants in the litigation. (Decl. of Roger V. Jaffe ("Jaffe Decl."), filed Apr. 16, 2010, ¶¶ 3-6.) Further, Jaffe asserts that counsel and defendants have irreconcilable differences arising out of the litigation that impede an effective attorney-client

1 relationship and that defendants have not paid fees associated
2 with their defense. (Id. ¶ 7.) Neither plaintiff nor defendants
3 filed an opposition to the motion.

4 Local Rule 182(d) provides that attorneys may not withdraw
5 from an action in which they have appeared without leave of the
6 court upon noticed Motion. The Local Rule incorporates the
7 requirements for withdrawal and the Rules of Professional Conduct
8 of the State Bar of California. The Rules of Professional
9 Conduct of the State Bar of California provide in pertinent part:

10 A member shall not withdraw from employment until the
11 member has taken reasonable steps to avoid reasonably
12 foreseeable prejudice to the rights of the client,
13 including giving due notice to the client, allowing
time for employment of other counsel, complying with
rule 3-700(D), and complying with applicable laws and
rules.

14 California Rules of Professional Conduct, Rule 3-700(A)(2).

15 Pursuant to California Rules of Professional Conduct, Rule
16 3-700(C), withdrawal is permitted in certain specified
17 circumstances. Counsel contends that withdrawal is warranted
18 under Rule 3-700(C)(1)(d), where the client's conduct renders it
19 unreasonably difficult for the attorney to carry out the
20 employment effectively, and Rule 3-700(C)(1)(f), where the client
21 breaches an agreement or obligation to the attorney as to
22 expenses or fees.

23 Counsel has complied with these requirements by notifying
24 defendants of the pending motion and obtaining their agreement to
25 termination of the employment relationship. (Jaffe Decl. ¶¶ 8-
26 9.) Further, Jaffe represents that defendants participated in
27 the initial Joint Status Conference Report submitted in the

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1 litigation and thus, are aware of the proposed deadlines in this
2 case.

3 Accordingly, based upon the materials submitted by counsel,
4 the motion to withdraw as attorney of record is GRANTED. Counsel
5 shall comply with the requirements of California Rules of
6 Professional Conduct, Rule 3-700(D).

7 Further, because pursuant to Local Rule 183(a), a
8 corporation may not appear in propria persona and because D.A.
9 Souza Investments, LLC must obtain counsel to avoid having a
10 default judgment entered against it, counsel is directed to
11 advise defendant D.A. Souza Investment, LLC of the possibility of
12 default. Counsel shall file a declaration regarding compliance
13 within ten days of issuance of this order.

14 Pursuant to Local Rule 302(c)(21), this case is hereby
15 referred to the assigned Magistrate Judge, Kimberly J. Mueller,
16 for case management and recommendation(s) to the District Court
17 Judge. Parties are to contact Matt Caspar at 916-930-4187 with
18 regard to further case management.

19 IT IS SO ORDERED.

20 DATED: June 2, 2010

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23 FRANK C. DAMRELL, JR.
24 UNITED STATES DISTRICT JUDGE
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