

**** E-filed July 29, 2010 ****

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NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARIA A. GARVIN, et al.,
Plaintiffs,
v.
LINDA TRAN, et al.,
Defendants.

No. C07-01571 HRL

**ORDER GRANTING LAST &
FAORO'S MOTION FOR LEAVE OF
COURT TO WITHDRAW AS
COUNSEL**

[Re: Docket No. 188]

United States District Court
For the Northern District of California

Since September 2007, Defendant Tara Home Financial Services, Inc. ("Tara"), a California corporation, has been represented by the law firm Last & Faoro. (Docket No. 44.) Last & Faoro has now discovered that Tara is currently classified as a "suspended" corporation by the California Secretary of State. (Docket No. 188, Decl. of Jonathan M. Bowne, ¶ 4.) Last & Faoro state that Tara has neither cured its suspended status nor paid its legal fees. (*Id.* at ¶ 4.) For these reasons, Last & Faoro now moves for leave to withdraw as Tara's counsel. It represents that it has either met-and-conferred or attempted to meet-and-confer with the known principals of Tara and has "thoroughly advised" Tara, as a corporation, of its inability to appear *pro se* in this lawsuit. (*Id.* at ¶ 5.) No opposition to Last & Faoro's motion has been filed.

Pursuant to Civil Local Rule 7-1(b), the Court finds the matter suitable for determination without oral argument, and the August 3, 2010 hearing is vacated.

1 A lawyer in a civil case may not withdraw as the counsel of record until relieved by the
2 court. Civ. L.R. 11-5(a). Under the California Rules of Professional Conduct, a lawyer may
3 withdraw where the client “renders it unreasonably difficult for the [lawyer] to carry out the
4 employment effectively” or “breaches an agreement or obligation to the [lawyer] as to expenses or
5 fees.” CAL. RULES OF PROF’L CONDUCT 3-700(C)(1)(d) & (f). Tara has failed to pay its legal fees to
6 Last & Faoro. Moreover, since Tara is a suspended corporation, it lacks the capacity to defend itself
7 in this lawsuit. *Traub Co. v. Coffee Break Service, Inc.*, 425 P.2d 790, 792 (Cal. 1967); *Boyle v.*
8 *Lakeview Creamery Co.*, 68 P.2d 968, 970 (Cal. 1937); *see* Cal. Rev. & Tax Code § 23301.5 (West
9 2004). Therefore, Last & Faoro’s motion for leave to withdraw as counsel of record for Tara is
10 GRANTED.¹ However, pursuant to Civil Local Rule 11-5(b), the withdrawal is subject to the
11 condition that papers directed to Tara may continue to be served on Last & Faoro for forwarding
12 purposes unless and until Tara appears by other counsel.

13 **IT IS SO ORDERED.**

14 Dated: July 29, 2010

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17 HOWARD R. LLORENS
18 UNITED STATES MAGISTRATE JUDGE

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26 ¹ Should Tara be reinstated, it is advised that it may not appear *pro se* or through its corporate
27 officers, but must retain new counsel forthwith to represent it in this lawsuit. *See* Civ. L.R. 3-9(b)
28 (“A corporation, unincorporated association, partnership or other such entity may appear only
through a member of the bar of this Court.”). *See also* *Rowland v. California Men’s Colony*, 506
U.S. 194, 201-02 (1993) (“It has been the law for the better part of two centuries . . . that a
corporation may appear in the federal courts only through licensed counsel.”); *In re Highley*, 459
F.2d 554, 555 (9th Cir. 1972) (“A corporation can appear in a court proceeding only through an
attorney at law.”).

1 **C07-01571 HRL Notice will be electronically mailed to:**

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9 **Notice will be sent by other means to:**

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13 **Counsel are responsible for distributing copies of this document to co-counsel who have not**
14 **registered for e-filing under the court's CM/ECF program.**

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