

1 **** E-filed August 4, 2011 ****

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7 NOT FOR CITATION

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 ED SUMMERFIELD, et al.,

No. C09-02609 HRL

12 Plaintiffs,

**ORDER (1) CONTINUING SHOW
CAUSE HEARING AND (2)
GRANTING PLAINTIFF'S
COUNSEL'S MOTION FOR LEAVE
TO WITHDRAW**

13 v.

14 STRATEGIC LENDING CORPORATION,
et al.,

[Re: Docket Nos. 104, 106]

15 Defendants.

16 _____/

17 On July 11, 2011, this Court ordered Plaintiffs to appear on August 2, 2011 to show cause
18 why this case should not be dismissed for failure to prosecute. Docket No. 104. Plaintiffs appeared
19 through counsel on August 2, but he explained that Plaintiffs have terminated his representation and
20 will no longer communicate with him. Docket No. 105. In light of these circumstances, he stated
21 that he would file a motion for leave to withdraw as Plaintiffs' counsel. Id. As promised, he did so
22 the next day. Docket No. 106.

23 Under this District's civil local rules, "[c]ounsel may not withdraw from an action until
24 relieved by order of Court after written notice has been given reasonably in advance to the client and
25 to all other parties who have appeared in the case." Civ. L. R. 11-5(a). Moreover, "[w]hen
26 withdrawal by an attorney from an action is not accompanied by simultaneous appearance of
27 substitute counsel or agreement of the party to appear *pro se*, leave to withdraw may be subject to
28 the condition that papers may continue to be served on counsel for forwarding purposes . . . , unless

1 and until the client appears by other counsel or *pro se*. When this condition is imposed, counsel
2 must notify the party of this condition. Any filed consent by the party to counsel's withdrawal under
3 these circumstances must include acknowledgment of this condition." Civ. L. R. 11-5(b).

4 Based on Plaintiffs' counsel's motion and declaration in support, the Court finds that the
5 relationship between Plaintiffs and their counsel has deteriorated to the point that he cannot
6 effectively represent them. And since they have terminated his representation and will no longer
7 communicate with him, notice to them is unnecessary. Accordingly, his motion for leave to
8 withdraw is GRANTED.¹ However, since he makes no mention of the simultaneous appearance of
9 substitute counsel or of any agreement by Plaintiffs' to appear *pro se*, the withdrawal is subject to
10 the condition that papers may continue to be served on him for forwarding purposes unless and until
11 Plaintiffs either engage new counsel or agree to represent themselves *pro se*. Plaintiffs shall notify
12 the Court of their decision in this regard. Plaintiffs' counsel shall notify Plaintiffs of this condition.

13 In addition, the Court CONTINUES the show cause hearing to **October 4, 2011 at 10:00**
14 **a.m.** in Courtroom 2, Fifth Floor, United States District Court, 280 S. First Street, San Jose,
15 California, 95113. At that time, Plaintiffs (or any newly-retained counsel) shall appear to show
16 cause why this case should not be dismissed for failure to prosecute. If a voluntary dismissal is filed,
17 the show cause hearing will be automatically vacated.

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19 **IT IS SO ORDERED.**

20 Dated: August 4, 2011

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23 HOWARD R. LLOYD
24 UNITED STATES MAGISTRATE JUDGE

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¹ Pursuant to Civil Local Rule 7-1(b), the Court finds the matter suitable for determination without oral argument, and the September 13, 2011 hearing is VACATED.

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C09-02609 HRL Notice will be electronically mailed to:

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