

1 ROBERT E. BARNES (Cal. St. Bar # 235919)  
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9 Attorney for Defendant  
10 Joseph R. Francis

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION

11	)	
12	)	
13	)	No. 2:08-cr-00494-SJO
14	)	
15	)	<u>DECLARATION OF</u>
16	)	<u>ROBERT E. BARNES, ESQ.</u>
17	)	<u>REGARDING COUNSEL'S</u>
18	)	<u>MOTION TO WITHDRAW,</u>
19	)	<u>(DKT. 61)</u>
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19 The Bernhoft Law Firm, S.C., by and through counsel for the defendant,  
20 Robert E. Barnes, hereby files this declaration in support of defense counsel's  
21 motion to withdraw. (Dkt. 61.)

22 I, Attorney Robert E. Barnes, hereby declare that:

23 1. The defendant, Joseph R. Francis ("Francis"), previously retained the  
24 Bernhoft Law Firm, P.C., as counsel in the above captioned matter, and I hereby  
25 execute this Declaration in support of the Motion for Leave to Withdraw as  
26 Counsel, (Dkt. 61.)

1 2. Except where explicitly noted to the contrary, I have personal knowledge of  
2 the facts set forth in this Declaration and if called upon to testify, could do so  
3 competently.

4 3. Counsel and Mr. Francis have reached an irreconcilable conflict concerning  
5 issues that, at the time, were reposed within the attorney-client privilege. As a  
6 result of this irreconcilable conflict, counsel was obligated to inform Mr. Francis  
7 on November 18, 2008, of the necessity of terminating the legal relationship and  
8 withdrawing as counsel of record from the case.

9 5. Thereafter, via email transmission, Mr. Francis communicated one of several  
10 threats to counsel that if counsel did not perform certain acts: "As for a practice in  
11 LA. It is highly unlikely if you piss me off. I KNOW EVERYONE AND THEY  
12 WILL DO WHAT I SAY!" Counsel has previously withheld this information out  
13 of an overabundance of caution and to protect Mr. Francis' interests. However,  
14 Mr. Francis recently waived the privilege as to some communications with Mr.  
15 Francis' recent public statements to the press.

16 6. Counsel continued to advise Mr. Francis to protect the attorney-client  
17 privilege and resolve any disagreement or dispute between himself and counsel  
18 after the termination of the above-captioned matter to best protect Mr. Francis'  
19 interests. Counsel, after notice to Mr. Francis, filed the motion to withdraw with  
20 this court.

21 7. At the hearing held on January 22, 2009, Mr. Francis spoke with members of  
22 the public and press and announced anticipated litigation between himself and  
23 current counsel concerning counsel's refusal to perform certain acts arising from  
24 this matter. This threat of litigation creates an irreconcilable conflict of interest.

25 8. Mr. Francis has had no direct communication with current counsel  
26 concerning the substance of this matter since early December of 2008. Mr. Francis  
27

1 has also fired all licensed legal counsel working for his corporation, including  
2 general counsel, an associate attorney, a longstanding paralegal with the  
3 corporation and outside corporate counsel in civil litigation. Mr. Francis is thus,  
4 proceeding *in propria persona*. Counsel cannot continue to remain counsel of  
5 record in this matter and ethically discharge his duties.

6 9. The court has patiently entertained three hearings to date and has scheduled  
7 a fourth to accommodate Mr. Francis' search for substitute counsel. Counsel  
8 intends to recommend the court advise Mr. Francis to proceed *in propria persona*  
9 if he has not procured substitute counsel by February 3, 2009 due to the  
10 irreconcilable conflict of interest which precludes this counsel from proceeding  
11 further as Mr. Francis' counsel in this matter and the court advise Mr. Francis of all  
12 rights and responsibilities thereto.

13 10. Counsel previously served and notified Mr. Francis of the prior motion to  
14 withdraw, upon which this supplemental declaration is filed.

15 Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury the  
16 foregoing is true and correct to the best of my information, knowledge and belief.  
17

18 Dated: January 29, 2009

THE BERNHOFT LAW FIRM, S.C.  
Attorneys for the Defendant Joseph R. Francis

19  
20 /s/ Robert E. Barnes  
21 Robert E. Barnes, Cal. St. Bar #235919  
22 24955 Pacific Coast Highway, Suite A204  
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9 Attorney for Defendant  
10 Joseph R. Francis

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION  
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15 UNITED STATES OF AMERICA, )  
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Plaintiff,

v.

JOSEPH R. FRANCIS,

Defendant.

No. 2:08-cr-00494-SJO

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that true and correct copies of the foregoing  
“Declaration of Robert E. Barnes”, were via the ECF system to the following  
party’s:

Caryn D. Mark, Asst. U.S. Attorney  
U.S. Dept. of Justice, Tax Division  
312 North Spring Street  
Los Angeles, California 90012

John P. Scully, Asst. U.S. Attorney  
U.S. Dept. of Justice  
312 North Spring Street  
Los Angeles, California 90012

1 Furthermore, true and correct copies of the foregoing "Declaration of Robert E.  
2 Barnes", were served via overnight delivery to the defendant by Federal Express at  
3 the following address:

4 Joseph R. Francis  
5 1601 Cloverfield Boulevard  
6 Suite 420 South  
7 Santa Monica, California 90404

8  
9 Dated on January 29, 2009.

10 /s/ Daniel Treuden

11 Daniel Treuden  
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