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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

14 UNITED STATES OF AMERICA,)

15 Plaintiff,)

16 v.)

17 JOSEPH R. FRANCIS,)

18 Defendant.)

No. 2:08-cr-00494-SJO

DECLARATION OF
ROBERT E. BARNES, ESQ.
REGARDING COUNSEL'S
MOTION TO WITHDRAW,
(DKT. 61)

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
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CERTIFICATE OF SERVICE

19 IT IS HEREBY CERTIFIED that true and correct copies of the foregoing
20 "Declaration of Robert E. Barnes", were via the ECF system to the following
21 party's:

22
23 Caryn D. Mark, Asst. U.S. Attorney
24 U.S. Dept. of Justice, Tax Division
25 312 North Spring Street
26 Los Angeles, California 90012

23 John P. Scully, Asst. U.S. Attorney
24 U.S. Dept. of Justice
25 312 North Spring Street
26 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 Dated on January 29, 2009.

9 /s/ Daniel Treuden

10 Daniel Treuden