

1 David Brian Lally, Esq., Bar No. 145872
2 Law Office of David Brian Lally
3 8001 Irvine Center Drive, Suite 1090
4 Irvine, CA 92618
5 Telephone 949-349-0022
6 Facsimile 949-861-9250
7 Davidlallylaw@gmail.com

8 Attorney for Defendants
9 Alfred Paul Seckel, Isabel Silvia Margaret Maxwell

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA, WOODLAND HILLS DIVISION

12	In Re:	)	CASE NO.:	1:11-bk-21678MT
13		)	ADV. NO.:	1:11-ap-01639MT
14	ALFRED PAUL SECKEL, ISABEL SILVIA	)	CHAPTER:	7
15	MARGARET MAXWELL,)		
16	Debtors,)		
17	<hr/>	)	NOTICE OF MOTION AND MOTION BY	
18	ENSIGN CONSULTING LIMITED,	)	DAVID B. LALLY, ESQ., TO WITHDRAW	
19	Plaintiff,	)	AS DEFENDANTS' ATTORNEY OF	
20	v.	)	RECORD, AND DECLARATION OF	
21		)	DAVID B. LALLY IN SUPPORT	
22	ALFRED PAUL SECKEL, ISABEL SILVIA	)	NO HEARING SET	
23	MARGARET MAXWELL,)		
24	Defendants.)		

25 TO THE HONORABLE MAUREEN TIGHE, UNITED STATES BANKRUPTCY
26 JUDGE, AND DEFENDANTS:

27 NOTICE IS GIVEN THAT the Law Office of David B. Lally, attorney of record for
28 Defendants, files his Notice of Motion and Motion to Withdraw as Defendants' attorney of
record in this Adversary Proceeding ("Motion"). The Motion shall be based upon this Motion,
the inclusive points and authorities, and the attached Declaration of David Brian Lally.

PLEASE TAKE FURTHER NOTICE that any response and request for hearing as to the
Motion must be in the form required by Local Bankruptcy Rules 2014-1(b) 9013-1(f) and (o) and
filed with the Clerk of the Court within fourteen days (14) from the date of service of this Notice,

1 and a copy served on David B. Lally at the address indicated above. A copy of any response
2 must also be served on Plaintiff, the Chapter 7 Trustee, and the U.S. Trustee. Failure to timely
3 respond may be deemed as acceptance of Motion and withdrawal by David B. Lally as
4 Defendants' attorney of record. Defendants reside in France so this Motion is served on
5 Defendants at the address on the docket and via Defendants' e-mail addresses.

6 DEFENDANTS HAVE BEEN ADVISED TO SEEK NEW COUNSEL.

7 **I.**

8 **INTRODUCTION**

9 1. Defendants have failed to comply with the terms of the Retainer Agreement with
10 Mr. Lally in that Defendants, despite their representations, have not paid the required fees for this
11 pending litigation. As such, Defendants have breached the Retainer Agreement. The failure to
12 pay the fees due and owing has created an actual conflict of interest, and as a result of this clear
13 conflict of interest, David B. Lally cannot, and chooses not to, represent Defendants any further.
14 Moreover, Mr. Lally has never agreed with Defendants to finance Defendants' litigation.

15 **II.**

16 **THE SALIENT FACTS**

17 2. Defendants hired David Lally, Esq. to represent Defendants' interests in defending
18 this Adversary Complaint filed by Plaintiff. To that end, Defendants signed a Retainer
19 Agreement and retained Mr. Lally. Mr. Lally filed an Answer to the Complaint, and has attended
20 several Status Conferences and depositions for Defendants.

21 3. Defendants have a large receivable with Mr. Lally, and Mr. Lally has
22 communicated with Defendants on many occasions about reducing the receivable. The Retainer
23 Agreement provides that Defendants will pay the initial retainer fee, and Mr. Lally's invoices,
24 and Defendants have never disputed any charges and fees on Mr. Lally's invoices. Mr. Lally and
25 Defendants have communicated about this issue, however unfortunately, despite Defendants'
26 efforts, they have been unable to pay the fees due and owing, and work continues to be necessary
27 in this case. Mr. Lally has informed Defendants that they must pay according to the Retainer
28 Agreement. Mr. Lally's hourly rate is \$300/hour, which is reasonable in light of Mr. Lally's 22

1 years of experience with bankruptcy litigation. There currently are no Court hearings scheduled
2 in this Adversary Proceeding so there is no prejudice to Defendants.

3 4. As a result of the lack of payment, Defendants have breached the Retainer
4 Agreement, and Mr. Lally now has a conflict of interest with Defendants. Mr. Lally might take
5 legal action against Defendants, if necessary, as a result of Defendant's breach of contract.
6 Consequently, there is an ACTUAL conflict of interest, precluding Mr. Lally from further
7 representing Defendants. Moreover, Mr. Lally has not agreed to finance Defendants' litigation.
8 Again, Mr. Lally has not agreed to finance this litigation and Defendants have not paid the fees
9 due and owing. Mr. Lally sent Defendants a substitution of Attorney. However, despite the fact
10 that Defendants agreed in the Retainer Agreement to cooperate in this regard, Defendants have
11 not signed and returned the Substitution of Attorney.

12 **III.**

13 **THERE IS CAUSE TO WITHDRAW**

14 5. Defendants are unable to pay Mr. Lally's earned fees. This has created a conflict
15 of interest. And this is a clear breach of the Retainer Agreement by Defendants. Mr. Lally does
16 not finance his client's litigation and there is no agreement with Defendants that Mr. Lally would
17 finance this pending litigation.

18 6. Rule 3-700© of the California Rules of Professional Conduct provides, in part,
19 that an attorney may withdraw from representing a client if the client "(d) by other conduct
20 renders it unreasonably difficult for the member to carry out the employment effectively, or ... (f)
21 "breaches an agreement or obligation to the member as to expenses or fees." Based upon
22 Defendants' conduct as set forth above, it is impossible to carry out, effectively, representing
23 Defendants, resulting in a conflict of interest. Mr. Lally cannot represent Defendants due to the
24 conflict of interest and because Defendants are not in compliance with the Retainer Agreement.
25 Moreover, Mr. Lally chooses to not further represent Defendants when Defendants are unable to
26 pay Mr. Lally's fees.

27 7. There is cause to withdraw when the client fails to pay the required attorney's
28 fees. Jackie v. Sturkie, 255 F. Supp. 2d 1096, 1098 (N.D. Cal. 2003), FTC v. Pacific Medical

1 Clinics, 1992 WL 12177 (S.D.Cal. April 9, 1992) Cal. Rules of Prof. Conduct 3-700(C)(1)(f).
2 Feruzzo v. Superior Court, 104 Cal. App. 3d 501, 540 (1980).

3 8. Mr. Lally is a solo practitioner and cannot afford to finance his client's expensive
4 litigation. In addition, the Retainer Agreement does not provide that Mr. Lally will finance
5 Defendants' litigation. By spending time on this case and not getting paid, as a solo practitioner,
6 this places Mr. Lally in a very difficult financial situation in which he can ill afford to be placed.

7 9. Again, there are no Court hearings scheduled or calendared at this juncture so
8 there is no prejudice to Defendants.

9 WHEREFORE, Mr. Lally prays for an order as follows:

10 1. That the Motion be granted and that Mr. Lally immediately be allowed to
11 withdraw as attorney of record for Defendants;

12 2. For such other relief as the Court deems just and proper.

13 DATED: October 6, 2013

Law Office of David Brian Lally

14



15

David Brian Lally

16

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

DECLARATION OF DAVID BRIAN LALLY

I, David Brian Lally, declare as follows:

10. I am an attorney duly licensed to practice law in this State and before this Court. I am Defendants' attorney of record in this Adversary Proceeding. I have personal knowledge of the facts set forth herein, and if called upon to testify, I could and would testify thereto. I have reviewed my file, the court dockets for this Adversary Proceeding, and the Debtors' Petition, Schedules and Statement of Financial Affairs as well as all other documents filed in the Chapter 7 case and the Adversary case. I am familiar with all of their contents.

11. Defendants have failed to comply with the terms of the Retainer Agreement with me in that Defendants, despite their representations and efforts, have not paid the required fees for this pending litigation. The failure to pay the fees has created an actual conflict of interest, and as a result of this clear conflict of interest, I cannot, and choose not to, represent Defendants any further. Moreover, I have never agreed with Defendants to finance their litigation.

12. Defendants hired me to defend them in this Adversary Complaint filed by Plaintiff. To that end, Defendants signed a Retainer Agreement and retained me. I filed an Answer to the Complaint, and have attended several Status Conferences, other hearings, and depositions, for Defendants.

13. Defendants have a relatively large receivable with me. And I have communicated with Defendants on several occasions about paying and reducing the receivable. The Retainer Agreement provides that Defendants will pay my invoices, and Defendants have never disputed any charges and fees on my invoices. Defendants and I have communicated about this issue, unfortunately, despite Defendants' efforts, they have been unable to pay my invoice. I have informed Defendants that they must pay my invoice according to the Retainer Agreement. My hourly rate is \$300/hour, which I believe is reasonable in light of my 23 years of experience with bankruptcy litigation.

14. As a result of the lack of payment, Defendants are in breach of the Retainer Agreement, and I now have a conflict of interest with Defendants. I may take legal action against Defendants, if necessary, as a result of Defendants' breach of contract. Consequently, there is an

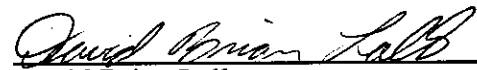
1 ACTUAL conflict of interest, precluding me from further representing Defendants. Based upon
2 Defendants' conduct as set forth above, it is impossible to carry out, effectively, representing
3 Defendants, resulting in a conflict of interest. I cannot represent Defendants due to the conflict
4 of interest and because Defendants are not in compliance with the Retainer Agreement.
5 Moreover, I choose to not further represent Defendants when Defendants are unable to pay my
6 fees.

7 15. The Retainer Agreement provides that Defendants will cooperate in signing a
8 Substitution of Attorney Form. I sent the Defendants a Substitution of Attorney form however
9 they have not returned it.

10 I declare under penalty of perjury of the laws of the United States that the foregoing is
11 true and correct. This Declaration was executed on October ~~6~~⁷, 2013, at Irvine, California.

12
13 Dated: October ~~6~~⁷, 2013

Law Office of David Brian Lally

14
15 
16 David Brian Lally

17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 8001 Irvine Center Dr., #1090, Irvine CA 92618

A true and correct copy of the foregoing document entitled (specify): NOTICE OF MOTION AND MOTION BY DAVID B. LALLY, ESQ., TO WITHDRAW AS DEFENDANTS' ATTORNEY OF RECORD, AND DECLARATION OF DAVID B. LALLY IN SUPPORT will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

The Honorable Maureen Tighe, Courtroom 302, 21041 Burbank Blvd., Woodland Hills, CA 91367

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 10/7/2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below: Plaintiff's Attorney Olivier A. Taillieu o@taillieulaw.com, mstephens@taillieulaw.com David B Lally, Esq. on behalf of Defendants davidlallylaw@gmail.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 10/7/2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed. Defendants Al Seckel, Isabel Maxwell, c/o Malina, 17 Rue Emile Dunois, Boulogne Billancourt, 92100, France. CURRENT ADDRESS Defendants Al Seckel, Isabel Maxwell, 95 Hiller Dr., Oakland, CA 94618, DOCKET ADDRESS

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 10/7/2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

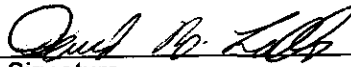
VIA E-MAIL: Defendant Al Seckel alseckelcogsci@gmail.com
VIA E-MAIL Defendant Isabel Maxwell, imaxwell@gmail.com
Plaintiff's Attorney Raffi Zerounian rz@taillieulaw.com

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/7/2013
Date

David Brian Lally
Printed Name


Signature