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6 ORLY TAITZ, INC, "APPEALING DENTISTRY"

7 CHARLES LINCOLN,) CASE NO.: 8:10-CV-01573-AG
8 PLAINTIFF,) DEFENDANTS, "DEFEND OUR
9 VS.) FREEDOMS FOUNDATION, ORLY
10 DAYLIGHT CHEMICAL,et al) TAITZ INC, AND APPEALING
11 DEFENDANT) DENTISTRY NOTICE OF MOTION
12) AND MOTION TO DISMISS THE
13) CASE IN ITS' ENTIRETY BASED
14) ON RULE 41(b)and 12B(1) OF
15) FRCP
16) Date: April 18, 2011
17 Time: 10 AM
18 Hon Andrew Guilford
19 Courtroom 10D

20 TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

21 PLEASE TAKE NOTICE that on April 18, 2011 Defendants "Defend our Freedoms
22 Foundation", Orly Taitz, inc and Appealing Dentistry (collectively "Defendants") will move the
23 court to dismiss this case in its' entirety based the motion below and oral argument at the motion
24 hearing.

25 The court was very generous with the Plaintiff in this action, Charles Lincoln. In spite of the fact
26 that the court found no jurisdiction in Federal court and no value in 12 out of 13 causes of action
27 and dismissed all but one minor state cause of action, the court gave the plaintiff an extra month
28

1 to file a second amended complaint. **The second amended complaint was not filed.** The only
2 remaining cause of action in this case is cause of action for quantum meruit against one
3 defendant Orly Taitz for \$47,000 amount, which is less than \$75,000 required to maintain a legal
4 action in the federal court. Though the defense argues that Plaintiff was paid for the services he
5 provided, that the amount he claims of \$47,000 is an outrageous invented number and the
6 Plaintiff actually owes the Defendants a full refund and damages for tremendous damage the
7 Plaintiff caused the Defendants, even if the court will put all of these arguments aside and rules
8 solely on the amount claimed in the First Amended Complaint and assumes as true the allegation
9 by the Plaintiff, that the defendant owes him \$47,000, it is still below \$75,000 required to
10 maintain a legal action in the Federal court under FRCP 12 (b) and the **court is simply without**
11 **subject matter jurisdiction to maintain this action any further.** Considering highly offensive
12 nature of the complaint, maintaining it, only serves as further harassment and causes tremendous
13 emotional distress. Additionally, while the Plaintiff claimed hardship in denial of Pro Hac Vice
14 for PA attorney Philip Berg, the Defense wanted to remind the court that The Plaintiff, himself is
15 an attorney. Even though he is disbarred, he can represent himself, he has necessary education,
16 as he is a graduate of the University of Chicago 1992, has nearly 20 years of experience and he
17 maintained some 70 legal actions in Federal courts, where he was a party. Plaintiff filed his
18 complaint and First Amended Complaint **pro se**, as he believed that he does not need another
19 attorney and he was capable to file a second amended complaint by the deadline of March 16,
20 2011 ordered by the court. Additionally, the Plaintiff still has his local attorney Gary Kreep and
21 he could get assistance of Philip Berg in drafting and assistance of Gary Kreep in drafting and
22 filing electronically. There was no excuse or justification for the Plaintiff not to file the second
23 amended complaint. As the second amended complaint was never filed and the remaining cause
24 of action against one defendant does not provide for subject matter jurisdiction in the Federal
25 court, Defendants respectfully move this court to dismiss this case in its' entirety under 41b and
26 12 (b)1 FRCP and grant the defendants attorneys' fees and any other relief the court finds just
27 and appropriate.

28 Respectfully submitted

1 /s/ Dr. Orly Taitz, ESQ

2 03.19.2011

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4 **FEDERAL COURT PROOF OF SERVICE**

5 I certify under penalty of perjury and under the laws of CA that I served the Plaintiff and his
6 counsel via ECF and or mail on 03.19.2011

7
8 Dated this 03.19.2011
/s/Orly Taitz

9 Dr. Orly Taitz, ESQ
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