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Ventures, Inc. and Steve Vachani*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC.,

Plaintiff,

v.

POWER VENTURES, INC. d/b/a POWER.COM, a
California corporation; POWER VENTURES, INC.
a Cayman Island Corporation, STEVE VACHANI,
an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or
business entities of unknown nature,

Defendants.

Case No. 5:08-CV-05780 JW

**NOTICE OF MOTION AND
MOTION TO WITHDRAW AS
COUNSEL FOR DEFENDANTS
POWER VENTURES, INC. AND
STEVE VACHANI**

Honorable Chief Judge James Ware

Date: July 9, 2012
Time: 9:00 a.m.
Dept.: Courtroom 9, 19th Floor

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Bursor & Fisher, P.A. (“Counsel”) seeks to withdraw as counsel for defendants Power
4 Ventures, Inc., and Steve Vachani (collectively “Defendants”) because Counsel’s outstanding
5 invoices have gone unpaid. This reason is an enumerated ground for withdrawing as counsel under
6 California statutory law. Counsel’s withdrawal will cause no harm to Defendants, as summary
7 judgment has already been granted in favor of Plaintiff Facebook, Inc. (“Facebook”). Furthermore,
8 Counsel’s withdrawal will not unduly delay resolution of the case, as all issues related to damages
9 have been fully briefed. Finally, Counsel has complied with all local rules relevant to withdrawing
10 as counsel and has filed this Motion as soon as practicable upon learning the facts giving rise to it
11 and conferring with Plaintiff’s counsel. Counsel, therefore, respectfully requests that the Court grant
12 their Motion to Withdraw.

13 **II. DEFENDANTS’ INABILITY TO PAY THEIR ATTORNEYS’ FEES WARRANT**
14 **COUNSEL’S WITHDRAWAL**

15 Under this District’s Local Rules, “Counsel may not withdraw from an action until relieved
16 by order of the Court after written notice has been given reasonably in advance to the client and to all
17 other parties who have appeared in the case.” N.D. Cal. L. R. 11-5(a); *Ortega v. Giammalvo*, 2010
18 WL 3489396 at *1 (N.D. Cal. Sept. 2, 2010). In making their determination, courts will typically
19 look to “applicable state rules to determine whether adequate grounds exist to excuse counsel from
20 further representation.” *Board of Trustees v. Harrison*, 2010 WL 1753275 at *1 (N.D. Cal. Apr. 22,
21 2011). The California Rules of Professional Conduct provide that an attorney may withdraw as
22 counsel under California law if the client: (1) “renders it unreasonably difficult for the member to
23 carry out the employment effectively,” or (2) “breaches an agreement or obligation to the member as
24 to expenses or fees.” Cal. Rules of Professional Conduct, Rules 3-700(C)(1)(d) and (C)(1)(f).

25 The decision to grant or deny counsel’s motion to withdraw is within the discretion of the
26 trial court, however there are four factors courts often weigh in exercising that discretion: “(1) the
27 reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the
28 harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal

1 will delay the resolution of the case.” *Nedbank Int’l, Ltd. v. Xero Mobile, Inc.*, 2008 WL 4814706 at
2 *1 (C.D. Cal. Oct. 30, 2008)

3 In this case, all four factors support granting Counsel’s Motion. First, Counsel’s reason for
4 withdrawal is supported by California law. *See* Cal. Rules of Professional Conduct, Rule 3-
5 700(C)(1)(f). Defendants have failed to pay Counsel’s outstanding invoices for over one year.
6 Fisher Decl. ¶ 2-3. Refusal to pay Counsel’s fees by itself warrants withdrawal. *See Board of*
7 *Trustees v. Harrison*, 2011 WL 1753275 at *1 (“Defendants’ lack of cooperation and refusal to pay
8 counsel constitutes good cause for withdrawal.”)

9 Second, Plaintiff will suffer no prejudice as a result of Counsel’s withdrawal. Plaintiff’s
10 counsel was notified of this Motion, and expressed no opposition. Fisher Decl. ¶ 4. Plaintiff’s non-
11 opposition to this motion shows that there will be no harm to its interests.

12 Third, the withdrawal will cause no harm to the administration of justice. Summary
13 judgment has already been granted in favor of Plaintiff, and the issues regarding damages have been
14 fully briefed pursuant to the Court’s request. Additionally, Counsel has complied with all local rules
15 relevant to withdrawing as counsel, and has met and conferred with both the client and Plaintiff’s
16 counsel. *Id.* ¶ 2-3, 6.

17 Fourth, and finally, withdrawal will not delay resolution of the case, as the case has already
18 been resolved. All legal issues have been decided, with summary judgment having been granted in
19 favor of Plaintiff. The issue of damages has been fully briefed, with no further action required on the
20 part of Counsel. Furthermore, Counsel filed this Motion as soon as practicable upon learning the
21 facts giving rise to it. Fisher Decl. ¶ 5.

22 **III. CONCLUSION**

23 For the foregoing reasons, and for good cause shown, Counsel respectfully requests that the
24 Court grant its Motion to Withdraw as Counsel.

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1 Dated: June 4, 2012

BURSOR & FISHER, P.A

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3 By: /s/ L. Timothy Fisher
L. Timothy Fisher

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