

1 ROBERT E. BARNES (Cal. St. Bar # 235919)  
 Email: rebarnes@bernhoftlaw.com  
 2 Attorney for Defendant Joseph R. Francis  
 THE BERNHOFT LAW FIRM, P.C.  
 3 24955 Pacific Coast Highway, Suite A204  
 Malibu, CA 90265  
 4 Telephone: (414) 276-3333 (general)  
 (414) 704-2416 (direct)  
 5 Facsimile: (414) 276-2822

6  
 7  
 8 **UNITED STATES DISTRICT COURT**  
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 9 **WESTERN DIVISION**

10 UNITED STATES OF AMERICA, ) 11 ) Plaintiff, ) 12 ) v. ) 13 ) JOSEPH R. FRANCIS, ) 14 ) Defendant. ) 15 ) 16 ) 17 )	No. 2:08-cr-00494-UA  MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO WITHDRAW AS COUNSEL  Motion Hearing Date Pursuant to Local Rule: December 22, 2008 December 22, 2008 – 10:00 a.m.  Requested Motion Date: December 8, 2008 – 10:00 a.m.
--	---

18 The Bernhoft Law Firm, S.C., by and through counsel for the  
 19 defendant, Robert E. Barnes, hereby respectfully moves this court for leave to  
 20 withdraw as counsel for the defendant, Joseph R. Francis. This memorandum is  
 21 filed pursuant to Local R. 7-5. This motion is based on the record in this matter and  
 22 the attached declaration of Attorney Robert E. Barnes, which show that:

- 23 1. Mr. Francis has advised undersigned counsel that he has retained new  
 24 trial counsel for this case. Current counsel does not know who Mr. Francis's new  
 25 trial counsel is. (Decl. of Robert E. Barnes, ¶ 3.)
- 26 2. A substantial strategic difference of opinion precludes counsel from  
 27 competently discharging the tasks necessary to protect his former client's rights – in  
 28

1 breach of the client's contractual obligation but within his Constitutional entitlement  
2 – rendering it impossible to carry out the duties of counsel to effectively represent  
3 the defendant in this proceeding, justifying the substitution of counsel. *See id.*, ¶ 4.

4 3. Any continued representation of the defendant would not be in the best  
5 interest of either the defendant or counsel. *See id.*, ¶¶ 4-5.

6 4. Counsel presents this motion at this time rather than wait for substitute  
7 counsel to appear, in order to afford both the former client and the court as much  
8 advance notice as possible for successor trial counsel to appear in this case, and  
9 minimize intrusion into the court's calendar. Trial is currently scheduled to begin  
10 on March 31, 2009. *See id.*, ¶¶ 6-8.

11 5. The substitution of counsel should not impact the scheduling of trial in  
12 this matter. *See id.*, ¶¶ 5 and 7.

13 6. Undersigned counsel notified the defendant of counsel's intent to  
14 withdraw as early as possible, so as to afford him the maximum amount of time  
15 prior to trial to obtain substitute trial counsel. Additionally, the undersigned is  
16 prepared to provide new trial counsel organized, prompt conveyance of all discovery  
17 materials (including comprehensive indices), along with research and work product.  
18 *See id.*, ¶ 5.

19 7. The undersigned has communicated with government counsel  
20 regarding their position on withdrawal. Although the government does not  
21 generally oppose this withdrawal motion, the government intends to file a  
22 responsive paper elaborating its position and concerns. *See id.*, ¶¶ 6-7.

23 8. Both the undersigned and government counsel agree that this matter  
24 should be heard with all deliberate speed, and although this motion is noticed for  
25 hearing on December 22, 2008, both parties have reserved December 8, 2008 for an  
26 expedited hearing, if the Court is so inclined and the Court's calendar permits. *See*  
27 *id.*, ¶ 7.

28

1           9. Defendant's address is: 1601 Cloverfield Blvd., Suite 420 South, Santa  
2 Monica, California 90404.

3           WHEREFORE, for all the foregoing reasons, and additional reasons properly  
4 reposed in the attorney-client privilege and duty of confidentiality, counsel for the  
5 defendant, The Bernhoft Law Firm, P.C., and Attorney Robert E. Barnes of that  
6 firm, respectfully request that this Court grant their motion for leave to withdraw as  
7 counsel for the defendant.

8 Dated: November 28, 2008

THE BERNHOFT LAW FIRM, P.C  
Attorneys for Defendant Francis

9

10

By: /s/ Robert E. Barnes  
Robert E. Barnes, Cal. Bar #235919

11

12

24955 Pacific Coast Highway, Suite A204  
Malibu, CA 90265  
(414) 276-3333 telephone  
(414) 276-2822 facsimile  
[rebarnes@bernhoftlaw.com](mailto:rebarnes@bernhoftlaw.com)  
[www.bernhoftlaw.com](http://www.bernhoftlaw.com)

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28