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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID LUBOCKI, et al.,)	NO. CV 07-02959-SJO (JCx)
)	
Plaintiffs,)	ORDER GRANTING MOTION TO
)	WITHDRAW AS COUNSEL FOR DAVID
v.)	LUBOCKI, ET AL., PLAINTIFFS
)	[Docket No. 81]
ZIPREALTY, INC.,)	
)	
Defendant.)	

This matter is before the Court on the Motion to Withdraw as Counsel for David Lubocki, et al., Plaintiffs, filed by Plaintiffs' counsel, Sandeep Baweja ("Baweja"), on December 24, 2008. Defendant ZipRealty, Inc. ("ZipRealty") filed a Non-Opposition. The Court held a hearing on the Motion on January 26, 2009. For the following reasons, Baweja's Motion is GRANTED.

I. BACKGROUND

On May 4, 2007, Plaintiffs, former employees of ZipRealty, through their counsel, Baweja and Ernest J. Franceschi, Jr. ("Franceschi"), filed a class action complaint against ZipRealty alleging a variety of causes of actions arising from ZipRealty's reimbursement and commission-upon-termination policies. (See Class & Collective Action Compl.) On November 19, 2007, the Court approved the parties' \$3.55 million settlement agreement. (See Order of Nov. 19, 2007 8.) On March 19, 2008, Baweja received the full settlement amount. (See Decl. Sandeep Baweja ("Baweja Decl.") ¶ 3.)

1 On December 24, 2008, Baweja admitted, through a declaration submitted to this Court
2 concomitant with Baweja's Motion, that beginning in April 2008, Baweja transferred approximately
3 \$2.72 million of the settlement funds into an online brokerage account. (See Baweja Decl. ¶ 5.)
4 Baweja subsequently used the funds in this account to buy and sell stocks. (See Baweja Decl.
5 ¶ 5.) Over time, the value of the online brokerage account dwindled, reaching a value of
6 approximately \$54,846.90 on December 16, 2008. (See Baweja Decl. ¶ 6.) At that time, Baweja
7 sold the entire portfolio of stocks in the online brokerage account. (See Baweja Decl. ¶ 7.)
8 Baweja represented that he has distributed \$500,000, much of which he borrowed from family and
9 friends, to approximately 150 class members but is unable to distribute the approximately
10 \$2 million that is owed to over 600 additional class members. (See Baweja Decl. ¶¶ 8–10.) Prior
11 to December 24, 2008, Baweja had not informed the Court, Plaintiffs, Franceschi, counsel for
12 ZipRealty, or the Notice and Claims Administrator that he had invested the settlement funds in an
13 online brokerage account. (See Baweja Decl. ¶¶ 5, 12.)

14 On December 24, 2008, Baweja filed this Motion to Withdraw as Counsel for David Lubocki,
15 et al. pursuant to California Rules of Professional Conduct 3-300 and 3-310. (Notice Mot. & Mot.
16 Withdraw Counsel David Lubocki, et al., Pls. ("Baweja's Mot.") 1.) On December 30, 2008, this
17 Court sent letters to Sal Hernandez, Assistant Director in Charge, FBI Los Angeles; Thomas P.
18 O'Brien, United States Attorney; William J. Bratton, Chief of the Los Angeles Police Department;
19 Steve Cooley, Los Angeles County District Attorney; Scott Drexel, Chief Trial Counsel of the State
20 Bar of California; and the Standing Committee on Discipline for the Central District of California,
21 notifying them of Baweja's admissions.¹ The Court held a hearing on Baweja's Motion on January
22 26, 2009.

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28 ¹ At the hearing on this matter on January 26, 2009, the Court erroneously stated that these letters were sent on January 26, 2009.

1 II. DISCUSSION

2 A. Grounds for Withdrawal

3 The California Rules of Professional Conduct expressly prohibit an attorney from acquiring
4 an interest adverse to a client in order to "assure the attorney's absolute and *undivided loyalty* and
5 commitment to the client" *Sharp, et al. v. Next Entm't, Inc., et al.*, 78 Cal. Rptr. 3d 37, 51
6 (Cal. Ct. App. 2008). Specifically, California Rule of Professional Conduct 3-300 provides that an
7 attorney shall not "knowingly acquire an ownership, possessory, security, or other pecuniary
8 interest adverse to a client" unless the client gives written consent after being informed in writing
9 of the terms of the transaction, which must be fair and reasonable to the client, and being advised
10 in writing that the client may seek independent counsel. Cal. R. Prof'l Conduct 3-300. An attorney
11 acquires an interest adverse to a client if the attorney "obtains an interest in the property of a
12 client, where it is reasonably foreseeable that his acquisition may become detrimental to the
13 client" *Connor v. The State Bar of Cal.*, 791 P.2d 312, 317 (Cal. 1990).

14 Furthermore, California Rule of Professional Conduct 3-310(B)(4) requires that an attorney
15 "shall not accept or continue representation of a client without providing written disclosure to the
16 client" if counsel "has or had a legal, business, financial, or professional interest in the subject
17 matter of the representation." Cal. R. Prof'l Conduct 3-310(B)(4). If an attorney who is
18 representing a client before a Court knows or should know that continued employment with the
19 client will result in a violation of any of the California Rules of Professional Conduct, the Rules
20 require the attorney to "withdraw from employment with the permission of the [Court]" Cal.
21 R. Prof'l Conduct 3-700(B)(2).

22 "It is well-settled that courts have the power to enforce the rule against representing
23 adverse interests to assure fairness and the proper administration of justice." *Smiley v. Dir., Office*
24 *Workers Comp. Programs*, 984 F.2d 278, 282 (9th Cir. 1992) (internal citations omitted). "The
25 determination whether to grant or deny an attorney's motion to withdraw as counsel of record lies
26 within the sound discretion of the trial court, having in mind whether such withdrawal might work
27 an injustice in the handling of the case." *Lempert v. Superior Court*, 5 Cal. Rptr. 3d 700, 709 (Cal.
28 Ct. App. 2003) (citing *People v. Prince*, 74 Cal. Rptr. 197, 203 (Cal. Ct. App. 1968)).

1 Here, the Court exercises its discretion to permit Baweja to withdraw as class counsel, as
2 his interests are now adverse to his clients, the class members. In secretly taking and investing
3 \$2.72 million of the class settlement funds, without notifying or seeking the permission of class
4 members, Baweja acquired an interest adverse to his clients without their informed consent in
5 violation of California Rule of Professional Conduct 3-300. See *Connor*, 791 P.2d at 317; Cal. R.
6 Prof'l Conduct 3-300; Baweja Decl. ¶ 5. Because he currently owes his clients approximately
7 \$2 million, his own interests are likely to conflict with those of his clients and, thus, he cannot fulfill
8 his duty of absolute and undivided loyalty to his clients. See *Sharp, et al.*, 78 Cal. Rptr. 3d at 51;
9 Baweja Decl. ¶¶ 6–9. Given this conflict of interest, Baweja was required, under California Rules
10 of Professional Conduct, to seek permission of the Court to withdraw as counsel. See Cal. R.
11 Prof'l Conduct 3-310(B)(4), 3-700(B)(2). Under these circumstances, the Court finds that Baweja's
12 withdrawal as counsel will not work any injustice in the handling of the case. See *Lempert*, 5 Cal.
13 Rptr. at 709. Rather, Baweja's removal, which will allow the class to be represented by counsel
14 without adverse interests who can fully protect the class's interests, is necessary to assure
15 fairness and further the interests of justice. See *Smiley*, 984 F.2d at 282.

16 B. Procedural Requirements

17 Local Rule 83-2.9.2.1 provides: "An attorney may not withdraw as counsel except by leave
18 of court. An application for leave to withdraw must be made upon written notice given reasonably
19 in advance to the client and to all other parties who have appeared in the action." L.R. 83-2.9.2.1.
20 In addition, if withdrawal of an attorney will delay the action, the withdrawal will not be granted
21 "[u]nless good cause is shown and the ends of justice require" L.R. 83-2.9.2.4.

22 Here, Baweja has complied with the requirements of Local Rule 83-2.9.2.1 by requesting
23 leave of the Court to withdraw as counsel and providing all parties, including Franceschi and
24 counsel for ZipRealty, with notice of this request more than a month in advance of the hearing
25 date. See L.R. 83-2.9.2.4; Baweja's Mot., Proof Service. Furthermore, given that the class is
26 represented by another attorney, Franceschi, who was unaware of and uninvolved in Baweja's
27 conduct, and that the case has already settled, leaving distribution of the settlement funds as the
28 only matter left to be addressed, the Court does not believe that Baweja's withdrawal will delay

1 the action. See Baweja's Decl. ¶¶ 5, 12; Decl. Ernest J. Francheschi, Jr. ¶ 8. Even if Baweja's
2 withdrawal delays the action, granting Baweja's request to withdraw would still be warranted, as
3 his clear conflict of interest ensures that the requirements of good cause and furtherance of the
4 "ends of justice" are satisfied. See L.R. 83-2.9.2.4.

5 III. RULING

6 For the foregoing reasons, Baweja's Motion to Withdraw as Counsel is GRANTED. The
7 Court retains jurisdiction over Baweja and counsel are expected to notify the Court all relevant case
8 developments.

9 Franceshi remains as class counsel pending this Court's decision on any objection to his
10 representation and is ordered by the Court to notify class members of the ongoing investigation
11 into Baweja's conduct, the outcome of today's proceeding, and the scheduled status conference.

12 The Court will hold a status conference for this case on **April 27, 2009 at 8:30 a.m.**

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14 IT IS SO ORDERED.

15
16 January 26, 2009

17 /S/ S. James Otero

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S. JAMES OTERO
UNITED STATES DISTRICT JUDGE