

PTO Form 2201 (Rev 5/2006)

OMB No. 0651-0056 (Exp 09/30/2011)

Withdrawal of Attorney

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78844895
MARK SECTION	
MARK	EINSTEIN
WITHDRAWAL OF ATTORNEY SECTION	
REASON TEXT	Trademark Owner Einstein Cosmetics LLC (☐Einstein Cosmetics☐) has failed to pay its outstanding balance of a substantial amount, which Cislo & Thomas LLP can no longer bear. Cislo & Thomas LLP spoke with Einstein Cosmetics on several occasions requesting that Einstein Cosmetics pay its outstanding balance with Cislo & Thomas LLP, or Cislo & Thomas LLP would have to withdraw as counsel in this matter. Einstein Cosmetics responded by promising to pay the balance on a given date, even personally promising to pay as soon as the sale of certain property is completed, and then postponed this date several times.
WITHDRAWAL STATEMENT	I have given due notice to the applicant/registrant of withdrawal from employment and the filing of this request for withdrawal with the USPTO.
WITHDRAWAL STATEMENT	I have delivered to the applicant/registrant all papers and property in any file concerning the prosecution of the mark.
WITHDRAWAL STATEMENT	I have notified the applicant/registrant of any responses that may be due and the timeframe within which the applicant/registrant must file the response.
WITHDRAWAL STATEMENT	I have given the applicant/registrant notice of withdrawal from employment at least two (2) months prior to the expiration of the response period.
CORRESPONDENCE SECTION	
ORIGINAL CORRESPONDENCE ADDRESS	Kelly W. Cunningham, Esq. CISLO & THOMAS LLP 1333 2ND STREET, SUITE 500

	SANTA MONICA, CA 90401-4110
NEW CORRESPONDENCE ADDRESS	
NAME	Einstein Cosmetics Ltd
STREET	35684 Larkspur Drive
CITY	Wildomar
STATE	California
POSTAL/ZIP CODE	92595
COUNTRY	United States
PHONE	949-600-8208
SIGNATURE SECTION	
ORIGINAL PDF FILE	http://tgate/PDF/WOA/2009/04/27/20090427220056904037-78844895-001_001/hw_66808318-215730336_.Request_to_withdraw_as_counsel.PDF
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SIGNATORY NAME	Kelly W. Cunningham
SIGNATORY POSITION	Attorney of record
FILING INFORMATION SECTION	
SUBMIT DATE	Mon Apr 27 22:00:56 EDT 2009
TEAS STAMP	USPTO/WOA-66.80.83.18-200 90427220056904037-7884489 5-420e9c674aea6a31244d39d fd53914ccf-N/A-N/A-200904 27215730336716

Application No. 76/656,482
Request dated April 27, 2009
Attorney Docket No. 07-18336



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 78/844,895
Trademark Owner: Einstein Cosmetics LLC
Filing Date: March 23, 2006
Title: EINSTEIN

Law Office: 107
Examiner: JACKSON, Steven W.

Docket No. 07-18336

Commissioner for Trademarks
Post Office Box 1451
Alexandria, Virginia 22313-1451

**CISLO & THOMAS LLP'S REQUEST TO WITHDRAW AS
ATTORNEY OF RECORD PURSUANT TO 37 CFR § 2.19 AND 37 CFR § 10.40**

To the Director:

The law firm of Cislo & Thomas LLP, through the undersigned, hereby requests to withdraw as counsel of record regarding Trademark Application Serial No. 78/844,895 pursuant to 37 CFR § 2.19 and § 10.40.

1) Reasons for Request for Withdrawal

Trademark Owner Einstein Cosmetics LLC ("Einstein Cosmetics") has failed to pay its outstanding balance of a substantial amount, which Cislo & Thomas LLP can no longer bear. Cislo & Thomas LLP spoke with Einstein Cosmetics on several occasions

requesting that Einstein Cosmetics pay its outstanding balance with Cislo & Thomas LLP, or Cislo & Thomas LLP would have to withdraw as counsel in this matter. Einstein Cosmetics responded by promising to pay the balance on a given date, even personally promising to pay as soon as the sale of certain property is completed, and then postponed this date several times.

**2) Attorney Has Given Due Notice to Einstein Cosmetics of
Attorney's Intent to Withdraw**

Pursuant to 37 CFR § 10.40, Einstein Cosmetics has been given due notice, including by letters dated January 7, 2009, January 16, 2009, and March 11, 2009. Cislo & Thomas LLP has sent numerous email messages before and since informing Einstein Cosmetics of Cislo & Thomas LLP's intent to withdraw.

Cislo & Thomas LLP filed a motion to withdraw as counsel for Einstein Cosmetics in the related litigation, Benjamin Einstein et al. v. Baby Einstein Company Ltd., et al., Case No. CV 07-2171 MMM (SSx) in the United States District Court for the Central District of California ("the Central District litigation"), which the Court on Cislo & Thomas LLP's motion to withdraw granted on February 26, 2009. A true and correct copy of the Court's February 26, 2009 order is attached hereto and marked as Exhibit 1. Cislo & Thomas LLP, therefore, no longer represents Einstein Cosmetics in the Central District litigation.

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Further, Einstein Cosmetics has received invoices on a monthly basis since Cislo & Thomas LLP began representing it, as well as numerous telephone messages, electronic mail, and letters to the attention of Einstein Cosmetics' principal contacts. As of this date, Einstein Cosmetics is currently seeking alternate counsel.

3) Attorney Has Delivered to Einstein Cosmetics All Papers and Property

All papers and property to which Einstein Cosmetics is entitled has been personally delivered to Einstein Cosmetics, and Cislo & Thomas LLP has notified Einstein Cosmetics that copies of the papers and property related to the present matter and the complete files for this matter are available to Einstein Cosmetics for pick up at Cislo & Thomas LLP's offices at 1333 2nd Street, Suite 500, Santa Monica, California 90401.

4) Attorney Notified Einstein Cosmetics of All Responses Due and the Deadlines Therefor

Prosecution of this trademark application has been suspended pending the outcome of Trademark Opposition No. 91179973, which itself has been suspended pending a decision in the Central District litigation. Cislo & Thomas LLP is therefore aware of no upcoming deadlines in this matter, but Cislo & Thomas LLP has notified

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Einstein Cosmetics in detail of the current status of this matter, including in its letter dated March 11, 2009.

**(5) Einstein Cosmetics Was Given Notice at Least Two Months
Before Deadline**

Cislo & Thomas is aware of no upcoming deadlines in this matter. Cislo & Thomas LLP, however, notified Einstein Cosmetics of Cislo & Thomas LLP's intent to withdraw as counsel several times, including in its letters dated January 7, 2009 and March 11, 2009. Cislo & Thomas LLP therefore believes it has provided adequate notice to Einstein Cosmetics and has complied with all applicable laws and rules.

CONCLUSION

Accordingly, Cislo & Thomas LLP requests to withdraw as attorney of record in this matter pursuant to 37 CFR § 10.40(c)(1)(iv) and 37 CFR § 10.40(c)(1)(vi). Cislo & Thomas LLP requests that all communications be sent to Applicant directly at the following address:

Einstein Cosmetics LLC
14631 Dickens Street #2
Sherman Oaks, California 91403
and
35684 Larkspur Drive
Wildomar, California 92595
Telephone: (949) 600-8208

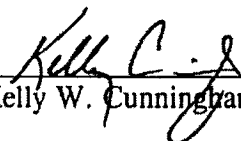
Application No. 78/844,895
Request dated April 27, 2009
Attorney Docket No. 07-18336

Einstein Cosmetics is being served a copy of this request pursuant to the Proof
of Service attached hereto.

Respectfully submitted,

CISLO & THOMAS LLP

Date: April 27, 2009



Kelly W. Cunningham, Reg. No. 43,570

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BENJAMIN EINSTEIN, an individual;
EINSTEIN COSMETICS LLC, a
California limited liability company;
EINSTEIN COSMETICS, LTD., a
California corporation,

Plaintiffs,

vs.

BABY EINSTEIN COMPANY LLC, a
Colorado limited liability company;
HEBREW UNIVERSITY OF
JERUSALEM, an Israel corporation;
and DOES 1-10, inclusive,

Defendants.

) CASE NO. CV 07-02171 MMM (SSx)

) ORDER GRANTING MOTION OF CISLO &
) THOMAS, LLP TO WITHDRAW AS
) PLAINTIFFS' COUNSEL OF RECORD

I. FACTUAL BACKGROUND

A. The History of the Litigation

On April 3, 2007, plaintiffs Benjamin Einstein, Einstein Cosmetics LLC, and Einstein Cosmetics, Ltd. (collectively, "Einstein Cosmetics") filed a complaint alleging trademark infringement under the Lanham Act, state and common law trademark infringement, and state and common law unfair competition against defendant Baby Einstein Company LLC ("Baby Einstein")

1 and certain fictitious defendants.¹ On July 30, 2007, plaintiffs filed a first amended complaint
2 adding the Hebrew University of Jerusalem (“HUI”) as a defendant,² and seeking a declaration
3 that Einstein Cosmetics’ use of the “Einstein” mark does not infringe HUI’s trademarks and does
4 not invade any right of publicity owned by HUI.³ Plaintiffs then filed a second amended
5 complaint on February 12, 2008, striking references to a trademark application that Einstein
6 Cosmetics had abandoned.⁴ In its answer, HUI asserted counterclaims for federal trademark
7 infringement, false endorsement, state and federal unfair competition, dilution under the Lanham
8 Act and state law, violation of the right of publicity of a deceased personality, and violation of the
9 common law right of publicity against all plaintiffs.⁵

10 Einstein Cosmetics asserts that it has marketed and distributed lip balm and lip care
11 products throughout the United States and Europe under the “Einstein” mark since at least as early
12 as January 2005.⁶ It contends that Baby Einstein has used, is using, and intends to continue to use
13 the trademarks Little Einsteins and/or Baby Einstein in commerce in connection with the sale of
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16 ¹See Verified Complaint for Damages and Injunctive Relief for (1) Trademark
17 Infringement; (2) State and Common Law Trademark Infringement; (3) State and Common Law
18 Unfair Competition, Docket No. 1 (Apr. 3, 2007).

19 ²HUI is allegedly the licensor of Baby Einstein and Little Einsteins.

20 ³See First Amended Complaint for Damages and Injunctive Relief for (1) Trademark
21 Infringement; (2) State and Common Law Trademark Infringement; (3) State and Common Law
22 Unfair Competition; (4) Declaratory Judgment of No Trademark Infringement; (5) Declaratory
23 Judgment of No Invasion of Right of Publicity, Docket No. 8 (Jul. 30, 2007).

24 ⁴See Second Amended Complaint for Damages and Injunctive Relief for (1) Trademark
25 Infringement; (2) State and Common Law Trademark Infringement; (3) State and Common Law
26 Unfair Competition; (4) Declaratory Judgment of No Trademark Infringement; (5) Declaratory
27 Judgment of No Invasion of Right of Publicity (“Second Amended Complaint”), Docket No. 35
28 (Feb. 2, 2008).

⁵See Hebrew University of Jerusalem’s Answer to the Second Amended Complaint and
Counterclaim, Docket No. 43 (Mar. 10, 2008).

⁶Second Amended Complaint, ¶ 8.

1 cosmetics, baby oils, lotions, and other skin and body care products in such a way as will likely
2 cause consumer confusion as to whether defendants' products are affiliated with or approved by
3 Einstein Cosmetics.⁷

4 **B. Plaintiffs' Counsel's Motion to Withdraw**

5 On January 28, 2009, Cislo & Thomas, LLP ("Cislo & Thomas") filed a motion seeking
6 to withdraw as plaintiffs' counsel of record.⁸ Cislo & Thomas asserts that irreconcilable
7 differences have arisen between itself and plaintiffs, and that plaintiffs have failed to pay agreed-
8 upon attorneys' expenses and fees in a timely fashion.⁹ Plaintiffs have not opposed the motion.
9 On February 6, 2009, defendants filed a "response" to counsel's motion,¹⁰ to which Cislo &
10 Thomas replied on February 13, 2008.¹¹

11 Cislo & Thomas identifies two primary bases for its motion to withdraw. First, it
12 maintains that irreconcilable differences have emerged between counsel and plaintiffs, which have
13 made it "unreasonably difficult for Cislo & Thomas to carry out the representation of Einstein
14 Cosmetics effectively and in a manner Cislo & Thomas believes necessary."¹² Second, the firm
15 represents that Einstein Cosmetics is in breach of its obligation under the retainer agreement to
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18 ⁷*Id.*, ¶ 21.

19 ⁸See Notice of Motion and Motion by Cislo & Thomas, LLP for Leave to Withdraw as
20 Counsel of Record for Plaintiffs; Memorandum of Points and Authorities in Support ("Motion to
Withdraw"), Docket No. 58 (Jan. 28, 2009).

21 ⁹*Id.* at 2.

22 ¹⁰See Statement in Response to Cislo & Thomas, LLP's Motion for Leave to Withdraw as
23 Counsel of Record for Plaintiffs; Memorandum of Points and Authorities in Support Thereof
24 ("Defendants' Response"), Docket No. 62 (Feb. 6, 2009).

25 ¹¹See Cislo & Thomas LLP's Reply to Defendants' Response to Cislo & Thomas LLP's
26 Motion for Leave to Withdraw as Counsel ("Reply"), Docket No. 64 (Feb. 13, 2009).

27 ¹²Motion to Withdraw at 4.

1 pay attorneys' fees and expenses.¹³ While defendants do not oppose Cislo & Thomas' withdrawal
2 motion, they argue that prosecution of the case should not be further delayed if withdrawal is
3 permitted. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the
4 court finds the matter appropriate for decision without oral argument. The hearing scheduled for
5 March 2, 2009 is vacated and taken off calendar.

7 II. DISCUSSION

8 A. Standard Governing Leave To Withdraw

9 "An attorney may not withdraw as counsel except by leave of court. An application for
10 leave to withdraw must be made upon written notice given reasonably in advance to the client and
11 to all other parties who have appeared in the action." CA CD L.R. 83-2.9.2.1. Attorneys do not
12 have an absolute right to withdraw from representation at any time, with or without cause; even
13 where grounds for termination exist, attorneys seeking to withdraw must comply with the
14 procedures set forth in Rule 3-700 of the California Rules of Professional Conduct, and are subject
15 to discipline for their failure to do so. See *Slavkin v. State Bar*, 49 Cal.3d 894, 903 (1989);
16 *Matter of Miller*, 1 Cal. State Bar Ct. Rptr. 131, 135 (Rev. Dept. 1990). Moreover, an attorney
17 may not withdraw from a representation until he or she has taken "reasonable steps to avoid
18 reasonably foreseeable prejudice to the rights of the client . . . and compl[ie]d with applicable laws
19 and rules." CAL. RULES PROF. CONDUCT 3-700(A)(2).

20 B. Good Cause

21 A breakdown in communications between client and attorney constitutes good cause for
22 withdrawal. See *Pedraza v. Alameda Unified School Dist.*, C 05-4977 VRW, 2008 WL 482846,
23 *2 (N.D. Cal. Feb. 19, 2008) ("Here it is evident that Goins and plaintiffs' relationship has
24 degenerated to the point that it would be extremely difficult for Goins to carry out further
25 representation effectively. . . . On these facts, the court finds good cause for withdrawal");

27 ¹³*Id.*

1 *Trustees of the Mason Tenders District Council Welfare Fund Annuity Fund v. Acoustic*
2 *Technology Inc.*, Civ. 01-2315 DC, 2002 WL 1453835, *2 (S.D.N.Y. July 3, 2002) (“It is well
3 established that lack of cooperation and communication by a client, and refusal to pay fees, are
4 sufficient reasons for granting withdrawal,” quoting *Pic Power Industries v. Cook-N-Throw, Inc.*,
5 Civ. 00-9119 THK, 2001 WL 840073, *1 (S.D.N.Y. July 25, 2001); *Statue of Liberty-Ellis Island*
6 *Found., Inc. v. Int’l United Indus., Inc.*, 110 F.R.D. 395, 397 (S.D.N.Y. 1986)(granting an
7 attorney’s motion to withdraw because the client failed to answer the attorney’s telephone calls
8 and letters “regarding the conduct of the litigation in general and the scheduling of depositions in
9 particular” and failed to pay attorneys’ fees).

10 Cislo & Thomas represents that it has approached plaintiffs with recommendations
11 regarding further proceedings in this matter, “including advice concerning developing further fact
12 discovery, moving to compel certain discovery, developing certain expert survey evidence, and
13 other law and motion practice.”¹⁴ Despite these efforts, plaintiffs have allegedly delayed decisions
14 on critical aspects of prosecuting the action repeatedly.¹⁵ Although counsel has sent letters and
15 email communications to plaintiffs regarding its recommendations – including letters dated
16 September 5, 2008, December 11, 2008, December 16, 2008, December 18, 2008 and January
17 7, 2009 – plaintiffs have not provided instructions and/or have ignored counsel’s advice.¹⁶ As a
18 consequence, although both the fact discovery and expert discovery cut-off dates have passed,¹⁷

19 _____
20 ¹⁴Motion to Withdraw at 6.

21 ¹⁵*Id.*

22 ¹⁶Declaration of Kelly W. Cunningham in Support of Cislo & Thomas’ Notice of Motion
23 and Motion for Leave to Withdraw as Counsel of Record for Plaintiffs (“Cunningham Decl.”),
24 ¶ 3; Declaration of Daniel M. Cislo in Support of Cislo & Thomas’ Notice of Motion and Motion
25 for Leave to Withdraw as Counsel of Record for Plaintiffs (“Cislo Decl.”), ¶ 3 (“Einstein
26 Cosmetics has repeatedly delayed any decisions in this matter and has continually failed to follow
27 my advice and recommendations”). Cislo states that the attorney-client privilege would be
28 compromised if he provided additional detail regarding the communication difficulties, but states
that he will submit to an *in camera* hearing on the issue if necessary. (*Id.*, ¶ 6.)

¹⁷The deadline to complete fact and expert discovery was February 13, 2009.

1 Cislo & Thomas represents that substantial fact discovery remains to be completed, and that the
2 parties have not yet served expert witness disclosures or exchanged expert discovery.¹⁸ The firm
3 also represents that the parties have not reached agreement on a stipulated protective order
4 covering confidential information or documents, and have thus failed to exchange information of
5 this type that is responsive to outstanding discovery requests.¹⁹ Given the difficulties reported by
6 counsel, the court finds that irreconcilable differences exist between Cislo & Thomas and
7 plaintiffs, and that these differences constitute good cause for withdrawal.²⁰

8 Additionally, failure to pay attorneys' fees constitutes good cause for withdrawal under the
9 Rules of Professional Conduct and Local Rule 83-2.9.2.4. See *Darby v. City of Torrance*, 810
10 F.Supp. 275, 276 (C.D. Cal. 1992) ("failure of a client to pay attorney's fees will serve as
11 grounds for an attorney to withdraw," citing *Statue of Liberty-Ellis Island Found.*, 110 F.R.D.
12 at 396); CAL. RULES PROF. CONDUCT 3-700(C)(1)(f) (an attorney may seek withdrawal when a
13 client "breaches an agreement or obligation to the member as to expenses or fees").

14 Cislo & Thomas asserts that plaintiffs have failed to pay a substantial outstanding balance
15 in fees and costs for the services it has performed,²¹ and contends that it can no longer bear the
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18 ¹⁸Motion to Withdraw at 4.

19 ¹⁹*Id.*

20 ²⁰Defendants complain that Cislo & Thomas has known of the breakdown in
21 communications for several months, yet did not inform defendants of the issue until late January
22 2009. (See Defendants' Response, at 5; Declaration of Antoinette Waller in Support of Response
23 to Cislo & Thomas, LLP's Motion for Leave to Withdraw as Counsel of Record for Plaintiffs
24 ("Waller Decl."), ¶ 10.) It is likely, however, that the firm was attempting to resolve the
25 differences for its clients' benefit; the evidence reveals that it made repeated attempts to
26 communicate with plaintiffs between September 2008 and early January 2009. Cislo & Thomas
27 states that it finally notified plaintiffs of its intention to seek leave to withdraw on January 13,
28 2009, and that it contacted defendants' lawyers concerning the matter on January 16, 2009.
(Cunningham Decl., ¶¶ 4-5.) As a result, the court does not believe that Cislo & Thomas delayed
unduly in advising defendants that it intended to seek leave to withdraw.

²¹Cislo Decl., ¶ 4.

1 financial burden of continuing the representation.²² The firm implies that it is unlikely that
2 plaintiffs will pay the balance any time in the near future, if at all, given other substantial
3 monetary demands they face.²³ Counsel represent that plaintiffs' non-payment of fees has
4 increased its difficulty in providing effective representation, since "a number of specific tactics
5 involv[e] out-of-pocket costs, [e.g.,] . . . expert discovery and traveling abroad to depose one of
6 the defendants."²⁴ Given counsel's representations, the court concludes that plaintiffs' failure to
7 pay outstanding attorneys' fees and costs constitutes good cause justifying Cislo & Thomas'
8 withdrawal from this action.

9 For all of these reasons, the court finds that Cislo & Thomas has demonstrated good cause
10 for its motion to withdraw as counsel for plaintiffs.

11 **C. Notice to Client**

12 Counsel is required to give a client advance notice of its intention to seek permission to
13 withdraw. See CAL. RULES PROF. CONDUCT 3-700(A)(2); CA CD L.R. 83-2.9.2.1. Cislo &
14 Thomas states that it called Amy Strausheim, chief executive officer of Einstein Cosmetics, and
15 Benjamin Einstein, its president, on January 13, 2009.²⁵ At that time, counsel notified plaintiffs
16 of the firm's intention to seek leave to withdraw as attorneys of record.²⁶ Counsel filed their
17 motion two weeks later, on January 28, 2009. On February 23, 2009, Cislo & Thomas filed
18 proofs of service indicating that it had served a copy of its motion for leave to withdraw,
19 defendants' response, its reply, and its February 18 notice of errata via U.S. mail on all
20

21 _____
22 ²²*Id.*

23 ²³*Id.*, ¶ 5. These additional monetary demands include substantial fees owed to counsel in
24 a concurrent unrelated litigation, as well as attempts by a shareholder to interfere with Einstein
25 Cosmetics' inventory and business relations. (*Id.*, ¶ 6.)

26 ²⁴Motion to Withdraw at 7.

27 ²⁵Cunningham Decl., ¶ 4.

28 ²⁶*Id.*

1 plaintiffs.²⁷ Therefore, the court finds that the requirement of “notice given reasonably in advance
2 to the client” of counsel’s intention to request permission to withdraw has been satisfied.

3 **D. Prejudice**

4 “A lawyer violates his or her ethical mandate by abandoning a client, or by withdrawing
5 at a critical point and thereby prejudicing the client’s case.” *Ramirez v. Sturdevant*, 21
6 Cal.App.4th 904, 915 (1994) (citing CAL. RULES PROF. CONDUCT 3-700(A)(2); *Pineda v. State*
7 *Bar*, 49 Cal.3d 753, 758-59 (1989); and *Vann v. Shilleh*, 54 Cal.App.3d 192, 197 (1975)). An
8 attorney may withdraw, however, “when withdrawal can be accomplished without undue prejudice
9 to the client’s interests.” *Id.*

10 There is no indication that Cislo & Thomas’ withdrawal will prejudice plaintiffs. To the
11 contrary, in light of counsel’s uncontroverted account of their differences with plaintiffs, the court
12 cannot see how counsel’s continued representation of plaintiffs will promote timely prosecution
13 of the action. All discovery cut-off dates have expired.²⁸ In addition, though the motion hearing
14 cut-off date is March 9, 2009,²⁹ no motions have been filed.³⁰ As trial is set for April 27, 2009,³¹

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16 ²⁷Proofs of Service, Docket No. 68 (Feb. 23, 2009).

17 ²⁸The parties filed a stipulation to extend certain case management dates on February 17,
18 2009. (See Stipulation and [Proposed]Order to Continue the Trial Date and Extend All Pre-Trial
19 Dates Other than the February 13, 2009 Fact Discovery Cutoff Date, Docket No. 65 (Feb. 17,
20 2009).) As the court had previously cautioned the parties that it was not in a position to grant
21 further continuances, it declined to enter an order on the stipulation on February 18, 2009. (See
22 Order Denying Stipulation to Continue Trial Date and All Pre-Trial Dates, Docket No. 67 (Feb.
23 18, 2009).)

24 ²⁹See Minutes of Telephone Status Conference (“FTSC Order”), Docket No. 57 (Nov. 20,
25 2008) (correcting the motion hearing cut-off date to March 9, 2009, rather than March 8, 2009,
26 as previously stated in court’s prior case management order).

27 ³⁰Defendants assert that they have been gathering evidence in support of a motion for
28 summary judgment, but the cut-off for filing such motions has passed. See CA CD L.R. 6-1 (“If
mailed, the notice of motion shall be served not later than twenty-four (24) days before the Motion
Day designated in the notice. If served personally, the notice of motion shall be served not later
than twenty-one (21) days before the Motion Day designated in the notice. The notice of motion
and all moving papers in support thereof shall be filed with the Clerk not less than twenty (20)

1 plaintiffs have time to retain new counsel and prepare for trial. Consequently, the court concludes
2 that Cislo & Thomas' withdrawal will not prejudice plaintiffs.³²

3 **E. Corporations/Unincorporated Associations**

4 "A corporation . . . may not appear in any action or proceeding *pro se*." CA CD L.R. 83-
5 2.10.1. As a result, counsel for a corporation or unincorporated association seeking leave to
6 withdraw from a representation must provide "written notice to the corporation or unincorporated
7 association of the consequences of its inability to appear *pro se*." CA CD L.R. 83-2.9.2.3. The
8 court is not aware that Cislo & Thomas has provided such notice to either Einstein Cosmetics LLC
9 or Einstein Cosmetics, Ltd.³³ It is directed to do so immediately, and to file proof of compliance
10 with the court within five days after this order is docketed.

11
12 **III. CONCLUSION**

13 For the reasons stated, the court grants Cislo & Thomas' motion for leave to withdraw as
14 counsel of record for plaintiffs. Cislo & Thomas is directed to serve a copy of this order on
15 Benjamin Einstein, Einstein Cosmetics LLC and Einstein Cosmetics, Ltd. immediately, and to file
16 proof of service **within five days** after this order is docketed. Cislo & Thomas is further directed
17 to provide written notice immediately to Einstein Cosmetics LLC and Einstein Cosmetics, Ltd.
18 of the consequences of their inability to proceed *pro se*, and to file proof that such notice has been
19 _____
20 days prior to the Motion Day for which the matter is noticed").

21 ³¹See Minutes of Scheduling Conference, Docket No. 55 (June 9, 2008).

22 ³²Withdrawal seems equally unlikely to prejudice defendants given that all discovery and
23 motion filing deadlines, of which defense counsel was well aware, have passed.

24 ³³In August 2008, plaintiff Einstein Cosmetics, Ltd. was suspended by the Franchise Tax
25 Board. Cislo & Thomas represents that it agreed that Einstein Cosmetics, Ltd. could be removed
26 as a party, and sent defendants a proposed stipulation concerning the matter on November 26,
27 2008. (Reply at 6.) Counsel states that defendants have not signed the stipulation to date. Since
28 Einstein Cosmetics, Ltd. has not yet been dismissed as a party, this order relieves Cislo & Thomas
as its counsel of record, in addition to relieving the firm as counsel for Benjamin Einstein and
Einstein Cosmetics, Ltd.

1 given **within five days** after this order is docketed. Plaintiffs are directed to have any attorney
2 representing them file a notice of appearance no later than **March 20, 2009**. If no notice of
3 appearance is filed, Benjamin Einstein will be deemed to be proceeding *pro se*. Because neither
4 Einstein Cosmetics, Ltd. nor Einstein Cosmetics LLC can appear *pro se*, the court will strike each
5 entity's answer and enter its default if an attorney does not file a notice of appearance stating that
6 he or she represents the entity by March 20.

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DATED: February 26, 2009


MARGARET M. MORROW
UNITED STATES DISTRICT JUDGE

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PROOF OF SERVICE

I am over the age of eighteen (18) years, employed in the State of California, and not a party to the above-entitled action. My business address is 1333 2nd Street, Suite 500, Santa Monica, California 90401.

On Thursday, February 26, 2009, I served:

ORDER GRANTING MOTION OF CISLO & THOMAS, LLP TO WITHDRAW AS PLAINTIFFS' COUNSEL OF RECORD

addressed as follows to:

Anthony V. Lupo, Esq.
ARENT FOX LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
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Antoinette Waller, Esq.
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and
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Wildomar, California 92595
b.a.einstein@gmail.com
strausheim@gmail.com

Einstein Cosmetics Ltd.
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and
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CISLO & THOMAS LLP

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BY MAIL: I am readily familiar with the Firm's practice of collecting and processing correspondence for mailing. Under that practice, I delivered to all above-listed Plaintiffs such documents via the United States Postal Service on the same day with a postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware that, on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing shown on this proof of service.

BY FEDERAL EXPRESS/OVERNIGHT DELIVERY: I caused a copy of such document to be sent via overnight delivery to the office(s) of the addressee(s) shown above.

BY FACSIMILE: I caused a copy of such document to be sent via facsimile machine to the office(s) of the addressee(s) at the phone number(s) shown above.

BY ELECTRONIC PROCESS: I caused an electronic copy of this document to be sent to the above-listed Defendants' counsel's email addresses via the Electronic Court Filing procedure provided by this Court.

BY EMAIL: I sent an electronic copy of this document to all above-listed Plaintiffs via attachment to an email message to the office of the Plaintiffs at the email addresses shown above.

BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the person(s) identified above.

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on Thursday, February 26, 2009, at Santa Monica, California.



Christopher Eckart

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this document, CISLO & THOMAS LLP'S REQUEST TO WITHDRAW AS ATTORNEY OF RECORD PURSUANT TO 37 CFR § 2.19 AND 37 CFR § 10.40, is being filed with the United States Patent and Trademark Office on April 27, 2009 as follows.

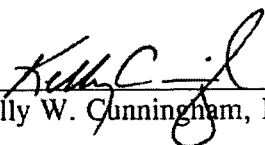
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Alexandria, Virginia 22313-1451

ELECTRONICALLY: This document has been submitted electronically through the United States Patent and Trademark Office's Electronic System for Trademark Trials and Appeals.

I additionally certify that one (1) copy of this document is being addressed to:

Einstein Cosmetics LLC
14631 Dickens Street #2
Sherman Oaks, California 91403
and
35684 Larkspur Drive
Wildomar, California 92595
Telephone: (949) 600-8208

BY FIRST CLASS MAIL: This paper is being deposited with the United States Postal Service with sufficient postage as first class mail to the foregoing addressees.



Kelly W. Cunningham, Esq., Reg. No. 43,570