

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PATRICIA COHEN,

Plaintiff,

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09 CV 10230 (RJH) (GWG)  
:

- against -  
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STEVEN A. COHEN, S.A.C. TRADING  
CORP., S.A.C. CAPITAL MANAGEMENT,  
INC., S.A.C. CAPITAL MANAGEMENT,  
LP, S.A.C. CAPITAL MANAGEMENT,  
LLC, S.A.C. CAPITAL ADVISORS, LLC,  
S.A.C. CAPITAL ASSOCIATES, LLC,  
SIGMA CAPITAL MANAGEMENT, LLC,  
and DONALD T. COHEN,  
:

Defendants.  
:

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**AFFIRMATION IN SUPPORT OF MOTION**

PAUL BATISTA affirms under penalty of perjury as follows:

1. I was admitted to practice in this Court in 1975. I submit this affirmation in support of my motion for an order pursuant to Rule 1.4 of the Local Civil Rules of the United States District Courts for the Southern and Eastern Districts of New York relieving me as counsel to plaintiff Patricia Cohen. Except as otherwise specifically stated, I have personal knowledge of the facts set forth in this affirmation.

2. As explained in greater detail in the balance of this affirmation, Ms. Cohen has unilaterally – and unexpectedly – stopped communicating with me. Over the last several days I have repeatedly asked her to contact me, and she has failed to do so. In the absence of any direct communication from her, I believe it is essential that I be formally relieved from representing her.

3. I was approached by Ms. Cohen in April 2009. She advised me that she had contacted me primarily because I am the author of the treatise *Civil RICO Practice Manual*, first published in 1987 by John Wiley & Sons. The third edition of *Civil RICO Practice Manual* appeared in 2007, published by Wolters Kluwer Aspen.

4. After meeting several times with Ms. Cohen and one of her representatives, I prepared a retainer agreement under which I agreed to provide legal services to Ms. Cohen in connection with potential claims against her former husband, Steven A. Cohen, and others under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Ms. Cohen signed the retainer agreement on or about April 21, 2009, as I did at the same time.

5. Between April 2009 and December 16, 2009 – the date on which this action was filed – I had many conversations and communications with Ms. Cohen and with investigators she had hired. Moreover, I also reviewed the extensive files and documents Ms. Cohen and her investigators provided to me. Ms. Cohen advised me that several law firms she had consulted before she retained me had also concluded that there was a viable basis for suing these defendants under RICO but that she had preferred that I represent her. Over the last several months – indeed, until she abruptly stopped communicating with me – I had conversations with Ms. Cohen virtually every day.

6. On December 30, 2009, I received a telephone call from a person who described herself as a Boston lawyer. That lawyer said that she wanted the file in the litigation "transferred" to her. She had no answer when I asked her what authority she

had to make this request, nor did she respond when I pointed out that Ms. Cohen had not spoken to me about the issue raised by the call the lawyer placed to me.

7. I immediately wrote to Ms. Cohen. My December 30 email to her summarized my conversation with the lawyer:

I just received a telephone call from a lawyer in Boston who said that you had asked her to represent you in your claims against Steve Cohen.

Needless to say, this is a complete surprise to me. You have always, and repeatedly, praised me and my work. You have never once expressed even the slightest concerns about my representation. On the contrary, you have been enthusiastic – extremely so – in what you have said to me about my work for you. And you have been even more enthusiastic in your praise for me as a person.

I am at a loss to understand the call I received from the lawyer in Boston – a lawyer, incidentally, of whom I have never heard . . . .

On a personal note, I wish you and your family well. We have always had a completely respectful relationship. I would have thought that you would have called me – and you certainly have called me many times on issues relating to your case – to articulate any questions or concerns you may have had, rather than let a lawyer with whom I'm not familiar call me literally out of the blue.

8. The email also reminded Ms Cohen that she had continuing financial obligations to me for legal fees under the retainer agreement even if she changed lawyers. In the wake of the telephone call from the other lawyer, I have only received one communication from Ms. Cohen: an email she sent immediately after she received my email in which she asked that I send her a copy of the April 2009 retainer agreement. I

had given her a fully executed copy of that agreement when she was in my office in April 2009 to sign it.

9. Within minutes of my conversation with the Boston lawyer,<sup>1</sup> I received a voice mail message at my office from Peter Nussbaum, who described himself as the General Counsel of the corporate defendants. Mr. Nussbaum said that he was calling to let me know that he had been authorized to accept service of the summons and complaint on behalf of all the defendants, with the exception of defendant SAC Trading Corporation. This was the first communication I had received from anyone acting on behalf of the defendants.

10. I immediately brought Mr. Nussbaum's message to Ms. Cohen's attention. In another December 30 email to her, I wrote:

I have left my office for the holiday weekend and will send you a copy of the retainer agreement you signed when I return to my office on Monday. Of course, I gave you a copy of the retainer agreement when you came to my office to sign the original.

Ironically, I just received a telephone message at my office from the General Counsel of SAC in which he said he...is authorized to accept service on behalf of all the defendants, with the exception of SAC Trading Corporation.... He made the comment that by accepting service the costs of making service could be avoided.

In light of this afternoon's developments, I will not respond to the telephone message I received. The General Counsel said that I was free to call him.

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<sup>1</sup> I later learned that the Boston lawyer was named Gaytri Kachroo, whose website describes her and her firm as providing "holistic" legal representation.

11. By December 31, I still had not heard directly from Ms. Cohen, in stark contrast to months in which she had called me virtually every day. On December 31, I received an email from Mr. Nussbaum in which he said, "I am not sure if you are out of the office or are checking [voice] mail. I wanted to let you know that I left two voicemails for you yesterday regarding service."

12. I immediately forwarded Mr. Nussbaum's email to Ms. Cohen, with yet another request that she contact me directly. I also again advised her that, in light of the new developments, I would not contact Mr. Nussbaum unless and until Ms. Cohen herself clarified the situation.

13. I make this motion reluctantly. In fact, this is only the second time in more than thirty years of practice in this Court that I have been compelled by circumstances to move to withdraw as counsel to a party. Although I am reluctant to make this application, this is a case that will continue to require the level of consistent attention I have devoted to it for months, as well as open, free and candid dialogue between lawyer and client. Ms. Cohen has on her own now made it clear that no dialogue, much less an open, consistent and candid one, is possible. That is her choice, not mine, since I have vigorously represented her and would have continued to do so but for the recent developments she apparently has caused. Indeed, I still have not heard directly from Ms. Cohen.

14. As far as the status of the case is concerned, it is at its inception. It was filed on December 16, 2009. No attorneys for defendants have yet appeared.

15. For all the foregoing reasons, I respectfully request that the Court grant this motion for leave to withdraw as counsel to plaintiff.

Dated: New York, New York  
January 4, 2010



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PAUL BATISTA (PB8717)