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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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12 James L. Gagan, )  
c/o David G. Bray )  
13 Mariscal, Weeks, McIntyre )  
Friedlander, P.A. )  
14 2901 N. Central Ave., )  
Suite 200 )  
15 Phoenix, AZ 85012, )

No. CIV 99-1427-PHX-RCB

O R D E R

16 Plaintiff/Judgment )  
Creditor, )

17 vs. )

18 James A. Monroe )  
19 12880 East Mercer Lane )  
Scottsdale, AZ 85259, )  
20 et al., )

21 Defendant/Judgment )  
Debtor, )

22

23 Currently pending before the court is a "Motion to  
24 Withdraw as Counsel for Defendant Monroe" filed by attorney,  
25 David H. Carmichael, on February 1, 2013 (Doc. 451). On  
26 February 11, 2013, this court ordered defendant James A.  
27 Monroe to file "[a] response, if any," to that motion by **no**  
28 **later than fourteen (14) days** from the date of entry of this

1 order[,]” *i.e.*, by February 25, 2013. See Ord. (Doc. 458) at  
2 2:5-7 (emphasis in original). To date, Mr. Monroe has not  
3 filed a response, timely or otherwise.

4 In the meantime, on February 22, 2013, plaintiff Gagan  
5 filed a motion for an order to show cause (“OSC”),  
6 “request[ing] that this Court issue a rule requiring James  
7 Monroe to appear and show cause, if any, why he should not be  
8 held in contempt of this Court, and if found to be in  
9 contempt that the Court punish him by fine, the costs  
10 incurred by Plaintiff to pursue this matter and for any other  
11 relief the Court deems appropriate.” Mot. (Doc. 464) at  
12 2:20-23. The basis for that motion is defendant Monroe’s  
13 failure “to provide written discovery responses by February  
14 18, 2013, in violation of this Court’s prior Orders.” Id. at  
15 2:14-15, ¶ 6 (citations omitted).

16 On February 27, 2013, this court granted plaintiff’s OSC,  
17 requiring Mr. Monroe to “appear before this Court on the 26<sup>th</sup>  
18 day of March, 2013 at 10:00 a.m. in Courtroom 606, Sandra Day  
19 O’Connor United States Courthouse, 401 West Washington,  
20 Phoenix, Arizona 85003[.]” Ord. (Doc. 466) at 1:23-25.  
21 Between the filing of plaintiff’s OSC motion and the order  
22 granting that motion, on February 26, 2013, defendant Monroe  
23 himself, not through his attorney, provided written responses  
24 to plaintiff’s post-judgment discovery demands. See Mot.  
25 (Doc. 470), exh. A thereto (Doc. 470-1) at 2.<sup>1</sup>

26 On March 26, 2013, plaintiff Gagan’s counsel, David Bray,

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27 <sup>1</sup> Defendant Monroe’s responses are the subject of plaintiff’s  
28 pending March 18, 2013, motion to compel.

1 and defendant Monroe's counsel, David Carmichael, appeared  
2 before this court. However, defendant Monroe did not. During  
3 that hearing, both lawyers addressed, *inter alia*, the court's  
4 previously stated concerns "as to whether Mr. Monroe has had  
5 actual notice of: (1) his attorney's motion to withdraw;  
6 (2) the court's order permitting Mr. Monroe to file a  
7 response to that motion; (3) plaintiff Gagan's motion for an  
8 OSC; and (4) this court's order granting that OSC." See  
9 Ord. (Doc. 472) at 4:18-22.

10 After carefully considering all of submissions relating  
11 thereto, and the arguments of counsel, based upon the record  
12 as more fully developed during that hearing, as fully  
13 explained below, the court finds that Mr. Monroe had "actual  
14 notice" of each of the listed documents.

15 **I. Motion to Withdraw**

16 **A. Notice**

17 The court is satisfied that Mr. Monroe had actual notice  
18 of his attorney's motion to withdraw. Two e-mails between Mr.  
19 Monroe and attorney Carmichael provide the strongest  
20 indication of that notice.<sup>2</sup> Via e-mail, attorney Carmichael  
21 informed Mr. Monroe, among other things, that "[p]ursuant to  
22 [their] recent communications of the last weeks," he would be  
23 "filing a Motion to Withdraw as Counsel" in this action.  
24 Importantly, that e-mail recites that Mr. Monroe "advised"  
25 attorney Carmichael "that [he] consent[ed] to [Carmichael's]  
26 withdrawal and ha[d] indicated that [he] would be consulting

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28 <sup>2</sup> Attorney Carmichael provided these e-mails to the court during  
the March 26, 2013 hearing.

1 with one of the attorneys whom [Mr. Carmichael] recommended  
2 to" Mr. Monroe. Attorney Carmichael expressed that he would  
3 "very much appreciate [Mr. Monroe's] confirming that consent  
4 and agreement by reply to this email . . . at the earliest  
5 time possible."

6 Mr. Monroe's responding February 5, 2013, e-mail evinces  
7 that he had actual notice of attorney Carmichael's intent to  
8 file a motion to withdraw. In that e-mail, Mr. Monroe  
9 explicitly informed attorney Carmichael, among other things,  
10 that he "understand[s] that [Mr. Carmichael] desire[s] to  
11 withdraw as [his] Counsel in the US District Court case in  
12 Arizona[.]" E-mail from James Monroe to David Carmichael  
13 (Feb. 5, 2013 11:01 AM). Moreover, Mr. Monroe wrote that he  
14 had "no objection to [Mr. Carmichael's] withdrawal[.]" Id.  
15 Mr. Monroe did condition such withdrawal upon attorney  
16 Carmichael's continued representation of Monroe in the  
17 "Homestead Exemption matter pending before . . . the Arizona  
18 Supreme Court in Arizona[.]" Id.

19 In addition to receiving e-mail notice of his attorney's  
20 intent to file a motion to withdraw, the record shows that on  
21 February 1, 2013, a "COPY" of the actual motion, addressed to  
22 Mr. Monroe at "P.O. Box 5322 Scottsdale, AZ[] 85261[,]" was  
23 "deposited in the U.S. Mail[.]" See Mot. (Doc. 451) at 2. Mr.  
24 Carmichael's office mailed the withdrawal motion to that P.O.  
25 Box, as opposed to a residence, because that is the mailing  
26 address Monroe provided to Carmichael; and, "within the last  
27 probably year - at least," that is the "only physical mailing  
28 address" his office had for Mr. Monroe. Court Recording

1 (March 26, 2013)<sup>3</sup> at 10:11:51 - 10:12:22 a.m. This mailing is  
2 significant because "[i]t is generally accepted that  
3 '[s]ervice by mail is accomplished, for purposes of Rule 5,<sup>4</sup>  
4 when documents are placed in the hands of the United States  
5 Post Office or in a Post Office Box.'" Hernandez v. Gates,  
6 2004 WL 291225, at \*1 (C.D.Cal. Feb. 5, 2004) (quoting, *inter*  
7 *alia*, Theede v. United States Dept. of Labor, 172 F.3d 1262,  
8 1266 (10<sup>th</sup> Cir. 1999); and 4B Charles Alan Wright & Arthur R.  
9 Miller, Federal Practice and Procedure § 1148 at 453 (3d ed.  
10 2002)). Additionally, it has been attorney Carmichael's  
11 experience that Mr. Monroe "always received" mail sent to that  
12 address. Tr. at 10:12:25-27 a.m.

13 The strongest indication that Mr. Monroe had actual  
14 notice of this court's permitting him to file a response to  
15 the withdrawal motion is an e-mail from attorney Carmichael to

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17 <sup>3</sup> The foregoing refers to the court's simultaneous recording of the  
18 March 26, 2013 proceeding. For ease of reference, hereinafter the court  
19 will refer to this recording as "Tr.[,]" although no actual physical  
20 transcript exists.

21 <sup>4</sup> According to Fed.R.Civ.P. 5(b)(2)(C), "[a] paper is served under  
22 this rule by . . . mailing it to the person's last known address - in  
23 which event service is complete upon mailing[.]" Responding to this court's  
24 inquiry, "What is [Mr. Monroe's] last known *physical* address[,]" attorney  
25 Carmichael stated that it was "12880 East Mercer Lane, Scottsdale,  
26 Arizona." Tr. 10:09:42 a.m. - 10:10:03 a.m. The basis for that answer was  
27 Mr. Monroe's October 30, 2012, testimony during an Arizona Superior Court  
28 matter. Id. at 10:10:4-21 a.m.

Based upon the foregoing, arguably the East Mercer Lane address was  
Mr. Monroe's "last known address" within the meaning of Rule 5. Under the  
particular circumstances of this case, however, the court declines to make  
such a finding. Instead, it finds that insofar as attorney Carmichael and  
his office are concerned, when the motion to withdraw was mailed, Mr.  
Monroe's "last known address" was his Scottsdale P.O. Box. That is  
because, as discussed above, that is the only mailing address Mr. Monroe  
provided to attorney Carmichael and, in accordance with Mr. Monroe's  
instructions, that is the only address Carmichael's office used for  
mailings to Mr. Monroe. Id. at 10:10:29-42 a.m.

1 defendant Monroe. The court's order was entered on 11:41 a.m.  
2 MST. Ord. (Doc. 458) Notice of Electronic Filing ("NEF") at 1.  
3 Within the next half hour, at 12:09 p.m., attorney Carmichael  
4 e-mailed Mr. Monroe, attaching a copy of that order, adding,  
5 "Let me know if there is something you want me to do to assist  
6 you with a response if you want to make one." E-mail from  
7 David Carmichael to James Monroe (Feb. 11, 2013 12:09 PM).  
8 This prompt e-mail is indicative of Mr. Carmichael's diligence  
9 in keeping Mr. Monroe apprised of the status of this action.  
10 Indeed, as Mr. Carmichael explained, because he is still  
11 Monroe's counsel of record, every document which is served  
12 upon Mr. Carmichael in that capacity, he, in turn, "serves"  
13 upon Mr. Monroe via e-mail. Tr. at 10:06:27-44 a.m.

14 The foregoing satisfies this court that defendant Monroe  
15 had actual notice of attorney Carmichael's motion to withdraw,  
16 as well as the court's order permitting Monroe to file a  
17 response to that motion.

18 **B. Merits**

19 Given that notice finding, the court will turn to the  
20 merits. Before doing so, it is worth noting that the only  
21 reasonable inference from Mr. Monroe's February 11, 2013, e-  
22 mail, especially in the absence of any response to this  
23 withdrawal motion, is that Mr. Monroe consents to the granting  
24 of such relief, albeit conditionally, as mentioned above.  
25 Furthermore, although plaintiff Gagan does not oppose this  
26 motion, he, too, wants a condition placed upon the granting of  
27 such relief. To avoid incurring process serving costs,  
28 plaintiff wants the court to "order[]" defendant Monroe "to

1 provide . . . a physical address" to which pleadings can be  
2 mailed. Tr. at 10:28:32 a.m. - 10:28:49 a.m.

3 LRCiv 83.3(b) governs attorney withdrawal and "sets forth  
4 the technical requirements for withdrawing as counsel of  
5 record in the District Court of Arizona." Bohnert v. Burke,  
6 2010 WL 5067695, at \*1 (D.Ariz. Dec. 7, 2010). An attorney of  
7 record may not withdraw:

8 in any pending action except by formal written  
9 order of the Court, supported by written  
10 application setting forth the reasons therefore  
together with the name, last known residence  
and last known telephone number of the client[.]

11 LRCiv 83.3(b). In addition where, as here, the motion to  
12 withdraw "does not bear the written approval of the client, it  
13 shall be made by motion and shall be served upon the client  
14 and all other parties or their attorneys." LRCiv 83.3(b)(2).

15 Pursuant to LRCiv 83.3(b), Mr. Carmichael's supporting  
16 "Certification" provides his client's name and "last known  
17 telephone number[.]" See Cert'n (Doc. 451-1) at 1:24-25.  
18 Although that Certification provides Monroe's "last known  
19 address[,]" i.e. the Scottsdale P.O. Box, Cert. (Doc. 451-1)  
20 at 1:23-24, it does not provide his "last known residence[,]"  
21 in accordance with LRCiv 83.3(b). The court can overlook that  
22 omission, chiefly because Mr. Monroe advised attorney  
23 Carmichael that he received mail at that P.O. Box, and that is  
24 how he wanted Mr. Carmichael to communicate with him. Tr. at  
25 10:12:42 -55 a.m. Thus, while generally strict compliance  
26 with LRCiv 83.3(b) is preferable, under the particular  
27 circumstances herein, the court is willing to excuse the fact  
28 that in seeking withdrawal, attorney Carmichael did not

1 indicate his client's "last known residence."

2 A "written application" for attorney withdrawal also  
3 should "set[] forth the reasons therefore[.]" LRCiv 83.3(b).  
4 Attorney Carmichael's Certification is silent on that point.  
5 As discussed momentarily, however, those reasons are ample and  
6 became abundantly clear during the March 26, 2013 hearing.  
7 So, once again, under the particular circumstances of this  
8 case, the court will overlook this "technical" omission. See  
9 Bohnert, 2010 WL 5067695, at \*1.

10 Insofar as service under LRCiv 83.3(b)(2) is concerned,  
11 as discussed with respect to notice, the court finds that  
12 defendant Monroe was served for purposes of that Rule. Cf.  
13 Hernandez v. Gates, 2004 WL 291225, at \*1 (C.D.Cal. Feb. 5,  
14 2004) (commenting that in the context of Fed.R.Civ.P. 5,  
15 "context plays an important role in determining whether  
16 adequate service has been effected in a given case[]").  
17 Further, there is no dispute that "all other parties or their  
18 attorneys[]" were also served in accordance with that Rule.  
19 See LRCiv 83.3(b)(2).

20 Having addressed LRCiv 83.3(b)'s requirements, next, the  
21 court will address the broader issue of whether, in the  
22 exercise of its "discretion," it should grant attorney  
23 Carmichael's motion to withdraw. See Chaker v. Adams, 2012 WL  
24 4848962, at \*1 (S.D.Cal. Oct. 10, 2012) (citation omitted).  
25 "Factors that a district court should consider when ruling  
26 upon a motion to withdraw as counsel include: (1) the reasons  
27 why withdrawal is sought; (2) the prejudice withdrawal may  
28 cause to other litigants; (3) the harm withdrawal might cause

1 to the administration of justice; and (4) the degree to which  
2 withdrawal will delay the resolution of the case." Bohnert,  
3 2010 WL 5067695, at \*1 (citing, *inter alia*, In re Ryan, 2008  
4 WL 4775108, at \*3 (D.Or. Oct. 31, 2008)).

5 Whether viewed individually or collectively, these  
6 factors weigh heavily in favor of granting attorney  
7 Carmichael's withdrawal motion. The most compelling reason  
8 for allowing attorney withdrawal here is the erosion of the  
9 attorney-client relationship between Mr. Carmichael and  
10 defendant Monroe. There are several manifestations of this  
11 erosion. The first is that attorney Carmichael does not "have  
12 any idea at all" as to his client's whereabouts. Tr. at  
13 10:29:57 - 10:30:07 a.m. He is not even certain whether or  
14 not defendant Monroe is in Arizona or elsewhere. See  
15 generally id. at 10:31:44 - 10:32:10 a.m.

16 Second, attorney Carmichael has not had a "face-to-face  
17 conversation with Mr. Monroe" for nearly four months. Id. at  
18 10:15:21-27a.m. The last such conversation was "probably  
19 . . . on October 30<sup>th</sup> [2013] - the day of the trial in  
20 [Arizona] Superior Court." Id. at 10:15:28-30 a.m. Third,  
21 attorney Carmichael has not spoken with or seen Mr. Monroe  
22 since mid-December, 2012. Id. at 10:16:30-45 a.m. Fourth,  
23 despite attorney Carmichael's efforts to "continue to urge  
24 [Mr. Monroe] to appear in court and do the things that are  
25 asked of him, [Monroe] has not responded to [Carmichael] in  
26 any way at all." Id. at 10:31:20-36 a.m.

27 Additional evidence of the erosion of the attorney-client  
28 relationship is found in a March 7, 2013, e-mail to Mr.

1 Monroe, with a copy to plaintiff's attorney, Mr. Bray. In  
2 that e-mail, attorney Carmichael explicitly did "no[t]  
3 object[]" to plaintiff's attorney "contacting [Mr. Monroe]  
4 directly." Mot. (Doc. 470), exh. B thereto (Doc. 470-2) at 2.  
5 And, indeed, wholly independent of attorney Carmichael, after  
6 receiving plaintiff's discovery demands via e-mail from  
7 attorney Carmichael, Mr. Monroe contacted plaintiff's  
8 attorney. See Tr. at 10:30:45 a.m. - 10:31:07 a.m. On  
9 February 26, 2013, plaintiff's attorney received, from  
10 defendant Monroe himself, his written responses to plaintiff's  
11 discovery demands. See Mot. (Doc. 470), exh. A thereto (Doc.  
12 470-1) at 2; see also Tr. at 10:30:51 - 10:31:07 a.m.  
13 Attorney Carmichael "never" saw those responses, however,  
14 because Mr. Monroe did not provide him with a copy. Id. at  
15 10:31:15 a.m. As attorney Carmichael put it, and the record  
16 demonstrates, he "is out of the loop with [Mr. Monroe]." Id.  
17 at 10:31:17-19 a.m.

18 Further, when Mr. Monroe has been directed to appear in  
19 this court, which has "happened at least twice[,] attorney  
20 Carmichael has "urged" Monroe to appear, but he does not. Id.  
21 at 10:33:02-12 a.m. That is because, as attorney Carmichael  
22 candidly and bluntly put it, he "ha[s] no control[]" over  
23 defendant Monroe. Id. at 10:33:13-14 a.m. With equal  
24 candor, and as the record vividly shows, attorney Carmichael  
25 admitted that he has not gotten "cooperation" from defendant  
26 Monroe[;] "it's an impossible circumstance." Id. at 10:37:38-  
27 42 a.m. Notably, despite this lack of cooperation, for the  
28 past two years, attorney Carmichael has continued to represent

1 defendant Monroe *pro bono*. Id. at 10:37:26-29 a.m.

2 The "conflict of interest between" defendant Monroe and  
3 his attorney, Mr. Carmichael, also factors into the court's  
4 finding that there are justifiable reasons for allowing  
5 attorney Carmichael to withdraw as counsel here. E-mail from  
6 David Carmichael to James Monroe. Because Mr. Carmichael did  
7 not elaborate upon that conflict, it is not as significant as  
8 the overall erosion of the attorney-client relationship.  
9 Nonetheless, it is a consideration. All of the reasons  
10 outlined above justify granting attorney Carmichael's motion  
11 to withdraw.

12 As to the prejudice factor, during the hearing,  
13 plaintiff's attorney implied prejudice arising from his  
14 inability to definitively ascertain a "physical address" to  
15 which he can "mail pleadings" to defendant Monroe. Tr. at  
16 10:28:41-48 a.m. That suggested prejudice does not outweigh  
17 the reasons discussed favoring withdrawal in this case.  
18 Undermining a finding of prejudice is the fact that when asked  
19 if anything sent to defendant Monroe at the East Mercer Lane  
20 address had been returned as undeliverable, plaintiff's  
21 attorney responded, "I don't believe that we've gotten return  
22 mail from that address[,]" or that he has received a notice of  
23 return or of a "bad address from the post office." Id. at  
24 10:25:35-59 a.m.

25 Second, when attempting to serve post-judgment discovery  
26 requests upon either defendant Monroe or Ms. Sullivan<sup>5</sup> at the

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27  
28 <sup>5</sup> Ms. Sullivan is defendant Monroe's daughter and a  
garnishee/defendant in this action.

1 East Mercer Lane address, Mr. Monroe "answered the door and  
2 accepted service." Id. at 10:23:15-30 a.m. It is plaintiff's  
3 understanding that the East Mercer Lane address is Ms.  
4 Sullivan's house, and that Mr. Monroe was living there with  
5 her. Id. at 10:45-52 a.m.

6 Third, when considering possible prejudice, one of the  
7 sources for using the East Mercer Street address is  
8 plaintiff's most recent attorney, Mr. Bray. Immediately upon  
9 filing his Notice of Appearance on September 10, 2012 (Doc.  
10 393), attorney Bray filed six Applications for Writ of  
11 Garnishment. The caption of each identifies  
12 "Defendant/Judgment Debtor[]" as "JAMES A. MONROE 12880 East  
13 Mercer Lane Scottsdale, AZ 85259[.]" See, e.g., Appl'n (Doc.  
14 394) at 1. The Summons and Writ[s] of Garnishment attached to  
15 each of those applications provides that the "last known  
16 addresses of the Defendant/Judgment Debtor [Monroe] are 1092  
17 North 115<sup>th</sup> Street, Unit 2053, Scottsdale, AZ and" the East  
18 Mercer Lane address as recited in the caption. See, e.g.,  
19 Summons (Doc. 394-2) at 2, ¶ 4 (emphasis added). Consistent  
20 with the foregoing, attorneys Carmichael and Bray both  
21 recalled that Mr. Monroe testified in Arizona Superior Court  
22 that his address is 12880 East Mercer Lane, Scottsdale,  
23 Arizona.

24 Finally, as is evident, attorneys Carmichael and Bray are  
25 at least equally well-positioned to ascertain defendant  
26 Monroe's last known "physical address." Therefore, the court  
27 finds no merit to any implication that plaintiff Gagan will be  
28 prejudiced by allowing attorney Carmichael to withdraw as

1 defendant Monroe's counsel in this case.

2 As to the last two withdrawal factors, there has been no  
3 suggestion, and the court can conceive of none, how allowing  
4 attorney Carmichael to withdraw will harm the administration  
5 of justice or cause undue delay to the resolution of this  
6 case. Consequently, in the exercise of its discretion, for  
7 all of the reasons set forth above, the court hereby **GRANTS**  
8 attorney Carmichael's "Motion to Withdraw as Counsel for  
9 Defendant Monroe" (Doc. 451).

10 Because the court is granting that motion, unless and  
11 until defendant Monroe retains substitute counsel, he will be  
12 proceeding *pro se*. Defendant Monroe thus is advised that  
13 insofar as the court is concerned, his "last known address" is  
14 12880 East Mercer Lane Scottsdale, Arizona 85259. See  
15 Fed.R.Civ.P. 5(b)(2)(C). It will therefore be incumbent upon  
16 defendant Monroe to notify the court and counsel of any change  
17 in that address. LRCiv 83.3(d) ("An . . . unrepresented party  
18 must file a notice of a[n] . . . address change[.]"); see also  
19 Khalafala-Khalafala v. U.S., 2012 WL 6783567, at \*1 (D.Ariz.  
20 Dec. 7, 2012), (quoting Carey v. King, 856 F.2d 1439, 1441 (9<sup>th</sup>  
21 Cir. 1988)) ("A party, not the district court, bears the  
22 burden of keeping the court apprised of any changes in his  
23 mailing address."), adopted, 2013 WL 69176 (D.Ariz. Jan. 7,  
24 2013). Until the court is otherwise notified in writing, with  
25 proof that a copy of such address change had been provided to  
26 plaintiff's counsel, David Bray, it will continue to provide  
27 copies of its orders to defendant Monroe by placing a copy of  
28 such orders in the United States mail, postage pre-paid, first

1 class to James A. Monroe 12880 East Mercer Lane, Scottsdale,  
2 Arizona 85259. Additionally, as to **this order only**, the court  
3 **ORDERS** the Clerk of the Court to also place a copy of this  
4 order in the United States mail, postage pre-paid, first class  
5 to James A. Monroe P.O. Box 5322, Scottsdale, Arizona 85261.

6 **II. Motion/Order to Show Cause**

7 **1. Notice**

8 A copy of plaintiff Gagan's OSC motion (Doc. 464) was  
9 "placed . . . in the U.S. mail, postage prepaid, first class  
10 to . . . James A. Monroe 12880 East Mercer Lane Scottsdale,  
11 Arizona 85259[.]" Mot. (Doc. 464) at 4:4-7. The present  
12 record convinces this court that insofar as plaintiff is  
13 concerned, that is defendant Monroe's "last known address."  
14 See Fed.R.Civ.P. 5(B)(2)(C). Thus, service was "complete upon  
15 mailing[.]" Id. Moreover, there is nothing in the record  
16 showing non-delivery, which is consistent with attorney Bray's  
17 statement that he does not believe any mail has been returned  
18 as undeliverable from that address.

19 Furthermore, because he is the attorney of record, Mr.  
20 Carmichael's practice had been to "serve" Mr. Monroe, via e-  
21 mail, with "every document" which has been served upon Mr.  
22 Carmichael. Tr. at 10:06:28-51 a.m. In accordance with that  
23 practice, Mr. Carmichael e-mailed a copy of the OSC to  
24 defendant Monroe, Tr. at 10:13:21-26 a.m.; but he does not  
25 remember whether he had "any indication from any  
26 communication" from Mr. Monroe indicating whether he "in fact"  
27 received, *inter alia*, the OSC. Id. at 10:14:42 a.m. -  
28 10:15:53 a.m.

1 Even if the foregoing did not convince this court that  
2 defendant Monroe had actual notice of plaintiff's OSC motion,  
3 defendant Monroe's attorney of record, attorney Carmichael was  
4 electronically served with that motion, as well as the court's  
5 OSC. Mot. (Doc. 464), NEF at 2; OSC (Doc. 466), NEF at 2.  
6 Accordingly, the court deems defendant Monroe to have had  
7 notice of both the OSC motion and the OSC itself through  
8 service upon his attorney. Cf. Fed.R.Civ.P. 5(b)(1) ("If a  
9 party is represented by an attorney, service under this rule  
10 must be made on the attorney unless the court orders service  
11 on the party."); and N.R.R.B. v. Sequoia Dist. Council of  
12 Carpenters, 568 F.2d 628, 633 (9<sup>th</sup> Cir. 1977) (service of  
13 judgment on union's attorney gave union sufficient notice to  
14 bind it to terms of the judgment such that "the union was  
15 clearly bound to abide by it[]").

16 **2. Merits**

17 Pursuant to this court's order, defendant Monroe was  
18 required to provide written discovery responses to plaintiff  
19 by no later than February 18, 2013, as mentioned at the  
20 outset. Ord. (Doc. 457) at 2:14-15, ¶ (2). When defendant  
21 Monroe did not respond by that date, four days later, on  
22 February 22, 2013, plaintiff filed his OSC motion directed to  
23 those tardy discovery responses. In the meantime, defendant  
24 Monroe did respond, but not until February 26, 2013 - eight  
25 days late. Mot. (Doc. 470), exh. A thereto (Doc. 471-1) at 2.

26 Given that relatively short delay, the court, in the  
27 exercise of its discretion, declines to hold defendant Monroe  
28 in contempt for the untimely filing of his written discovery

1 responses. Furthermore, especially because the court is  
2 granting attorney Carmichael's motion to withdraw, defendant  
3 Monroe is advised that if he violates any further court  
4 orders, he proceeds at his peril. Defendant Monroe is further  
5 advised that, upon the proper showing, any future violations  
6 of this court's orders could result in his being held in civil  
7 or criminal contempt. Possible sanctions for such contempt  
8 are fines and imprisonment. At this time, however, the court  
9 **DENIES** the Order to Show Cause (Doc. 466).

10 **Conclusion**

11 For all of these reasons, the court hereby:

12 (1) **GRANTS** attorney Carmichael's Motion to Withdraw as  
13 Counsel for defendant James A. Monroe (Doc. 451);

14 (2) **DENIES** the Order to Show (Doc. 466); and

15 (3) **ORDERS** the Clerk of the Court to place a copy  
16 of this order in the United States mail, postage  
17 prepaid, first class to defendant James A. Monroe  
12880 East Mercer Lane, Scottsdale, Arizona 85259  
**and** to defendant James A. Monroe P.O. Box 5322,  
18 Scottsdale, Arizona 85261.

19 DATED this 1st day of April, 2013.

20 

21 Robert C. Broomfield  
22 Senior United States District Judge

23  
24  
25  
26 Copies to counsel of record; James A. Monroe (12880 East  
27 Mercer Lane, Scottsdale, Arizona 85259 and P.O. Box 5322,  
28 Scottsdale, Arizona 85261); and Kimberly Sullivan (12880 East  
Mercer Lane, Scottsdale, Arizona 85259).