

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

HELENA CHEMICAL COMPANY
doing business as HELENA FINANCE

Plaintiff

V.

DANNY W. PORTER; SARAH
PORTER, JUSTIN PORTER, and
PORTER FARMS, a partnership

Defendants

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NO: 4:10CV01193 SWW

ORDER

Before the Court are (1) Plaintiff’s and Defendant Justin Porter’s joint motion to dismiss with prejudice all claims against Defendant Justin Porter (docket entry #89); (2) defense counsel’s second motion to be relieved as attorney of record for Defendants Danny W. Porter, Sarah Porter, and Porter Farms (docket entry #87) and Plaintiff’s response stating no opposition (docket entry #88); and (3) Defendants’ motion for an extension of time up to and including January 13, 2011, in which to answer or otherwise respond to the second amended complaint (docket entry #86). After careful consideration, the motion to dismiss claims against Defendant Justin Porter will be granted, the motion to withdraw as counsel will be granted pursuant to the conditions stated in this order, and the deadline for responding to the second amended complaint will be extended up to and including fourteen (14) days following the entry date of this order.

Joint Motion to Dismiss Claims as to Justin Porter

Plaintiff and Defendant Justin Porter report that they have settled, and they jointly move to dismiss the complaint, with prejudice, as to Defendant Justin Porter. The motion will be

granted. Plaintiff reserves all claims against Defendants Danny Porter, Sarah Porter, and Porter Farms.

Second Motion to be Relieved as Counsel for Separate Defendants

By order entered December 2, 2011, the Court denied defense counsel's first motion to be relieved as counsel for Defendants Danny Porter, Sarah Porter, and Porter Farms because it was not clear whether the separate defendants had received reasonable notice of the motion to withdraw. Now before the Court is counsel's second motion to withdraw, along with proof that counsel attempted to notify the separate defendants of the motion to withdraw via letters sent by certified mail, return receipt required. Defense counsel reports that the separate defendants have not responded to the letters and that the separate defendants cannot be reached by telephone. According to counsel, the only known telephone number for the separate defendants has been disconnected or is no longer in service.

The Court finds that the motion to withdraw should be granted. However, defense counsel is directed to mail a copy of this order and the second amended complaint to the separate defendants, via certified mail, return receipt requested, and to file an affidavit of mailing with the Court.

Defendants Danny Porter, Sarah Porter, and Porter Farms have up to and including fourteen (14) days from the entry date of this order in which to answer or otherwise respond to the second amended complaint.

If Defendants Danny Porter, Sarah Porter, and Porter Farms have retained new counsel, counsel should enter an appearance in this case immediately.

If Defendants Danny Porter, Sarah Porter, and Porter Farms the choose to proceed

without counsel (*pro se*) they are obligated to comply with the Federal Rules of Civil Procedure and the Local Rules of this Court,¹ including Local Rule 5.5(c)(2), which provides as follows:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Motion to Extend Time for Answer

Along with the motion to withdraw, defense counsel filed a motion to extend the time to file an answer or otherwise respond to the second amended complaint. As stated above, Defendants Danny Porter, Sarah Porter, and Porter Farms have up to and including fourteen (14) days from the entry date of this order in which to file an answer or otherwise respond to the second amended complaint. Accordingly, the motion to extend time is moot.

IT IS THEREFORE ORDERED that the joint motion to dismiss claims against Defendant Justin Porter (docket entry #89) is GRANTED. All claims against Defendant Justin Porter are DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that the second motion to withdraw as counsel (docket entry #87) is GRANTED. Attorneys Stephen L. Gershner and Benjamin A. Kent are terminated as attorneys for Defendants Danny Porter, Sarah Porter, and Porter Farms. Attorneys Gershner

¹The Federal Rules of Civil Procedure are available in many libraries and bookstores and the Local Rules can be obtained from the District Clerk for the Eastern District of Arkansas. Additionally, the Local Rules and the Federal Rules of Civil Procedure are available on the Court's website: www.are.uscourts.gov. To access the Federal Rules of Civil Procedure via the Court's website, go to "Links," find the heading "Federal Links" and click on "Federal Rules of Civil Procedure" below the heading. A direct link to "Local Rules" is provided on the home page of the Court's website.

and Kent are directed to mail a copy of this order and the second amended complaint to the separate defendants, via certified mail, return receipt requested, and to file an affidavit of mailing with the Court.

IT IS FURTHER ORDERED that Defendants Danny Porter, Sarah Porter, and Porter Farms have up to and including fourteen (14) days from the entry date of this order in which to answer or otherwise respond to the second amended complaint.

If Defendants Danny Porter, Sarah Porter, and Porter Farms have retained new counsel, he or she should enter an appearance in this case immediately.

IT IS SO ORDERED THIS 5TH DAY OF JANUARY, 2012.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE