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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MONTRY McNALLY; RUBY BELL,

Plaintiffs,

v.

EYE DOG FOUNDATION FOR THE
BLIND, INC.; EYE DOG FOUNDATION
PROFIT SHARING PLAN; and GWEN
BROWN,

Defendants.

) 1:09-cv-1184 AWI SKO

) ORDER GRANTING AMENDED MOTION
) TO WITHDRAW AS COUNSEL FOR
) DEFENDANTS

) (Doc. 22)

INTRODUCTION

On March 17, 2010, Defendants’ counsel H. Steven Schiffres, Esq., of Rosoff, Schiffres & Barta filed an Amended Motion to Withdraw as Counsel for Defendants.¹ (Doc. 22.) The motion was scheduled to be heard at 9:30 a.m. on April 30, 2010, before this Court. On April 20, 2010, the Court determined the matter was suitable for decision without oral argument, and the matter was taken under submission pursuant to Local Rule 230(g).

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¹ Although Howard Rosoff of Rosoff, Schiffres & Barta appears on this case’s docket as representing Defendants, Mr. Schiffres filed the present motion and supporting declaration.

1 relative to the defense of the lawsuit,” resulting in “an irremedial breakdown in communication
2 between Defendants and [counsel], precluding [counsel] from effectively representing Defendants
3 in this lawsuit and to maintain an appropriate attorney-client relationship.” (Am. Schiffres Decl.
4 ¶ 6.) Counsel further declares that Defendants have failed to pay attorney’s fees, despite counsel’s
5 repeated efforts to collect such fees, and that counsel notified Defendants in writing on several
6 occasions of counsel’s intent to withdraw. (Am. Schiffres Decl. ¶¶ 7-8.)

7 Counsel for Defendants has provided complete contact information for Defendants. (Am.
8 Schiffres Decl. ¶ 3.) Counsel indicates he has served the instant motion upon Plaintiffs’ counsel and
9 Defendants. (See Doc. 22 [Proof of Service].) No opposition to the instant motion has been filed.

10 Rule of Professional Conduct 3-700(C)(1)(f) provides that an attorney may request
11 permission to withdraw if the client breaches an agreement or obligation as to expenses or fees. Rule
12 3-700(A)(2) also provides that a “member shall not withdraw from employment until the member
13 has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client,
14 including giving due notice to the client, allowing time for employment of other counsel, complying
15 with rule 3-700(D),² and complying with applicable laws and rules.” Here, counsel has provided
16 Defendants with notice of the motion and with time to find additional counsel. Defendants have not
17 opposed the motion. Moreover, this litigation is in its early stages. Therefore, the risk of prejudice
18 to Defendants is minimal if this motion is granted.

19 Because no opposition has been filed and there appears to be no prejudice to Defendants, the
20 motion will be granted. However, Defendants are advised that “a corporation may appear in the
21 federal courts only through licensed counsel.” *Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 202
22 (1993); *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam);
23 *see also Osborn v. Bank of U.S.*, 22 U.S. (9 Wheat.) 738, 829 (1824). All artificial entities must
24 appear in federal court through counsel. *Rowland*, 506 U.S. at 202. Additionally, this Court’s Local
25 Rule 183(a) provides: “A corporation or other entity may appear only by an attorney.”

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27 ² Section 3-700(D) pertains to returning property and funds to clients.

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Accordingly, IT IS HEREBY ORDERED that:

1. The amended motion to withdraw as counsel is GRANTED;
2. Counsel is ordered to serve a copy of this order on Defendants via email and the United States Postal Service forthwith. Counsel shall provide the Court with a declaration indicating proof of service;
3. The Clerk of the Court is ORDERED to RELIEVE Rosoff, Schiffres & Barta as counsel for Defendants; and
4. Defendants shall retain counsel or provide the Court with a statement regarding their intention to obtain counsel within sixty (60) days of the date of this order.

IT IS SO ORDERED.

Dated: April 23, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE