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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MP NEXLEVEL, of California, Inc.,

Plaintiff,

v.

Case No. 1:14-cv-00288-LJO-EPG
**ORDER GRANTING MOTION TO
WITHDRAW AS COUNSEL**

(ECF No. 414)

CVIN, LLC, d/b/a VAST NETWORKS,
CALAVERAS COMMUNICATIONS
COMPANY, SEBASTIAN
ENTERPRISES, INC., VOLCANO
COMMUNICATIONS COMPANY,
STAGELINE COMMUNICATIONS,
INC., THE PONDEROSA TELEPHONE
COMPANY, SIERRA TEL
COMMUNICATIONS GROUP,
VARNET INC., CAL-ORE TELEPHONE
COMPANY, THE CORPORATION OF
EDUCATION NETWORK INITIATIVES
IN CALIFORNIA, and DOES 1 to 500,
DEFENDANTS.

I. BACKGROUND

On November 3, 2016, attorney Frank James Weiss of the Tonkon Torp, LLP, law firm (“Tonkon law firm”) filed the instant motion to withdraw as counsel for Defendant/Third-Party Defendant Apex Directional Drilling, LLC (“Defendant Apex”). (ECF No. 414.) The Court held a hearing on the motion on December 2, 2016. (ECF No. 425.) The motion is unopposed. For the following reasons, the motion to withdraw as counsel (ECF No. 414) is GRANTED.

1 **II. DISCUSSION**

2 The Local Rules of this District provide the following with respect to withdrawal of
3 counsel of record:

4 **Withdrawal.** Unless otherwise provided herein, an attorney who has appeared
5 may not withdraw leaving the client in propria persona without leave of court
6 upon noticed motion and notice to the client and all other parties who have
7 appeared. The attorney shall provide an affidavit stating the current or last
8 known address or addresses of the client and the efforts made to notify the client
9 of the motion to withdraw. Withdrawal as attorney is governed by the Rules of
10 Professional Conduct of the State Bar of California, and the attorney shall
11 conform to the requirements of those Rules. The authority and duty of the
12 attorney of record shall continue until relieved by order of the Court issued
13 hereunder. Leave to withdraw may be granted subject to such appropriate
14 conditions as the Court deems fit.

15 CAED-LR 182(d).

16 In support of the motion to withdraw, attorney Weiss has submitted two declarations: 1)
17 declaration of Frank Weiss, dated November 2, 2016 (“Weis Decl.”, ECF No. 416); and 2)
18 declaration of Scott Campbell, dated October 20, 2016 (“Campbell Decl.”, ECF No. 417).
19 Campbell is the CEO of Silvies Drilling Co., LLC, which is the majority and controlling
20 shareholder of Defendant Apex. (Campbell Decl., ECF No. 417 ¶ 1.)

21 According to the information provided in support of withdrawal, Defendant Apex “went
22 out of business over a year ago, and no longer has any officers, employees, equipment or
23 facilities and has not pursued or performed work since early 2015. (*Id.*) While Apex itself no
24 longer has officers or employees, Campbell has consented to the Tonkon law firm withdrawing
25 and is aware that it could result in a default judgment being entered against Defendant Apex.
26 (*Id.* ¶ 2.) Since October 6, 2015, has not, made payments to the Tonkon law firm. (Weis Decl.,
27 ECF No. 416 ¶ 6.)

28 In accordance with Local Rule 182(d), copies of the motion to withdraw have been
mailed to: (i) Apex's last known business address; (ii) its member and shareholder, and (iii) its
registered agent for service of process. (*Id.* ¶ 4.) The last know addresses for Defendant Apex
are” 8850 SE 76th Drive, Portland, OR 9206; registered agent for service, at 888 SW Fifth
Ave., Portland, OR 97204; and member, Silvies Drilling Co., LLC, at 7610 SE 162nd Ave.,

1 Portland, OR 97236. (*Id.*) It also appears that the withdrawal is in compliance with the Rules
2 of Professional Conduct of the State Bar of California. (ECF No. 415 at 3.)

3 Given the fact that there has been no opposition to this motion filed and the client
4 representative has provided consent, the motion will be granted. However, Defendant Apex is
5 advised that a “corporation may appear in federal court only through licensed counsel.”
6 *Rowland v. California Men’s Colony*, 506 U.S. 194, 202, 113 S.Ct. 716, 721 (1993); *United*
7 *States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993); *see also*,
8 *Osborn v. President of Bank of United States*, 9 Wheat. 738, 829, 6 L.Ed. 204 (1824); *Turner v.*
9 *American Bar Ass’n*, 407 F.Supp. 451, 476 (N.D. Tex. 1975) (citing the “long line of cases”
10 from 1824 to the present holding that a corporation may only be represented by licensed
11 counsel). All artificial entities must appear in federal court through counsel. *Rowland*, 506
12 U.S. at 202, 113 S.Ct. at 721. Additionally, our Local Rules provide that: “A corporation or
13 other entity may appear only by an attorney.” CAED-LR 183(a).

14 Given the above, Defendant Apex shall obtain counsel within 30 days of the date of this
15 order or provide the court with its intention regarding retaining counsel. Defendant is advised
16 that failure to obtain counsel may result in the imposition of sanctions including but not limited
17 to entry of default judgment.

18 As discussed on the record, the Court is aware that settlement negotiations are taking
19 place in this case. Apex is encouraged to correspond with Plaintiff’s counsel to discuss
20 inclusion in any such settlement.

21 **III. CONCLUSION**

22 Accordingly, IT IS HEREBY ORDERED that :

23 1) The Motion to Withdraw as Counsel is GRANTED;

24 2) The Clerk shall TERMINATE Frank James Weiss of the Tonkon Torp, LLP as
25 counsel for Defendant/Third-Party Defendant Apex Directional Drilling, LLC;

26 3) Counsel, Frank James Weiss, is ordered to serve a copy of this order on Apex
27 Directional Drilling, LLC. Counsel shall provide the court with a declaration indicating proof
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1 of service, or if counsel is unable to execute service, an explanation of the circumstances of
2 attempted service;

3 4) Counsel, Frank James Weiss, is ordered to provide the Court with a revised address
4 and contact information for Defendant Apex Directional Drilling, LLC; and

5 5) Defendant/Third-Party Defendant Apex Directional Drilling, LLC, shall, within 30
6 days of the date of this order, retain counsel, or provide the court with a statement regarding its
7 intention to obtain counsel.

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9 IT IS SO ORDERED.

10 Dated: December 5, 2016

11 /s/ Eric P. Grogan
12 UNITED STATES MAGISTRATE JUDGE
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