

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

JORGE MACHUCA,
Plaintiff,
v.
COUNTY OF KERN, et al.,
Defendants.

) Case No.: 1:16-cv-01497 DAD JLT
)
)
) ORDER GRANTING THE MOTION OF
) ATTORNEY MGDESYAN AND HIS FIRM TO
) WITHDRAW AS COUNSEL OF RECORD FOR
) PLAINTIFF
) (Doc. 18)
)
)
)

The attorney for the plaintiff seeks to withdraw from his representation because Mr. Machuca has failed to remain in contact with him and has failed to respond to letters seeking an opportunity to discuss with him claims that the case is Heck-barred. Mr. Machuca has failed to respond to counsel and has failed to respond to the motion to withdraw. For the reasons set forth below, the motion to withdraw is **GRANTED**.

I. Legal Standard

Whether an attorney may withdraw from a client's representation is governed by the Rules of Professional Conduct of the State Bar of California and the Local Rules of the United States District Court, Eastern District of California. *See LR 182.* The withdrawal of representation is permitted under the Rules of Professional Conduct if a client "renders it unreasonably difficult for the member to carry our employment effectively." Cal. R.P.C. 3-700(C)(1)(d). Local Rule 182(d) provides:

Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and

1 notice to the client and all other parties who have appeared. The attorney shall provide
2 an affidavit stating the current or last known address or addresses of the client and the
efforts made to notify the client of the motion to withdraw.

3 *Id.* Likewise, California's Rules require the notice of motion and declaration to be served on the client
4 and other parties who have appeared in the case. CRC 3.1362(d).

5 The decision to grant withdrawal is within the discretion of the Court, and leave "may be
6 granted subject to such appropriate conditions as the Court deems fit." LR 182; *see also Canandaigua*
7 *Wine Co., Inc. v. Moldauer*, 2009 WL 89141, at *1 (E.D. Cal. Jan. 14, 2009) ("The decision to grant or
8 deny counsel's motion to withdraw is committed to the discretion of the trial court."). Factors the
9 Court may consider include: (1) the reasons for withdrawal, (2) prejudice that may be caused to the
10 other litigants, (3) harm caused to the administration of justice; and (4) delay to the resolution of the
11 case caused by withdrawal. *Canandaigua Wine Co.*, 2009 WL 89141, at *1.

12 **II. Discussion and Analysis**

13 Mr. Mgdesyan asserts that he received correspondence from defense counsel supporting a
14 claim that the litigation is *Heck* barred. (Doc. 18-1 at 2; Doc. 18-2) Along with this, the defense
15 propounded requests for admission related to the issue. His associate contacted the plaintiff to set an
16 appointment to discuss the matter but the plaintiff missed the appointment but rescheduled for a
17 different day. Doc. 18-2 at 2. Though the firm "continued to speak with Plaintiff and discuss the
18 documents received" from defense counsel, in June 2017, the plaintiff cut off all contact. *Id.* at 3. On
19 two occasions, the firm sent certified letters to the plaintiff at his address asking for his response and
20 telling him that if he did not, the firm would withdraw from his representation. *Id.* Mr. Machuca did
21 not respond. *Id.*

22 Mr. Mgdesyan filed his motion to withdraw on July 6, 2017 (Doc. 18) and served the plaintiff
23 notice of the motion via first class mail to his last known address and at his post office box at the same
24 time. *Id.* at 4-5. The plaintiff has not responded to the motion and the defendant has not opposed the
25 motion. A client's failure to communicate with counsel is a basis to relieve an attorney of the
26 representation. *See Canandaigua Wine Co.*, 2009 WL 89141, at *1 citing *Whiting v. Lacara*, 187 F.3d
27 317, 322-23 (2nd Cir.1999).

28 The plaintiff has had sufficient time to retain substitute counsel, if that is his intention. Likewise,

1 it does not appear the defendant would suffer prejudice as a result of the withdrawal. Indeed, it appears
2 the plaintiff may have decided to abandon this litigation entirely. Furthermore, any delay caused by the
3 withdrawal would be minimal and there is little risk of harm to the administration of justice.

4 **III. Conclusion and Order**

5 Counsel followed the procedural and substantive requirements set forth in the California Rules
6 of Professional Conduct and the Local Rules in filing the motion to withdraw as counsel, and set forth
7 sufficient reasons for the withdrawal. Therefore, the Court is acting within its discretion to grant the
8 motion to withdraw. *See* LR 182. Accordingly, the Court **ORDERS**:

- 9 1. The motion to withdraw (Doc. 28) is **GRANTED**;
- 10 2. The Clerk's Office **SHALL TERMINATE** George Mgdesyan and the entire
11 Mgdesyan Law Firm as "Attorney to be Noticed" for the plaintiff Jorge Machuca in the
12 Court docket, and update the docket to reflect the plaintiff's last known contact
13 information as follows:

14 Jorge Machuca
15 PO Box 465
Maricopa, CA 93252

- 16 3. **No later than September 1, 2017**, plaintiff **SHALL** notify the Court whether he
17 intends to represent himself in this matter or whether he has secured substitute counsel
18 and whether he intends to prosecute this action.

19 **Plaintiff is advised that failure to comply with the Local Rules, Federal Rules, or a Court Order,**
20 **may result in dismissal of this action pursuant to Local Rule 110.**

21
22 IT IS SO ORDERED.

23 Dated: August 10, 2017

24 /s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE