



1 failure to prosecute this action. (Docs. 21-22)

2 On February 27, 2018, Mr. Whittington filed the motion now pending before the Court. (Doc.  
3 23) Because insufficient notice was given for the hearing date, the Court directed counsel to “file an  
4 amended notice of motion hearing which includes a certificate of service of the amended notice upon  
5 the individual plaintiffs.” (Doc. 24) Mr. Whittington re-filed the motion on March 1, 2018, with the  
6 proofs of service as ordered by the Court. (Doc. 25) After the Court re-set the hearing date, to be held  
7 the same date as the mid-discovery status conference, counsel provided notice to Plaintiffs of the  
8 change. (Docs. 26, 27)

9 **II. Discussion and Analysis**

10 Withdrawal of counsel is governed by the Rules of Professional Conduct of the State Bar of  
11 California, and the Local Rules of the United States District Court, Eastern District of California. *See*  
12 LR 182. The withdrawal of representation is permitted under the Rules of Professional Conduct if a  
13 client “renders it unreasonably difficult for the member to carry our employment effectively.” Cal.  
14 R.P.C. 3-700(C)(1)(d). Local Rule 182(d) provides:

15 Unless otherwise provided herein, an attorney who has appeared may not withdraw  
16 leaving the client in propria persona without leave of court upon noticed motion and  
17 notice to the client and all other parties who have appeared. The attorney shall provide  
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.

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

20 The decision to grant withdrawal is within the discretion of the Court, and leave “may be  
21 granted subject to such appropriate conditions as the Court deems fit.” LR 182; *see also Canandaigua*  
22 *Wine Co., Inc. v. Moldauer*, 2009 WL 989141, at \*1 (E.D. Cal. Jan. 14, 2009) (“The decision to grant  
23 or deny counsel’s motion to withdraw is committed to the discretion of the trial court.”). Factors the  
24 Court may consider include: (1) the reasons for withdrawal, (2) prejudice that may be caused to the  
25 other litigants, (3) harm caused to the administration of justice; and (4) delay to the resolution of the  
26 case caused by withdrawal. *Id.*, 2009 WL 989141, at \*1-2.

27 Mr. Whittington asserts the law firm of Rodriguez & Associates is unable to continue to its  
28 representation because “communication between counsel and Plaintiffs has broken down to the point

1 where counsel is not able to provide Plaintiffs with the standard of legal service [the law firm] is  
2 comfortable with, therefore necessitating termination of attorney client relationship.” (Doc. 23 at 3)  
3 According to Mr. Whittington, Plaintiffs have “Plaintiffs live in various parts of California, and in  
4 Miami, Florida. R&A has repeatedly attempted to contact Plaintiffs via mail, and phone, regarding this  
5 case, including discovery deadlines, and potential deposition dates.” (*Id.*) In addition, he asserts the  
6 law firm “sent authorizations to dismiss via U.S. mail to all Plaintiffs at their last known addresses in  
7 the United States.” (*Id.* at 5, Whittington Decl. ¶ 2(a)) However, Mr. Whittington reports there “has  
8 been a breakdown of communications.” (*Id.* at 4)

9 The declaration of Mr. Whittington, and the proofs of service of the amended motion and  
10 notice indicate all parties, including Plaintiffs, were served with the documents required by the  
11 California Rules. (*See* Doc. 23 at 6, Whittington Decl. ¶ 3; Doc. 27 at 3-10) Plaintiffs did not oppose  
12 the motion to withdraw, and thereby have indicated their consent to the withdrawal. In addition, it  
13 does not appear that Defendants would suffer any prejudice. Finally, any delay to the resolution of  
14 this case caused by the withdrawal will be minimal. Accordingly, the factors set forth by the Court in  
15 *Canandaigua Wine Co., Inc. v. Moldauer* weigh in favor of granting the motion to withdraw.

### 16 **III. Conclusion and Order**

17 Joseph Whittington followed the procedural and substantive requirements set forth in the  
18 California Rules of Professional Conduct and the Local Rules in filing the motion to withdraw as  
19 Plaintiff’s attorney, and set forth sufficient reasons for the withdrawal. Therefore, the Court is acting  
20 within its discretion to grant the motion to withdraw. *See* LR 182. Accordingly, the Court **ORDERS:**

- 21 1. The motion to withdraw (Docs. 23, 25) is **GRANTED**;
- 22 2. The Clerk’s Office **SHALL TERMINATE** Joseph Whittington and all attorneys from  
23 Rodriguez & Associates as “Lead Attorney to be Noticed” for Plaintiffs in the Court  
24 docket, and update the docket to reflect Plaintiffs’ last known contact information as  
25 follows:

26 Veronica Lira  
27 16146 Via Andeta  
28 San Lorenzo, CA 94580

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Abigail Vilorio  
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3. Plaintiffs **SHALL** each notify the Court in writing of her intent to proceed with this action no later than **April 20, 2018**.

**Plaintiffs are advised that failure to comply with this order will result in a recommendation that the action be dismissed pursuant to Local Rule 110**

IT IS SO ORDERED.

Dated: **April 6, 2018**

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