

1 withdraw now pending before the Court. (Doc. 6)

2 Defendant filed its answer to the Complaint as well as a statement of non-opposition to the
3 motion to withdraw on November 14, 2014. (Docs. 10, 12)

4 **II. Legal Standards**

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

10 Unless otherwise provided herein, an attorney who has appeared may not withdraw
11 leaving the client in propria persona without leave of court upon noticed motion and
12 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.

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

15 The decision to grant withdrawal is within the discretion of the Court, and leave “may be
16 granted subject to such appropriate conditions as the Court deems fit.” LR 182; *see also Canandaigua*
17 *Wine Co., Inc. v. Moldauer*, 2009 WL 989141, at *1 (E.D. Cal. Jan. 14, 2009) (“The decision to grant
18 or deny counsel’s motion to withdraw is committed to the discretion of the trial court.”). The Court
19 may consider: (1) the reasons for withdrawal, (2) prejudice that may be caused to the other litigants, (3)
20 harm caused to the administration of justice; and (4) delay to the resolution of the case caused by
21 withdrawal. *Id.*, 2009 WL 989141, at *1-2. In addition, permissive withdrawal of an attorney is
22 allowed if a client “knowingly and freely assents to termination of the employment.” Cal. R.P.C. 3-
23 700(C)(5); *see also Ortiz v. Alvarez*, 2017 U.S. Dist. LEXIS 84252 at *2 (E.D. Cal. May 31, 2017).

24 **III. Discussion and Analysis**

25 Mr. Dingwall asserts that he and C. Kiel Garella seek to withdraw as counsel for Plaintiff.
26 (Doc. 6 at 2) Mr. Dingwall reports that he “informed Mr. Barnes via phone and email of the intent ...
27 to withdraw as counsel on behalf of Mr. Barnes in this matter.” (Doc. 6-1 at 1, Dingwall Decl. ¶3) In
28 addition, he asserts that Plaintiff was “provided with opportunity to obtain new counsel.” (*Id.*, ¶ 4)

1 According to Mr. Dingwall, Plaintiff “knowingly and freely assents to the termination of the
2 employment of [Mr. Dingwall] and Mr. Garella.” (*Id.*, ¶ 5) Thus, it appears that counsel seeks to
3 withdraw from the case pursuant to Rule 3-700(C)(5) of the California Rules of Professional Conduct,
4 which provides that an attorney may seek withdrawal where “[t]he client knowingly and freely assents
5 to the termination of the employment.” Indeed, although informed of the filing of the motion, Plaintiff
6 did not oppose the withdrawal of representation.

7 Likewise, the defendant does not oppose the motion (Doc. 12), and it does not appear the
8 defendant would suffer any prejudice by the withdrawal of counsel. Further, there would be any harm
9 to the administration of justice. Finally, the withdrawal is unlikely to cause unreasonable delay to the
10 litigation because this case has not yet been scheduled and no trial has been set. Accordingly, the
11 factors set forth in *Canandaigua Wine Co.* weigh in favor of granting the motion to withdraw as
12 counsel for Plaintiff. *See id.*, 2009 WL 989141, at *1-2.

13 **IV. Conclusion and Order**

14 Mr. Dingwall followed the procedural and substantive requirements set forth in the California
15 Rules of Professional Conduct and the Local Rules in filing the motion to withdraw as Plaintiff’s
16 attorneys. In addition, the Court finds Plaintiff has knowingly and freely assented to the termination
17 of employment, given his failure to oppose the motion. Therefore, the Court is acting within its
18 discretion to grant the motion to withdraw. See LR 182. Accordingly, the Court **ORDERS**:

- 19 1. The motion to withdraw is **GRANTED**;
- 20 2. The Clerk’s Office **SHALL TERMINATE** Jeff R. Dingwall as “Lead Attorney to be
21 Noticed” for Plaintiffs in the Court docket, and update the docket to reflect Plaintiff
22 now appearing pro se and his last known contact information as follows:
23 Kevin Barnes
24 511 Arvin Street
25 Bakersfield, CA 93308
- 26 3. No later than **December 4, 2017**, Plaintiff **SHALL** notify the Court in writing whether
27 he intends to represent himself in this matter or secure substitute counsel, and whether
28 he intends to prosecute this action.

Plaintiff is advised that failure to comply with the Local Rules, Federal Rules, or any Court

1 **Order—including this Order— may result in dismissal of this action pursuant to Local Rule 110.**

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3 IT IS SO ORDERED.

4 Dated: November 20, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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