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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ENTREPRENEUR MEDIA, INC.,

Plaintiff,

No. MISC. S-10-55 JAM EFB

vs.

SCOTT SMITH dba  
ENTREPRENEURPR,

Defendant.

ORDER

This miscellaneous action, in which defendant is *pro se*, was referred to the undersigned under Eastern District of California Local Rule 302(a). Presently noticed for hearing on September 28, 2011 is third party Karen Mix’s counsel’s motion to withdraw. Dckt. No. 77. No opposition to the motion has been filed. For the following reasons, the undersigned vacates the hearing and grants the motion to withdraw.

BACKGROUND

In July 2003, judgment creditor and plaintiff herein Entrepreneur Media, Inc. (“EMI”) obtained a judgment in the Central District of California for trademark infringement plus a substantial award of attorneys’ fees against judgment debtor and defendant herein Scott Smith (“Smith”). In May 2010, EMI registered the judgment in this district because Smith resides here.

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1 On January 14, 2011, EMI filed a motion to appoint a receiver to sell certain domain  
2 names owned and/or controlled by Smith. Dckt. No. 24. Additionally, on February 11, Smith  
3 filed a motion to quash a third party subpoena that was issued to Chase Bank, along with a  
4 motion for a protective order and a motion for sanctions, arguing that the subpoena sought  
5 information related to a credit card account maintained by Smith's girlfriend, Karen Mix  
6 ("Mix"). Dckt. No. 29. Mix also joined in the motion to quash, motion for a protective order,  
7 and motion for sanctions. Dckt. No. 37.

8 The motions were heard on May 4, 2011, along with a motion for a stay pending appeal  
9 filed by Smith on shortened time. At the May 4, 2011 hearing, the court indicated that it  
10 intended to (1) deny EMI's motion to appoint a receiver without prejudice (since the court  
11 opined that EMI should at least proceed with the judgment debtor exam before seeking to sell  
12 Smith's domain names); (2) deny Smith's motion for a stay pending appeal (since a stay of the  
13 entire case was not warranted); and (3) continue the hearing on Smith and Mix's motions to  
14 quash, for a protective order, and for sanctions to June 22, 2011 so that those motions could be  
15 heard after the judgment debtor examination of Smith, which was at that time scheduled to occur  
16 on May 18 (since the court was concerned about the intrusiveness of the subpoena with regard to  
17 Mix's bank account, especially since EMI had not yet conducted a judgment debtor exam of  
18 Smith). Dckt. Nos. 59, 64.

19 Since the May 4 hearing, the court has granted Smith two extensions of the judgment  
20 debtor examination and his deadline for responding to a subpoena for documents issued by EMI.  
21 Accordingly, the judgment debtor examination is currently scheduled for October 19, 2011 and  
22 the hearing on Smith and Mix's motions to quash the subpoena, for a protective order, and for  
23 sanctions is currently set for November 16, 2011 at 10:00 a.m. in Courtroom No. 24.  
24 Additionally, on or before November 2, 2011, plaintiff is required to file a brief indicating  
25 whether the subpoena to Chase will be withdrawn as moot, and if not, indicating why the  
26 motions to quash the subpoena should not be granted, and on or before November 9, 2011,

1 defendant and/or Mix shall file a response to plaintiff's brief. The briefs are not to exceed fifteen  
2 pages. *See* Dckt. No. 72.

3 MOTION TO WITHDRAW

4 On August 29, 2011, attorney Alan Steinberg, who is counsel of record for Mix, filed a  
5 motion to withdraw as Mix's counsel. Dckt. No. 77. Steinberg contends that he should be  
6 permitted to withdraw because Mix (1) has been uncommunicative with Steinberg, (2) expressed  
7 dissatisfaction with Steinberg's representation of her, and (3) has failed to meet her obligations  
8 to pay for legal fees and costs incurred in this matter, despite receiving monthly invoices. Dckt.  
9 No. 77-1; Steinberg Decl., Dckt. No. 77-2, ¶¶ 4-11. Steinberg contends that "[t]here will be no  
10 prejudice to the Court, the parties or [] Mix in allowing counsel to withdraw." Dckt. No. 77-1 at  
11 1.

12 As required by Local Rule 182(d), Steinberg provided notice to Mix and all other parties  
13 who have appeared in this action, and filed a declaration stating Mix's current or last known  
14 address and the efforts made to notify Mix of the motion to withdraw. Steinberg Decl. ¶ 12;  
15 Supp. Steinberg Decl., Dckt. No. 78, ¶ 2. Nonetheless, no party has filed an opposition or  
16 statement of non-opposition to the motion.<sup>1</sup>

17 As provided in Local Rule 182(d), "[w]ithdrawal as attorney is governed by the Rules of  
18 Professional Conduct of the State Bar of California, and the attorney shall conform to the  
19 requirements of those Rules." California Rule of Professional Conduct 3-700(C)(1) provides  
20 that an attorney may withdraw when, among other things, the client "renders it unreasonably  
21 difficult for the member to carry out the employment effectively" or "breaches an agreement or  
22 obligation to the member as to expenses or fees." Cal. Rules Prof. Conduct 3-700(C)(1)(d), (f).

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24 <sup>1</sup> Local Rule 230(c) provides that opposition to the granting of a motion, or a statement of  
25 non-opposition thereto, must be filed and served no later than fourteen days preceding the  
26 noticed hearing date or, in this instance, by September 14, 2011. Local Rule 230(c) further  
provides that "[n]o party will be entitled to be heard in opposition to a motion at oral arguments  
if opposition to the motion has not been timely filed by that party."

1 Here, Steinberg declares that Mix's lack of communication with him and her dissatisfaction with  
2 his services render it unreasonably difficult for him to carry out the employment effectively, and  
3 that Mix has breached an obligation to pay for legal fees and costs incurred in this matter.  
4 Additionally, Steinberg has "taken reasonable steps to avoid reasonably foreseeable prejudice to  
5 the rights of [Mix], including giving due notice to [Mix and] allowing time for employment of  
6 other counsel . . . ." Cal. Rules Prof. Conduct 3-700(A)(2). The hearing on Mix's motion to  
7 quash is not scheduled to be heard until November 16, 2011, and Mix's supplemental brief  
8 regarding the motion to quash is not due until November, 9, 2011. Therefore, Steinberg's  
9 request to withdraw as Mix's counsel will be granted.<sup>2</sup>

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The September 28, 2011 hearing on Steinberg's motion to withdraw as counsel for  
12 Mix, Dckt. No. 77, is vacated.

13 2. Steinberg's motion to withdraw as counsel for Mix, Dckt. No. 77, is granted.

14 3. Mix will hereafter be proceeding *pro se* in this action, and any filings, notices, or  
15 correspondence shall be served upon her at 7824 Copper Fox Court, Citrus Heights, California  
16 95610.<sup>3</sup>

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22 <sup>2</sup> Steinberg is reminded of his obligation to "promptly release to the client, at the request  
23 of the client, all the client papers and property," subject to any protective order or non-disclosure  
agreement. Cal. Rules Prof. Conduct 3-700(D)(1).


24 <sup>3</sup> The October 19, 2011 judgment debtor examination and the November 16, 2011 hearing  
25 on Smith and Mix's motions to quash the subpoena issued by EMI to Chase Bank, for a  
protective order, and for sanctions, Dckt. Nos. 29 and 37, remain on calendar. Also remaining  
26 on calendar is EMI's motion for assignment of rights, a restraining order, and turnover order,  
which is noticed for hearing on October 26, 2011, Dckt. No. 79.

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4. The Clerk is directed to serve a copy of this order on Mix at 7824 Copper Fox Court,  
Citrus Heights, California 95610.

SO ORDERED.

Dated: September 20, 2011.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE