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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ST. MATTHEWS BAPTIST CHURCH OF
LIVERMORE, INC.,

Plaintiff,

v.

FOUNDATION CAPITAL RESOURCES,
INC.,

Defendant.

Case No. [13-cv-05765-MEJ](#)

**ORDER RE: MOTION BY
PLAINTIFF'S COUNSEL TO
WITHDRAW AS COUNSEL OF
RECORD**

Re: Dkt. No. 55

INTRODUCTION

On January 15, 2015, Edwin C. Schreiber, counsel for Plaintiff St. Matthews Baptist Church of Livermore, filed a Motion for Schreiber & Schreiber, Inc. to Withdraw as Counsel of Record. Dkt. No. 55. The Court finds this matter suitable for disposition without oral argument and VACATES the February 26, 2015 hearing. *See* Fed. R. Civ. P. 78(b); Civil L.R. 7-1(b).

Schreiber states that St. Matthews has not paid attorney's fees in over six months, the unpaid fees exceed \$40,000, and the unpaid expenses are difficult to manage for a three-member law firm. Schreiber Decl. ¶ 2, Dkt. No. 55. Schreiber also states that St. Matthews has refused to obtain a new attorney. *Id.* Schreiber points out that mail to St. Matthew's last known address has been returned undelivered, but Federal Express packages to the same last known address have been delivered. *Id.*

St. Matthews did not respond, but Defendant Foundation Capital Resources, Inc. filed an Opposition. Dkt. No. 56. Defendant maintains that it will be prejudiced if Schreiber & Schreiber is permitted to withdraw, given that case management deadlines, including discovery and dispositive motions, are fast approaching. Opp'n at 4. Specifically, because St. Matthews is a corporation and cannot appear without counsel,¹ Defendant argues that it has no means of

¹ "A corporation, unincorporated association, partnership or other such entity may appear only through a member of the bar of this Court." Civ. L.R. 3-9(b).

1 obtaining discovery responses or serving moving papers on St. Matthews. *Id.* Defendant also
2 argues that any delay in the resolution of this action is unacceptable, because it has already been
3 engaged in litigation with St. Matthews since September of 2011, and what began as a simple
4 unlawful detainer action has become an expensive and time consuming litigation which has now
5 included four lawsuits, including the instant action. *Id.*

6 If the Court is inclined to grant the motion to withdraw, Defendant requests that it be
7 subject to the condition that papers may continue to be served on counsel for forwarding purposes,
8 unless and until St. Matthews appears by other counsel. *Id.* Defendant also requests that St.
9 Matthews be granted a limited amount of time to obtain new counsel, after which the matter
10 should be dismissed without prejudice, allowing St. Matthews to re-file if it obtains counsel and
11 the statute of limitations has not run.

12 **LEGAL STANDARD**

13 The Court’s Civil Local Rules authorize an attorney to withdraw as counsel of record if:
14 (1) written notice has been given reasonably in advance to the client and all other parties in the
15 action; and (2) the attorney obtains leave of Court. Civ. L.R. 11-5(a). However, “[w]hen
16 withdrawal by an attorney from an action is not accompanied by simultaneous appearance of
17 substitute counsel or agreement of the party to appear pro se, leave to withdraw may be subject to
18 the condition that papers may continue to be served on counsel for forwarding purposes . . . unless
19 and until the client appears by other counsel or pro se.” Civ. L.R. 11-5(b).

20 In this district, the conduct of counsel, including the withdrawal of counsel, is governed by
21 the standards of professional conduct required of members of the State Bar of California. Civ.
22 L.R. 11-4(a)(1); *see Nehad v. Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California
23 Rules of Professional Conduct to attorney withdrawal). California Rule of Professional Conduct
24 3-700(C)(1)(f) allows withdrawal when a client “breaches an agreement or obligation to the
25 [attorney] as to expenses or fees.” *See also Darby v. City of Torrance*, 810 F. Supp. 275, 276
26 (C.D. Cal. 1992) (failure of a client to pay attorney’s fees is grounds for an attorney to withdraw).
27 Moreover, California Rule of Professional Conduct 3-700(C)(1) (d) allows withdrawal where the
28 client “renders it unreasonably difficult for [counsel] to carry out the employment effectively.”

1 Before counsel can withdraw, counsel must comply with California Rule of Professional
2 Conduct 3-700(A)(2), which provides that counsel shall not withdraw from employment until the
3 member has taken steps to avoid reasonably foreseeable prejudice to the rights of the client,
4 including giving due notice to the client, allowing time for employment of other counsel,
5 complying with rule 3-700(D) (regarding papers), and complying with applicable laws and rules.
6 *El Hage v. U.S. Sec. Assocs., Inc.*, 2007 WL 4328809, at *1 (N.D. Cal. Dec. 10, 2007).

7 The decision to permit counsel to withdraw is within the sound discretion of the trial court.
8 *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). Courts consider several factors
9 when considering a motion for withdrawal, including: (1) the reasons counsel seeks to withdraw;
10 (2) the possible prejudice that withdrawal may cause to other litigants; (3) the harm that
11 withdrawal might cause to the administration of justice; and (4) the extent to which withdrawal
12 will delay resolution of the case. *Deal v. Countrywide Home Loans*, 2010 WL 3702459, at *2
13 (N.D. Cal. Sept. 15, 2010).

14 **DISCUSSION**

15 Here, Schreiber & Schreiber seeks to withdraw on the ground that St. Matthews has
16 breached the attorney-client fee agreement executed by the parties. In support of its motion to
17 withdraw, Schreiber & Schreiber submitted the declaration of Edwin C. Schreiber, St. Matthew's
18 counsel of record. Dkt. No. 55 at 3. Schreiber attests that he has communicated by email with St.
19 Matthews within the last 30 days, and that the motion was sent to St. Matthews by United States
20 Mail, Federal Express, and email. Schreiber Decl. ¶ 2.

21 The Court finds that St. Matthew's failure to pay attorney's fees constitutes good cause for
22 withdrawal. *See, e.g., Waters v. E.P. Architectural Builders, Inc.*, 2011 WL 482769, at *2 (N.D.
23 Cal. Feb. 7, 2011); *U.A. Local 342 Joint Labor-Mgmt. Comm. v. S. City Refrigeration, Inc.*, 2010
24 WL 1293522, at *3 (N.D. Cal. Mar. 31, 2010). In addition, the Court finds that Schreiber &
25 Schreiber has complied with the requirements of Civil Local Rule 11-5(a) and the California Rules
26 of Professional Conduct. Schreiber & Schreiber has provided reasonable advance notice to St.
27 Matthews and all the other parties that have appeared in this case of its intention to withdraw as
28 counsel of record. The Court also finds that Schreiber & Schreiber has taken steps to avoid

