

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

FORRESTSTREAM HOLDINGS
LIMITED,

Plaintiff,

v.

GREGORY SHENKMAN,
Defendant.

Case No. 16-cv-01609-LB

**ORDER GRANTING WALTER C.
COOK’S MOTION TO WITHDRAW
AS ATTORNEY FOR GREGORY
SHENKMAN**

Re: ECF No. 364–366

INTRODUCTION

Walter C. Cook, counsel for the defendant Gregory Shenkman, moves to withdraw as Mr. Shenkman’s attorney because — among other reasons — Mr. Shenkman has made it unreasonably difficult for him to carry out his role effectively and is not paying him.¹ Plaintiff Forreststream Holdings Ltd. does not oppose withdrawal, provided that withdrawal does not complicate Forreststream’s being able to serve Mr. Shenkman with documents and filings. Mr. Cook served his motion to withdraw on Mr. Shenkman.²

The court held two hearings — on February 7, 2019, and on March 7, 2019 — at which Mr. Cook, Mr. Shenkman, and Forreststream were all present. As discussed at the hearings, the court

¹ Cook Decl. – ECF No. 365 at 2–3 (¶¶ 5–13). Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Cook Mot. to Withdraw Proof of Service – ECF No. 365 at 27.

1 grants the motion to withdraw for the reasons advanced by Mr. Cook and finds that he has taken
2 adequate steps to avoid foreseeable harm caused by his withdrawal.

3 4 ANALYSIS

5 1. Governing Law

6 Under Civil Local Rule 11-5(a), “[c]ounsel may not withdraw from an action until relieved by
7 order of Court after written notice has been given reasonably in advance to the client and to all
8 other parties who have appeared in the case.” The Local Rules further provide that if the client
9 does not consent to the withdrawal and no substitution of counsel is filed, the motion to withdraw
10 will be granted on the condition that all papers from the court and from the opposing party will be
11 served on the current (and withdrawing) counsel to forward to the client until the client appears
12 through new counsel or pro se (if the client is not a corporate defendant). N.D. Cal. Civ. L.R.
13 11-5(b).

14 Withdrawal is governed by the California Rules of Professional Conduct. *See Nehad v.*
15 *Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to
16 attorney withdrawal); *j2 Global Commc’ns, Inc. v. Blue Jay, Inc.*, No. C 08-4254 PJH, 2009 WL
17 464768, at *1 (N.D. Cal. Feb. 24, 2009) (citing *Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*,
18 809 F. Supp. 1383, 1387 (N.D. Cal. 1992)). California Rule of Professional Conduct 3-700(C) sets
19 forth several grounds under which an attorney may request permission to withdraw, including the
20 following: (1) a client (a) insists on presenting a claim or defense not warranted under the law or a
21 good-faith extension of it, (b) seeks to pursue an illegal course of conduct, (c) insists that the
22 attorney pursue an illegal course of conduct or conduct barred by the ethics rules, (d) makes it
23 unreasonably difficult for the attorney to carry out his employment effectively, (e) insists (in a
24 matter not pending before a tribunal) that the attorney act contrary to the attorney’s judgment or
25 advice, or (f) breaches an agreement or obligation as to fees; (2) the attorney’s continued
26 employment is likely to breach the ethics rules; (3) the inability to work with co-counsel indicates
27 that the best interests of the client likely will be served by withdrawal; (4) the member’s mental or
28 physical condition renders it difficult for the member to carry out the employment effectively;

1 (5) the client knowingly and freely assents to termination of the employment; or (6) the attorney
2 believes in good faith (in proceeding pending before a tribunal) that the tribunal will find other
3 good cause for the withdrawal.

4 Before counsel can withdraw, counsel must comply with California Rule of Professional
5 Conduct 3-700(A)(2), which provides that counsel must not withdraw from employment until the
6 member has taken steps to avoid reasonably foreseeable prejudice to the rights of the client,
7 including giving due notice to the client, allowing time for employment of other counsel,
8 complying with Rule 3-700(D) (regarding papers), and complying with applicable laws and rules.
9 *El Hage v. U.S. Sec. Assocs., Inc.*, No. C06-7828 TEH, 2007 WL 4328809, at *1 (N.D. Cal. Dec.
10 10, 2007).

11 The decision to permit counsel to withdraw is within the sound discretion of the trial court.
12 *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir.2009). Courts consider several factors when
13 considering a motion for withdrawal, including (1) the reasons counsel seeks to withdraw, (2) the
14 possible prejudice that withdrawal may cause to other litigants, (3) the harm that withdrawal might
15 cause to the administration of justice, and (4) the extent to which withdrawal will delay resolution
16 of the case. *Deal v. Countrywide Home Loans*, No. C 09-01643 SBA, 2010 WL 3702459, at *2
17 (N.D. Cal. Sept. 15, 2010).

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19 **2. Application**

20 The court grants the motion to withdraw because Mr. Shenkman (1) has made it unreasonably
21 difficult for Mr. Cook to carry out his employment effectively — as reflected in Mr. Cook’s
22 declaration³ and in the court’s earlier order sanctioning Mr. Shenkman, *Forreststream Holdings*
23 *Ltd. v. Shenkman*, No. 16-cv-01609-LB, 2018 WL 6522218 (N.D. Cal. Dec. 11, 2018)⁴ — and
24 (2) has breached his obligation to pay Mr. Cook, both of which are grounds for withdrawal under
25

26 _____
27 ³ Cook Decl. – ECF No. 365.

28 ⁴ Order – ECF No. 345.

1 California Rule of Professional Conduct 3-700(C). Mr. Cook has taken available steps to avoid
2 prejudice to Mr. Shenkman by giving him notice.⁵

3
4 **CONCLUSION**

5 The court grants Mr. Cook's motion to withdraw as attorney for Mr. Shenkman.

6 Because Mr. Shenkman will now be proceeding pro se, at the March 7, 2019 hearing the court
7 provided him with a copy of the district court's handbook *Representing Yourself in Federal Court:*
8 *A Handbook for Pro Se Litigants* and a flyer for the Legal Help Center, a free service of the
9 Volunteer Legal Services Program. The court attaches another copy of the handbook and flyer
10 here.

11 Mr. Shenkman is ordered to (1) file an appearance in this case that states his current address
12 and (2) keep his address current and up-to-date with the court on an ongoing basis. The court will
13 not excuse any failure by Mr. Shenkman to keep his address current and up-to-date and will deem
14 Mr. Shenkman to have constructive knowledge of any documents or filings properly served upon
15 him at the address he has on file with the court. (Until Mr. Shenkman enters an appearance, Mr.
16 Cook must accept service of all papers from Forreststream and the court and must forward them to
17 Mr. Shenkman.)

18 Nothing in this order relieves Mr. Shenkman of any obligation imposed on him by any prior
19 court order.

20 Mr. Cook is ordered to serve a copy of this order on Mr. Shenkman.

21
22 **IT IS SO ORDERED.**

23 Dated: March 8, 2019

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25 LAUREL BEELER
26 United States Magistrate Judge

27 ⁵ Cook Mot. to Withdraw Proof of Service – ECF No. 366 at 5; Cook Proof of Service – ECF No. 370.
28 Additionally, Mr. Shenkman attended in person both the February 7, 2019 and the March 7, 2019
hearings where Mr. Cook's motion was discussed.