

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 WALNUT CREEK MANOR, LLC,

No. C 07-5664 CW

5 Plaintiff,

ORDER GRANTING
MOTION TO WITHDRAW
(Docket No. 298)

6 v.

7 MAYHEW CENTER, LLC, and DEAN
8 DUNIVAN,

9 Defendants.
10 _____/

11 The law firm of Burnham Brown moves to withdraw as counsel
12 for Defendants Dean Dunivan and Mayhew Center, LLC. Defendant
13 Dunivan, who serves as manager and majority owner of Mayhew
14 Center, opposes the motion.¹ The Court finds the matter suitable
15 for decision without oral argument and now grants the motion.

16 BACKGROUND

17 The parties entered into a settlement agreement in 2010.
18 Under the terms of that agreement, Defendants were required to
19 clean up and abate the chemical contamination that they caused on
20 Plaintiff's property by November 2012. See Docket No. 273,
21 Stipulation & Injunction, at 8. After Defendants failed to meet
22 this requirement, the Court extended their deadline to do so until
23 July 31, 2013. Docket No. 287. To date, Defendants have not
24 cleaned up the contamination on Plaintiff's property. See Docket

25 ¹ Dunivan asserts that he filed his opposition on behalf of
26 himself, his wife, and Mayhew Center. However, his wife is not a party
27 in this litigation. Furthermore, because Dunivan is proceeding pro se,
28 the local rules preclude him from representing Mayhew Center. Civil
L.R. 3-9(b) ("A corporation, unincorporated association, partnership or
other such entity may appear only through a member of the bar of this
Court.").

1 No. 304, Defs.' Mot. for Extension of Time to Complete Cleanup &
2 Abatement, at 2.

3 Burnham Brown filed the instant motion to withdraw in June
4 2013. An attorney with the firm, Charles Alfonzo, asserts that
5 the firm's relationship with Dunivan "has significantly
6 deteriorated to the point where it is now impossible for Counsel
7 to continue to represent [Mayhew Center and Dunivan] and to take
8 the necessary steps to continue to diligently pursue and protect
9 their best interests." Docket No. 298-1, Declaration of Charles
10 A. Alfonzo ¶ 3. Alfonzo also asserts that Defendants owe the firm
11 "in excess of \$100,000 all of which has not been paid after
12 repeated requests to do so." Id. ¶ 2.

13 DISCUSSION

14 In a civil case, counsel may not withdraw from an action
15 until relieved by court order. See Civil L.R. 11-5(a). Rule
16 3-700(C) of the California Rules of Professional Conduct provides
17 that an attorney

18 may not request permission to withdraw in matters pending
19 before a tribunal, and may not withdraw in other matters,
20 unless such request or such withdrawal is because:

- 21 (1) the client
- 22 (a) insists upon presenting a claim or defense that is
23 not warranted under existing law and cannot be
24 supported by good faith argument for an extension,
25 modification, or reversal of existing law, or . . .
 - 26 (d) by other conduct renders it unreasonably difficult
27 for the member to carry out the employment
28 effectively, or . . .
 - (f) breaches an agreement or obligation to the
[attorney] as to expenses or fees. . . .

Here, Burnham Brown has presented evidence that Dunivan has
failed to pay a significant amount of money to the firm for

1 services rendered over the past year. The firm has also presented
2 evidence that its fractured relationship with Dunivan makes it
3 "unreasonably difficult" to continue representing him. This is
4 sufficient to justify withdrawal under Rule 3-700(C).

5 Dunivan does not dispute that he has failed to pay Burnham
6 Brown. In fact, he concedes in his opposition that he currently
7 owes the firm over \$120,000. Docket No. 302, Opp. 8. He argues,
8 however, that Burnham Brown's motion to withdraw is untimely.
9 Dunivan contends that, because he has failed to pay his legal
10 bills for over a year, the firm should have moved to withdraw
11 several months ago. Specifically, he asserts that the firm should
12 have moved to withdraw in December 2012, when his unpaid legal
13 bills totaled roughly \$98,000. Dunivan contends that the firm
14 should have notified the Court of his outstanding debt at that
15 time.

16 This argument fails for several reasons. First, the Rules of
17 Professional Conduct do not require that an attorney move to
18 withdraw within a limited time period after his or her client
19 fails to make a payment. Burnham Brown may have reasonably
20 believed that Dunivan would eventually pay his outstanding debt
21 and only decided to withdraw after Dunivan's debt continued to
22 grow. Second, Burnham Brown's motion to withdraw would have been
23 more problematic in December 2012 because Dunivan's motion for an
24 extension of time to complete cleanup and abatement was still
25 pending at that time.² Third and finally, Dunivan's failure to

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27 ² What's more, if Dunivan wished to notify the Court about his
28 outstanding debt at that time, he could have directed his attorneys to
do so -- or done so himself -- at the hearing on that motion in January
2013.

1 pay is not the only basis Burnham Brown has asserted for
2 withdrawing: as noted above, the firm also alleges that its
3 relationship with Dunivan has "deteriorated to the point where it
4 is now impossible to represent" him and Mayhew Center. Alfonzo
5 Decl. ¶ 3. Dunivan has not presented any evidence or argument to
6 refute this assertion and, as such, has not shown that the firm's
7 motion is untimely.

8 Dunivan next argues that his debt to the firm does not
9 provide a basis for withdrawal because he never believed he was
10 responsible for paying Burnham Brown's fees. This argument, too,
11 is unpersuasive. Dunivan's agreement with the firm -- which
12 refers to Dunivan as "Client" and Burnham Brown as "Attorney" --
13 expressly provides, "Client agrees to pay for legal services" at
14 the rates outlined in the contract. Def.'s Ex. 1,³ at 2 (emphasis
15 added). It also states, "Client shall pay Attorney's statements
16 within thirty (30) days of each statement's date." Id. (emphasis
17 added). Finally, the contract provides, "In the event that Client
18 fails to meet its payment obligations under this Contract,
19 Attorney reserves the right to stop work on Client's matter until
20 such time as Client satisfies its payment obligations as set forth
21 above." Id. (emphasis added).

22 Although the contract names Dr. Clifford Tschetter -- a non-
23 party in this suit -- as Dunivan's guarantor, this does not
24 relieve Dunivan of his obligations under the contract. The
25 contract plainly states that Dunivan was responsible for paying
26 the firm's fees. Even if Dunivan and Tschetter had some

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28 ³ Although Dunivan refers to this contract as "Exhibit 3" in his
opposition brief, he has labeled the document, "Exhibit 1."

1 independent understanding that Tschetter would pay Dunivan's legal
2 fees, as Dunivan alleges, this would not change the fact that
3 Burnham Brown has not been compensated for the services it has
4 provided. Tschetter is not a party to this case and any dispute
5 that Dunivan has with him regarding Dunivan's fee agreement with
6 the firm, including any guarantees Tschetter may have made
7 therein, is a matter for state court. What matters here is that
8 Dunivan and Mayhew Center breached their payment obligations under
9 their contract with Burnham Brown; this is sufficient grounds for
10 withdrawal. Cal. R. Prof. Conduct 3-700(C)(1)(f).

11 Finally, Dunivan contends that he and Mayhew Center will be
12 prejudiced by Burnham Brown's withdrawal. However, he has not
13 presented any evidence to support this claim. This case was
14 closed in 2010 after the parties reached a settlement agreement
15 and the Court has already granted Defendants an extension of time
16 to satisfy their obligations under that agreement. See Docket No.
17 287. Dunivan has not explained how Burnham Brown's withdrawal at
18 this point will undermine Defendants' efforts to comply with their
19 remaining obligations under the settlement agreement.

20 CONCLUSION

21 For the reasons set forth above, Burnham Brown's motion to
22 withdraw (Docket No. 298) is GRANTED. Burnham Brown's motion for
23 an in camera hearing or leave to file documents under seal in
24 support of its motion to withdraw (Docket No. 312) is DENIED as
25 moot. Defendant Dunivan's request for an in camera hearing and
26 for leave to subpoena Tschetter and Eric Haas is DENIED. Pursuant
27 to Civil Local Rule 3-9(b),
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Defendant Mayhew Center may not appear unless represented by a member of the bar of this Court.

IT IS SO ORDERED.

Dated: 8/12/2013


CLAUDIA WILKEN
United States District Judge