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4 UNITED STATES DISTRICT COURT
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA
6 OAKLAND DIVISION

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8 IRMA RAMIREZ and DAREN
HEATHERLY,

9 Plaintiffs,

10 vs.

11 VIDEO WAVE OF NOE VALLEY;
12 MICHAEL KNYSH; LESLIE KNYSH;
and COLIN C. HUTTON and GWEN
13 SANDERSON, individuals dba VIDEO
WAVE OF NOE VALLEY,

14 Defendants.

Case No: C 11-2779 SBA

**ORDER GRANTING MOTION
TO WITHDRAW**

Docket 16.

15
16 The parties are presently before the Court on Corfee Stone & Associates' ("CSA")
17 motion to withdraw as counsel of record for Defendants Colin Hutton, Gwen Sanderson,
18 and Video Wave of Noe Valley (collectively "Video Wave"). Dkt. 16. No opposition to
19 the motion has been filed. Having read and considered the papers filed in connection with
20 this matter and being fully informed, the Court hereby GRANTS CSA's motion to
21 withdraw, for the reasons stated below. The Court, in its discretion, finds this matter
22 suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R.
23 7-1(b).

24 **I. DISCUSSION**

25 The Court's Civil Local Rules authorize an attorney to withdraw as counsel of record
26 if: (1) written notice has been given reasonably in advance to the client and all other parties
27 in the action; and (2) the attorney obtains leave of Court. Civ. L.R. 11-5(a); see Darby v.
28 City of Torrance, 810 F.Supp. 275, 276 (C.D. Cal. 1992) (an attorney representing a client

1 may not withdraw except by leave of court). In addition, the Local Rules provide that
2 "[w]hen withdrawal by an attorney from an action is not accompanied by simultaneous
3 appearance of substitute counsel or agreement of the party to appear *pro se*, leave to
4 withdraw may be subject to the condition that papers may continue to be served on counsel
5 for forwarding purposes . . . , unless and until the client appears by other counsel or *pro se*."
6 Civil L.R. 11-5(b).

7 In this district, the conduct of counsel, including the withdrawal of counsel, is
8 governed by the standards of professional conduct required of members of the State Bar of
9 California. Civ. L.R. 11-4(a)(1); see Nehad v. Mukasey, 535 F.3d 962, 970 (9th Cir. 2008)
10 (applying California Rules of Professional Conduct to attorney withdrawal). California
11 Rule of Professional Conduct 3-700(C)(1)(f) allows withdrawal when a client "breaches an
12 agreement or obligation to the [attorney] as to expenses or fees." See also Darby, 810
13 F.Supp. at 276 (failure of a client to pay attorneys' fees is grounds for an attorney to
14 withdraw).

15 Moreover, California Rule of Professional Conduct 3-700(C)(1) (d) allows
16 withdrawal where the client "renders it unreasonably difficult for [counsel] to carry out the
17 employment effectively." However, before counsel can withdraw, counsel must comply
18 with California Rule of Professional Conduct 3-700(A)(2), which provides that counsel
19 shall not withdraw from employment until the member has taken reasonable steps to avoid
20 reasonably foreseeable prejudice to the rights of the client, including giving due notice to
21 the client, allowing time for employment of other counsel, complying with rule 3-700(D)
22 (regarding papers), and complying with applicable laws and rules. See El Hage v. U.S.
23 Sec. Assocs., Inc., 2007 WL 4328809, at *1 (N.D. Cal. 2007). The decision to permit
24 counsel to withdraw is within the sound discretion of the trial court. See United States v.
25 Carter, 560 F.3d 1107, 1113 (9th Cir. 2009).

26 Here, CSA seeks to withdraw on the ground that Video Wave has breached the
27 attorney-client fee agreement executed by the parties. CSA asserts that it has become
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1 impossible for it to continue to represent Video Wave due to Video Wave's "failure and
2 inability to pay for legal services and fees."

3 In support of its motion to withdraw, CSA submitted the declaration of Catherine
4 Corfee ("Corfee"), an attorney with CSA. Corfee Decl., Dkt. 16-1. CSA also submitted a
5 declaration from the owners of Video Wave, Colin Hutton ("Hutton") and Gwen Sanderson
6 ("Sanderson"). Hutton & Sanderson Decl., Dkt. 16-2. In her declaration, Corfee attests
7 that Video Wave and all the parties in this action have been informed of CSA's intent to
8 withdraw as counsel of record for Video Wave. Corfee Decl. ¶¶ 3, 5. In their declaration,
9 Hutton and Sanderson attest that they have "run out of litigation money" and that they agree
10 with CSA's motion to withdraw as counsel of record. Hutton & Sanderson Decl. ¶¶ 1-2.

11 The Court finds that Video Wave's failure to pay attorneys' fees constitutes good
12 cause for withdrawal. In addition, the Court finds that CSA has complied with the
13 requirements of Civil Local Rule 11-5(a) and the California Rules of Professional Conduct.
14 CSA has provided notice reasonably in advance to Video Wave and all the other parties
15 that have appeared in this case of its intention to withdraw as counsel of record for Video
16 Wave. As of May 23, 2012, all parties to this action have been notified of CSA's intent to
17 withdraw. Dkt. 16; see Corfee Decl. ¶ 5; Hutton & Sanderson Decl. ¶ 1. The Court also
18 finds that CSA has taken steps to avoid reasonably foreseeable prejudice to the rights of
19 Video Wave by giving due notice of its intent to withdraw and by allowing Video Wave
20 time to obtain substitute counsel. Indeed, Video Wave has obtained substitute counsel. On
21 June 4, 2012, a substitution of attorney was filed, indicating that Video Wave is now
22 represented by the Law Offices of Christopher D. Denny. Dkt. 19. Accordingly, the Court
23 concludes that withdrawal is appropriate.

24 **II. CONCLUSION**


25 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 26 1. CSA's motion to withdraw as counsel of record for Video Wave is
27 GRANTED.
28 2. This Order terminates Docket 16.

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IT IS SO ORDERED.

Dated: 6/26/12



SAUNDRA BROWN ARMSTRONG
United States District Judge