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UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

POGA MGT PTNRS LLC,

No. C 12-06087 SBA (LB)

Plaintiff,

**SECOND ORDER ON MOTION TO
WITHDRAW**

v.

[Re: ECF Nos. 59, 60]

MEDFILER LLC et al.,

Defendants.

INTRODUCTION

Plaintiff is represented by attorney Joseph Wilson, who moved to withdraw on September 12, 2014, on the ground that there has been a “total breakdown in the attorney-client relationship, such that Counsel for Plaintiff is in conflict with Plaintiff, cannot carry out further representation, and must mandatorily withdraw.” Motion, ECF No. 59 at 3. Defendants respond that they do not have facts to oppose the motion (given that Plaintiff’s counsel did not explain the context for the breakdown), but they are concerned that a delay will prejudice the timing of the summary judgment motion that they contemplate filing shortly. *See* Response, ECF No. 61 at 2. The district court referred the matter to the undersigned on September 17, 2014. *See* Order, ECF No. 63.

The court previously granted the matter to shorten time and set the matter for hearing on Thursday, October 2, 2014. *See* 9/21/14 Order, ECF No. 66. That order directed counsel and plaintiff to appear personally. *See id.* The order also set forth the legal standard for withdrawal, and

1 the court directed Mr. Wilson to serve a copy of the order on his client before the hearing. *See id.*

2 At the hearing on October 2, 2014, counsel appeared, but Plaintiff did not. *See* Minute Order,
3 ECF No. 74. Plaintiff’s counsel represented that he served his client, told him about the time of the
4 hearing the night before by email, and received an emailed acknowledgment. He also filed a proof
5 of service. *See* ECF No. 73.

6 Based on Plaintiff’s non-appearance, the court reset the matter for hearing on October 9, 2014, at
7 11 a.m. in Courtroom C, 15th Floor, United States District Court, 450 Golden Gate Avenue, San
8 Francisco, California, 94102. As discussed below, the court orders counsel and Plaintiff to
9 personally appear at the hearing, and the court orders Plaintiff’s counsel to serve Plaintiff with a
10 copy of this order.

11 The next section reiterates the standards for withdrawal of counsel in the next section.

12 **STANDARD FOR WITHDRAWAL OF COUNSEL**

13 Under Civil Local Rule 11-5(a), “[c]ounsel may not withdraw from an action until relieved by
14 order of Court after written notice has been given reasonably in advance to the client and to all other
15 parties who have appeared in the case.” The local rules further provide that if the client does not
16 consent to the withdrawal and no substitution of counsel is filed, the motion to withdraw shall be
17 granted on the condition that all papers from the court and from the opposing party shall continue to
18 be served on that party’s current counsel for forwarding purposes until the client appears by other
19 counsel or *pro se* if the client is not a corporate defendant. N.D. Cal. Civ. L.R. 11-5(b).

20 Withdrawal is governed by the California Rules of Professional Conduct. *See Nehad v.*
21 *Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to
22 attorney withdrawal); *j2 Global Commc’ns, Inc. v. Blue Jay, Inc.*, No. C 08-4254 PHJ, 2009 WL
23 464768, at *1 (N.D. Cal. Feb. 24, 2009) (citation omitted). California Rule of Professional Conduct
24 3-700(B) sets forth grounds requiring mandatory withdrawal, including the following: (1) a client’s
25 bringing a harassing or malicious lawsuit or (2) the attorney’s continued employment would violate
26 California’s ethics rules. Rule 3-700(C) sets forth several grounds under which an attorney may
27 request permission to withdraw, including the following: (1) a client (a) insists on presenting a claim
28 or defense not warranted under the law or a good-faith extension of it, (b) seeks to pursue an illegal

1 course of conduct, (c) insists that the attorney pursue an illegal course of conduct or conduct barred
2 by the ethics rules, (d) makes it unreasonably difficult for the attorney to carry out his employment
3 effectively, (e) insists (in a matter not pending before a tribunal) that the attorney act contrary to the
4 attorney's judgment or advice, or (f) breaches an agreement or obligation as to fees; (2) the
5 attorney's continued employment is likely to breach the ethics rules; or (3) the attorney believes in
6 good faith (in proceeding pending before a tribunal) that the tribunal will find other good cause for
7 the withdrawal.

8 The decision to grant or deny a motion to withdraw is discretionary with the court, and the court
9 can use "its discretion to deny an attorney's request to withdraw where such withdrawal would work
10 an injustice or cause undue delay in the proceeding." *Gong v. City of Alameda*, No. C 03-05495
11 THE, 2008 WL 160964, at *1 (N.D. Cal. Jan. 8, 2008) (citing *Mandel v. Superior Court*, 67 Cal.
12 App. 3d 1, 4 (1977)) (no prejudice or undue delay to client where counsel provided sufficient notice
13 of his intent to withdraw and where no trial date had yet been set in the case).

14 The court notes that Plaintiff's counsel gave notice under Civil Local Rule 11-5 of his intent to
15 withdraw to his client and Defendants' counsel. *See* Wilson Decl., ECF No. 59, at 5.

16 **SERVICE ON PLAINTIFF AND CONSEQUENCES OF NOT APPEARING PERSONALLY**

17 Plaintiff's counsel must serve a copy of this order on his client and must file proof of service.
18 Plaintiff must appear personally at the hearing set for October 9, 2014, at 11 a.m. in Courtroom C,
19 15th Floor, United States District Court, 450 Golden Gate Avenue, San Francisco, California,
20 94102. Plaintiff is warned that if he fails to appear at the hearing, he risks dismissal of his case for
21 failure to prosecute it. The other issue is that Defendants have counterclaimed against Plaintiff. *See*
22 Answer and Counterclaims, ECF No. 55. Defendants stipulated on the record on October 2, 2014
23 that they would extend the time to answer the counterclaims at least through the hearing on October
24 9, 2014. But Plaintiff will need to respond, and if he does not, he risks Defendants' moving for
25 default judgment against him.

26 **CONCLUSION**

27 The court resets the hearing on the motion to withdraw for October 9, 2014, at 11 a.m. in
28 Courtroom C, 15th Floor, United States District Court, 450 Golden Gate Avenue, San Francisco,

1 California, 94102., orders Plaintiff to appear personally at it, and orders counsel to serve his client
2 and file proof of service.

3 **IT IS SO ORDERED.**

4 Dated: October 3, 2014



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6 LAUREL BEELER
7 United States Magistrate Judge

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