

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ZHIXUN SAMUEL SUN,)	Case No.: 10-CV-01055-LHK
)	
Plaintiff,)	ORDER GRANTING CONDITIONAL
v.)	WITHDRAWAL OF COUNSEL
)	
RICKENBACKER COLLECTION dba)	
RICKENBACKER GROUP,)	
)	
Defendant.)	
)	

Counsel for Defendant Rickenbacker Collection has moved to withdraw as counsel in this matter. Although Defendant has consented to the withdrawal, Plaintiff Zhixun Samuel Sun opposes the motion. The Court held a hearing on April 7, 2011. Having considered the submissions and arguments of the parties, the Court grants the motion to withdraw, subject to the condition that papers continue to be served on counsel for forwarding purposes for 30 days. Defendant must obtain new counsel within 30 days of this Order.

I. Background

On October 20, 2009, Plaintiff Zhixun Samuel Sun filed an action in state court alleging that Defendant Rickenbacker Collections (“Rickenbacker”) violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* Rickenbacker was originally represented by Ellis, LaVoie, Poirier, Steinheimer, & McGee, LLP. After removing the case to federal court, Rickenbacker substituted June D. Coleman and Candice Lynn Fields, of Kronick, Moskovitz, Tiedemann & Girard, as its counsel of record. On February

1 18, 2011, the Court granted Defendant’s motion to dismiss the Fair Debt Collection Practices Act
2 claim with prejudice and subsequently referred the parties to a Magistrate Judge Settlement
3 Conference, to be held by May 25, 2011. The case is currently set for trial on November 7, 2011,
4 approximately seven months from now.

5 On March 3, 2011, counsel for Defendant moved for leave to withdraw. In the motion and
6 supporting declaration, counsel represents that Rickenbacker consents to the requested withdrawal
7 and has discharged counsel. Counsel further represents that Defendant can no longer pay any
8 defense costs and has breached its legal services agreement by failing to pay the agreed-upon fees.
9 Indeed, it appears that Defendant is no longer in business. Plaintiff opposes the motion to
10 withdraw on grounds that withdrawal of defense counsel will cause delay and prevent Plaintiff
11 from recovering from Defendant. Plaintiff requests that the Court order counsel to continue its
12 representation of Rickenbacker until Plaintiff can obtain a default judgment.

13 II. Analysis

14 Pursuant to Civil Local Rule 11-5(b), counsel may not withdraw from an action until
15 relieved by order of the Court after written notice has been given reasonably in advance to the
16 client and to all other parties who have appeared in the case. Civil Local Rule 11-5(b). The
17 decision to permit counsel to withdraw is within the sound discretion of the trial court. *United*
18 *States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). When addressing a motion to withdraw, the
19 consent of the client is not dispositive. *Robinson v. Delgado*, No. CV 02-1538, 2010 WL 3259384,
20 at *2 (N.D. Cal. Aug. 18, 2010). Rather, the court must consider factors such as the reason counsel
21 seeks to withdraw, the possible prejudice caused to the litigants, and the extent to which
22 withdrawal may delay resolution of the case. *Id.*

23 Additionally, Civil Local Rule 11-4(a)(1) mandates compliance with the standards of
24 professional conduct required of members of the State Bar of California. Civ. L. R. 11-4(a)(1).
25 The California Rules of Professional Conduct permit counsel to withdraw in cases where the client
26 “breaches an agreement or obligation to the member as to expenses or fees,” or where the client
27 “knowingly and freely assents” to withdrawal. Cal. Rules of Prof’l Conduct 3-700(C)(1)(f), (5). In
28 all cases, however, counsel must take “reasonable steps to avoid reasonably foreseeable prejudice

1 to the rights of the client, including giving due notice to the client, allowing time for employment
2 of other counsel, complying with Rule 3-700(D) [which addresses the disposition of client papers
3 and property], and complying with applicable laws and rules.” *Id.* 3-700(A)(2).

4 In this case, Defendant has breached an agreement to make payments for legal services,
5 consented to withdrawal, and discharged defense counsel. Furthermore, counsel has explained to
6 Defendant the consequences of withdrawal: that is, as a corporate entity, Defendant cannot appear
7 in this action *pro se*, Civ. L.R. 3-9(b), and may face default judgment if it does not retain new
8 counsel.¹ Defense counsel also represents that it is prepared to forward the entire case file to
9 Defendant within three business days of the granting of its motion to withdraw. Based on these
10 representations, withdrawal is permitted under California Rules of Professional Conduct 3-
11 700(C)(1)(f) and (C)(5), as long as it would not otherwise prejudice the litigants or cause undue
12 delay of the case.

13 Plaintiff Sun opposes withdrawal on grounds that it would delay the case and allow
14 Defendant to avoid liability. Plaintiff suggests that only defense counsel is able to contact
15 Rickenbacker and that, therefore, if defense counsel is permitted to withdraw, Plaintiff will be
16 unable to recover from Rickenbacker and restore his credit. The Court understands Plaintiff’s
17 concerns, but does not believe that withdrawal will cause Plaintiff prejudice or unduly delay the
18 case. The Court will minimize delay by ordering Defendant to retain new counsel within 30 days
19 of this Order. If Defendant fails to retain new counsel within 30 days or otherwise ceases to
20 participate in this case, Plaintiff may seek entry of default and move for default judgment.
21 Whether Plaintiff is ultimately able to obtain or enforce a default judgment does not depend upon
22 counsel’s continued involvement in the case.

23 Under Civil Local Rule 11-5(b), when withdrawal by an attorney is not accompanied by
24 simultaneous appearance of substitute counsel, the court may grant withdrawal subject to the
25 condition that papers continue to be served on counsel for forwarding purposes, unless and until the
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27 ¹ Under Civil Local Rule 3-9, individuals may appear in a lawsuit without counsel, but
28 corporations and other such entities must be represented by an attorney. Civil Local Rule 3-9(b)
provides: “A corporation, unincorporated association, partnership or other such entity may appear
only through a member of the bar of this Court.”

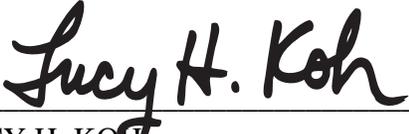
1 client appears by other counsel. Given Plaintiff's concerns about the difficulty of contacting
2 Defendant and the possibility that Defendant may not retain new counsel, the Court finds it
3 appropriate to grant withdrawal subject to the condition that papers continue to be served on
4 Kronick, Moskovitz, Tiedemann & Girard for forwarding purposes for 30 days. In addition, by
5 April 12, 2011, counsel shall file a notice providing contact information for the owner of
6 Rickenbacker collections, including a name, phone number, address, and email address (if
7 available).

8 **III. Conclusion**

9 For the foregoing reasons, the Court GRANTS the motion to withdraw subject to the
10 condition that that papers continue to be served on counsel for forwarding purposes for 30 days.
11 Counsel shall serve a copy of this Order on Defendant and file proof of service with the Court no
12 later than April 12, 2011. Counsel shall also file a notice providing contact information for the
13 owner of Rickenbacker Collection by April 12, 2011. **Defendant is ordered to retain new**
14 **counsel within 30 days of this the date of this Order.** If new defense counsel does not enter an
15 appearance within 30 days, Defendant will be in default and may face entry of default judgment.

16 **IT IS SO ORDERED.**

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18 Dated: April 8, 2011

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21 LUCY H. KOH
22 United States District Judge
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