

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANGELIA BRYANT ESLICK,
Plaintiff,
v.
INTUITIVE SURGICAL, INC.,
Defendant.

Case No. 18-CV-02200-LHK

**ORDER DENYING MOTION TO
WITHDRAW AS COUNSEL WITHOUT
PREJUDICE**

Re: Dkt. No. 29

On March 25, 2019, counsel for Plaintiff, Ronnie G. Penton and Nancy Hersh¹ (collectively “Movers”) filed a motion to withdraw as counsel for Plaintiff. ECF No. 29 (Mot.).

Pursuant to Civil Local Rule 11-5(b), counsel may not withdraw from an action until relieved by order of the Court. Civil Local Rule 11-5(b); *see also Jariwala v. Napolitano*, 2011WL 703730, at *1 (N.D. Cal. Feb. 21, 2011) (“An attorney may not withdraw as counsel except by leave of court.”). The decision to permit counsel to withdraw is within the sound discretion of the Court. *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). When

¹ Francois M. Blaudeau, Evan Taylor Rosemore, and Leah F. Walsh also move to withdraw as counsel for Plaintiff; however, Blaudeau, Rosemore, and Walsh have not made an appearance in the instant Plaintiff’s case and are not on the docket.

1 addressing a motion to withdraw, “the consent of the client is not dispositive.” *Robinson v.*
2 *Delgado*, 2010 WL 3259384, at *2 (N.D. Cal. Aug. 18, 2010); *DeLeon v. Wells Fargo Bank, N.A.*,
3 2010 WL 3565188, at *1 (N.D. Cal. Sept. 13, 2010). Rather, the court must consider factors such
4 as the reason counsel seeks to withdraw, the possible prejudice caused to the litigants, and the
5 extent to which withdrawal may delay resolution of the case. *Id.*

6 Civil Local Rule 11-4(a)(1) requires attorneys practicing in this district to “comply with
7 the standards of professional conduct required of members of the State Bar of California.” Rule 3-
8 700 of the Rules of Professional Conduct of the State Bar of California governs an attorney’s
9 withdrawal as counsel. Under that rule, before withdrawing for any reason, an attorney must take
10 “reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including
11 giving due notice to the client, allowing time for employment of other counsel, complying with
12 rule 3-700(D), and complying with applicable laws and rules.” Cal. R. Prof. Conduct 3-700(A)(2).

13 The Court finds that Movers have not met these standards. First, Movers have not given
14 their reason for seeking to withdraw as counsel. Second, the Court finds possible prejudice to the
15 Plaintiff. Although Movers notified Plaintiff of their intent to withdraw as her counsel of record,
16 and Plaintiff notified Movers of her intent to retain substitute counsel to continue her
17 representation, Plaintiff has yet to locate her substitute counsel. Mot. ¶¶ 6–9. The Court questions
18 whether Movers have given Plaintiff adequate time for employment of other counsel. The only
19 timeline that Movers provide is that on March 5, 2019, Plaintiff advised of her intent to retain
20 other counsel; on March 7, 2019, Movers spoke with Plaintiff and confirmed she was seeking
21 another attorney; on March 8, 2019, Movers forwarded Plaintiff a copy of her file; on March 13,
22 2019, Movers had “another conversation with Plaintiff wherein it was communicated to her that
23 she needed to immediately have her new counsel file a substitution into the record due to the
24 existence of scheduling orders”; and on March 15, 2019, Movers sent another correspondence to
25 Plaintiff reiterating all prior communication with Plaintiff.” *Id.* ¶ 8. Plaintiff has not yet obtained
26 substitute counsel nor has Plaintiff confirmed that she would represent herself as a pro se litigant
27 in this action.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The Court also finds that granting Movers’ motion to withdraw as counsel at this stage would pose possible prejudice to Plaintiff and Defendant and may delay resolution of the case. Defendant filed a limited opposition to note that it does not oppose the Movers’ motion, “provided that it does not delay the current case schedule.” ECF No. 31 (“Opp’n”). Defendant reiterates that “[f]act discovery closes on May 3, 2019, and [Defendant] very much wants to abide by this deadline and to complete all fact discovery by that date.” *See id.* Movers suggest that any prejudice would be alleviated by Movers’ continued representation of Plaintiff in the sole and limited capacity of forwarding all filed documentation to Plaintiff, until another attorney can enroll on Plaintiff’s behalf. *See* Mot. ¶ 9. The Court finds that this does not cure the possible prejudice to Plaintiff and Defendant or alleviate any burdens on the case schedule, particularly the May 3, 2019 fact discovery deadline. The Court is concerned that granting Movers’ motion to withdrawal as counsel, without substitute counsel available or without notice from the Plaintiff that she would like to continue pro se, will cause unnecessary delays in the case.

Thus, the Court DENIES Movers’ motion to withdraw as counsel without prejudice. Plaintiff shall obtain new counsel and move to substitute, or file a notice that she would like to continue pro se, within 21 days. At that time, Movers may renew their motion to withdraw as counsel. The case schedule, including the May 3, 2019 close of fact discovery, remains as set.

IT IS SO ORDERED.

Dated: April 9, 2019



LUCY H. KOH
United States District Judge