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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SHEILA NEGRON,
Plaintiff,
v.
INTUITIVE SURGICAL, INC.,
Defendant.

Case No. 18-CV-02207-LHK

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

Re: Dkt. No. 32

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. 32 (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, Movers had a telephone conversation with
20 Plaintiff where she stated her intent to retain other counsel; on March 6, 2019, Movers forwarded
21 to Plaintiff a copy of her file; on March 7, 2019, Movers forwarded a letter advising of their intent
22 to withdraw; on March 13, 2019, Plaintiff again advised of her intent to retain other counsel; and
23 on March 15, 2019, Movers sent Plaintiff another correspondence reiterating her rights and
24 communicating that Movers would be filing a motion to withdraw. *Id.* ¶ 8. Plaintiff has not yet
25 obtained substitute counsel nor has Plaintiff confirmed that she would represent herself as a pro se
26 litigant in this action.

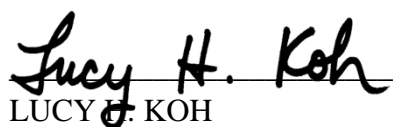
27 The Court also finds that granting Movers’ motion to withdraw as counsel at this stage

1 would pose possible prejudice to Plaintiff and Defendant and may delay resolution of the case.
2 Defendant filed a limited opposition to note that it does not oppose the Movers’ motion, “provided
3 that it does not delay the current case schedule.” ECF No. 34 (“Opp’n”). Defendant reiterates that
4 “[f]act discovery closes on May 3, 2019, and [Defendant] very much wants to abide by this
5 deadline and to complete all fact discovery by that date.” *See id.* Movers suggest that any
6 prejudice would be alleviated by Movers’ continued representation of Plaintiff in the sole and
7 limited capacity of forwarding all filed documentation to Plaintiff, until another attorney can enroll
8 on Plaintiff’s behalf. *See* Mot. ¶ 9. The Court finds that this does not cure the possible prejudice to
9 Plaintiff and Defendant or alleviate any burdens on the case schedule, particularly the May 3, 2019
10 fact discovery deadline. The Court is concerned that granting Movers’ motion to withdrawal as
11 counsel, without substitute counsel available or without notice from the Plaintiff that she would
12 like to continue pro se, will cause unnecessary delays in the case.

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

17 **IT IS SO ORDERED.**

18
19 Dated: April 9, 2019

20 
21 LUCY H. KOH
22 United States District Judge