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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALBERT SANCHEZ, SR.,
Plaintiff,
v.
ALBERT SANCHEZ, JR., et. al,
Defendants.

Case No.: 10-cv-1628-GPC (MDD)
**ORDER DENYING WITHOUT
PREJUDICE MOTION OF
PLAINTIFF'S ATTORNEYS TO
WITHDRAW AND GRANTING IN
PART PLAINTIFF'S MOTION FOR
AN EXTENSION OF TIME TO
FILE RESPONSIVE PLEADING**
[ECF Nos. 145, 146]

Before the Court, on referral from the District Court, are the motions of counsel for Plaintiff to withdraw (ECF No. 145) and Plaintiff's motion for an extension of time to file a responsive pleading regarding whether this case should be dismissed on *res judicata* or collateral estoppel grounds. (ECF No. 146). Both motions were filed on August 5, 2015. Defendants have advised the Court that they will not file a responsive pleading to either motion.

1 On August 5, 2015, counsel for Plaintiff filed the instant motions for
2 leave to withdraw as counsel and for an extension of time to file a
3 responsive pleading. (ECF Nos. 145, 146). Counsel for Plaintiff asserts that
4 an irreconcilable conflict has arisen because Defendants have filed a lawsuit
5 alleging malicious prosecution against Plaintiff and his attorneys in the
6 Superior Court. (ECF Nos. 145-1, 145-2, 146, 146-1). The lawsuit was filed
7 on July 16, 2015. (ECF No. 145-1). Plaintiff filed a declaration asserting
8 that his lawyers advised him that there is a conflict based upon the filing of
9 the malicious prosecution case and, consequently, intends to find new
10 counsel upon the withdrawal of current counsel. (ECF No. 146-1).

11 As set forth below, the motion to withdraw as counsel is DENIED
12 WITHOUT PREJUDICE. The motion for an extension of time for Plaintiff
13 to file his responsive brief is GRANTED IN PART.

14 Legal Standard

15 “An attorney may not withdraw as counsel except by leave of court,
16 [citation omitted] and ‘the decision to withdraw as counsel is
17 committed to the discretion of the trial court.’ [citations omitted] In
18 ruling on a motion to withdraw as counsel, courts consider: (1) the
19 reasons why withdrawal is sought; (2) the prejudice withdrawal may
20 cause to other litigants; (3) the harm withdrawal might cause to the
21 administration of justice; and (4) the degree to which withdrawal will
22 delay the resolution of the case. [citations omitted]”
23 *Beard v. Shuttermart of California, Inc.*, 2008 WL 410694 *2 (S.D. Cal., No.
24 07cv594-WQH, Feb. 13, 2008).

25 Analysis

26 The Court agrees that Plaintiff and his attorneys are conflicted in the

1 malicious prosecution case filed against them in Superior Court. The
2 question is whether, considering the current posture of the instant case,
3 that the conflict requires their immediate withdrawal from this case. The
4 Court believes not.

5 First, the issue pending before the district court is entirely legal –
6 whether the judgments obtained in the completed state court proceedings
7 have preclusive effect in the instant case. At this stage, it does not appear
8 that any privileged communications have any relevance. Moreover, neither
9 counsel nor Plaintiff himself has suggested that there has been a
10 breakdown in communications.

11 Second, the issue has been briefed twice, so far, by the parties. There
12 is not much new here. The Defendants’ brief, filed on July 24, 2015, is but
13 eight pages. (ECF No. 144). The issue involves parsing the state court
14 judgment and determining, as a matter of law, their preclusive effect or lack
15 thereof.

16 Third, the briefing schedule for this last round was set on May 22,
17 2015. Counsel for Plaintiff had nearly two months to prepare prior to the
18 filing of the malicious prosecution lawsuit on July 16, 2015.¹ And, as
19 mentioned above, there is very little new here and Plaintiff’s responsive
20 pleading need tread no new ground other than providing Plaintiff’s view
21 regarding the parsing of the judgments.

22 Application of this factual predicate to the factors to be considered in
23 deciding whether to grant a motion to withdraw militates against granting
24

25 ¹ Counsel also provides no reason for the delay from that date until the filing of the
26 instant motions on August 5, 2015.

1 withdrawal at this time. First, the reason why withdrawal is sought is
2 legitimate; the filing of the malicious prosecution lawsuit does raise a
3 conflict. Second, the Court agrees that there is no demonstrated prejudice
4 to the Defendants, other than how long they have been in litigation with
5 Plaintiff in several courts. Third, the administration of justice will be
6 harmed by allowing for withdrawal at this time. The pending motion needs
7 a ruling and it may be case dispositive. There is no guarantee that Plaintiff
8 will be able to find a new lawyer. As it is, Plaintiff seeks 90 days for that
9 purpose. (ECF No. 146-1). This has all the earmarks of another lengthy
10 delay. And, fourth, there can be no doubt that granting withdrawal will
11 delay substantially the resolution of this case.

12 The Court finds that the harm to the administration of justice and the
13 substantial likelihood of additional, lengthy delay in resolving this motion
14 (and, potentially, this case), considering the circumstances, mitigates
15 against allowing the withdrawal of counsel for Plaintiff at this time. Should
16 this case survive the dismissal motion, however, Plaintiff may refile.

17 Inasmuch as the date by which Plaintiff's responsive pleading passed
18 on August 7, 2015, approximately one week ago, Plaintiff is granted one
19 additional week, until close of business on August 20, 2015, to file his
20 responsive pleading. Defendants may reply, if they chose, no later than
21 close of business on August 25, 2015. The hearing date before District
22 Judge Gonzalo P. Curiel on August 28, 2015, at 1:30 p.m. is confirmed.

23 Conclusion

24 The motion of counsel for Plaintiff to withdraw is **DENIED**
25 **WITHOUT PREJUDICE**. The motion may be refiled in the event that the
26 pending motion to dismiss is denied by the District Court.

1 Plaintiff's motion to extend the time to file a responsive pleading on
2 the issue of preclusion is **GRANTED IN PART**. Plaintiff's brief is to be
3 filed no later than close of business on August 20, 2015. Defendants may
4 file a reply no later than close of business on August 25, 2015. The hearing
5 date of August 28, 2015, at 1:30 p.m., before District Judge Gonzalo P.
6 Curiel is confirmed, absent further Order of the Court.

7 **IT IS SO ORDERED:**

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9 Dated: August 13, 2015

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11 Hon. Mitchell D. Dembin
12 United States Magistrate Judge
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