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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GOLDEN EYE MEDIA USA, INC., a California corporation,)	Case No.: 3:18-cv-02109-BEN-LL
)	
Plaintiff,)	ORDER ON MOTION TO BE
)	RELIEVED AS COUNSEL OF
v.)	RECORD
)	
TROLLEY BAGS UK LTD, a corporation of the United Kingdom; and)	[ECF No. 100]
BERGHOFF INTERNATIONAL, INC., a Florida corporation,)	
)	
Defendants.)	
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TROLLEY BAGS UK LTD, a corporation of the United Kingdom; and)	
BERGHOFF INTERNATIONAL, INC., a Florida corporation,)	
)	
Counterclaimants,)	
)	
v.)	
)	
GOLDEN EYE MEDIA USA, INC., a California corporation; FARZAN)	
DEHMOUBED, an individual; and)	
JENNIFER DUVALL, an individual,)	
)	
Counterdefendants.)	
)	

1 **I. INTRODUCTION**

2 Plaintiff/Counterdefendant GOLDEN EYE MEDIA USA, INC., a California
3 corporation (“Plaintiff”) brings this action seeking a declaratory judgment of non-
4 infringement against Defendants/Counterclaimants TROLLEY BAGS UK LTD, a
5 corporation of the United Kingdom (“Trolley Bags”); and BERGHOFF
6 INTERNATIONAL, INC., a Florida corporation (“Berghoff”) (collectively,
7 “Defendants”). ECF No. 1.

8 Before the Court is the Motion to Withdraw as Counsel of Record submitted by
9 Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin”) and Honigman LLP
10 (“Honigman”) (collectively, “Counsel”), current counsel of record for Berghoff (the
11 “Motion”). ECF No. 100.

12 The motion was submitted on the papers without oral argument pursuant to Civil
13 Local Rule 7.1(d)(1) and Rule 78(b) of the Federal Rules of Civil Procedure. ECF No.
14 114. After considering the papers submitted, supporting documentation, and applicable
15 law, the Court **DENIES** the Motion.

16 **II. LEGAL STANDARD**

17 An attorney may not withdraw as counsel except by leave of court, permitting the
18 party to either appear on the party’s own behalf or substitute other counsel in as counsel of
19 record. S.D. Cal. Civ. R. 83.3(f)(1); *see also P.I.C. Int’l, Inc. v. Gooper Hermetic, Ltd.*,
20 No. 3:19-CV-00734-BEN-LL, 2020 WL 2992194, at *1 (S.D. Cal. Jun. 4, 2020). Under
21 the Local Rules, “[o]nly natural persons representing their individual interests in propria
22 persona may appear in court without representation by an attorney permitted to practice
23 pursuant to Civil Local Rule 83.3.” S.D. Cal. Civ. R. 83.3(k). “All other parties, including
24 corporations, partnerships and other legal entities, may appear in court only through an
25 attorney permitted to practice pursuant to Civil Local Rule 83.3.” *Id.*; *see also Laskowitz*
26 *v. Shellenberger*, 107 F. Supp. 397, 398 (S.D. Cal. 1952) (“Since a corporation cannot
27 practice law, and can only act through the agency of natural persons, it follows that it can
28 appear in court on its own behalf only through a licensed attorney.”). Thus, courts may not

1 grant a motion to withdraw filed by counsel for a corporate entity unless the attorney and/or
2 corporate entity have arranged for qualified replacement counsel to substitute in as counsel
3 of record. *See, e.g., id.*

4 California law governs issues of ethics and professional responsibility in federal
5 courts. *See, e.g., Radcliffe v. Hernandez*, 818 F.3d 537, 541 (9th Cir. 2016) (“California
6 law governs questions of conflicts of interest and disqualification”); *see*
7 *generally* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 1 cmt.
8 b (2000) (“Federal district courts generally have adopted the lawyer code of the jurisdiction
9 in which the court sits, and all federal courts exercise the power to regulate lawyers
10 appearing before them.”); *but see Unified Sewerage Agency of Washington Cty., Oregon*
11 *v. Jelco, Inc.*, 646 F.2d 1339, 1342 n.1 (9th Cir. 1981) (“We express no opinion on the law
12 to apply where the district court has not designated the applicable rules of professional
13 responsibility (*e.g.*, state law, the Model Code of Professional Responsibility, or a federal
14 common law of professional responsibility).”). Under Rule 1.16 of California’s Rules of
15 Professional Conduct, effective June 1, 2020, subdivision (a) governs mandatory
16 withdrawal while subdivision (b) governs permissive withdrawal. In ruling on a motion to
17 withdraw, “[i]t is the duty of the trial court to see that the client is protected, so far as
18 possible, from the consequences of an attorney’s abandonment.” *CE Res., Inc. v. Magellan*
19 *Group, LLC*, No. 08-cv-02999-MCE-KJM, 2009 WL 3367489, at *2 (E.D. Cal. Oct. 14,
20 2009) (denying motion to withdraw where corporation would be left unrepresented by
21 counsel) (citations omitted).

22 **III. DISCUSSION**

23 Rule 1.16(b) of the California Rules of Professional Conduct, governing permissive
24 withdrawal, permits an attorney to withdraw from representation of a client for several
25 enumerated grounds. In the present case, Counsel asks to be permitted to withdraw from
26 representation “because there are multiple grounds for withdrawal under Rule 1.16(b).”
27 ECF No. 100-1 at 2:9-11. Counsel claims that they “have taken reasonable steps to
28 prevent any potential prejudice to BergHOFF under Rule 1.16(d) of the California Rules

1 of Professional Conduct, including providing reasonable notice to BergHOFF.” *Id.* at
2 2:11-15. While there is no declaration submitted concurrently with the Motion, Counsel
3 states that “[a] copy of the Motion and this Brief in Support have been served on
4 BergHOFF and its regular outside counsel via email and U.S. Mail, as well as all counsel
5 of record using the Court’s ECF system.” *Id.* at 2:16-18. Counsel asks that their client,
6 Berghoff, “be granted 14 days to engage new counsel.” *Id.* at 2:18-19.

7 The Court denies the Motion because (1) Counsel failed to submit a declaration in
8 support of their Motion; (2) the Court may not permit counsel to withdraw leaving a
9 corporate entity defendant unable to defend itself; and (3) Counsel failed to set forth
10 adequate grounds for this Court to grant the Motion.

11 **A. Counsel Failed to Submit the Declaration Required by the Local Rules.**

12 A motion to withdraw must (1) be served on the adverse party and moving
13 attorney’s client and (2) include a declaration regarding service of the motion on those
14 parties. S.D. Cal. Civ. R. 83.3(f)(3). “Failure to . . . file the required declaration of service
15 will result in a denial of the motion.” S.D. Cal. Civ. R. 83.3(f)(3)(b). In the present case,
16 Counsel filed a “Certificate of Service” stating that the Motion was electronically served
17 via the Court’s ECF system as well as via regular U.S. Mail and e-mail to the client and
18 its outside counsel. ECF No. 100-1 at 4. This document, however, although signed by
19 John Burns, was not signed under penalty of perjury, and as such, does not qualify as a
20 “declaration.” *See, e.g.*, 28 U.S.C. § 1746(2) (providing that whenever a law of the United
21 States or rule requires a matter to be supported by sworn declaration in writing, that matter
22 may be proved “by the unsworn declaration . . . in writing of such person which is
23 subscribed by him, as true under penalty of perjury, and dated,” so long as it substantially
24 follows the form proscribed by the statute). As such, the Motion fails to meet the
25 requirements of Local Rule 83.3(f)(3).

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1 **B. Courts May Not Allow Permissive Withdrawal for a Corporate Entity**
2 **Where There is No Other Counsel Ready to Substitute in as Counsel of**
3 **Record.**

4 Under the Local Rules, “[o]nly natural persons representing their individual
5 interests in propria persona may appear in court without representation by an attorney
6 permitted to practice pursuant to Civil Local Rule 83.3.” S.D. Cal. Civ. R. 83.3(k). “All
7 other parties, including corporations, partnerships and other legal entities, may appear in
8 court only through an attorney permitted to practice pursuant to Civil Local Rule 83.3.”
9 S.D. Cal. Civ. R. 83.3(k); *see also Laskowitz*, 107 F. Supp. at 398. Thus, courts may not
10 grant a motion to withdraw filed by counsel for a corporate entity unless the attorney
11 and/or corporate entity have arranged for qualified replacement counsel to substitute in as
12 counsel of record. *See, e.g., id.* Here, the Court denies the Motion as granting the Motion
13 would leave a corporate entity unrepresented, and Counsel has failed to set forth an
adequate plan for replacement counsel to appear on Berghoff’s behalf.

14 **C. Counsel Failed to Set Forth Adequate Grounds for Granting the**
15 **Motion, Especially in Light of Potential Prejudice.**

16 Under Rule 1.16, subdivision (b) of the California Rules of Professional Conduct,
17 counsel may withdraw from representing a client where (1) “a continuation of the
18 representation is likely to result in a violation of these rules or the State Bar Act”; (2) the
19 attorney “believes in good faith, in a proceeding pending before a tribunal, that the
20 tribunal will find the existence of other good cause for withdrawal”; and/or (3) the client
21 (a) “insists upon presenting a claim or defense in litigation . . . that is not warranted under
22 existing law and cannot be supported by good faith argument for an extension,
23 modification, or reversal of existing law,” (b) “either seeks to pursue a criminal or
24 fraudulent course of conduct or has used the lawyer’s services to advance a course of
25 conduct that the lawyer reasonably believes was a crime or fraud,” (c) “insists that the
26 lawyer pursue a course of conduct that is criminal or fraudulent,” (d) “by other conduct
27 renders it unreasonably difficult for the lawyer to carry out the representation effectively,”
28 (e) “breaches a material term of an agreement with, or obligation, to the lawyer relating

1 to the representation, and the lawyer has given the client a reasonable warning after the
2 breach that the lawyer will withdraw unless the client fulfills the agreement or performs
3 the obligation,” or (f) “knowingly and freely assents to termination of the representation.”
4 Cal. R. Prof. Conduct, Rule 1.16(b). Subdivision (d) requires that “[a] lawyer shall not
5 terminate a representation until the lawyer has taken reasonable steps to avoid reasonably
6 foreseeable prejudice to the rights of the client, such as giving the client sufficient notice
7 to permit the client to retain other counsel.” Cal. R. Prof. Conduct, Rule 1.16(d).

8 “In ruling on a motion to withdraw as counsel, courts consider: (1) the reasons why
9 withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the
10 harm withdrawal might cause to the administration of justice; [and] (4) the degree to
11 which withdrawal will delay the resolution of the case.” *Garrett v. Ruiz*, No. 11-cv-
12 02540-IEG, 2013 WL 163420, at *2 (S.D. Cal. Jan. 14, 2013); *see also Bernstein v. City*
13 *of Los Angeles*, No. CV1903349PAGJSX, 2020 WL 4288443, at *1–2 (C.D. Cal. Feb.
14 25, 2020) (same). There is no danger of prejudice where a hearing date is not immediately
15 set or where litigation is at a relatively nascent stage. *Gurvey v. Legend Films, Inc.*, No.
16 09-cv-00942-IEG, 2010 WL 2756944, at *1 (S.D. Cal. July 12, 2010). Further, there is
17 no undue delay where the counsel takes “reasonable steps to avoid reasonably foreseeable
18 prejudice to the rights of the client, including giving due notice to the client [and] allowing
19 time for employment of other counsel ...” Cal. R. Prof. Conduct, Rule 1.16(c).

20 “It is the duty of the trial court to see that the client is protected, so far as possible,
21 from the consequences of an attorney’s abandonment.” *CE Res.*, 2009 WL 3367489, at
22 *2 (denying motion to withdraw where corporation would be left unrepresented by
23 counsel) (citations omitted). “[C]onclusory assertions that there was a communication
24 breakdown is not sufficient to warrant withdrawal.” *Amazon Logistics, Inc. v. Mann Bros.*
25 *Transp., Inc.*, No. 1:19-cv-01060-DAD-SAB, 2020 WL 2194005, at *4 (E.D. Cal. May
26 6, 2020). At the same time, attorney must “preserve client confidences even when seeking
27 to be relieved as counsel.” Tuft, Mark L., et al., *Cal. Prac. Guide Prof. Resp.*, Ch. 10-B
28 (Dec. 2019); *see also* Cal. State Bar Form. Opn. 2015-192 (decided under former rule,

1 providing that an attorney may disclose to court only as much as reasonably necessary to
2 demonstrate need to withdraw).

3 The Court recognizes that granting the withdrawal motion would leave Berghoff, a
4 corporate Defendant, without counsel, in contravention of Local Rule 83.3(k). However,
5 Rule 83.3(k) is not offended where the court orders an unrepresented corporate defendant
6 to find substitute counsel and gives them some time to do so. *See e.g., Indymac Fed.*
7 *Bank, F.S.B. v. McComic*, No. 08-CV-1871-IEG-WVG, 2010 WL 2000013 (S.D. Cal.
8 May 18, 2010) (granting counsel's motion to withdraw as defendants could no longer pay
9 and were not prejudiced, but also directing defendants to secure substitute counsel, where
10 counsel cited the client limited partnership's refusal to participate in litigation and
11 inability to pay fees as reasons for withdrawal); *McNally v. Commonwealth Financial*
12 *Systems, Inc.*, 2013 WL 685364 (S.D. Cal. Feb. 25, 2013) (granting motion where
13 litigation was at an early stage and where corporate defendant was unable to pay legal
14 fees, consented to the motion, and had "ample opportunity to retain substitute counsel as
15 needed"). Nonetheless, the matter remains within the Court's discretion and subject to
16 considerations of prejudice, harm, and delay. The Court notes this case is not in the earlier
17 stages, and on the contrary, is nearing trial. Thus, concerns of prejudice, harm, and delay
18 are heightened at this stage of the proceedings. Accordingly, the Court finds that the
19 motion, as drafted, is inadequate and is therefore DENIED. Counsel may refile their
20 motion if they believe the Court's concerns laid out in this Order can be readdressed.

21 **IV. CONCLUSION**

22 For the above reasons, the Court **DENIES** the Motion as follows:

23 1. Defendant's counsel's Motion to Withdraw as Counsel of Record is **DENIED**
24 *without prejudice* to counsel refiling the motion in accordance with Local Rules and stating
25 the grounds discussed above.

26 **IT IS SO ORDERED.**

27 DATED: January 5, 2021

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HON. ROGER T. BENITEZ
United States District Judge