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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ASHLEY VUZ,

12 Plaintiff,

13 v.

14 DCSS III, INC., et al.,,

15 Defendants.

Case No.: 20-cv-246-GPC-AGS

**ORDER DENYING PETERSON  
BRADFORD BURKWITZ'S  
OBJECTION**

**[ECF No. 216]**

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17 Before the Court is non-Party law firm Peterson Bradford Burkwitz's ("PBB")  
18 Objection to Magistrate Judge Schopler's Report and Recommendation regarding the  
19 settlement distribution. ECF No. 216. Judge Schopler entered this Report and  
20 Recommendation on July 15, 2022, recommending that PBB be entitled to no recovery  
21 and that its lien be discharged. ECF No. 209. PBB's Objection was filed on July 29,  
22 2022, and Plaintiff Ashley Vuz ("Plaintiff") filed a Response on August 12, 2022. ECF  
23 No. 216, 219.

24 For the reasons below, the Court **DENIES** PBB's Objection and adopts Magistrate  
25 Judge Schopler's Report and Recommendation in full. PBB is entitled to no recovery,  
26 and its lien is hereby discharged. ECF No. 78.

1 **BACKGROUND**

2 On July 15, 2022, Magistrate Judge Andrew G. Schopler held a hearing to address:  
3 (1) the distribution of settlement proceeds from the January 2021 settlement between  
4 Plaintiff and Defendants DCSS III, Inc. and associated individual defendants (collectively  
5 “Gossip Grill Defendants”), and (2) a lien asserted by PBB (Plaintiff’s former counsel)  
6 on Plaintiff’s total recovery in this case. ECF No. 209. Magistrate Judge Schopler issued  
7 a Report and Recommendation recommending that PBB be entitled to no recovery and  
8 that its lien be discharged because the firm withdrew from representing Plaintiff without  
9 justifiable cause. ECF No. 209. PBB timely objected to this ruling. ECF No. 216.

10 The Court recounts the facts relevant to the instant ruling. In April 2019, Plaintiff  
11 and PBB entered into a contingency fee agreement providing that PBB’s legal fees would  
12 be 35% of any net recovery against any party to this litigation. ECF No. 170 at 2. In  
13 February 2020, while represented by PBB, Plaintiff filed this action. ECF No. 1. Ryan  
14 Graham, a PBB attorney who had represented Plaintiff in this matter left PBB in October  
15 2020. ECF 219 at 1. Mr. Graham, as a solo practitioner, then substituted as Plaintiff’s  
16 counsel. *Id.* In January 2021, Plaintiff reached a settlement with the Gossip Grill  
17 Defendants which was approved by the Court in September 2021. ECF No. 129, 146. On  
18 October 8, 2021, Plaintiff filed an *Ex Parte* Motion to determine distribution of the  
19 settlement proceeds. ECF No. 151. Shortly thereafter, Plaintiff’s then-counsel, Mr.  
20 Graham, failed to file an Opposition to the Motions for Summary Judgment and  
21 effectively abandoned representation of Plaintiff. *See e.g.*, ECF Nos. 154, 166. The  
22 matter was continued until Plaintiff was able to obtain her current counsel. ECF Nos.  
23 188-91.

24 Plaintiff filed briefing on the issue of the settlement distribution on June 20, 2022.  
25 ECF No. 201. PBB filed its Response on June 27, 2022, and Plaintiff filed an Objection  
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1 on June 28, 2022. ECF Nos. 202, 203. Magistrate Judge Schopler held a hearing on July  
2 15, 2022. ECF No. 209.

### 3 **LEGAL STANDARD**

4 Because this objection involves the distribution of settlement proceeds and is thus  
5 a non-dispositive matter, Federal Rule of Civil Procedure Rule 72(a) governs. Pursuant to  
6 Rule 72(a), a party to a hearing before a magistrate judge may file an objection to the  
7 order within 14 days after being served with a copy. Fed. R. Civ. P. 72(a). A district  
8 judge “must consider timely objections and modify or set aside any part of the order that  
9 is clearly erroneous or is contrary to law.” *Id.* The “clearly erroneous” prong “applies to  
10 factual findings and discretionary decisions made in connection with non-dispositive  
11 pretrial discovery matters.” *F.D.I.C. v. Fid. & Deposit Co. of Md.*, 196 F.R.D 375, 378  
12 (S.D. Cal. 2000). To overturn something as “clearly erroneous,” a district judge must  
13 have a “definite and firm conviction that a mistake has been committed.” *In re Optical*  
14 *Disk Drive Antitrust Litig.*, 801 F.3d 1072, 1076 (9th Cir. 2015). The “contrary to law”  
15 prong “permits independent review of purely legal determinations by the magistrate  
16 judge.” *Deposit Co. of Maryland*, 196 F.R.D. at 378. A magistrate judge’s order will be  
17 contrary to law if it “applies an incorrect legal standard, fails to consider an element of  
18 [the] applicable standard, or fails to apply or misapplies relevant statutes, case law, or  
19 rules of procedure.” *Martin v. Loadholt*, No. 1:10-cv-00156-LJO-MJS, 2014 WL  
20 3563312, at \*1 (E.D. Cal. July 18, 2014).

### 21 **DISCUSSION**

#### 22 **I. The Magistrate Judge’s Ruling**

23 In the hearing, Magistrate Judge Schopler provided reasoning for his  
24 recommendation that PBB receive no proceeds from the settlement and that its lien be  
25 discharged. Specifically, Judge Schopler stated that if a client fires an attorney, the  
26 attorney has a quantum meruit claim against any ultimate recovery, but an attorney that  
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1 voluntarily withdraws from representation cannot later seek fees for services rendered.  
2 ECF No. 218 at 7 (citing *Rus, Miliband & Smith v. Conkle & Olesten*, 113 Cal. App. 4th  
3 656, 671 (2003); *Schroeder vs. San Diego Unified Sch. Dist.*, No. 7-cv-1266, 2010 WL  
4 1948235, at \*5 (S.D. Cal. May 12, 2010)). An inequity will result from allowing a lawyer  
5 to “capitalize on their own voluntary actions [that leave the] client lawyerless by  
6 collecting fees from a post-withdrawal settlement.” *Id.* The ultimate issue was “whether  
7 Ms. Vuz voluntarily changed counsel, which is akin to firing her counsel, or whether  
8 PBB voluntarily withdrew from representing Ms. Vuz.” *Id.* at 8.

9 PBB argued that Plaintiff voluntarily changed counsel because she wanted to  
10 continue representation with Mr. Graham after he had left PBB. *Id.* Plaintiff argued that  
11 “she was abandoned by PBB.” *Id.* at 9. Specifically, Plaintiff states that PBB “informed  
12 [her] in an email that they would not continue on as counsel with Mr. Graham and did not  
13 see it as feasible to continue representing her, even without Mr. Graham’s involvement.”  
14 *Id.* Judge Schopler reviewed the record and ultimately found there were no circumstances  
15 indicating a reason for mandatory withdrawal on the part of PBB and as such they were  
16 not entitled to recovery. ECF No. 218 at 28.

## 17 **II. PBB’s Objections and Plaintiff’s Response**

18 PBB’s Objection raises two arguments. First, PBB argues that to give PBB “no  
19 remuneration (zero) despite the hundreds of hours expended” would be unfair. ECF No.  
20 216 at 4. Second, PBB argues that PBB did not “abandon” Plaintiff. *Id.* Plaintiff argues  
21 PBB’s Objection should be rejected because their objections are not sufficiently specific  
22 to identify the particular portion of the Report and Recommendation PBB disagrees with.  
23 ECF No. 219 at 4. Plaintiff also argues PBB’s objections are meritless because it would  
24 not be unfair to deny settlement proceeds to PBB because of the amount of litigation that  
25 happened after their withdraw and that it is clear in the record PBB is the party who  
26 voluntarily withdrew from representation. *Id.* at 4-5.

1           **III. Analysis**

2           An attorney retained on a contingency fee basis cannot voluntarily withdraw from  
3 representing a client and then later seek fees for the value of services rendered.  
4 *Schroeder*, 2010 WL 1948235, at \*5 (citing *Estate of Falco v. Decker*, 188 Cal. App. 3d  
5 1004, 1014 (1987)). To retain fees after withdrawing from a contingency fee  
6 representation, counsel must show withdraw was mandatory for ethical reasons and that  
7 they in fact withdrew for that justifiable reason. *Id.* (citing *Falco*, 188 Cal. App. 3d at  
8 1015). This is heightened standard, and to recover after withdrawal from a contingent fee  
9 arrangement, an attorney must show: (1) counsel’s withdrawal was mandatory, not  
10 merely permissive, under statute or State Bar rules; (2) the overwhelming and primary  
11 motivation for counsel’s withdrawal was the obligation to adhere to these ethical  
12 imperatives under statute or State Bar rules; (3) counsel commenced the action in good  
13 faith; (4) subsequent to counsel’s withdrawal, the client obtained recovery; and (5)  
14 counsel has demonstrated that his work contributed in some measurable degree towards  
15 the client’s ultimate recovery. *Id.* (citing *Falco*, 188 Cal. App. 3d at 1016). “While a  
16 personality clash between the parties may provide good reason for allowing the attorney  
17 to withdraw, it is not necessarily a justifiable reason for purposes of awarding fees.”  
18 *Falco*, 188 Cal. App. 3d at 1014.

19           Thus, the critical issues here are (1) whether it was Plaintiff who terminated PBB’s  
20 representation or vice versa; and (2) whether PBB’s withdrawal was voluntary or  
21 mandatory under the Rules. As to the first question, the Court agrees with Judge Schopler  
22 that it was PBB who terminated this representation. Specifically, an October 8, 2020  
23 email from PBB to Plaintiff states that “[t]here may be a question as to whether you  
24 would want to continue working with PBB as counsel, without Ryan Graham’s  
25 involvement. Again, we do not view that as feasible.” ECF No. 218 at 26. An individual  
26 in Plaintiff’s shoes would reasonably interpret this to mean that under no circumstances,  
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1 with or without Mr. Graham, would PBB represent Plaintiff. Nothing in the record  
2 indicates that Plaintiff had voluntarily and definitively closed the door on PBB's  
3 continued representation of her without Mr. Graham prior to the October 8, 2020 email.

4 As to the second question, the Court further agrees with Judge Schopler that  
5 mandatory withdrawal of PBB under the Rules was not required in this situation. The  
6 California Rules of Professional Conduct state that withdrawal is mandatory when: (1)  
7 the lawyer knows the client is bringing an action, conducting a defense, asserting a  
8 position in litigation, etc. without probable cause and for the purpose of harassing or  
9 maliciously injuring any person; (2) the lawyer knows or reasonably should know that  
10 representation will result in violation of the Rules; (3) the lawyer's mental or physical  
11 condition renders it unreasonably difficult to carry out the representation effectively; or  
12 (4) the client discharges the lawyer. Cal. R. Pro. Conduct 1.16(a). Circumstances rising to  
13 one of these four reasons for mandatory withdrawal do not appear anywhere in the  
14 record. The declaration in PBB's initial Brief on this matter states that after Mr. Graham  
15 left PBB it "became extremely difficult and frankly awkward for the firm to continue to  
16 represent Ms. Vuz particularly because Ms. Vuz continued to trust Mr. Graham, remained  
17 friends with him and specifically told [PBB] that he would continue to represent her  
18 throughout the pendency of this matter." ECF No. 202-1 ¶ 6 (Declaration of Avi  
19 Burkwitz, Esq.). "Awkwardness" does not give rise to mandatory withdrawal under  
20 California law.

21 As to PBB's argument that it would be unfair for them to receive zero recovery  
22 despite their work on the settlement, the Court does not see how this has bearing on the  
23 legal question of whether they are entitled to recovery under California law. This  
24 argument also ignores the fact that to allow them to recover under these circumstances  
25 would be unfair in the sense that they were able to "shift the time, effort and risk of  
26 obtaining the recovery . . . from [their firm], who originally agreed to bear those  
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1 particular costs in the first place, to the client.” *Schroeder*, 2010 WL 1948235, at \*5  
2 (citing *Rus*, 113 Cal. App. 4th at 675-76).

3 Further, the Court agrees with Magistrate Judge Schopler that the fact that the  
4 ultimate settlement was identical in many or all ways to the settlement terms negotiated  
5 while PBB was still counsel has no bearing on the legal analysis. ECF No. 218 at 27. It  
6 has no impact on the core issue of whether it was Plaintiff or PBB that terminated PBB’s  
7 representation, or whether PBB’s withdrawal was permissive or mandatory. PBB  
8 voluntarily terminated their representation of Plaintiff knowing an imminent settlement  
9 was likely, and thus they willingly renounced any potential recovery.

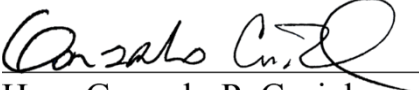
10 In conclusion, because PBB terminated their representation of Plaintiff without  
11 justifiable cause, under California law, PBB is not entitled to recover fees for any legal  
12 services rendered.

### 13 CONCLUSION

14 For the reasons stated above, the Court **DENIES** PBB’s Objection and adopts  
15 Magistrate Judge Schopler’s Report and Recommendation on the distribution of  
16 settlement proceeds in full. PBB is entitled to no recovery and its lien is hereby  
17 discharged.

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19 **IT IS SO ORDERED.**

20  
21 Dated: September 9, 2022

22   
23 Hon. Gonzalo P. Curiel  
24 United States District Judge