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

AIDA ESTIFANOS, an individual;	)	Case No.: 3:20-cv-02463-BEN-WVG
Plaintiff,	)	
v.	)	<b>ORDER GRANTING SETH E.</b>
AIRPORT MANAGEMENT SERVICES,	)	<b>TILLMON’S MOTION TO</b>
LLC, a Delaware limited liability	)	<b>WITHDRAW AS COUNSEL FOR</b>
company; and DOES 1 through 50,	)	<b>PLAINTIFF &amp; COUNTER-</b>
inclusive,	)	<b>DEFENDANT AIDA ESTIFANOS</b>
Defendant.	)	<b>[ECF No. 11]</b>

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AIRPORT MANAGEMENT SERVICES,	)
LLC, a Delaware limited liability	)
company,	)
Counter-Complainant,	)
v.	)
AIDA ESTIFANOS, an individual, and	)
DOES 1 through 50, inclusive,	)
Counter-Defendant.	)

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**I. INTRODUCTION**

Plaintiff/Counter-Defendant Aida Estifanos (“Plaintiff”) brings this action against Defendant/Counter-Complainant AIRPORT MANAGEMENT SERVICES,

1 LLC, a Delaware limited liability company (“Defendant”) for various alleged violations  
2 of California’s wage and hour laws. ECF No. 1-3 at 6, 10. Defendant counterclaims that  
3 Plaintiff ran a fraudulent scheme while working for Defendant, and in doing so,  
4 misappropriated Defendant’s funds. ECF No. 4 at 2, ¶ 4.

5 Before the Court is Seth E. Tillmon’s Motion to Withdraw as Counsel of Record  
6 for Plaintiff (the “Motion”). ECF No. 11. After considering the papers submitted,  
7 supporting documentation, and applicable law, the Court **GRANTS** the Motion.

## 8 **II. BACKGROUND**

### 9 **A. Statement of Facts**

10 Plaintiff alleges that Defendant employed from April 14, 2014 through May 31,  
11 2020. ECF No. 1-3 at 6:10-11. Her duties included opening all seven of Defendant’s  
12 stores that it operates within the San Diego International Airport; ordering merchandise;  
13 operating the cash register; communicating with other employees; setting up displays; and  
14 retrieving merchandise from storage and delivering it to the various stores. *Id.* at 6:14-  
15 7:3. Plaintiff alleges that during her employment, Defendant regularly engaged in  
16 behavior that violated California’s wage and hour laws. *Id.* at 10:8-11:3. However,  
17 Defendant alleges that “while Plaintiff claims to have been working without proper  
18 compensation or without breaks, she actually was not performing labor on behalf of  
19 [Defendant].” ECF No. 4 at 2, ¶ 4. Rather, Defendant alleges that she was devoting her  
20 time and efforts to misappropriating Defendant’s funds through a scheme involving  
21 processing fraudulent voids and returns. *Id.*

### 22 **B. Procedural History**

23 On November 13, 2020, Plaintiff filed suit in the San Diego Superior Court,  
24 alleging causes of action for (1) failure to pay minimum wage, Cal. Lab. Code § 1197;  
25 (2) failure to pay wages, including overtime compensation, Cal. Lab. Code §§ 204, 510,  
26 1194; (3) recovery of statutory liquidated damages for failure to pay minimum wage, Cal.  
27 Lab. Code § 1194.2; (4) failure to provide meal periods, Cal. Lab. Code §§ 226.7, 512;  
28 (5) failure to provide rest periods, Cal. Lab. Code § 226.7; (6) failure to furnish accurate

1 wage statements, Cal. Lab. Code § 226; (7) failure to pay wages following employment  
2 severance, Cal. Lab. Code §§ 201-203; and (8) violation of California’s Unfair Business  
3 Practices Law, Cal. Bus. & Prof. § 17200, *et seq.* See ECF No. 1 at 2, ¶ 1; *see also Aida*  
4 *Estifanos v. Airport Management Services, LLC; DOES 1 through 50, inclusive*, Case No.  
5 37-2020-00041663-CUOE-CTL. On November 17, 2020, Plaintiff served Defendant  
6 with the Complaint. *Id.* at 2, ¶ 2.

7 On December 17, 2020, Defendant filed an Answer to the Complaint. ECF No. 1-  
8 3 at 34-40; *see also* ECF No. 2. On December 17, 2020, Defendant filed a Notice of  
9 Removal. ECF No. 1.

10 On January 7, 2021, Defendant filed counterclaims against Plaintiff for (1)  
11 conversion; (2) violation of California Penal Code § 496; (3) money had and received; (4)  
12 breach of fiduciary duty; (5) fraud – concealment; and (6) fraud – intentional  
13 misrepresentation. ECF No. 4. On February 1, 2021, Plaintiff filed her answer to  
14 Defendant’s counterclaims. ECF No. 7.

15 On March 29, 2021, however, Plaintiff’s counsel filed a Motion to Withdraw as  
16 Counsel of Record. ECF No. 11. In support of this Motion, he submitted a Certificate of  
17 Service on Plaintiff by mail, ECF Nos. 12, 13, as well as Defendant’s counsel, ECF Nos.  
18 14, 15. On April 13, 2021, Defendant submitted a Notice of Non-Opposition. ECF No.  
19 16.

### 20 **III. LEGAL STANDARD**

21 An attorney may not withdraw as counsel except by leave of court, permitting the  
22 party to either appear on the party’s own behalf or substitute other counsel in as counsel  
23 of record. S.D. Cal. Civ. R. 83.3(f)(1); *see also P.I.C. Int’l, Inc. v. Gooper Hermetic, Ltd.*,  
24 No. 3:19-CV-00734-BEN-LL, 2020 WL 2992194, at \*1 (S.D. Cal. June 4, 2020). Under  
25 the Local Rules, “[o]nly natural persons representing their individual interests in propria  
26 persona may appear in court without representation by an attorney permitted to practice  
27 pursuant to Civil Local Rule 83.3.” S.D. Cal. Civ. R. 83.3(k).

28 A motion to withdraw must (1) be served on the adverse party and moving

1 attorney's client and (2) include a declaration regarding service of the motion on those  
2 parties. S.D. Cal. Civ. R. 83.3(f)(3). "Failure to . . . file the required declaration of service  
3 will result in a denial of the motion." S.D. Cal. Civ. R. 83.3(f)(3)(b). California law  
4 governs issues of ethics and professional responsibility in federal courts. *See, e.g.,*  
5 *Radcliffe v. Hernandez*, 818 F.3d 537, 541 (9th Cir. 2016) ("California law governs  
6 questions of conflicts of interest and disqualification"); *see generally* RESTATEMENT  
7 (THIRD) OF THE LAW GOVERNING LAWYERS § 1 cmt. b (2000) ("Federal district  
8 courts generally have adopted the lawyer code of the jurisdiction in which the court sits,  
9 and all federal courts exercise the power to regulate lawyers appearing before them.");  
10 *but see Unified Sewerage Agency of Washington Cty., Oregon v. Jelco, Inc.*, 646 F.2d  
11 1339, 1342 n.1 (9th Cir. 1981) ("We express no opinion on the law to apply where the  
12 district court has not designated the applicable rules of professional responsibility (*e.g.*,  
13 state law, the Model Code of Professional Responsibility, or a federal common law of  
14 professional responsibility)."). Under Rule 1.16 of California's Rules of Professional  
15 Conduct, effective June 1, 2020 ("Rule 1.16"), subdivision (a) governs mandatory  
16 withdrawal while subdivision (b) governs permissive withdrawal.

17 "In ruling on a motion to withdraw as counsel, courts consider: (1) the reasons why  
18 withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the  
19 harm withdrawal might cause to the administration of justice; (4) the degree to which  
20 withdrawal will delay the resolution of the case." *Garrett v. Ruiz*, No. 11-CV-2540-IEG  
21 WVG, 2013 WL 163420, at \*2 (S.D. Cal. Jan. 14, 2013); *see also Bernstein v. City of Los*  
22 *Angeles*, No. CV1903349PAGJSX, 2020 WL 4288443, at \*1–2 (C.D. Cal. Feb. 25, 2020)  
23 (same). There is no danger of prejudice where a hearing date is not immediately set or  
24 where litigation is at a relatively nascent stage. *Gurvey v. Legend Films, Inc.*, No. 09-  
25 CV-942-IEG (BGS), 2010 WL 2756944, at \*1 (S.D. Cal. July 12, 2010). There is also  
26 no undue delay where the counsel takes "reasonable steps to avoid reasonably foreseeable  
27 prejudice to the rights of the client, including giving due notice to the client [and] allowing  
28 time for employment of other counsel . . ." Cal. R. Prof. Conduct, Rule 1.16(c).

1 **IV. DISCUSSION**

2 Under subdivision (b) of Rule 1.16, an attorney may (but not must) withdraw from  
3 representing a client where, *inter alia*, (1) the attorney “believes in good faith, in a  
4 proceeding pending before a tribunal, that the tribunal will find the existence of other  
5 good cause for withdrawal” or (2) “the lawyer’s mental or physical condition renders it  
6 difficult for the lawyer to carry out the representation effectively.” Cal. R. Prof. Conduct,  
7 Rule 1.16(b)(8), (10). Subdivision (c) provides that “[i]f permission for termination of a  
8 representation is required by the rules of a tribunal, a lawyer shall not terminate a  
9 representation before that tribunal without its permission.” Cal. R. Prof. Conduct, Rule  
10 1.16(c). Finally, subdivision (d) requires that “[a] lawyer shall not terminate a  
11 representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable  
12 prejudice to the rights of the client, such as giving the client sufficient notice to permit  
13 the client to retain other counsel.” Cal. R. Prof. Conduct, Rule 1.16(d).

14 Mr. Tillmon submits a thorough and thoughtful Motion to Withdraw as Counsel of  
15 Record, seeking to withdraw due, *inter alia*, to his wife’s Stage 4 cervical cancer and his  
16 need to care for his family while she receives treatment, which make representation of  
17 Plaintiff difficult at this time. ECF No. 11 at 3:3-6, 4:20-21. First, Mr. Tillmon advises  
18 that his Contingency Fee Agreement with Plaintiff permits him to withdraw from  
19 representation. *Id.* at 3: 15-21, 4:3-6. Second, Mr. Tillmon sets forth valid grounds for  
20 withdrawal by stating that (1) his understandable stress and anxiety at this time render it  
21 difficult for him to effectively represent his client, and (2) he, in good faith, believes the  
22 Court will find the existence of good cause for withdrawal. *Id.* at 6:18-7:1. Both of these  
23 reasons qualify as grounds for withdrawal under Rule 1.16(b). Third, Mr. Tillmon has  
24 taken reasonable steps to avoid prejudicing his client by (1) informing her of his intent to  
25 terminate representation; (2) giving her adequate time to find new counsel; (3) working  
26 with opposing counsel to schedule Plaintiff’s deposition; (4) serving Defendant with  
27 Plaintiff’s discovery requests; and (5) agreeing to provide Plaintiff with her complete case  
28 file upon his withdrawal, if granted. *Id.* at 7:11-22 (citing Declaration of Seth E. Tillmon

1 in Support of Motion to Withdraw, ECF No. 11-1 (“Tillmon Decl.”) at 3-6, ¶¶ 10, 11, 12,  
2 17, 24). Mr. Tillmon advises that there are also “no impending deadlines in the case  
3 because fact discovery cut-off is still six months out and the trial isn’t expected to be  
4 scheduled for another year and a half.” *Id.* at 7:18-20 (citing Tillmon Decl., ¶¶ 11, 12);  
5 *see Gurvey*, 2010 WL 2756944 (noting that there is no danger of prejudice to a client  
6 where litigation is in the early stages, and there are not immediate hearing dates). Mr.  
7 Tillmon’s Declaration also states that when he informed Plaintiff of his intent to  
8 withdraw, she “expressed . . . her assent to [his] withdrawal and further expressed that she  
9 would cooperate in effecting [his] withdrawal.” Tillmon Decl., ¶ 20.

10 The Court finds it appropriate to grant this Motion because (1) Mr. Tillmon sets  
11 forth valid reasons for withdrawal; (2) the other litigants (*i.e.*, Defendant) will not be  
12 prejudiced as they filed a Notice of Non-Opposition to this Motion; (3) the withdrawal  
13 will not harm the administration of justice; and (4) withdrawal should not delay resolution  
14 of this case. *Garrett*, 2013 WL 163420, at \*2. Further, Plaintiff consents to the  
15 withdrawal and will not be prejudiced due to the early stage of the case. That being said,  
16 in an abundance of caution and in light of the fact that Mr. Tillmon’s declaration indicates  
17 discovery is ongoing in this case, the Court finds it appropriate to grant a thirty (30) day  
18 stay of all deadlines, including to file a motion to compel, in order to allow Plaintiff to  
19 find replacement counsel if she chooses to do so. *See Landis v. N. Am. Co.*, 299 U.S. 248,  
20 254-55 (1936) (noting that a court’s power to stay proceedings is incidental to the inherent  
21 power to control the disposition of its cases in the interests of efficiency and fairness to  
22 the court, counsel, and litigants).

## 23 **V. CONCLUSION**

24 For the above reasons, the Court **GRANTS** the Motion as follows:

- 25 1. Seth E. Tillmon’s Motion to Withdraw as Counsel of Record for Plaintiff is  
26 **GRANTED**.
- 27 2. Plaintiff may proceed *pro se*, without counsel of record until she finds new  
28 representation.

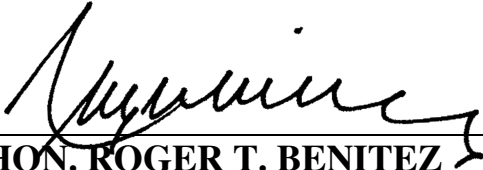
1           3.     The Clerk of Court shall update the docket to reflect the withdrawal of Mr.  
2 Tillmon, as counsel of record for Plaintiff.

3           4.     Mr. Tillmon shall immediately serve Plaintiff with a copy of this Order and  
4 thereafter file a proof of service to confirm the same.

5           5.     All deadlines in this case are stayed for thirty (30) days or until Friday, May  
6 14, 2021.

7           **IT IS SO ORDERED.**

8           DATED:   April 14, 2021

  
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**HON. ROGER T. BENITEZ**  
United States District Judge

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