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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JOHN JUNGERS,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, et al.,

15 Defendants.  
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Case No.: 21-CV-0829 W (MSB)

**ORDER GRANTING ATTORNEY'S  
MOTION TO WITHDRAW AS  
COUNSEL FOR PLAINTIFF JOHN  
JUNGERS [DOC. 30]**

18 Attorney Danielle R. Pena and PHG Law Group have filed a motion to withdraw  
19 as attorney of record for Plaintiff John Jungers. The motion is unopposed.

20 The Court decides the matter on the papers submitted. See Civ.L.R. 7.1.d.1. For  
21 the reasons set forth below, the Court **GRANTS** the motion [Doc. 30].  
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23 **I. BACKGROUND**

24 On April 28, 2021, Plaintiff John Jungers filed the Complaint naming Defendants  
25 City of San Diego, SDPD Officers Fernando F. Rincon, Jr. and Brooks R. Noble  
26 (collectively, the "City Defendants"), the County of San Diego and various Doe  
27 Defendants. (*See Compl.* [Doc. 1].) Thereafter, Plaintiff settled with the City Defendants  
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1 and on November 2, 2021, filed a joint motion to dismiss the City Defendants. (*See Jt.*  
2 *Motion* [Doc. 18].)

3 Meanwhile, Defendant County of San Diego filed a motion to dismiss, which was  
4 granted without leave to amend on December 22, 2021. (*See MTD Order* [Doc. 20].) As  
5 a result, the only remaining defendants are the does.

6 On January 26, 2022, this Court issued an Order to Show Cause (“OSC”) why the  
7 case should not be dismissed for failure to serve any of the doe defendants. (*See OSC I*  
8 [Doc. 22].) Plaintiff’s response to the OSC requested an opportunity to discover the  
9 identities of the doe defendants. (*Pl’s Response to OSC I* [Doc. 23] 3:1–6.)

10 On March 28, 2022, the parties attended a telephonic discovery conference with  
11 the Magistrate Judge. (*Minute Order* [Doc. 28].) Shortly after the telephonic conference,  
12 Attorney Pena spoke with Plaintiff about the status of the case and advised him on how to  
13 proceed. (*Pena Decl.* [Doc. 30-1] ¶2.) Since then, Attorney Pena has been unable to  
14 contact Plaintiff despite multiple attempts via telephone and email. (*Id.* ¶¶ 2–4.)

15 On September 29, 2022, this Court issued a second OSC for failure to serve the  
16 doe defendants. (*See OSC II* [Doc. 29].) Following the issuance of the second OSC,  
17 Attorney Pena again attempted unsuccessfully to contact Plaintiff. (*Pena Decl.* ¶ 3.)

18 On October 12, 2022, in response to the second OSC, Attorney Pena filed the  
19 pending motion to withdrawal as counsel based on the complete and total breakdown in  
20 communication with Plaintiff. (*Motion* [Doc. 30] 2:24–25, 4:12–14.)

## 21 22 **II. DISCUSSION**

23 An attorney may not withdraw as counsel except by leave of court. Darby v. City  
24 of Torrance, 810 F.Supp. 275, 276 (C.D.Cal.1992); Civ.L.R. 83.3.f.3. “The grant or  
25 denial of an attorney’s motion to withdraw in a civil case is a matter addressed to the  
26 discretion of the trial court...” Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081,  
27 1087 (7th Cir. 1982). Factors considered in evaluating the motion are “1) the reasons  
28 why withdrawal is sought; 2) the prejudice withdrawal may cause to other litigants; 3) the

1 harm withdrawal might cause to the administration of justice; and 4) the degree to which  
2 withdrawal will delay the resolution of the case.” CE Resource, Inc. v. Magellan Group,  
3 LLC, 2009 WL 3367489, at \*2 (E.D.Cal. 2009) (citing Canandaigua Wine Co., Inc. v.  
4 Moldauer, 2009 WL 89141, at \*1 (E.D.Cal. 2009)).

5 Withdrawal of counsel is governed by the standards of professional conduct  
6 required of members of the State Bar of California. See Nehad v. Mukasey, 535 F.3d  
7 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to attorney  
8 withdrawal). California Rule of Professional Conduct 3-700(C) enumerates several  
9 grounds under which counsel may properly seek to withdraw from a representation. Rule  
10 3-700(B)(d) provides that an attorney may seek withdrawal where the client’s conduct  
11 “renders it unreasonably difficult for the member to carry out the employment  
12 effectively.” Accordingly, “[s]tate and federal courts in California have granted motions  
13 to withdraw where a client fails to cooperate and communicate with counsel regarding  
14 the representation.” BLK Enters., LLC v. Unix Packaging, Inc., 2018 WL 5993842, at \*1  
15 (C.D.Cal. 2018) (citations omitted).

16 Here, Plaintiff’s failure to respond to Attorney Pena’s numerous attempts to  
17 contact him renders it unreasonably difficult for counsel to carry out her representation of  
18 Plaintiff in this lawsuit. Additionally, given the posture of this case—i.e., none of the  
19 remaining defendants have been served—there is nothing in the record suggesting that  
20 Attorney Pena and PHG Law Group’s withdrawal will prejudice the litigants in this  
21 matter, will harm the administration of justice or unduly delay the resolution of this case.  
22 Further, Attorney Pena has demonstrated diligence in attempting to notify her client of  
23 the motion to withdraw. (*Pena Decl. Re. Service* [Doc. 32] ¶¶ 2–3.)

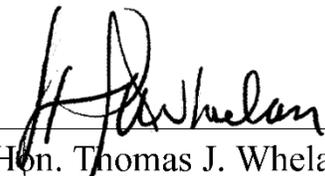
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25 **III. CONCLUSION & ORDER**

26 For all the reasons set forth above, the Court **GRANTS** Attorney Pena and PHG  
27 Law Group’s motion to withdraw as attorney of record for Plaintiff John Jungers [Doc.  
28 30] and **ORDERS** as follows:

- 1 • Attorney Pena shall serve a copy of this order on Plaintiff John Jungers at  
2 his last known mailing and e-mail address or addresses.
- 3 • On or before **December 2, 2022**, Attorney Pena shall file a notice with this  
4 Court listing the mailing and e-mail addresses used to serve Plaintiff John  
5 Jungers.
- 6 • On or before **December 9, 2022**, Plaintiff John Jungers shall file a notice  
7 with this Court verifying his mailing and e-mail addresses.

8 **IT IS SO ORDERED.**

9 Dated: November 21, 2022

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12 Hon. Thomas J. Whelan  
13 United States District Judge  
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