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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TWINS SPECIAL CO., LTD., a private  
limited company organized under the  
laws of Thailand,

Plaintiff,

v.

TWINS SPECIAL, LLC, NICHOLAS  
MECHLING, an individual,  
CHRISTOPHER MECHLING, an  
individual, TWINS SPECIAL, an  
unincorporated general partnership, and  
DOES 1-10, inclusive,

Defendants.

Case No.: 23-cv-223-JO-DDL  
Related Case No.: 21-cv-221-JO-DDL

**ORDER GRANTING DEFENDANTS’  
COUNSEL’S MOTION TO  
WITHDRAW AS COUNSEL**

**[Dkt. No. 108]**

**I.**

**BACKGROUND**

On September 22, 2023, counsel for Defendants at the law firm Witham Mahoney & Abbott, LLP (“WMA”) filed a Motion to Withdraw as Attorney of Record (“Motion to Withdraw”). Dkt. No. 108. On October 12, 2023, the Court held a hearing to address Defendants’ counsel’s Motion to Withdraw. The Court continued the hearing to October 31, 2023, to allow Defendants to search for new counsel. During the October 31 hearing,

1 Defendants reported that despite diligent efforts, they had not retained new counsel.  
2 Having considered the Motion to Withdraw and the parties' statements at the hearing, the  
3 Court **GRANTS** the Motion to Withdraw.

## 4 **II.**

### 5 **LEGAL STANDARD**

6 "An attorney may not withdraw as counsel except by leave of court." *P.I.C. Int'l,*  
7 *Inc. v. Gooper Hermetic, Ltd.*, No. 3:19-CV-00734-BEN-LL, 2020 WL 2992194, at \*1  
8 (S.D. Cal. June 4, 2020) (citation omitted). "The trial court has discretion whether to grant  
9 or deny an attorney's motion to withdraw in a civil case." *Osgood v. Main Street Mktg.,*  
10 *LLC*, No. 16CV2415-GPC(BGS), 2017 WL 7362740, at \*1 (S.D. Cal. Mar. 27, 2017).  
11 Under this District's Civil Local Rules, "corporations, partnerships and other legal entities,  
12 may appear in court only through an attorney permitted to practice pursuant to Civil Local  
13 Rule 83.3." S.D. Cal. CivLR 83.3(j); *see also Laskowitz v. Shellenberger*, 107 F. Supp.  
14 397, 398 (S.D. Cal. 1952) ("Since a corporation cannot practice law, and can only act  
15 through the agency of natural persons, it follows that it can appear in court on its own  
16 behalf only through a licensed attorney.").

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; and (4) the degree to which  
20 withdrawal will delay the resolution of the case." *Leatt Corp. v. Innovative Safety Tech.,*  
21 *LLC*, No. 09-CV-1301-IEG POR, 2010 WL 444708, at \*1 (S.D. Cal. Feb. 2, 2010). For  
22 example, courts have previously held that "[f]ailure to pay attorney's fees can be a valid  
23 ground for withdrawal." *Id.* at \*2. Moreover, there is no danger of prejudice, harm to the  
24 administration of justice, or undue delay where there are no immediately scheduled  
25 hearings, the case is still in early stages, and the relevant party has had sufficient notice of  
26 the intent to withdraw. *See Gurvey v. Legend Films, Inc.*, No. 09-CV-942-IEG (BGS),  
27 2010 WL 2756944, at \*1 (S.D. Cal. July 12, 2010). Additionally, the California Rules of  
28 Professional Conduct permit a lawyer to withdraw from representing a client if the client

1 breaches a material term of an agreement with the lawyer relating to the representation,  
2 and the lawyer has given the client a reasonable warning after the breach that he or she will  
3 withdraw unless the client complies with the agreement. Cal. Rule of Pro. Conduct  
4 R. 1.16(b)(5) (Cal. State Bar 2020).

5 Under this District’s Local Rules, a motion to withdraw must (1) be served on the  
6 adverse party and moving attorney’s client and (2) include a declaration regarding service  
7 of the motion on those parties. S.D. Cal. CivLR 83.3(f)(3). “Failure to make [service] as  
8 required . . . or to file the required declaration of service will result in a denial of the  
9 motion.” S.D. Cal. CivLR 83.3(f)(3)(b).

10 **III.**

11 **DISCUSSION**

12 As a preliminary matter, the Court notes that WMA has met the requirements of  
13 Civil Local Rule 83.3(f) by providing a declaration and proof of service indicating that it  
14 served Defendants with the Motion to Withdraw via email on September 22, 2023. Dkt.  
15 Nos. 108-2 and 108-3. The Court turns next to the merits of the Motion to Withdraw.

16 **A. Valid Cause for Withdrawal**

17 WMA asserts that withdrawal is warranted under California Rule of Professional  
18 Conduct 1.16(b)(5) because “Defendants have been unable to fulfill their obligations under  
19 the Engagement Agreement as WMA has not received compensation for the legal services  
20 provided to Defendants for a duration exceeding eight months,” and “[t]he outstanding  
21 balance for this matter has considerably aged due to non-payment, and constitutes a breach  
22 of the agreement between Defendants and WMA pertaining to fees and expenses.” Dkt.  
23 No. 108-1 at 3. The declaration of WMA attorney Matthew M. Mahoney states that  
24 “[n]early four months ago, at the end of May 2023, I advised Defendants that WMA would  
25 seek to withdraw if they did not fulfill their payment obligations.” Dkt. No. 108-2 at ¶ 3.  
26 As of the filing date of the Motion to Withdraw, “Defendants ha[d] not remitted payment,  
27 nor ha[d] they set forth a realistic plan to do so.” *Id.*

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1           Additionally, WMA contends that neither party in the action will be prejudiced if  
2 the Motion to Withdraw is granted. Specifically, WMA asserts Plaintiff will not be  
3 prejudiced by WMA’s withdrawal because “there is no trial date currently set, fact  
4 discovery is ongoing, and the pretrial conference is set to take place in June 2024.” Dkt.  
5 No. 108-1 at 4. WMA states that Defendants will also not be prejudiced because WMA  
6 gave Defendants notice of their potential withdrawal nearly four months prior to filing the  
7 Motion to Withdraw, and because WMA gave Defendants time to find new counsel. *Id.*  
8 Moreover, WMA contends that its withdrawal will not harm the administration of justice  
9 or delay resolution of the case given that no trial date has been set, the parties remained  
10 engaged in the discovery process, and the final pretrial conference was set in June 2024.  
11 *Id.* at 4. These circumstances, WMA asserts, leave sufficient time “for Defendants to  
12 obtain new counsel without any delay to the proceedings in this case.” *Id.*

13           Under the circumstances set forth by WMA in the Motion to Withdraw, the Court  
14 finds that withdrawal by WMA is appropriate. Defendants’ failure to pay fees owed to  
15 WMA for legal services rendered is a breach of a material term of the Engagement  
16 Agreement. Under California Rule of Professional Conduct 1.16(b)(5), such a breach  
17 represents a ground upon which to grant WMA’s Motion to Withdraw. *See Leatt Corp.*,  
18 2010 WL 444708, at \*2. Additionally, the Court finds that prejudice to Plaintiff or  
19 Defendants is mitigated by the Court’s issuance of an Amended Scheduling Order on  
20 October 18, 2023. Dkt. No. 120. Under the Amended Scheduling Order, the fact discovery  
21 cutoff is January 31, 2024; the expert discovery cutoff is April 23, 2024; the deadline to  
22 file pretrial motions is May 28, 2024; and the pretrial conference is set for September 25,  
23 2024. Given that WMA initially gave notice to Defendants of potential withdrawal in May  
24 2023—more than five months prior to the date of this Order—Defendants have had  
25 sufficient notice of WMA’s withdrawal and ample time to search for new counsel.

26 **B. Business Entities Must Retain New Counsel or Risk Default Proceedings**

27           Under this District’s Civil Local Rule 83.3(j), Defendants Twins Special LLC and  
28 Twins Special, an unincorporated general partnership (“Twins Special”), may only appear

1 in court through an attorney. The Court recognizes that granting the Motion to Withdraw  
2 will leave Twins Special LLC and Twins Special without counsel. However, Rule 83.3(j)  
3 is not offended where a court orders an unrepresented entity to find substitute counsel and  
4 provides time to do this on the condition that failure to do so will expose the defendant to  
5 default proceedings. *See, e.g., Osgood*, 2017 WL 7362740, at \*2 (granting counsel’s  
6 motion to withdraw from representing a business entity defendant; ordering the defendant  
7 to obtain new counsel within thirty days and requiring counsel to file a notice of appearance  
8 within that timeframe; and warning the defendant of the risk of default judgment upon its  
9 failure to retain new counsel); *see also United States v. High Country Broad Co., Inc.*,  
10 3 F.3d 1244, 1245 (9th Cir. 1993) (affirming a default judgment against a corporate  
11 defendant that failed to comply with the court’s order requiring it to retain new counsel).

12 **IV.**

13 **CONCLUSION**

14 For the foregoing reasons, the Court hereby **ORDERS** as follows:

- 15 1. WMA’s Motion to Withdraw as counsel for Defendants is **GRANTED**.
- 16 2. By not later than **November 10, 2023**, WMA shall (a) serve a copy of this  
17 Order on Defendants and file proof of service with the Court; (b) inform  
18 Defendants of the contents of this Order by phone, text message, and email;  
19 and (c) and submit a declaration of having done so.
- 20 3. By not later than **November 20, 2023**, Defendants Twins Special LLC and  
21 Twins Special, an unincorporated general partnership, must retain counsel and  
22 have counsel file a notice of appearance or be subject to default proceedings  
23 filed by Plaintiff pursuant to Federal Rule of Civil Procedure 55.
- 24 4. Defendants Nicholas Mechling and Christopher Mechling may proceed pro se  
25 (without counsel). By not later than **November 20, 2023**, Defendants must  
26 provide their contact information (mailing addresses, telephone numbers, and  
27 email addresses) to the Court pursuant to Civil Local Rule 83.11(b).

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1           5. All dates and deadlines set forth in the Amended Scheduling Order at Dkt.  
2           No. 120 remain unchanged and in effect.

3           **IT IS SO ORDERED.**

4 Dated: November 7, 2023



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7           Hon. David D. Leshner  
8           United States Magistrate Judge

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