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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEAN REYNOLDS,  
  
Plaintiff,  
  
v.  
  
MCLAREN GROUP, LLC; MCLAREN  
AUTOMOTIVE, INC.; and DOES 1  
through 20, inclusive.  
  
Defendants.

Case No.: 23-cv-01928-W-MMP  
  
**ORDER GRANTING ATTORNEY’S  
MOTION TO WITHDRAW AS  
COUNSEL FOR PLAINTIFF  
[DOC. 17]**

Pending before the Court is David N. Barry’s (“Attorney”) motion to withdraw as attorney of record for plaintiff Sean Reynolds (“Plaintiff”). ([Doc. 17], “Motion to Withdraw”.) The Court decides the matter on the papers submitted and without oral argument. See CivLR 7.1(d)(1). For the reasons set forth below, the Court **GRANTS** the Motion to Withdraw.

On September 13, 2023, Attorney filed this lawsuit on behalf of Plaintiff in San Diego County Superior Court. ([Doc. 1-2], “Complaint”.) The Complaint asserted seven causes of action relating to Plaintiff’s purchase of an allegedly defective McLaren vehicle. (*Id.*) On October 9, 2023, Plaintiff dismissed defendant McLaren Group, LLC with prejudice, apparently after realizing it is a real estate business operated by an

1 individual named Kelly McLaren, who has no relation to McLaren vehicles. ([Doc. 1], at  
2 ¶ 14 “Notice of Removal”.)

3 Remaining defendant McLaren Automotive, Inc. (“Defendant”) then removed the  
4 case to federal court on October 20, 2023. (*Id.*) Thereinafter, the Court denied Plaintiff’s  
5 motion to remand and granted in part Defendant’s motion to dismiss. (*See* [Doc. 13],  
6 “Motion to Dismiss”.) Shortly thereafter, Attorney attempted to withdraw as the attorney  
7 of record for Plaintiff [Doc. 14] but this initial request was stricken by the Court because  
8 it, among other things, did not appear that Attorney had served the document on his  
9 client. (*See* [Doc. 15].) Now, Attorney again attempts to withdraw as attorney of record  
10 for Plaintiff, citing a “breakdown of the attorney-client relationship.” ([Doc. 17-1], at 3.)

11 An attorney may not withdraw as counsel except by leave of court. *Darby v. City*  
12 *of Torrance*, 810 F. Supp. 275, 276 (C.D.Cal.1992); CivLR 83.3(f)(3). “The grant or  
13 denial of an attorney’s motion to withdraw in a civil case is a matter addressed to the  
14 discretion of the trial court . . . .” *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d  
15 1081, 1087 (7th Cir. 1982). Factors considered in evaluating a motion to withdraw are  
16 “1) the reasons why withdrawal is sought; 2) the prejudice withdrawal may cause to other  
17 litigants; 3) the harm withdrawal might cause to the administration of justice; and 4) the  
18 degree to which withdrawal will delay the resolution of the case.” *CE Resource, Inc. v.*  
19 *Magellan Group, LLC*, 2009 WL 3367489, at \*2 (E.D. Cal. 2009) (citing *Canandaigua*  
20 *Wine Co., Inc. v. Moldauer*, 2009 WL 89141, at \*1 (E.D. Cal. 2009)).

21 Withdrawal of counsel is governed by the standards of professional conduct  
22 required of members of the State Bar of California. *See Nehad v. Mukasey*, 535 F.3d  
23 962, 970 (9th Cir. 2008) (applying California Rules of Professional Conduct to attorney  
24 withdrawal). Under Rule 1.16(d), an attorney “shall not terminate the representation until  
25 the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the  
26 rights of the client, such as giving the client sufficient notice to permit the client to retain  
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1 other counsel . . . .”<sup>1</sup> (punctuation omitted). Furthermore, CivLR 83.3(f)(3) states an  
2 attorney’s motion to withdraw “must be served” “on the moving attorney’s client” and  
3 the motion must be accompanied by a “declaration pertaining to such service.”

4 Here, Attorney’s Motion to Withdraw is accompanied by a declaration and  
5 certificate of service representing that the Motion to Withdraw was timely served—by  
6 both mail and electronic service—on Plaintiff Sean Reynolds and counsel for Defendant.  
7 ([Doc. 17-2], at 3–6.) The time for opposition (September 2, 2024) passed and neither  
8 Plaintiff Sean Reynolds nor Defendant opposed, thereby conceding that neither party  
9 believes they would be prejudiced by the withdrawal.

10 However, on September 17, 2024—one day after the Motion to Withdraw’s  
11 hearing date and 15 days after any opposition was due—Plaintiff Sean Reynolds (who is  
12 an attorney) filed an opposition to the Motion to Withdraw. ([Doc. 20], “Opposition”).  
13 Plaintiff’s excuse for his Opposition being late was that he “ha[s] never filed in the  
14 Southern District despite being admitted in 2007 . . . [and] had to upgrade and link my  
15 Pacer account which has required dozens of phone calls and emails . . . .” (*Id.* at ¶ 3.)  
16 While this may be true and could possibly explain a short delay, it does not explain  
17 Plaintiff’s Opposition being 15 days late. *See* CivLR 7.1.e.2 (“[E]ach party opposing a  
18 motion . . . must file that opposition . . . not later than fourteen (14) calendar days prior to  
19 the noticed hearing.”). Indeed, Plaintiff had over a month between service of the Motion  
20 to Withdraw and when his Opposition was due—more than enough time to sort out any  
21 technical difficulties. Plaintiff is an attorney admitted to practice in this district and is  
22 expected to follow its deadlines just like any other attorney. As such, the Court declines  
23 to exercise its discretion to permit Plaintiff’s late-filed Opposition. *See* FED. R. CIV. P.  
24 6(b)(1) (emphasis added) (“[T]he court *may*, for *good cause*, extend time . . . .”).

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28 <sup>1</sup> California Rule of Professional Conduct 1.01(h) defines “reasonable” and “reasonably” in this context  
to mean “the conduct of a reasonably prudent and competent lawyer.”

1           Additionally, the Court would still grant the Motion to Withdraw even if it  
2 considered Plaintiff’s late-filed Opposition. While Plaintiff is correct that Attorney’s  
3 assertion of a “breakdown of the attorney-client relationship” is somewhat conclusory,  
4 Plaintiff’s own Opposition makes up for this by demonstrating just how unsalvageable  
5 the relationship between Plaintiff and Attorney has become. For example, Plaintiff  
6 himself characterizes Attorney of making “[K]nowingly false statements. There is no  
7 breakdown of the relationship. There is no conflict of interest. These claims are vague,  
8 unsupported by any evidence and a falsehood. It is patent that counsel is attempting to  
9 abandon me as the client after the case has been essentially gutted, mandating the motion  
10 be denied.” (*Opposition* at ¶ 11.) The Court fails to see how there can be “no breakdown  
11 of the relationship” while Plaintiff is simultaneously accusing his own Attorney of  
12 making “knowingly false statements.” Indeed, the Court does not see how the attorney-  
13 client relationship could reasonably continue at this point.

14           Furthermore, Plaintiff’s own assertions that he would suffer “severe prejudice if  
15 current counsel is permitted to be relieved . . . as [Attorney] has taken no reasonable steps  
16 to avoid prejudice of my rights” is itself entirely conclusory.<sup>2</sup> (*Opposition* at ¶ 12.)  
17 Plaintiff does not articulate how exactly he would be prejudiced by Attorney’s  
18 withdrawal nor what “reasonable steps” Attorney should take. To the contrary, the  
19 Magistrate Judge has postponed the Early Neutral Evaluation until the Court’s ruling on  
20 the Motion to Withdraw. ([Doc. 19].) The scheduling order has not yet been entered and  
21 there are no other impending dates in this case. Plaintiff himself is an attorney admitted  
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24 <sup>2</sup> Plaintiff also argues that “I object to the Motion’s request for ‘NO ORAL ARGUMENT PURSUANT  
25 TO RULE 7.1(D)(1).’ . . . I request [oral] argument . . .” (*Opposition* at ¶ 4.) Plaintiff is mistaken that  
26 Attorney somehow “request[ed]” “NO ORAL ARGUMENT” in his Motion to Withdraw. Instead,  
27 Attorney was simply following the Court’s Chambers Civil Rules. *See* Judge Whelan’s Chambers Civil  
28 Rule 3(b) (“The Court generally decides motions based on the papers submitted by the parties. In the  
caption of its notice of motion and motion, the moving party shall include the following: NO ORAL  
ARGUMENT PURSUANT TO LOCAL RULE. If the Court decides that oral argument will assist it in  
deciding a given motion, counsel will be notified telephonically at least three (3) court days before the  
scheduled hearing date.”)


1 to practice before this district and asserts that he paid \$275,000 for the vehicle at the heart  
2 of this case. (See [Doc. 7], at 7.) Clearly, Plaintiff could find other legal counsel if  
3 needed and the Court is unsure what other “reasonable steps” Attorney should be  
4 required to take at this point to avoid prejudicing Plaintiffs rights. Ultimately, it appears  
5 that Plaintiff opposes the Motion to Withdraw because he is upset with Attorney for  
6 losing the Motion to Dismiss. However, if Plaintiff is upset with Attorney regarding the  
7 Motion to Dismiss, his recourse is a potential malpractice suit, not reflexively opposing  
8 the Motion to Withdraw.

9 Seeing as neither Plaintiff nor Defendant would be prejudiced by Attorney’s  
10 withdrawal and there are no impending deadlines or any other indications in the record  
11 that Attorney’s withdrawal would harm the administration of justice or unduly delay the  
12 resolution of this case, the Court **GRANTS** Attorney’s Motion to Withdraw [Doc. 17] as  
13 attorney of record for Plaintiff Sean Reynolds and **ORDERS** as follows:

- 14 • Attorney shall serve a copy of this order on Plaintiff Sean Reynolds and  
15 Defendant and shall file the proof of service.
- 16 • On or before **October 8, 2024**, Plaintiff Sean Reynolds shall file a notice  
17 with this Court listing the mailing address for service of process.
- 18 • Additionally, the Court stays this matter until **October 22, 2024** to permit  
19 Plaintiff Sean Reynolds to find new counsel or decide to represent himself.  
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21 **IT IS SO ORDERED.**

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23 Dated: September 24, 2024

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27 Hon. Thomas J. Whelan  
28 United States District Judge