UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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JOSEPH A. GIBILTERRA,

Plaintiff,

vs.

AURORA LOAN SERVICES, LLC, *et al.*,

Defendants.

2:12-cv-00685-JCM-VCF

ORDER

Before the Court is Plaintiff's Motion to Withdraw as Attorney. (#22).

Relevant Background:

This case was removed on April 25, 2012. (#1). Defendant Quality Loan Service Corp. (hereafter "Defendant") filed a Motion to Dismiss on May 7, 2012. (#11). On May 4, 2012, Plaintiff filed a Motion to Remand. (#9). The Response to the Motion to Remand was filed on May 4, 2012 (#10) and the Reply on May 25, 2012 (#12). On May 18, 2012, the Court denied the Motion to Remand. (#16). On May 24, 2012, Opposition to the Motion to Dismiss was filed and the Reply was filed on May 25, 2012. (#'s 19 & 20). On May 25, 2012, the parties filed a Joint Status Report. (#21). In the Joint Status Report, the parties request the Court rule on the pending Motion to Dismiss. *Id.* On June 4, 2013, Plaintiff filed the Motion to Withdraw as Attorney. (#22). John C. Courtney, Esq. and the law firm of John Peter, Ltd. seek to withdraw as attorneys of record for Plaintiff Joseph Gibilterra. Counsel states that the firm's scope of work was to keep Plaintiff in his residence. Plaintiff has since vacated his residence and there has been no activity in the instant action for more than one year. *Id.*

Discussion:

Local Rule IA 10-6 provides that "no withdrawal . . . shall be approved if delay of discovery, the trial or any hearing in the case would result." On May 7, 2012, Defendant filed a Motion to Dismiss. (#11). To date, a Discovery Plan and Scheduling Order has not been entered. Trial has not been set in this matter but there is a pending dispositive motion. The Motion to Dismiss (#11) is pending before the Court but no hearing has been scheduled.

Defendant has not filed an opposition to the Motion to Withdraw As Counsel. Local Rule 7-2(d) states that "[t]he failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion."

Defendant Quality Loan Service Corp. appeared in the instant action by filing a Motion to Dismiss on May 7, 2012. (#11). Defendants Quality Loan Servicing Corporation and Mortgage Electric Registration Systems, Inc. were served April 24, 2012 (#'s 6 & 7) but have not answered or made an appearance. Pursuant to Local Rule 26-1(d), "[c]ounsel for plaintiff shall initiate the scheduling of the Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the first defendant answers or otherwise appears." It has been over a year since Defendant Quality Loan Service Corp. appeared. The Court finds that the parties must file a Discovery Plan and Scheduling.

Having reviewed and considered the matter, and for good cause shown,

IT IS HEREBY ORDERED that the Motion to Withdraw As Counsel (#22) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court serves a copy of this Order on Plaintiff Gibilterra at:

Joseph Gibilterra
P.O. Box 50802
Henderson, Nevada 89016

IT IS FURTHER ORDERED that the parties must file a Discovery Plan and Scheduling Order on or before June 28, 2013.

DATED this 17th day of June, 2013.

CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE