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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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ROBERT J. GARDNER, et al.,

Plaintiffs,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT, et al.,

Defendants.

Case No. 2:17-cv-00352-PAL

ORDER

(Mot Stay – ECF No. 16) (Mot WD Atty – ECF No. 17)

Before the court is counsel for plaintiff Potter Law Offices' Motion to Withdraw as Counsel and Stay Proceedings (ECF Nos. 16, 17). The motion represents that plaintiffs' counsel's present physical condition and health materially impairs his ability to represent his clients. The law firm consists of Mr. Potter and his son, who is unable to take over representation without his father's ability to practice law. Mr. Potter seeks leave to withdraw as counsel of record, and a stay of proceedings while his clients obtain substitute counsel. An Amended Scheduling Order (ECF No. 15) was entered April 18, 2017, giving the parties until November 10, 2017, to complete discovery.

Plaintiffs Robert and Kim Gardner have individual claims, and are also co-special administrators of the estate of Garrett Gardner, deceased. Courts routinely adhere "to the general rule prohibiting *pro se* plaintiffs from pursuing claims on behalf of others in a representative capacity." *See, e.g., Simon v. Hartford Life, Inc.*, 546 F.3d 661, 664–65 (9th Cir. 2008) (collecting cases). Additionally, estates may not proceed *pro se* in federal court. *Joubert v. Brown Williamson Tobacco Corp.*, 466 F. App'x 588 (9th Cir. 2012) (affirming dismissal of action in which pro se plaintiff alleged claims as the personal representative of his mother's estate) (citing *Simon*, 546 F.3d at 664); *Jones v. Corr. Med. Servs.*, 401 F.3d 950, 951–52 (8th Cir. 2005) (non-attorney administrator of decedent's estate may not proceed *pro se* on behalf of estate); *Iannaccone v. Law*,

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142 F.3d 553, 559 (2nd Cir. 1998) (administrator of estate may not appear *pro se* on behalf of estate); *Pridgen v. Andresen*, 113 F.3d 391, 393 (2nd Cir. 1997) (executrix may not appear *pro se* on behalf of estate).

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

IT IS ORDERED:

- 1. The Motion to Withdraw (ECF No. 17) is **GRANTED**.
- 2. Plaintiffs shall have until **September 25, 2017**, in which to retain substitute counsel who shall make an appearance in accordance with the requirements of the Local Rules of Practice
- 3. Plaintiffs' failure to timely comply with this order by obtaining substitute counsel may result in the imposition of sanctions which may include a recommendation to the district judge that plaintiffs' complaint be dismissed for failure to prosecute. *See* Fed. R. Civ. P. 41(b).
- 4. The clerk of the court shall serve the plaintiffs with a copy of this order at their last known address:

Robert J. Gardner, Co-Special Administrator Kim Gardner, Co-Special Administrator Estate of Garrett E. Gardner 27231 Calle Del Cid Mission Viejo, CA 92691

5. The Motion to Stay (ECF No. 16) is **GRANTED** to the extent that it is stayed for 30 days.

DATED this 25th day of August, 2017.

PEGGY A. ZEN

UNITED STATES MAGISTRATE JUDGE