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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 MGM RESORTS INTERNATIONAL,
11 Plaintiff,
12 v.
13 REGISTRANT OF LIVEMGM.COM,
14 Defendant.

Case No. 2:17-cv-00695-JCM-GWF

JONATHAN W. FOUNTAIN'S
MOTION TO WITHDRAW AS COUNSEL
FOR PLAINTIFF MGM RESORTS
INTERNATIONAL

15 Pursuant to District of Nevada Local Rule LR IA 11-6(b) and Rule 1.16 of the Nevada
16 Rules of Professional Conduct, I, Jonathan W. Fountain, hereby move the Court for entry of an
17 order: (1) granting leave for me to withdraw from representing Plaintiff MGM Resorts
18 International (“MGM Resorts”); and (2) directing the Clerk of the Court to remove me from the
19 CM/ECF service list for this case.

20 **STATEMENT OF FACTS**

21 This cybersquatting and trademark infringement action was filed on March 9, 2017.
22 (ECF No. 1, Compl.) The Defendant’s default was entered on July 17, 2017 (ECF No. 21,
23 Default), and on July 21, 2017, MGM Resorts moved for default judgment and other relief
24 (ECF No. 22, Mot. for Default J.). The motion is pending. On July 25, 2017, the undersigned
25 informed Lewis Roca Rothgerber Christie LLP of his resignation from further employment with
26 the firm.

27 **LEGAL STANDARDS**

28 District of Nevada Local Rule LR IA 11-6 governs attorney appearances, substitutions,

1 and withdrawals. It states the following:

2 **LR IA 11-6. APPEARANCES, SUBSTITUTIONS, AND WITHDRAWALS**

- 3 (a) A party who has appeared by attorney cannot while so represented appear
4 or act in the case. This means that once an attorney makes an appearance
5 on behalf of a party, that party may not personally file a document with
6 the court; all filings must thereafter be made by the attorney. An attorney
7 who has appeared for a party must be recognized by the court and all the
8 parties as having control of the client's case, however, the court may hear
9 a party in open court even though the party is represented by an attorney.
- 10 (b) No attorney may withdraw after appearing in a case except by leave of the
11 court after notice has been served on the affected client and opposing
12 counsel.
- 13 (c) A stipulation to substitute attorneys must be signed by the attorneys and
14 the represented client and be approved by the court. Except where
15 accompanied by a request for relief under subsection (e) of this rule, the
16 attorney's signature on a stipulation to substitute the attorney into a case
17 constitutes an express acceptance of all dates then set for pretrial
18 proceedings, trial, or hearings, by the discovery plan or any court order.
- 19 (d) Discharge, withdrawal, or substitution of an attorney will not alone be
20 reason for delay of pretrial proceedings, discovery, the trial, or any hearing
21 in the case.
- 22 (e) Except for good cause shown, no withdrawal or substitution will be
23 approved if it will result in delay of discovery, the trial, or any hearing in
24 the case. Where delay would result, the papers seeking leave of the court
25 for the withdrawal or substitution must request specific relief from the
26 scheduled discovery, trial, or hearing. If a trial setting has been made, an
27 additional copy of the moving papers must be provided to the clerk for
28 immediate delivery to the assigned district judge, bankruptcy judge, or
magistrate judge.

22 In addition, Rule 1.16 of the Nevada Rules of Professional Conduct governs the
23 termination of representation. It states the following:

- 24 (a) Except as stated in paragraph (c), a lawyer shall not represent a client or,
25 where representation has commenced, shall withdraw from the
26 representation of a client if:
- 27 (1) The representation will result in violation of the Rules of
Professional Conduct or other law;
- 28 (2) The lawyer's physical or mental condition materially impairs the

1 lawyer's ability to represent the client; or

2 (3) The lawyer is discharged.

3 (b) Except as stated in paragraph (c), a lawyer may withdraw from
4 representing a client if:

5 (1) Withdrawal can be accomplished without material adverse effect
6 on the interests of the client;

7 (2) The client persists in a course of action involving the lawyer's
8 services that the lawyer reasonably believes is criminal or
fraudulent;

9 (3) The client has used the lawyer's services to perpetrate a crime or
10 fraud;

11 (4) A client insists upon taking action that the lawyer considers
12 repugnant or with which the lawyer has fundamental disagreement;

13 (5) The client fails substantially to fulfill an obligation to the lawyer
14 regarding the lawyer's services and has been given reasonable
15 warning that the lawyer will withdraw unless the obligation is
16 fulfilled;

17 (6) The representation will result in an unreasonable financial burden
18 on the lawyer or has been rendered unreasonably difficult by the
19 client; or

20 (7) Other good cause for withdrawal exists.

21 (c) A lawyer must comply with applicable law requiring notice to or
22 permission of a tribunal when terminating representation. When ordered to
23 do so by a tribunal, a lawyer shall continue representation notwithstanding
24 good cause for terminating the representation.

25 (d) Upon termination of representation, a lawyer shall take steps to the extent
26 reasonably practicable to protect a client's interests, such as giving
27 reasonable notice to the client, allowing time for employment of other
28 counsel, surrendering papers and property to which the client is entitled
and refunding any advance payment of fee or expense that has not been
earned or incurred. The lawyer may retain papers relating to the client to
the extent permitted by other law.

ARGUMENT

The Court should grant leave to withdraw because the legal standards for withdrawal are easily satisfied. First, with respect to LR IA 11-6(b), I have informed MGM Resorts of my

1 resignation from Lewis Roca Rothgerber Christie LLP and my intent to withdraw. In addition,
2 this motion has been served on Defendant. Second, with respect to LR 11-6(e), no delay of
3 discovery, trial, or any hearing in the case will result as Michael J. McCue will continue on as
4 MGM Resorts' lead counsel. Third, with respect to Nevada Rule of Professional Conduct
5 1.16(b)(1), adequate grounds for withdrawal exist because withdrawal can be accomplished
6 without material adverse effect to the interests of MGM Resorts as Michael J. McCue is
7 continuing on as MGM Resorts' counsel. Fourth, Rule 1.16(c) is satisfied because, through this
8 motion, I am complying with the Court's rules and procedures for withdrawal. Fifth, Rule
9 1.16(d) is satisfied because, again, Michael J. McCue is continuing on as MGM Resorts' lead
10 counsel.

11 **CONCLUSION**

12 For the foregoing reasons, the Court should enter an order: (1) granting me leave to
13 withdraw as counsel for MGM Resorts; and (2) directing the Clerk of the Court to remove me
14 from the CM/ECF service list for this case.

15 Dated: this 27th day of July, 2017

16 Respectfully submitted,

17 LEWIS ROCA ROTHGERBER CHRISTIE LLP

18 By: /s/ Jonathan W. Fountain

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23 *Attorneys for Plaintiff MGM Resorts International*

24 **IT IS SO ORDERED:**

25
26 
27 UNITED STATES MAGISTRATE JUDGE

28 DATED: 7/28/2017