

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**March 14, 2019 at 10:00 a.m.**

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|-----------------------------------------|---------------------|---------------------------------------------------------------------------------------------------------------------|
| 1. <a href="#"><u>19-90062</u></a> -E-7 | UNITED RESORTS, LLC | <b>POST ORDER HEARING RE:<br/>MOTION FOR RELIEF FROM<br/>AUTOMATIC STAY<br/>1-31-19 <a href="#"><u>[10]</u></a></b> |
| <a href="#"><u>VFG</u></a> -1           | Michael H. Yi       |                                                                                                                     |
| <b>KHATRI BROTHERS VS.</b>              |                     |                                                                                                                     |

<p><b>Hearing in this Contested Matter to be conducted at 10:30 a.m. on March 14,2019, pursuant to order of the court (Dckt. 37).</b></p>
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| 2. <a href="#"><u>18-90771</u></a> -E-7 | RACHEL MACLEOD<br>Pro Se | <b>CONTINUED PRO SE<br/>REAFFIRMATION<br/>AGREEMENT WITH WELLS FARGO<br/>BANK, N.A.<br/>1-7-19 <a href="#"><u>[14]</u></a></b> |
|-----------------------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|

Continued from 1/24/19 (specially set time)

Negative equity in vehicle of \$-4,637.10

Negative income of

**March 14, 2019 at 10:00 a.m.**

[18-9001](#)**GIBSON V. NATIONAL RECOVERIES  
ET AL**

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 27, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Withdraw as Attorney has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Withdraw as Attorney is <span style="color: red;">XXXXXX</span></b>
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David Foyil ("Movant"), counsel of record for Jo Anne Gibson ("Plaintiff-Debtor"), filed a Motion to Withdraw as Attorney as Plaintiff-Debtor's counsel in the bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to California Rule of Professional Conduct 1.16(b)(4).

Cal. R. Prof. Cond. 1.16(b)(4) provides for termination of representation when a client discharges the attorney.

- B. Plaintiff-Debtor suffers from bi-polar disorder, which makes representation difficult.
- C. Counsel cannot effectively represent Plaintiff-Debtor due to lack of communication and Debtor's refusal to answer discovery requests

## JANUARY 24, 2019 HEARING

At the January 24, 2019 hearing the court continued the hearing to allow Movant to properly serve the Debtor. Civil Minutes, Dckt. 63.

### APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010).<sup>FN.1.</sup>

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FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

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It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 1.16. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 1.16(d). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) the lawyer knows or reasonably should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; (2) the lawyer knows or reasonably should know that the representation will result in violation of these rules or of the State Bar Act; (3) the lawyer's mental or physical condition renders it unreasonably difficult to carry out the representation effectively; or (4) the client discharges the lawyer. CAL. R. PROF'L CONDUCT 1.16(a).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

The client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively

CAL. R. PROF'L. CONDUCT 1.16(b)(4).

## **DISCUSSION**

### **Failure to Serve Debtor**

The Proof of Service does not indicate Debtor was served with this Motion. Since the January 24, 2019 hearing on the Motion, no proof of service has been filed suggesting notice was effected.

In Debtor's Chapter 7 case, it appears Movant is still or has resumed performing work for Debtor. Bankr. E.D. Cal. No. 15-90680, Dckts. 32, 36.

At the hearing, **XXXXXXXXXXXXX**.

### **Permissive Withdrawal**

~~As grounds for the Motion to Withdraw as Attorney, Movant states that Plaintiff-Debtor has on several occasions refused to communicate, and has refused to answer discovery requests. Movant states further he was told by Debtor that Debtor suffers from bi-polar disorder.~~

~~Under California Rule of Professional Conduct 1.16(b)(4), Debtor's conduct, here failure to cooperate and communicate with counsel, is hindering Movant's ability to carry out her employment and duties effectively. Those are sufficient reasons for permissive withdrawal.~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Withdraw as Attorney filed by David Foyil ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Withdraw as Attorney is **XXXXXXXXXXXXX**.