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CHANGES MADE BY COURT

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

South Bay Law Firm
3655 Torrance Blvd. Ste. 300
Torrance CA 90503

12 In re
13 SWING HOUSE REHEARSAL AND
14 RECORDING, INC.,
15
16 Debtor and Debtor-in-
17 Possession.

Case No. 2:16-bk-24758-RK
Chapter 11
Jointly Administered. With:
Case No. 2:16-bk-24760-RK
Chapter 7

**ORDER RE: MOTION PURSUANT TO
LOCAL BANKRUPTCY RULE 2090-
1(a)(1) TO WITHDRAW AS COUNSEL**

[DOCKET ENTRY NO. 694]

18 In re
19 PHILIP JOSEPH JAURIGUI,
20
21 Debtor.

Date: October 14, 2020
Time: 1:30 p.m.
Place: Courtroom 1675
255 East Temple Street
Los Angeles, California 90012

- 22 Affects Both Debtors
23 Affects Swing House Rehearsal and
24 Recording, Inc. Only
25 Affects Philip Joseph Jaurigui Only

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The Court, having reviewed and considered that “Motion Pursuant To Local Bankruptcy Rule 2090-1(a)(1) To Withdraw As Counsel” (“Motion”) filed by South Bay Law Firm and docketed as Docket Entry No. 694, hereby adopts its attached tentative ruling posted on the court’s website in advance of the hearing as its reasons for its ruling with respect to the Motion and, based thereon and for the additional reasons stated on the record at the hearing, it is further

ORDERED that the Motion is granted in its entirety.

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South Bay Law Firm
3655 Torrance Blvd. Ste. 300
Torrance CA 90503

Date: October 16, 2020



Robert Kwan
United States Bankruptcy Judge

**ADOPTED TENTATIVE
RULING**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, October 14, 2020

Hearing Room 1675

1:30 PM

2:16-24758 Swing House Rehearsal and Recording, Inc. and Philip

Chapter 11

#7.00 Cont'd hearing re: Motion to pursuant to Local Bankruptcy Rule 2090-1(a)(1) to withdraw as counsel fr. 8/4/2, 9/29/20

Docket 694

Tentative Ruling:

Revised and updated tentative ruling as of 10/13/20. Regarding the request of Creditor 7175 WB, LLC, to close the hearing to the public on the motion of its counsel to withdraw pursuant to LBR 2090-1(a), the court will first hear oral argument on the request since it was only filed on 10/10/20 and there has not been an opportunity for response, but the tentative ruling is to grant the request as follows. 7175 WB contends that an open hearing will prejudice it by revealing confidential communications between it and its counsel in discussing the evidence filed under seal during argument. While 7175 WB's request apparently contravenes the command of FRBP 5001(b) that "[a]ll trials and hearings shall be conducted in open court" because it seeks that the hearing be closed to the public, including counsel for debtor, the request is justified in that in the interests of allowing frank and candid discussion of the issues raised by the motion to withdraw, 7175 WB and its counsel would most likely discuss in argument their confidential attorney client communications and litigation strategy protected under both the attorney client privilege and the attorney work product doctrine since the motion to withdraw relates to the attorney client relationship and confidential communications between counsel and client. Public policy in vindicating the necessity to preserve confidentiality of these matters protected by these privileges outweighs the public interest in an open hearing on a matter that does not directly affect parties in the bankruptcy case other than counsel and this particular client. See *In re FiberMark, Inc.*, 330 B.R. 480, 497-503 (Bankr. D. Vt. 2005)(confidential attorney client and work product privileged matters may be shielded from public record disclosure as a matter of common law); see also, *In re 50-Off Stores, Inc.*, 213 B.R. 646, 650-660 (Bankr. W.D. Tex. 1997)(sealing order to protect confidential attorney client

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and work product privileged matters from disclosure on public record is authorized pursuant to 11 U.S.C. 107(b)). Accordingly, the court will grant the request of 7175 WB to close the hearing to the public.

On the merits of the pending motion of counsel to withdraw, the tentative ruling is as follows: Trial courts have discretion to decide whether an attorney may withdraw from representing a client. *United States v. McKenna*, 327 F.3d 830, 843 (9th Cir. 2003). In assessing whether an attorney may withdraw as counsel, courts look to the state's substantive ethics rules. In *re Mortgage & Realty Trust*, 195 B.R. 740, 747-748 (Bankr. C.D. Cal. 1996). The California Rules of Professional Conduct ("CRPC") provide the substantive ethics rules in California. *Id.* The local rules of this court adopt the California Rules of Professional Conduct as the ethics rules applying to attorneys practicing before the court through Local Bankruptcy Rule 2090-2(a) and Local Civil Rule 83.-3.1.2 of the United States District Court for the Central District of California. Local Bankruptcy Rule 2091-1(a)(1) requires leave of the court for "[a]n attorney who has appeared on behalf of an entity in any matter concerning the administration of the case... to withdraw as counsel...." A lawyer may withdraw from representing a client if "the client breaches a material term of an agreement with, or obligation, to [sic] the lawyer... and the lawyer has given the client a reasonable warning after the breach that the lawyer will withdraw unless the client fulfills the agreement or performs the obligation." CRPC 1.16(b)(5) (effective June 1, 2020). Under the CRPC, a lawyer "shall not terminate a representation until the lawyer has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, such as giving the client sufficient notice to permit the client to retain other counsel...." CRPC 1.16(d). In this case, counsel asserts that the client, 7175 WB, has not paid the agreed \$3,600 per month to be applied to the outstanding \$47,020.47 account receivable balance, which is a breach of the agreement between counsel and the client, 7175 WB. 7175 WB concedes that it has only "partially" paid counsel, but asserts that it has not paid counsel the remainder because counsel "has not completed performance of agreed upon services." ECF 695 at 5. Counsel asserts that "[t]here are no services for which [counsel] has been paid and which have not been performed." ECF 698, at 2 ¶ 11. As counsel stated in his declaration, both adversary proceedings "have been fully and finally

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resolved and closed," and there "are no presently pending contested matters." ECF 694 at 5. 7175 WB disputes this point, stating that there are outstanding "contested matters," specifically, conclusion of uncompleted assignment documentation, suspension of plan payments by Debtor, giving rise to a plan default and other matters required to be concluded under the plan. Gelles Reply Declaration, ECF 699 at 5-6. In accord with CRPC 1.16(d), counsel has also offered to refer 7175 WB to locally based bankruptcy counsel and has "offered to assist any replacement counsel in connection with any matters that might immediately arise." ECF 694 at 5. 7175 WB contends that counsel "has not provided any referral to qualified and actually physically currently available locally-based bankruptcy counsel," but does not state why referrals must be "actually physically available" in order to be effective counsel. Counsel also states in his declaration that 7175 WB has never responded to his offers to find replacement counsel, and that prior to 7175 WB's Opposition, 7175 WB had never requested "actually physically currently available locally-based bankruptcy counsel." ECF 698, at 4 ¶ 16. Having reviewed the client fee agreement filed under seal, the court agrees with counsel that the evidence indicates that 7175 WB has materially breached the agreement in not making the agreed \$3,600 monthly payments to be applied to the outstanding account receivable balance, and the evidence before the court indicates that counsel gave the client reasonable warning of counsel's intent to withdraw and has taken reasonable steps to avoid reasonably foreseeable prejudice to the client's rights, including sufficient notice to the client to permit it to retain new counsel. Accordingly, counsel's motion to withdraw should be granted because counsel has satisfied the requirements of CRPC 1.16(b)(5) and (d) for permissive withdrawal.

Appearances are required on 10/14/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be

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Central District of California
Los Angeles
Judge Robert Kwan, Presiding
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conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

Debtor(s):

Swing House Rehearsal and

Represented By
Steven R Fox