

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MILLER'S ORGANIC FARM, et al.,

Defendants.

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CIVIL ACTION

NO. 19-CV-1435

ORDER

AND NOW, this day of , 2021, upon consideration of Steven Lafuente, Esq.'s motion to withdraw as counsel for defendants Amos Miller and Miller's Organic Farm (Dkt. No. 120), as well as plaintiff United States' opposing memorandum and the parties' exhibits, IT IS HEREBY ORDERED that the motion is DENIED WITHOUT PREJUDICE. Consistent with Local Rule of Civil Procedure 5.1(c), the Court denies Mr. Lafuente leave to withdraw unless and until another attorney of this Court enters an appearance for the defendants.

BY THE COURT:

HONORABLE EDWARD G. SMITH
Judge, United States District Court

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**UNITED STATES' BRIEF OPPOSING STEVEN LAFUENTE, ESQ.'S
MOTION TO WITHDRAW AS DEFENDANTS' COUNSEL**

Plaintiff United States opposes Steven Lafuente, Esquire's motion to withdraw as counsel for defendants Miller's Organic Farm and Amos Miller, whom he has represented: (1) for years in this statutory permanent injunction action enforcing democratically enacted federal food safety laws of general applicability; and (2) in an earlier, related subpoena enforcement action. As discussed below, unless and until new counsel for the defendants appears who is admitted to this Court, Mr. Lafuente's withdrawal would be contrary to the public's, the Court's, and the government's interests during this post-injunction phase when the Court is assessing the defendants' contempt of its orders.

1. It is within the Court's discretion whether to grant the request.

Mr. Lafuente properly moves for leave to withdraw rather than merely withdrawing from this case, because: (1) under Local Rule of Civil Procedure 5.1(c), "An attorney's appearance may not be withdrawn except by leave of court, unless another

attorney of this court shall at the same time enter an appearance for the same party”; and (2) no such other attorney has appeared on defendants’ behalf.

The case law makes no exception to the leave-of-court requirement where the movant’s client seeks to proceed pro se. *See, e.g., Johnson v. Smithkline Beecham Corp.*, No. 11-cv-5782, 2017 WL 2729272, at *4 (E.D. Pa. Jan. 23, 2017) (Report and Recommendation of Special Discovery Master William T. Hangley) (“no such distinction is reflected in the case law.”) Regardless, Miller’s Organic Farm, as an unincorporated association, cannot appear in this action pro se. *See, e.g., Rowland v. Cal. Men’s Colony*, 506 U.S. 194, 202 (1993) (stating that “a corporation may appear in the federal courts only through licensed counsel,” and “the rationale for that rule applies equally to all artificial entities. Thus, save in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. § 1654 . . . does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.”); *accord, e.g., Adesanya v. Novartis Pharms. Corp.*, 755 Fed. Appx. 154, 159 (3d Cir. Oct. 11, 2018).

Here, it is wholly a matter for the Court’s discretion whether to grant or deny the withdrawal request. As the Third Circuit has held, the only limitation on that discretion is where the attorney seeking to withdraw serves no further meaningful purpose in the case-- unlike in the current context where, as explained below, Mr. Lafuente serves a highly meaningful, continuing purpose. *See Ohntrup v. Kurumu*, 760 F.3d 290, 295 (3d Cir. 2014). Notably, in *Ohntrup* it took the Morgan Lewis firm 28 years finally to be able to persuade the district court that the firm’s presence was not benefitting the court or the parties. Until then, the court’s decades-long view (which is apposite here) was that the firm was needed so that the court would not be left “without the possibility of

effective communication with [the corporation], as well as without a reliable mechanism for responsible supervision of the post-judgment aspects of this litigation.” *See, e.g., Johnson*, 2017 WL 2729272, at *3-4 & n.10, citing *Ohntrup v. Firearms Ctr., Inc.*, 802 F.2d 676, 679 (3d Cir. 1986).

2. In exercising discretion, the Court may consider various interests.

Former Judge Legrome Davis of this Court recognized some of the interests that the Court can consider when exercising its discretion on a motion to withdraw. These include: “the District Court's substantial interest in the administration of justice, in the efficient management of its schedule and docket, and the need to insure progress, not just in this case, but in all cases assigned to it.” *See In re DVI, Inc. Secur. Litig.*, No. 03-cv-5336, 2014 WL 5430998, at *1-2 (E.D. Pa. Oct. 24, 2014) (citations omitted). The Court may also consider the potential prejudice to litigating parties and the stage of the litigation. *Buschmeier v. G&G Investments, Inc.*, 222 Fed. Appx. 160, 164 (3d Cir. Jan. 25, 2007).

3. The motion is groundless: Prairie Star cannot represent defendants.

Here, there is no allegation that defendants have not been paying Mr. Lafuente’s fees and costs. Rather, Mr. Lafuente avers in large part, as grounds for his seeking to withdraw, that:

- Advocacy group Prairie Star National, which does not include licensed counsel, advised him that his representation of the defendants is ended. Motion, ECF 120, p. 1 ¶¶ 3-4 & Exh. A thereto.
- Amos Miller then advised Mr. Lafuente that Prairie Star National was replacing him as defendants’ representative. Motion, pp. 1-2, ¶ 5 & Exh. B thereto (Amos Miller writing to Mr. Lafuente, in part: “please notify USDA that you will not represent our farm at this time,” and then proceeding to ask Mr. Lafuente for advice).

- Mr. Lafuente “has experience with groups like Prairie Star National” and “suspects that defendants have chosen to pursue a strategy” with which Mr. Lafuente “has no desire to associate.” Motion, p. 2, ¶ 8.

Mr. Lafuente also notes the geographical challenges he faces, as a Texas attorney, in representing the Pennsylvania-based defendants, as well as his belief that “defendants will be better served with local counsel.” Motion, ¶ 9.

Mr. Lafuente has served in the role of counsel to the defendants in this action for years, however, and no such local counsel has appeared on behalf of the defendants, apart from two Harrisburg, Pennsylvania-area attorneys over the past several years (Joseph Macaluso, Esq., and Christopher Carusone, Esq.) who either were terminated by Mr. Miller or withdrew.

The government agrees with Mr. Lafuente that Prairie Star National does not appear to include licensed counsel (let alone licensed counsel admitted in the Eastern District of Pennsylvania). Representatives of the U.S. Department of Agriculture’s Food Safety and Inspection Service, as well as the United States Attorney’s Office, have received recent correspondence from Prairie Star National, including the correspondence to Assistant United States Attorney Sullivan that is attached hereto as Exhibit “A.” A fair reading of that correspondence suggests that the members of Prairie Star National are adherents of the “sovereign citizen” movement who contend that they are beyond the jurisdiction of the courts. The Third Circuit, and this Court, have found such positions to be frivolous. *See, e.g., Ibrahim v. Attorney General*, 2021 WL 3012660, at *2 (3d Cir. July 16, 2021), *citing United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011) (explaining that a person claiming to be a “sovereign citizen” is “not

beyond the jurisdiction of the courts” and that “[t]hese theories should be rejected summarily, however they are presented”); *Coppedge v. Charlton*, 798 Fed. Appx. 747, 748 n.3 (3d Cir. Mar. 24, 2020) (“we reiterate that Coppedge’s sovereign-citizen-based averments, which frequently rely on attacks on the judiciary and invocation of alchemistic, archaic, and irrelevant formalism, are unlikely to bring him relief in any court of law”) (quotation marks omitted); *Mumin v. City of Philadelphia*, No. 21-cv-2653, 2021 WL 2554624, at *2 (E.D. Pa. June 22, 2021) (“‘[L]egal-sounding but meaningless verbiage commonly used by adherents to the so-called sovereign citizen movement’ is nothing more than a nullity”) (citation omitted).

4. The relevant interests all weigh against Mr. Lafuente’s withdrawal.

Key, relevant interests weigh against Mr. Lafuente’s withdrawal unless and until new, licensed counsel enters an appearance for the defendants.

First, in this case in which the Court entered its permanent injunction order two years ago, the public has an interest—which the Court and the government share—in the Court’s enforcement orders and Congress’s generally applicable federal food safety laws being followed. Granting the motion to withdraw at this time—while defendants’ contempt of the Court’s orders is being litigated—opens the door for defendants to plead, to the public’s detriment, that any further illegality is based on uncounseled ignorance of those orders and the law.

The Court has held many conference calls and hearings with defendants’ counsel over the years, during several of which Mr. Miller also appeared. Those calls and hearings reinforce the government’s concern that Mr. Miller’s attempt to terminate Mr. Lafuente and effectively proceed pro se (with advice from non-attorney sovereign citizen

adherents) is an effort frivolously to avoid or delay the effects of the Court's orders and contempt sanctions in this case.¹ The government calls attention to Mr. Miller's frequent statements over the years (particularly when he was pro se in the subpoena enforcement action, in 2016) claiming confusion over legal requirements and over the effect of the Court's orders.

To the extent that Mr. Miller's oft-pleaded ignorance is genuine, Mr. Lafuente has a history of guiding Mr. Miller away from frivolous, sovereign-citizen-type arguments, and he serves a meaningful purpose here in continuing to do so. A September 20, 2019 deposition of Mr. Miller in this case included this exchange between Mr. Lafuente and Mr. Miller that is illustrative of Mr. Lafuente's necessary role:

20 BY MR. LAFUENTE:
 21 Q. Okay. Mr. Miller, I am your
 22 attorney; correct?
 23 A. Yes.
 24 Q. I've been working with you on this
 25 for this past year, is that about -- is that right?

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1 A. Yes.
 2 Q. Okay. Now, I want to take you to
 3 Plaintiff's Exhibit Number 3; and in this document I
 4 notice here on this Paragraph Number 2, [reading]:
 5 "It is hereby declared that we're exercising our
 6 right of freedom of association as guaranteed by the
 7 First and Fourteenth Amendment to the U.S.
 8 Constitution."

¹ As the government recently advised the Court, Mr. Miller's recent business conduct will be the subject of the United States' forthcoming motion for an order requiring the defendants to show cause why they should not be held in further contempt of the Court's orders. The government plans to file its motion before the November 12, 2021 hearing on Mr. Lafuente's motion to withdraw.

9 Do you see that?

10 A. Yes.

11 Q. Now, more importantly, you don't
12 really specify what the purpose of your association
13 is here, but the next sentence says, "This means
14 that our association activities are restricted to
15 the private domain only."

16 Is that what that says?

17 A. Yes.

18 Q. Okay. "The private domain," you're
19 not the person that came up with that idea, are you?

20 A. No.

21 Q. Okay. Who came up with that idea?

22 A. Karl Dahlstrom.

23 Q. And who is Karl Dahlstrom?

24 A. He was someone in Dallas, Texas that
25 gave me that information.

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1 Q. Okay. Did he work with a group
2 called ProAdvocate Group?

3 A. Yes.

4 Q. Okay. And did you -- did you pay him
5 for his services?

6 A. Yes.

7 Q. Okay. And what did he provide for
8 you?

9 A. A strategy.

10 Q. Okay. Did he draft documents for
11 you?

12 A. Yes, he did.

13 Q. Okay. Did he draft what's called
14 "Articles of Association" for your -- for your
15 Private Membership Association?

16 A. Yes.

17 Q. Okay. And these are the organizing
18 documents that you and Becky used to create your
19 Private Membership Association?

20 A. Correct.

21 Q. Okay. Now, at the time that you
22 purchased this Private Membership Association from
23 Karl Dahlstrom, did he convince you and did you
24 believe that you had the right to create a Private
25 Membership Association and that the Government had

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1 no jurisdiction over you?

2 A. That was the information that I
3 gathered, yes.

4 Q. And Karl Dahlstrom informed you of
5 that?

6 A. Correct.

7 Q. Okay. And you believed him?

8 A. I did.

9 Q. And did you rely on him?

10 A. I did.

11 Q. Okay. Have you since learned that
12 that's probably not true?

13 A. The way it's looking now, that's
14 correct.

15 Q. Okay. So you've admitted that you --
16 you know, all the things that the Government needs.
17 I mean, you admitted that you were selling
18 un-inspected meat in interstate commerce; right?

19 A. Yes.

20 Q. Okay. But were you doing so with the
21 intention of breaking the law?

22 A. Not intentionally.

23 Q. Right. You were doing it because you
24 believed that you had the right to do it as a
25 Private Membership Association; is that correct?

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1 A. That's right.

2 Q. Okay. Now, have -- in our
3 discussions have I explained to you the difference
4 between the right of private contract and maybe
5 other constitutional rights?

6 A. Correct, yes.

7 Q. Okay. And since have you learned
8 that the Government can regulate your contracts,
9 they only need a rational basis? Have we talked
10 about that?

11 A. Yes, we did.

12 Q. Okay. Now, does that give you a
13 clearer understanding of why you can't operate the
14 way you've been operating?

15 A. Correct.

16 Q. And you understand that now?

17 A. Yes.

18 Q. Okay. So is it your intention to
19 continue your operations as you've been doing them?

20 A. No.

21 O. Okay. Now, getting on to the First

Second, the Court and the government share an interest in the administration of justice, the efficient management of the Court's schedule and docket, and the need to ensure progress in this case. The Court may recall how difficult it was to communicate with Mr. Miller when he was pro se during the subpoena enforcement action in 2016. He was (and apparently still is) generally reachable only by mail and by telephone to his store. Mr. Lafuente's role (though he is located in Texas) has been crucial. Particularly in this post-injunction enforcement period, the Court's and government ability effectively to communicate with Mr. Miller and Miller's Organic Farm depends on licensed counsel who is admitted to this Court remaining in the case. Mr. Lafuente remains particularly

suited to that representation because he has represented the defendants in this and related proceedings since 2016.

The government submits that a pro se Mr. Miller would cause significant delays to this Court's docket and the government's ability effectively to investigate and enforce the public interests in this matter.

5. Conclusion.

Because Mr. Lafuente's withdrawal (without licensed counsel replacing him) would prejudice these public, judicial, and executive branch interests, the United States respectfully asks the Court to deny, without prejudice, Mr. Lafuente's motion to withdraw as defendants' counsel.

Respectfully submitted,

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Dated: November 4, 2021

Counsel for United States of America

CERTIFICATE OF SERVICE

I certify that today, November 4, 2021, I served a true and correct copy of the foregoing Opposition Brief to Steven Lafuente, Esq.'s Motion to Withdraw as Counsel, with Exhibit, via email upon the following:

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The brief has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing ("ECF") System.

/s/ Gerald B. Sullivan
Gerald B. Sullivan
Assistant United States Attorney