

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANDREW JONES, *et al.*,

Plaintiffs,

v.

5:98-CV-0374
(FJS/TWD)

JAMES PARMLEY, *et al.*,

Defendants.

APPEARANCES:

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THÉRÈSE WILEY DANCKS, United States Magistrate Judge

MEMORANDUM-DECISION and ORDER

I. INTRODUCTION

This case has a long, complicated, and varied litigation history. According to the Court's docket, there are ninety-two named Plaintiffs in all, and fifty-one named Defendants. Many additional individuals were named in the suit when it was commenced, but have since been

terminated as parties for various reasons. According to the docket, the law firm of Hoffman, Hubert & Hoffman (“Hoffman”), by counsel Terrance J. Hoffman, Esq., represents forty-nine Plaintiffs; the law firm of Morvillo, Abramowitz, Grand, Iason & Anello, P.C. (“Morvillo”), through several individual attorneys, represents forty-three Plaintiffs.¹ The Attorney General of New York State represents fifty of the named Defendants, and the law firm of Hiscock & Barclay, LLP, represents one Defendant, Joseph W. Smith.

Presently pending before the Court is a motion by Hoffman to withdraw as counsel to some of the Plaintiffs that firm represents, namely Plaintiffs Ronald Jones, Jr., Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., Karen Jones, as Administratrix of the Estate of Ruth Jones, Ross John, Tekarontake Paul Delaronde, Kahentinetha Horn, and Gerald Logan, Jr. (Dkt. No. 495). The Hoffman motion also seeks an attorney charging lien. *Id.* The Morvillo firm moves to withdraw from representation of all of the Plaintiffs represented by that firm. (Dkt. No. 498.) Plaintiffs Robert E. Bucktooth, Jr. and Cheryl Bucktooth object to the motion made by Morvillo. (Dkt. No. 501.) Hoffman partially opposes the motion of Morvillo to the

¹ There are some discrepancies in the motion papers as to the exact number and representation of parties when compared to the Court’s docket. *See* Dkt. No. 495-3 ¶¶ 2, 23 (Hoffman indicates that firm represents fifty-two Plaintiffs. However, Martha Bucktooth, whom Hoffman lists in the moving papers as being represented by that firm, is listed on the docket as being represented by Morvillo. Margerete Skye, Holly John, and Leighann Neff are not listed as parties on the docket, but Hoffman lists them as clients in the moving papers. Mona Logan is listed on the docket as being represented by both Hoffman and Morvillo. Steven Lee Skye and Francis E. Kloch, as Executor of the Estate of Anthony J. Kloch, Jr., are listed on the docket as being represented by Hoffman, but are not named as being represented by Hoffman in the moving papers.); Dkt. No. 510 ¶ 3 (indication of fifty-one Plaintiffs represented by Hoffman and forty-three Plaintiffs represented by Morvillo). These discrepancies do not affect the Court’s determination of the pending motions.

extent that the motion seeks withdrawal from representation of all Plaintiffs represented by Morvillo. (Dkt. No. 506.) Plaintiffs Kathy Melissa Smith and Malcolm Hill object to Morvillo's motion. (Dkt. No. 508.) The Defendants, with the exception of Defendant Joseph W. Smith who takes no position on the motions, oppose both motions. (Dkt. No. 510.) Plaintiff Kahentinetha Horn opposes the Hoffman motion. (Dkt. No. 512.) Plaintiff Ronald Jones, Jr., opposes the Hoffman motion. (Dkt. No. 514.) Plaintiff Kenneth Kappelmeier filed a "Petition to Strike" Morvillo's motion, which the Court construes as opposition to that motion. (Dkt. No. 518.) Morvillo filed a reply with permission. (Dkt. No. 522.) Also with permission of the Court, many of these filings were made under seal and/or in redacted format and/or were served on other parties in redacted format due to the sensitive nature of the information contained therein pertaining to the attorney-client relationships at issue.

For the reasons set forth below, the Hoffman motion is granted in part and denied in part, and the Morvillo motion is granted in part and denied in part.

II. CLAIMS AND PROCEDURAL BACKGROUND

Briefly, the Native American Plaintiffs gathered for a ceremonial fire on Plaintiff Andrew Jones' property in May of 1997. Shortly after the gathering commenced, members of the New York State Police came onto Mr. Jones' property, beat many gatherers, and arrested twenty-four people. A civil complaint was filed in March of 1998 alleging, among other claims, civil rights violations. (Dkt. No. 1.) A detailed summary of the legal claims originally asserted in this action, and a detailed description of the incident giving rise to this action, are set forth in District Court Judge Scullin's Memorandum-Decision and Order of March 28, 2005 (Dkt. No. 387, as modified by Dkt. No. 395), and reference is made to that Memorandum-Decision and Order for a

summary of those legal claims and a description of that incident. Litigation proceeded for several years. After Defendants' motion for summary judgment on the issue of qualified immunity was decided, and affirmed by the Second Circuit Court of Appeals, *Jones v. Parmley*, 465 F.3d 46 (2d Cir. 2006), the following claims remain: (1) alleged First Amendment violations brought by all Plaintiffs against all Defendants for disrupting the subject gathering; (2) alleged Fourth Amendment violations for excessive force brought by Plaintiffs Andrew Jones, Holly Lyons, Robert Bucktooth, Jr., Kenneth Kappelmeier, Malcolm Hill, Kathy Melissa Smith, Kevin Henhawk, Gerald Logan, Jr., Anthony Kloch (now deceased), and Marie Peter against Defendants Slade, Jecko, Clark, Barlow, Zubrzycko, Miner, Darstein, Buttenschon, Chris A. Smith, Brown, Scleiser, Ashbarry, Leadley, Williams, Gloria Wood, Bonner, Burgos, Dougherty, Dye, Free, Greenwood, Kealy, Little, Morse, Murray, Randazzo, Riley, and Frederick A. Smith; and (3) state law claims of alleged false arrest, assault and battery, malicious prosecution, intentional infliction of emotional distress, and negligent infliction of emotional distress against all Defendants. (*See generally* Dkt. Nos. 111, 146, 387, and 395; Dkt. No. 510-2 at 2.²)

Thereafter, settlement discussions began with the consent of all parties and, in an effort to continue the settlement process, former U.S. Magistrate Judge George Lowe conducted a summary trial where the parties presented evidence, but no live witnesses, regarding claims and defenses. (Text Minute Entry 4/9/2008.) Judge Lowe issued an advisory opinion determining that the issue of liability would in all likelihood be decided in favor of the Plaintiffs, but that most Plaintiffs would likely receive nominal damages, while some Plaintiffs should obtain a

² Page citations to the Court's docket entries refer to the page numbers automatically inserted by the Court's electronic filing system.

reasonable settlement. (Dkt. No. 498-3 at 27-64.) Judge Lowe also suggested that punitive damages were unlikely to be awarded. *Id.* Settlement negotiations were more actively pursued by the parties after the advisory opinion was issued.

Over the next couple of years, settlement negotiations continued with the knowledge and consent of Plaintiffs and ultimately resulted in a proposed written settlement agreement by approximately February of 2012. (Dkt. No. 498-3 at 10.) Plaintiff's attorneys then obtained written authorization from most of the Plaintiffs to enter into the settlement agreement. The Plaintiffs held meetings and mediation sessions with their attorneys, and the Court appointed mediator, former Magistrate Judge Lowe. (*See generally* Dkt. Nos. 474, 475, 478, 479, and 481; and Text Minute Entries 7/18/2012, 9/4/2012, 11/8/2012, 1/7/2013, 1/28/2013, 3/5/2013, and 7/17/2013.) On consent of the Defendants, the Court also held an ex parte two-day settlement conference with the Plaintiffs, Plaintiffs' counsel, and former Magistrate Judge Lowe as the mediator, but ultimately some of the Plaintiffs would not agree to the settlement. (Dkt. No. 483; Text Minute Entries 10/15/2013 and 10/16/2013.)

During the course of settlement negotiations, differences between Plaintiffs' counsel and some Plaintiffs arose regarding strategy in how the case should proceed, and what issues should be litigated. (*See generally* Dkt. Nos. 495 and 498.) Certain Plaintiffs stopped communications with counsel, and failed to respond to counsel's efforts to contact them about issues relevant to the case. *Id.* Hostility arose between some Plaintiffs and their counsel. *Id.*

Hoffman asserts that a conflict of interest exists because they cannot agree with certain Plaintiffs about litigation and/or settlement strategies, and the attorney-client relationship has broken down between attorney Hoffman and some of the Plaintiffs. (Dkt. No. 495.) Thus

Hoffman argues withdrawal from representation of those Plaintiffs is necessary. *Id.* Morvillo likewise asserts conflicts of interest due to disagreement about litigation and settlement strategies, and argue the firm cannot move forward in good faith with this litigation advancing what Morvillo identifies as claims not asserted in the action. (Dkt. No. 498.) Morvillo also contends that the attorney-client relationship has broken down between that office and certain Plaintiffs, and Plaintiffs have disputes amongst themselves. *Id.* Morvillo notes that these problems, coupled with the failure to be paid by a third party who originally agreed to fund Morvillo's representation of its Plaintiffs in the litigation, are sufficient to permit withdrawal from representation of all forty-three of the Plaintiffs that firm represents. *Id.*

III. LEGAL STANDARD

Withdrawal of counsel in a civil case is governed by Local Rule 83.2(b) which provides:

An attorney who has appeared may withdraw only upon notice to the client and all parties to the case and an order of the Court, upon a finding of good cause, granting leave to withdraw Unless the Court orders otherwise, withdrawal of counsel, with or without the consent of the client, shall not result in the extension of any of the deadlines contained an any case management orders . . . or the adjournment of a trial ready or trial date.

N.D.N.Y. L.R. 83.2(b).

“Whether to grant or deny a motion to withdraw as counsel ‘falls to the sound discretion of the trial court.’” *Stair v. Calhoun*, 722 F. Supp. 2d 258, 264 (E.D.N.Y. 2010) (quoting *In re Albert*, 277 B.R. 38, 47 (Bankr. S.D.N.Y. 2002)). In determining whether good cause has been shown for withdrawal, federal courts look to the various codes of professional responsibility, although courts are not bound by the codes. *See Whiting v. Lacara*, 187 F.3d 317, 321 (2d Cir. 1999) (referring to the Code of Professional Responsibility to illustrate both mandatory and

permissive situations for withdrawal of counsel); *Heck-Johnson v. First Unum Life Ins. Co.*, No. 01-CV-1739 (GLS/RFT), 2006 WL 1228841, at *4, 2006 U.S. Dist. LEXIS 26265, at *10 (N.D.N.Y. May 4, 2006) (citing to the New York State Code of Professional Responsibility, which is based upon the Model Code). Courts must analyze “the reasons for withdrawal and the impact of the withdrawal on the timing of the proceeding.” *Karimian v. Time Equities, Inc.*, No. 10 Civ. 3773 (AKH/JCF), 2011 WL 1900092, at *2, 2011 U.S. Dist. LEXIS 51916, at *3-4 (S.D.N.Y. May 11, 2011). “The court must ensure . . . that the prosecution of the suit is not disrupted by the withdrawal of counsel.” *Brown v. Nat’l Survival Games, Inc.*, No. 91-CV-221 (HGM), 1994 WL 660533, at * 3, 1994 U.S. Dist. LEXIS 16572, at *9 (N.D.N.Y. Nov. 18, 1994) (citation omitted).

There is no concrete standard for what constitutes a satisfactory reason for withdrawal, but district courts in the Second Circuit in reviewing reasons for withdrawal have found “the existence of an irreconcilable conflict between attorney and client is a proper basis for the attorney to cease representing his client.” *Lan v. AOL Time Warner, Inc.*, No. 11 Civ. 2870(LBS)(JCF), 2011 WL 5170311, at *1, 2011 U.S. Dist. LEXIS 126549, at *3 (S.D.N.Y. Oct. 31, 2011) (citation and punctuation omitted) (collecting cases). Further, an attorney may have valid reasons to withdraw when the client insists that the attorney pursue claims that are not part of a lawsuit or call witnesses the attorney deems detrimental to the case. *See Whiting*, 187 F.3d 317, 322 (citing Model Code DR 2-110(C)(1)(a)). Lack of communication with the client, lack of cooperation, and an “acrimonious relationship” with the client may be good cause for withdrawal. *Munoz v. City of New York*, No. 04 Civ. 1105(JGK), 2008 WL 2843804, at *1, 2008 U.S. Dist. LEXIS 55297, at *2 (S.D.N.Y. July 15, 2008). However, a client’s refusal to accept a

settlement offer and failure to pay legal fees are not valid reasons on their own to permit withdrawal. *See, e.g., Vaughn v. Am. Tel. & Tel. Co.*, No. 96 Civ. 0989 (LAK), 1998 WL 760230, at *1, 1998 U.S. Dist. LEXIS 17129, at *3 (S.D.N.Y. Oct. 30, 1998) (refusal of a client to accept settlement offer “does not amount to good cause for withdrawal” without further compelling reasons); *Whiting*, 187 F.3d at 321 (nonpayment of certain disputed fees asserted without sufficient particularity not enough to justify withdrawal, but withdrawal permitted on other grounds); *Burack v. Epstein*, No. 88 CIV. 4433 (JES), 1990 WL 129176, at * 1, 1990 U.S. Dist. LEXIS 11497, at *5 (S.D.N.Y. Aug. 30, 1990) (withdrawal not permitted where attorney made insufficient showing of client’s failure to pay litigation expenses and agreement was unclear regarding such expenses).

When considering the impact of withdrawal, courts consider the prejudice withdrawal may cause to other litigants, the harm the withdrawal might cause to the administration of justice, and the degree to which withdrawal will delay the resolution of the case. *See Bruce Lee Enterprises, LLC v. A.V.E.L.A., Inc.*, No. 1:10 C 2333(MEA), 2014 WL 1087934, at * 3, 2014 U.S. Dist. LEXIS 37574, at *11 (S.D.N.Y. Mar. 19, 2014) (court must weigh the impact of withdrawal on the progress of the action and take into account the prejudice, harm, and burden to client, the lawyer, and the judicial system which may be caused by the withdrawal) (citations omitted).

IV. DISCUSSION

A. Hoffman Motion to Withdraw

The Hoffman firm asserts that a conflict of interest exists because they cannot agree with certain Plaintiffs about litigation and/or settlement strategies, and the attorney-client relationship

has broken down between attorney Hoffman and some of the Plaintiffs. (Dkt. No. 495.) Thus, Hoffman argues withdrawal from representation of Plaintiffs Ronald Jones, Jr., Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., Karen Jones, as Administratrix of the Estate of Ruth Jones, Ross John, Tekarontake (Paul Delaronde), Kahentinetha Horn, and Gerald Logan, Jr., is necessary. *Id.*

1. Gerald Logan, Jr.

The arguments advanced by Hoffman for seeking to be relieved as counsel to Gerald Logan, Jr. (“Logan”), concerning communication issues are adequate to be relieved as his counsel. (Dkt. No. 495-3 at 8-9.) The Court has not received any communication from Logan indicating he objects to the motion. Without making a specific determination at this time that Logan has abandoned his claims, the Court finds that Hoffman has sufficiently shown that communication problems exist to such an extent that Hoffman’s withdrawal from representation of Logan is appropriate. *Munoz*, 2008 WL 2843804, at *1.

2. Ronald Jones, Jr.

Hoffman bases the motion for withdrawal from representation of Ronald Jones, Jr. on a “complete and utter breakdown of the lawyer/client relationship.” (Dkt. No. 495-3 at 10.) Although Plaintiff Ronald Jones, Jr., opposes the application to withdraw (Dkt. No. 514), Hoffman has shown good cause for the withdrawal based upon the rancorous relationship that has developed between the law firm and this Plaintiff. In *Heck-Johnson*, the court granted counsel’s motion to withdraw, holding that “[w]hen a client insists on dictating legal strategies to the lawyer to the extent that their relationship significantly deteriorates, the situation may

constitute the functional equivalent of a conflict of interest establishing good cause to withdraw.” *Heck-Johnson*, 2006 WL 1228841, at *3-4 (citations omitted). “Without revealing privileged confidences, it is readily apparent that there is a fundamental conflict between . . . [Hoffman and Ronald Jones, Jr.] concerning legal strategy that has caused their relationship to deteriorate.” *Id.* at *4. Hoffman’s submissions, including those filed publically and those submitted under seal with permission of the Court, reveal that Plaintiff Ronald Jones, Jr., insists on pressing claims that are not part of the present lawsuit. The Court finds Hoffman has shown a functional equivalent of a conflict of interest that amounts to good cause for permitting withdrawal. *Id.*

3. Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., and Karen Jones, as Administratrix of the Estate of Ruth Jones

Hoffman’s motion regarding the other Jones family member Plaintiffs he represents center on failure to communicate and cooperate with counsel, as well as a break down of the lawyer/client relationship concerning Karen Jones. (Dkt. No. 495-3 at 13-14.) None of these Plaintiffs have opposed the motion. Hoffman’s submissions detail efforts to communicate with these Plaintiffs to no avail. The Court finds that Hoffman has shown evidence of a strained relationship with these Plaintiffs sufficient to grant the motion to withdraw. *Munoz*, 2008 WL 2843804, at *1 (withdrawal permitted where the law firm showed a lack of communication between plaintiff and counsel and an acrimonious relationship that had developed); *Callahan v. Consolidated Edison Co. of New York, Inc.*, No. 00CIV.6542LAKKNF, 2002 WL 1424593, at *1, 2002 U.S. Dist. LEXIS 11791, at *2 (S.D.N.Y. July 1, 2002) (“[f]ailure of a client to cooperate with counsel in the prosecution or defense of an action by, among other things, failing to communicate with counsel, has been found to be an adequate basis . . .” to permit withdrawal

by the attorney).

4. Ross John and Tekarontake Paul Delaronde

Plaintiffs Ross John (“John”) and Tekarontake Paul Delaronde (“Delaronde”) had previously agreed to the proposed settlement, but at an ex parte settlement conference with the Court on October 16, 2013, where Plaintiffs, Plaintiffs’ counsel, and mediator George Lowe were present, both of these Plaintiffs withdrew their consent to the settlement. (Dkt. No. 495-3 at 14-15.) In the course of so doing, both of these Plaintiffs expressed a desire to see claims pursued in the litigation that are not part of the Constitutional violations or other claims alleged in the lawsuit. *Id.* Neither John nor Delaronde oppose the Hoffman motion. Similarly as to the Hoffman motion regarding Ronald Jones, Jr., the Court finds Hoffman has shown a functional equivalent of a conflict of interest that amounts to good cause for permitting withdrawal because this difference of opinion concerning legal strategy has caused their relationship to significantly deteriorate. *Heck-Johnson*, 2006 WL 1228841, at *4. Therefore, withdrawal of Hoffman from representation of John and Delaronde is appropriate.

5. Kahentinetha Horn

Hoffman moves to withdraw from representation of Kahentinetha Horn (“Horn”) essentially based upon a fundamental disagreement as to trial strategy, and failure to cooperate. (Dkt. No. 495-3 at 16-18.) Horn has submitted a letter to the Court in response to the motion which is filed under seal pursuant to the Court’s permission. (Dkt. No. 512.) Without revealing any specific statements, the Court notes that statements made by Horn confirm that Horn also seeks to pursue claims that are not part of the alleged Constitutional violations and other claims remaining in the case. (Dkt. No. 512 at 2.) Additionally, submissions on the motion by both

Hoffman and Horn convince the Court that communication between them has substantially deteriorated and a bitter relationship remains. Thus, Hoffman has shown good cause to permit withdrawal from representation of Horn. *Munoz*, 2008 WL 2843804, at *1.

6. General Conflict Between Plaintiffs in Agreement with Settlement and Plaintiffs not in Agreement with Settlement

Lastly, Hoffman asserts that hostile sentiments between Plaintiffs who have agreed to the proposed settlement and Plaintiffs who have not agreed create an inherent conflict of interest in the office continuing to represent all of the Hoffman Plaintiffs. (Dkt. No. 495-3 at 18-19.)

While the refusal of a single client to accept a settlement offer may not amount to good cause for withdrawal, such good cause has been found where the client's refusal to settle is coupled with other compelling reasons to permit withdrawal. *Vaughn*, 1998 WL 760230, at *1 (motion to withdraw granted where the attorney-client relationship generally broke down, the client refused to settle, and the client insisted that a claim lacking merit be pursued). The Court finds that the disagreement between the Plaintiffs who desire settlement and those Plaintiffs who do not, combined with the significant problematic issues outlined above between Hoffman and Ronald Jones, Jr., Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., Karen Jones, as Administratrix of the Estate of Ruth Jones, Ross John, Tekarontake Paul Delaronde, Kahentinetha Horn, and Gerald Logan, Jr., provide further support to grant the Hoffman motion to withdraw from representation of these specific Plaintiffs, while remaining as counsel to the other forty Plaintiffs.

B. Morvillo Motion to Withdraw

Morvillo moves to withdraw from representation of all of the Plaintiffs represented by

that firm. (Dkt. No. 498.) The motion is based upon claimed conflicts between Morvillo and the Plaintiffs they represent, and claimed conflicts among and between the Plaintiffs they represent. Specifically regarding these conflicts, Morvillo asserts that a breakdown has occurred in its relationship with certain clients, that certain clients may assert claims and defenses against one another, and that there are disagreements as to strategy and settlement. (Dkt. No. 498 at 4-11.) Morvillo also argues that they have not been paid since approximately 2008, and therefore should not be required to underwrite a trial. *Id.* at 13.

1. Breakdown of Attorney-Client Relationship and Disagreement in Strategy and Settlement

Morvillo asserts that the attorney-client relationship has broken down as to certain clients to such a serious extent that withdrawal from representation should be granted. (Dkt. No. 498-3 at 13-14.) With regard to the settlement process, Morvillo notes that thirty-eight of their clients originally agreed to the settlement. *Id.* at 13. The dissenting Plaintiffs include Robert E. Bucktooth, Jr., his children Nadine Bucktooth and Robert Bucktooth, Andrew Jones, and Alfred Logan. *Id.* at 13-14. In their sealed moving papers, Morvillo points out certain interactions between their firm and these five Plaintiffs which the Court agrees show dysfunctional communication issues and substantial disagreement regarding strategy and settlement amounting to good cause for withdrawal from representation of these five Plaintiffs. *Id.* at 13-14, 18-23; *see also Heck-Johnson*, 2006 WL 1228841, at *3-4.

Morvillo also asserts that it has had a fundamental breakdown in trial strategy regarding “many of its clients,” yet Morvillo only points to specific instances of fundamental differences of opinion regarding litigation and trial strategy between their office and Andrew Jones, Robert E.

Bucktooth, Jr., and Cheryl Bucktooth. *Id.* at 21-23; Dkt. No. 522 at 6-9. Notably, Andrew Jones has not filed any opposition to the motion and has verbally indicated he does not want Morvillo to represent him. (Dkt. No. 498-3 at 14.) Robert E. Bucktooth, Jr., and Cheryl Bucktooth filed opposition to the motion. (Dkt. No. 501.) Information in their opposition confirms discordant and problematic communication issues with Morvillo. *Id.* As such, the Court finds that Morvillo has shown additional good cause to withdraw from representation of Plaintiffs Robert E.

Bucktooth, Jr., and Andrew Jones, as well as Cheryl Bucktooth, based upon the breakdown of the attorney-client relationship and substantial differences of opinion concerning trial strategy.

Whiting, 187 F.3d at 319; *Heck-Johnson*, 2006 WL 1228841, at *4.

Accordingly, Morvillo has shown good cause supporting withdrawal from representation of Robert E. Bucktooth, Jr., Cheryl Bucktooth, their children Nadine Bucktooth and Robert Bucktooth, Andrew Jones, and Alfred Logan. However, good cause for withdrawal has not been shown regarding any other Plaintiff the Morvillo firm represents.

2. Disagreements Among Plaintiffs Represented by Morvillo

In further support of the motion to withdraw from representation of all of the Plaintiffs it represents, Morvillo asserts that disagreements exist among Plaintiffs which would potentially cause the firm “to engage in cross-examination of former clients, including, at a minimum, Andrew Jones” (Dkt. No. 498-3 at 20; *see also* Dkt. No. 522 at 5-8.) Morvillo generically asserts that they may need to cross-examine “several former clients” without providing specific information about any specific named Plaintiffs other than Andrew Jones. *Id.*; *see also* Dkt. No. 522 at 5-8. Morvillo also asserts other conflicts between clients, but again only provides specific information concerning Andrew Jones, Robert E. Bucktooth, Jr., and Cheryl Bucktooth. *Id.* at

90; Dkt. No. 522 at 6-9. Morvillo further claims these conflicts cannot be cured without complete withdrawal by the firm from representation of all Plaintiffs. *Id.* at 21, 89.

The Court does not agree. First, Morvillo's assertion that it would need to vigorously cross-examine former clients is premature and speculative at this juncture based upon the information provided in the sealed moving papers. Second, Morvillo indicates that if it is relieved as counsel to all Plaintiffs, it will assist any new counsel in getting "up to speed on the matter." *Id.* at 25. These claimed conflicts among the Plaintiffs would then potentially persist with any new counsel. Third, if necessary, the Court could appoint special counsel to conduct any such cross-examination deemed necessary and appropriate under the circumstances. This approach would be much less damaging to the Plaintiffs with whom Morvillo has failed to show any specific instances of significant disagreement.

Most importantly, however, the Court must balance the asserted conflict with the impact of withdrawal on the lawsuit. *See Whiting*, 187 F.3d at 320-21 ("In addressing motions to withdraw as counsel, district courts have typically considered whether the prosecution of the suit is likely to be disrupted by the withdrawal of counsel.") (citation and punctuation omitted). Here, in a case involving fifty-one individually named Defendants and at least ninety-two individually named Plaintiffs, forty-three of whom are represented by Morvillo, permitting complete withdrawal of Morvillo under the circumstances presented is not warranted. Judicial economy and fairness to the Plaintiffs for whom Morvillo has not shown a specific substantial conflict dictate that Morvillo's motion for withdrawal from those Plaintiffs must be denied. While there is still some discovery to be completed and the case is not quite trial ready, this case has had a long and protracted history in litigation. It was originally commenced in 1998. The vast majority

of the very extensive discovery is complete. Even though dispositive motions may be made, relatively speaking in the scheme of this litigation, this case is essentially on the verge of trial. As so aptly stated in their opposition to the Morvillo motion by Kathy Melissa Smith and Malcolm Hill, two of the Plaintiffs Morvillo represents, “The majority of clients that my attorneys represent, including ourselves, on this case have been nothing but cooperative. Everything they have advised we have done. We have never been hostile or threatening toward my attorneys. [] Our attorneys should not be allowed to cause us apprehension and unease by leaving us at such a critical time.” (Dkt. No. 508 at 1.)

To permit withdrawal of Morvillo from representation of all forty-three of the Plaintiffs it represents would cause significant interference with the trial court’s management of its calendar and more importantly cause significant unnecessary hardship on the Plaintiffs who have been cooperative and with whom no conflict or loss of trust has been sufficiently shown by Morvillo. Complete withdrawal by Morvillo from all Plaintiffs is not necessary or warranted under the circumstances. *See, e.g., In re World Trade Ctr. Disaster Site Litig.*, 769 F. Supp. 2d 650 (S.D.N.Y. 2011) (attorney representing clients who had made claims to, gave releases to, and received recoveries from the Victim Compensation Fund (“VCF”) found to have conflict of interest by virtue of his representation of other clients in the action who had not given releases; Court found appointment of special counsel was necessary to advise clients who made claims to VCF, but Court did not require attorney withdrawal from representation of all other clients.)

3. Morvillo’s Fees and Expenses

Morvillo notes that it hasn’t been paid since 2008 for its work on this matter. (Dkt. No. 498-3 at 2, 23-24.) Morvillo was originally retained by the Plaintiffs they represent on the

understanding of both Morvillo and the Plaintiffs that the fees and expenses would be paid by a third party. (Dkt. No. 498-1 at 19; Dkt. No. 501 at 1; Dkt. No. 508 at 1.) Apparently, through no fault of the Plaintiffs represented by Morvillo, the third party stopped paying Morvillo's fees in 2008. (Dkt. No. 498-3 at 23-24.) Morvillo argues that the non-payment of fees coupled with the "fundamental differences, conflicts, or difficulties with clients" provide enough support to permit their office to withdraw. (Dkt. No. 498-1 at 19.)

Initially however, the Court notes that Morvillo has offered no proof on the motion that they have billed the third party or any of the Plaintiffs for any fees and expenses since 2008. There has been no showing that the Plaintiffs have deliberately disregarded an obligation to pay the fees and expenses of the litigation as they have been incurred. *See Burack*, 1990 WL 129176, at *1 (motion to withdraw denied where attorney failed to show that clients "deliberately disregarded" an obligation to pay expenses of the litigation) (citing N.Y. Code of Professional Responsibility DR 2-110(c)(1)(f)). Next, as set forth above, Morvillo has only shown satisfactory "fundamental differences, conflicts, or difficulties" and specific problematic encounters with certain Plaintiffs, namely Robert E. Bucktooth, Jr., Nadine Bucktooth, Robert Bucktooth, Cheryl Bucktooth, Andrew Jones, and Alfred Logan. Lastly, Morvillo offers no explanation as to why they waited approximately six years after they stopped getting paid for their work to move to withdraw.

The cases cited by Morvillo on this issue do not compel a different result. In *United States v. Lawrence Aviation Indus.*, No. CV 06-4818(JFB)(ARL), 2011 WL 601415, 2011 U.S. Dist. LEXIS 13777 (E.D.N.Y. Feb. 11, 2011), counsel moving to withdraw represented only two of the named defendants and the court permitted withdrawal of counsel in part because the two

corporate defendants did not oppose the motion. *Id.* at *2. In *Diarama Trading Co., Inc. v. J. Walter Thompson U.S.A., Inc.*, No. 01 Civ. 2950(DAB), 2005 WL 1963945, 2005 U.S. Dist. LEXIS 17008 (S.D.N.Y. Aug. 15, 2005), the court permitted withdrawal of counsel, but there was only one corporate plaintiff represented by the moving law firm. *Id.* at *2. Here, as noted above, Plaintiffs are individuals, not corporations; Morvillo currently represents forty-three Plaintiffs, only six of whom have been shown to have substantial disagreements with the firm warranting withdrawal. Several Plaintiffs, the Defendants, and counsel for the other Plaintiffs not represented by the Morvillo firm oppose the motion or partially oppose it. (Dkt. Nos. 501, 506, 508, 510, and 518.)

4. Potential for Delay is Substantial and Supports Partial Denial

Morvillo next argues that the potential for delay should not bar the withdrawal of the firm from representation of all of its Plaintiffs. (Dkt. Nos. 498-1 at 20-22; 498-3 at 24.) While it is true that “there are some instances in which an attorney representing a plaintiff in a civil case might have to withdraw even at the cost of significant interference with the trial court’s management of its calendar,” *Whiting*, 187 F.3d at 321, this is not such a case. To be sure, permitting Morvillo to withdraw from representation of the six Plaintiffs for whom they have shown good cause for withdrawal, and permitting Hoffman to withdraw from the Plaintiffs for whom good cause for withdrawal has likewise been shown, will delay the progression of this suit. However, if Morvillo’s motion to withdraw were granted in its entirety, all forty-three of the Plaintiffs they represent would be searching for new counsel—a daunting task in this complex and already lengthy litigation which would clearly force a stay of the matter for an unacceptable amount of time. As it is, the matter will need to be stayed for some period of time

to give the Plaintiffs from whom Hoffman and Morvillo are being permitted to withdraw time to find new counsel. In short, to grant Morvillo's motion in its entirety would harm the Plaintiffs for whom no good cause has been shown; it would harm the judicial system; and it would harm the Plaintiffs who continue to be represented by Hoffman. *See Bruce Lee Enterprises*, 2014 WL 1087934, at *3 ("Based on the record presently before us, it is not apparent that harm would come to the clients, lawyers, or judicial system in this case as a result of *denying* the motion and continuing the representation. The harm, in our view, is the harm done to the judicial system were we to *grant* the motion to withdraw") (emphasis in original).

C. Attorney Charging Lien

Hoffman also seeks an attorney charging lien in the motion to withdraw. (Dkt. Nos. 495-1 at 7-8; 495-3 at 19-20.) Under New York law, an attorney must have good cause to withdraw or the charging lien may be lost. *Hallmark Capital Corp. v. Red Rose Collection, Inc.*, No. 96Civ.2839 (RPP)(AJP), 1997 WL 661146, at *3, 1997 U.S. Dist. LEXIS 16328, at *8 (S.D.N.Y. Oct. 21, 1997). While this Court has found good cause exists for Hoffman to withdraw under Local Rule 83.2(b), resolving a charging lien issue may involve more of an investigation into who caused the differences between attorney and client, what may be considered a reasonable fee, and may require a "trial-like hearing" to resolve. *Id.* (citation omitted). Moreover, a federal court may, in its discretion, decide not to exercise ancillary jurisdiction to hear fee disputes and lien claims between lawyers and their clients. *See Marrero v. Christiano*, 575 F. Supp. 837, 839 (S.D.N.Y. 1983); *SEC v. Towers Financial Corp.*, No. 93 Civ. 0744 (WK) (AJP), 93 Civ. 0810 (WK), 1996 WL 288176, at * 3, 1996 U.S. Dist. LEXIS 7450, at *9 (S.D.N.Y. May 31, 1996). At this juncture, the Court chooses not to exercise

jurisdiction over the charging lien issue. Therefore, that part of the Hoffman motion seeking an attorney charging lien is denied without prejudice to renew.

V. CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the motion by Hoffman, Hubert & Hoffman, LLP to withdraw and for an attorney charging lien is **GRANTED** in part and **DENIED** in part as follows:

1. Pursuant to Local Rule 83.2(b), the motion by Hoffman, Hubert & Hoffman, LLP to withdraw as counsel for Plaintiffs Ronald Jones, Jr., Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., Karen Jones, as Administratrix of the Estate of Ruth Jones, Ross John, Tekarontake Paul Delaronde, Kahentinetha Horn, and Gerald Logan, Jr. is **GRANTED**;

2. Hoffman, Hubert & Hoffman, LLP **SHALL** serve a copy of this Memorandum-Decision and Order on **ALL** Plaintiffs represented by that firm including, but not limited to, Ronald Jones, Jr., Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., Karen Jones, as Administratrix of the Estate of Ruth Jones, Ross John, Tekarontake Paul Delaronde, Kahentinetha Horn, and Gerald Logan, Jr., by January 14, 2015, at their last known addresses, and **SHALL** file a certificate(s) of service specifically setting forth those addresses by January 16, 2015;

3. On or before February 13, 2015, Plaintiffs Ronald Jones, Jr., Debbie Jones, Nikki Jones, Shawn Jones, Karoniaka (Yackta) Jones, Karen Jones, Karen Jones, as Administratrix of the Estate of Ronald Jones, Sr., Karen Jones, as Administratrix of the Estate of Ruth Jones, Ross

John, Tekarontake Paul Delaronde, Kahentinetha Horn, and Gerald Logan, Jr., **SHALL** have any new counsel they may retain file a notice of appearance as required by Local Rule 83.2(a), or, if new counsel is not retained, **SHALL** notify the Court in writing of their intent to proceed *pro se* (without representation); and

4. The motion by Hoffman, Hubert & Hoffman, LLP seeking an attorney charging lien is **DENIED** without prejudice; and it is further

ORDERED that the motion by Morvillo, Abramowitz, Grand, Iason & Anello, P.C., to withdraw is **GRANTED** in part and **DENIED** in part as follows:

1. Pursuant to Local Rule 83.2(b), the motion by Morvillo, Abramowitz, Grand, Iason & Anello, P.C., to withdraw as counsel for Plaintiffs Robert E. Bucktooth, Jr., Nadine Bucktooth, Robert Bucktooth, Cheryl Bucktooth, Andrew Jones, and Alfred Logan is **GRANTED**;

2. Morvillo, Abramowitz, Grand, Iason & Anello, P.C., **SHALL** serve a copy of this Memorandum-Decision and Order on **ALL** Plaintiffs represented by that firm including, but not limited to, Robert E. Bucktooth, Jr., Nadine Bucktooth, Robert Bucktooth, Cheryl Bucktooth, Andrew Jones, and Alfred Logan by January 14, 2015, at their last known addresses, and **SHALL** file a certificate(s) of service specifically setting forth those addresses by January 16, 2015;

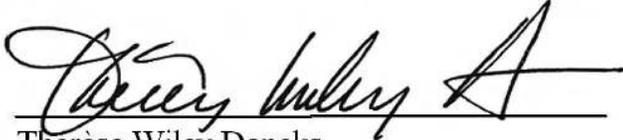
3. On or before February 13, 2015, Plaintiffs Robert E. Bucktooth, Jr., Nadine Bucktooth, Robert Bucktooth, Cheryl Bucktooth, Andrew Jones, and Alfred Logan **SHALL** have any new counsel they may retain file a notice of appearance as required by Local Rule 83.2(a), or, if new counsel is not retained, **SHALL** notify the Court in writing of their intent to proceed *pro*

se (without representation); and

4. The motion by Morvillo, Abramowitz, Grand, Iason & Anello, P.C., to withdraw as counsel for all other Plaintiffs represented by Morvillo is **DENIED**; and it is further

ORDERED that all further pretrial proceedings are stayed until further order of this Court.

Dated: January 7, 2015
Syracuse, New York



Therese Wiley Dancks
United States Magistrate Judge