

STATE OF NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 255

BIOMILQ, INC.,

Plaintiff and
Counterclaim Defendant,

v.

SHAYNE GUILIANO and 108LABS,
LLC,

Defendants and
Counterclaim Plaintiffs,

v.

LEILA STRICKLAND; MICHELLE
EGGER; BREAKTHROUGH
ENERGY VENTURES, LLC; BEV
JOHN DOES; BIOMILQ JOHN
DOES; and GOODWIN PROCTER
LLP,

Counterclaim Defendants.

**ORDER ON MOTION TO WITHDRAW
AS COUNSEL OF RECORD FOR
SHAYNE GUILIANO**

1. **THIS MATTER** is before the Court following the 17 November 2023 filing by Tara Warwick (“Ms. Warwick”), counsel of record for Shayne Guiliano and 108Labs, LLC, of the Motion to Withdraw as Counsel of Record for Shayne Guiliano (the “Motion”). (ECF No. 224 [“Mot.”].) The Motion requests permission for Ms. Warwick, Jonathan Carnes, and the law firm Carnes Warwick PLLC (“Carnes Warwick”, and collectively, “Movants”) to withdraw as counsel of record for Shayne Guiliano (“Mr. Guiliano”) pursuant to Rule 1.16 of the North Carolina Rules of Professional Conduct. (*See Mot.*)

2. The Motion was deficient as filed. As a result, the Court required Ms. Warwick to file a supplemental statement pursuant to Rule 7.3 of the Business

Court Rules (“BCRs”). (ECF No. 225.) The supplemental filing, as interpreted by the Court, indicated that Stephen Feldman, counsel for BIOMILQ, Inc., Leila Strickland, and Goodwin Procter, LLP, did not consent to the relief requested in the Motion and intended to file a response. (ECF No. 226.) As a result, and due to the nature of the relief sought and Mr. Guiliano’s contention that he should be permitted to proceed *pro se* immediately as a result of his termination of Movants’ services as his attorney, the Court shortened the typical response time pursuant to BCR 4.1(d) and required any responses to the Motion to be filed on or before 27 November 2023. (ECF No. 227.)

3. Counsel for BIOMILQ, Inc., Leila Strickland, and Goodwin Procter, LLP (together, “Respondents”), filed a response to the Motion on 27 November 2023 (the “Response”). (ECF No. 230 [“Resp. Br.”].)¹ The Response indicates that Respondents generally do not object to Movants’ withdrawal, but that Mr. Guiliano’s choice of self-representation “raises several serious concerns in the unique circumstances of this case.” (Resp. Br. 2.)

4. Respondents’ counsel raise three specific concerns: (1) the effect of the withdrawal on the application of the Protective Order, (ECF No. 147 [“Prot. Order”]), to Mr. Guiliano; (2) which claims and defenses are germane to Mr. Guiliano proceeding *pro se*, and which to 108Labs, LLC, which is still represented by Movants;

¹ Breakthrough Energy Ventures, LLC (“BEV”) and Michelle Egger (“Ms. Egger”) did not file a response to the Motion. The Response indicates that counsel for BEV and Ms. Egger conferred with Respondents’ counsel and concur with Respondents’ filing “without waiver of their challenges to personal jurisdiction and service of process.” (Resp. Br. 2 n.2.)

and (3) the number, tone, and content of emails that Mr. Guiliano has sent to Respondents' litigation counsel. (Resp. Br. 2–3.)

A. The Motion

5. Rule 16 of the General Rules of Practice for the Superior and District Courts expressly provides that

[n]o attorney who has entered an appearance in any civil action shall withdraw his appearance, or have it stricken from the record, except on order of the court. Once a client has employed an attorney who has entered a formal appearance, the attorney may not withdraw or abandon the case without (1) justifiable cause, (2) reasonable notice to the client, and (3) the permission of the court.

N.C. R. Super. & Dist. Cts. Rule 16; *see also Smith v. Bryant*, 264 N.C. 208, 211 (1965).

6. In compliance with Rule 16 of the General Rules of Practice for the Superior and District Courts of North Carolina and Rule 1.16 of the North Carolina Rules of Professional Conduct, the Motion represents that Mr. Guiliano has discharged Movants as his attorneys of record. (Mot. 2.) The materials before the Court, including emails received by Court staff from Mr. Guiliano, confirm Mr. Guiliano's desire to proceed *pro se* without representation by a licensed attorney, including his unilateral termination of Movants' services. Thus, the Court concludes that reasonable notice was given to the client since Mr. Guiliano discharged Movants, and that such action constituted justifiable cause for Movants' withdrawal. *See* N.C. R. Prof. Conduct Rule 1.16(b)(2) (“[A] lawyer may withdraw from representing a client if: . . . (2) the client knowingly and freely assents to the termination of the representation[.]”).

7. **THEREFORE**, for justifiable cause shown, the Court hereby **GRANTS** the Motion. Tara Warwick, Jonathan Carnes, and the law firm Carnes Warwick PLLC are hereby permitted to withdraw as counsel for Shayne Guiliano. Since Mr. Guiliano, who is not a licensed attorney, is electing to proceed *pro se*, the Court will establish an electronic filing account for Mr. Guiliano with the following address and contact information:

Shayne Guiliano
141 W. King St.
Hillsborough, North Carolina 27278
919-450-7226

(Mot. 2.) If this contact information is incorrect, Mr. Guiliano shall update the Court in accordance with the procedures set forth in the Case Management Order. (*See* CMO at 4, ECF No. 138.)

8. Given that Mr. Guiliano will be representing himself pending further action by him or by court order, the Court next addresses Respondents' three concerns raised in the Response.

B. The Response

9. First, the Court agrees that the applicability of the Protective Order to Mr. Guiliano is unclear, given that the Protective Order does not contemplate procedures for parties which are self-represented, especially where those self-represented parties are not licensed attorneys. (*See* Resp. Br. 3 (“Materials marked ‘Highly Confidential – Attorneys’ Eyes Only’ may only be disclosed to the Court and its staff, attorneys of record (‘Outside Counsel’), consulting or testifying experts, and any other person the designating party permits in writing.”).) While information

marked “Confidential” may be viewable by the parties, the same is not true for information marked “Highly Confidential – Attorneys’ Eyes Only.” (See Prot. Order 4–6.)

10. The parties are directed to confer in the next thirty (30) days. While conferring, the parties should determine whether a procedure can be agreed to that permits Mr. Guiliano to view certain materials related to any other party’s information and documents properly designated as “Highly Confidential – Attorneys’ Eyes Only,” while at the same time protecting that information from disclosure to individuals who are not licensed attorneys of record in this action. As a result, until further order of the Court, all counsel, including but not limited to Movants,² shall not provide Mr. Guiliano with documents or other information produced by other parties which bears the designation “Highly Confidential – Attorneys’ Eyes Only.”

11. Second, to appear and participate in an action, a limited liability company like Defendant 108Labs, LLC must be represented by a duly admitted and licensed attorney and cannot proceed *pro se*. See *James H.Q. Davis Tr. v. JHD Props., LLC*, 2023 NCBC LEXIS 143, at **7 n.41 (N.C. Super. Ct. Nov. 14, 2023) (citing *LexisNexis, Div. of Reed Elsevier, Inc. v. Travishan Corp.*, 155 N.C. App. 205, 209 (2002)). Thus, while 108Labs, LLC has retained counsel and continues to be represented by counsel

² While this should be abundantly clear to Movants, out of an abundance of caution, Movants which are permitted by this Order to withdraw as counsel for Mr. Guiliano should be careful in turning over any materials to him for purposes of his self-representation. Movants shall not provide him with any information that would be a violation, either expressly or by implication, of the Protective Order. To be clear, this does not include documents or other materials designated by Movants, on behalf of Mr. Guiliano, as “Highly Confidential – Attorneys’ Eyes Only.”

admitted to practice law in North Carolina, the Court states, out of an abundance of caution, that Mr. Guiliano cannot make representations on behalf of 108Labs, LLC in this action because it may only be spoken for by licensed counsel.

12. Third, with respect to Mr. Guiliano's communications with counsel for the other parties in this action, Mr. Guiliano is cautioned to conduct himself in a courteous and respectful fashion as it relates to this litigation. Through the materials provided to the Court in connection with the Response, (*see* ECF No. 230.5), and the Court's oversight of this action to date, the Court is aware that Mr. Guiliano has accused opposing counsel of serious misconduct.

13. While licensed attorneys in this State and out-of-state attorneys appearing *pro hac vice* in this action are required to abide by ethical rules and standards of professionalism not generally applicable to non-lawyers, the Court, in its inherent authority, may expect all litigants to conduct themselves in a respectful manner toward the Court, its personnel, the litigation process, and the opposing parties and their counsel.

14. Respondents call the Court's attention to the United States District Court for the District of Maryland's decision in *Paradyme Mgmt. v. Curto*, 2018 U.S. Dist. LEXIS 230935 (June 11, 2018). The Court finds the principles articulated by Judge Grimm in that decision informative, particularly regarding the obligations of self-represented individuals who are not attorneys. In *Paradyme*, the District Court provided that individuals proceeding *pro se* are expected to conduct themselves in an appropriate fashion in litigation, and the Court expressly defined that expectation.

Id. at *20–27. This Court determines that the expectations announced in *Paradyme* should apply with equal force in this State.

15. As noted by Judge Grimm, “although a pro se litigant may be entitled to great leeway by the Court when construing [his] filings, it does not excuse him from following basic rules of ethics and civility.” *Paradyme*, 2018 U.S. Dist. LEXIS 230935 at *26 (citing *Sanders v. Delta Air Lines, Inc.*, 2014 U.S. Dist. LEXIS 84969 (D. Ariz. June 23, 2014) (cleaned up)). Mr. Guiliano is expected to use respectful language in his communications with opposing counsel, and the Court will not tolerate misrepresentations or inaccurate depictions of actions from any party to this action or their counsel.

16. Additionally, having chosen to represent himself, Mr. Guiliano is required to abide by all relevant rules and procedures applying in the North Carolina Business Court. Mr. Guiliano should review, become familiar with, and comply with the Business Court Rules, the North Carolina Rules of Civil Procedure, and the General Rules of Practice for the Superior and District Courts of North Carolina.

17. It is hereby **ORDERED** that within the next thirty (30) days, counsel and any unrepresented parties shall meet and confer regarding appropriate processes to protect information that is designated as “Highly Confidential – Attorneys’ Eyes Only,” whether through *in camera* inspection or otherwise. While there need not be an agreement amongst all parties on this issue, an appropriately filed motion to amend the Protective Order with suggested processes and procedures should be filed by Respondents in the next forty-five (45) days, along with a supporting brief and a

proposed amended protective order. If all parties do not consent, response brief(s) shall be filed within twenty (20) days following the filing of the motion to amend.

18. Finally, without leave of the Court, Mr. Guiliano shall not issue a notice of deposition seeking to depose any person who is counsel of record for any party in this action. Mr. Guiliano may file a motion with the Court seeking permission to question any such person under oath. Any such motion and accompanying brief shall comply with the Rules of Civil Procedure and the Business Court Rules.

SO ORDERED, this the 29th day of November, 2023.

/s/ Michael L. Robinson

Michael L. Robinson
Special Superior Court Judge
for Complex Business Cases