

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

**PLAINTIFF’S MOTION FOR CLARIFICATION OF THE COURT’S ORDER
GRANTING MITCHELL N. ROTH AND ANDREW N. COVE’S
MOTION TO WITHDRAW**

Plaintiff Federal Trade Commission (“FTC”) respectfully moves the Court for an Order clarifying that Justin Ramsey and Dustin Pillonato remain represented parties in this matter. In support of this Motion, the FTC states as follows:

1. On July 3, 2018, Frank A. Rubino entered what he described as a “limited appearance” on behalf of Defendants Dustin Pillonato and Justin Ramsey “for the limited purpose of representing [Pillonato and Ramsey] for issues that may involve criminal liability only.” At the time, Andrew N. Cove and Mitchell N. Roth already had entered appearances on behalf of Defendants Pillonato and Ramsey.

2. On October 11, 2018, the Court granted the Motion to Withdraw of Roth Jackson, Cove Law, P.A., Mitchell N. Roth, and Andrew N. Cove as Counsel for Defendants Dustin Pillonato and Justin Ramsey. ECF No. 189. The Court also ordered Defendants Pillonato and

Ramsey to “(a) retain new counsel . . . or (b) file notices of intent to proceed *pro se*” on or before October 29, 2018.

3. Mr. Rubino has not filed a motion to withdraw from his representation of Defendants Pillonato and Ramsey.

4. Therefore, for purposes of Local Rule 11.1(d), Federal Rule of Civil Procedure 5, Rule 4-4.2 of the Rules Regulating the Florida Bar, and any other applicable ethical or procedural rules, Ramsey and Pillonato appear to remain represented by Mr. Rubino. To avoid a violation of any such rules, the FTC seeks an Order clarifying that Mr. Rubino remains Ramsey and Pillonato’s attorney in this matter.

5. Local Rule 11.1(d)(4) states, in relevant part, that, “Whenever a party has appeared by attorney, the party cannot thereafter appear or act on the party’s own behalf in the action or proceeding, or take any step therein, unless an order of substitution shall first have been made by the Court, after notice to the attorney of such party, and to the opposite party”

6. Here, Defendants Ramsey and Pillonato have appeared through Mr. Rubino. In addition to Mr. Rubino’s Notice of Limited Appearance (ECF No. 107), he has appeared on their behalf at the preliminary injunction hearing (ECF No. 60) and at a hearing before Magistrate Judge Seltzer on the Receiver’s Motion to Compel Turnover of Defendant Pillonato and Ramsey’s laptops and cell phones (ECF No. 171). He has also filed four briefs on behalf of his clients. ECF Nos. 108, 140, 160, and 179.

7. Local Rule 11 does not recognize “limited appearances” such as the one entered by Mr. Rubino. Local Rule 11.1(d)(4) therefore prohibits Defendants Ramsey and Pillonato from proceeding on their own behalves while Mr. Rubino remains in this case.

8. An Order of clarification regarding Mr. Rubino's representation is important to proceeding efficiently with discovery. At two depositions on Tuesday, October 9—prior to the withdrawal of Messrs. Cove and Roth—Defendants Ramsey and Pillonato appeared on their own behalves. Defendant Ramsey attempted to question both witnesses, and Defendant Pillonato improperly interrupted questioning to state that one witness was “lying under oath.” Counsel for the FTC objected to Mr. Ramsey's effort to question the witness on the basis that he was not permitted to do so while represented, and Mr. Ramsey did not proceed. Similar issues are likely to arise in upcoming depositions if this issue is not resolved.

9. Clarification of the Court's Order is also important to other procedural issues, such as service of pleadings and others papers. Federal Rule of Civil Procedure 5 requires that “[i]f a party is represented by an attorney, service under this rule *must* be made on the attorney unless the court orders service on the party” (emphasis added). Given Mr. Rubino's prior appearance, the FTC intends to serve Defendants Pillonato and Ramsey through Mr. Rubino, but seeks clarification to avoid running afoul of Rule 5.

10. The FTC also seeks to ensure compliance with ethical rules, including rules regarding contact with represented parties. Rule 4-4.2(a) of the Rules Regulating the Florida Bar states that “[i]n representing a client, a lawyer must not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.” Although Rule 4-4.2(b) recognizes certain exceptions in the case of “limited representation[s],” the applicability of those exceptions to the present situation is, in light of the concerns outlined above, unclear. This is especially true given Mr. Rubino's vague assertion that his representation is limited to “issues that may involve criminal liability.” ECF No. 107. The FTC is not in a position to determine which issues may

involve criminal liability, and Defendants, through Mr. Rubino, have previously argued that the FTC's entire Complaint "reads more like a criminal indictment than it does a civil complaint" and alleges "conduct which, if proven, could constitute the crimes of theft, wire fraud, mail fraud, money laundering, and credit card fraud." ECF No. 108 at 3. If those statements are true, it is difficult to imagine any matter within the scope of the FTC's Complaint that would fall outside the scope of Mr. Rubino's representation.

11. For the foregoing reasons, the FTC respectfully requests that the Court clarify its Order granting the Motion to Withdraw (ECF No. 189) to confirm that Defendants Ramsey and Pillonato remain represented parties in this case.

Rule 7.1 Certification

Undersigned counsel hereby certifies that, prior to filing the instant motion, undersigned counsel conferred with Frank A. Rubino, counsel for Defendants Pillonato and Ramsey, via email. Mr. Rubino stated that he intends to oppose this Motion.

Respectfully submitted,

Dated: October 12, 2018

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CERTIFICATE OF SERVICE

I hereby certify that, on October 12, 2018, a true and correct copy of the foregoing was served on all counsel or parties of record on the Service List, via the method indicated below.

/s/ Evan M. Mendelson

Evan M. Mendelson

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POINTBREAK MEDIA, LLC, et al.,

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**[Proposed] ORDER GRANTING PLANTIFF'S MOTION FOR CLARIFICATION OF
THE COURT'S ORDER GRANTING MITCHELL N. ROTH AND
ANDREW N. COVE'S MOTION TO WITHDRAW**

THIS CAUSE came before the Court on Plaintiff's Motion for Clarification of the Court's Order Granting Mitchell N. Roth and Andrew N. Cove's Motion to Withdraw. Good cause appearing, it is hereby **ORDERED AND ADJUDGED** that the motion is **GRANTED**.

It is further **ORDERED** that until the Court orders otherwise, Defendants Pilonato and Ramsey are, for purposes of Local Rule 11.1, Federal Rule of Civil Procedure 5, Rule 4-4.2 of the Rules Regulating the Florida Bar, and any other applicable ethical or procedural rules, represented by Frank A. Rubino. They may not proceed on their own behalves while represented.

DONE AND ORDERED in Miami, Florida, this ___ day of _____, 2018.

**CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE**

cc: counsel of record