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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JUDITH FONSECA,

No. 2:10-cv-02685-MCE-CMK

Plaintiff,

v.

ORDER

CITY OF RED BLUFF,

Defendant.

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Lynn Hubbard, the original counsel of record for Plaintiff Judith Fonseca in this litigation, filed, on April 26, 2011, a Motion for Review of the Magistrate Judge's April 15 Order declining Hubbard's request to continue the hearing on Defendant's Motion to Compel scheduled for May 5, 2011. That Motion was scheduled to be heard before this Court on June 9, 2011.

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1 By Order dated May 15, 2011, the Court granted Hubbard's  
2 Motion to Withdraw as counsel of record for Plaintiff in this  
3 litigation, leaving Plaintiff representing herself in pro se.  
4 Given Hubbard's withdrawal from this litigation, as well as the  
5 Court's declination to hear the instant Motion for Review prior  
6 to the May 5, 2011 hearing on the Motion to Compel, the Motion  
7 for Review is for all intents and purposes moot at this juncture.

8 Attorney Hubbard's Motion for Review fails substantively in  
9 any event. In reviewing a magistrate judge's determination, the  
10 assigned district judge shall apply a clear error standard of  
11 review pursuant to Local Rule 72-303(f), as specifically  
12 authorized by Federal Rule of Civil Procedure 72(a) and 28 U.S.C.  
13 § 636(b)(1)(A).<sup>1</sup> Under that standard, this Court must accept  
14 the Magistrate Judge's decision unless it has a "definite and  
15 firm conviction that a mistake has been committed." Concrete  
16 Pipe & Products of Calif., Inc. v. Construction Laborers Pension  
17 Trust for So. Calif., 508 U.S. 602, 622 (1993). If the Court  
18 believes the conclusions reached by the Magistrate Judge were at  
19 least plausible, after considering the record in its entirety,  
20 the Court will not reverse even if convinced that it would have  
21 weighed the evidence differently. Phoenix Eng. & Supply Inc. v.  
22 Universal Elec. Co., Inc., 104 F.3d 1137, 1141 (9th Cir. 1997).

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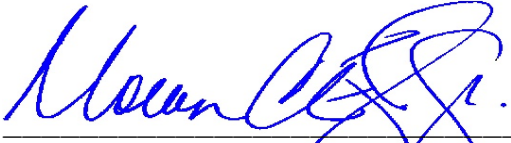
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26 <sup>1</sup>Federal Rule of Civil Procedure 72(a) directs the district  
27 court judge to "modify or set aside any portion of the magistrate  
28 judge's order found to be clearly erroneous or contrary to law."  
Similarly, 28 U.S.C. § 636(b)(1)(A), the district judge may  
reconsider any pretrial order "where it is shown that the  
magistrate's order is clearly erroneous or contrary to law."

1 Here, as the Magistrate Judge pointed out in the April 15,  
2 2011 that is the subject of the Motion for Review, attorney  
3 Hubbard's obligation to timely respond to discovery prior to  
4 moving to withdraw is an entirely separate issue than the  
5 propriety of withdrawal itself. The Magistrate Judge's decision  
6 denying a continuance of the Motion to Compel on that basis was  
7 not in clear error.

8 The Motion for Review filed on behalf of Plaintiff (ECF  
9 No. 17) is accordingly DENIED.<sup>2</sup>

10 IT IS SO ORDERED.

11 Dated: June 6, 2011

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14 MORRISON C. ENGLAND, JR.  
15 UNITED STATES DISTRICT JUDGE  
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27 <sup>2</sup> Because oral argument will not be of material assistance,  
28 the Court orders this matter submitted on the briefs. E.D. Cal.  
Local Rule 230(g).