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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOHN P. ANDERSON, in his official
capacity as the Sheriff of Madera County,
and individually,

Plaintiff,

v.

JACK DURAN, JR., in his official capacity,
et al.,

Defendants.

No. C 13-04825 RS

**ORDER CONTINUING HEARING ON
MOTION FOR SUMMARY
JUDGMENT AND MOTION FOR
JUDGMENT ON THE PLEADINGS
AND GRANTING MOTION TO
WITHDRAW AS COUNSEL FOR
DEFENDANTS JACK DURAN, JR.
AND DONNA HOWARD**

In light of the ongoing settlement discussions in this matter, the parties have stipulated to continue the hearings on plaintiff’s motion for summary judgment and the Lewis-Reid Faction’s motion for judgment on the pleadings, currently scheduled for July 11, 2014. Having considered the parties’ stipulation, and good cause appearing, the hearing on those motions is hereby continued to Wednesday, September 17, 2014 at 10:00 a.m. in Courtroom 3.

In addition, Klinedinst PC has moved to withdraw as counsel in this matter for defendants Jack Duran, J. and Donna Howard for failure or refusal to pay attorney fees. No opposition to this motion has been received. Pursuant to Civil Local Rule 7-1(b), the motion is suitable for disposition without oral argument, and the hearing on this motion set for July 11, 2014 is vacated.

No. C 13-04825 RS
ORDER GRANTING MOTION TO WITHDRAW

1 Under Civil Local Rule 11-5(a), “[c]ounsel may not withdraw from an action until relieved
2 by order of Court after written notice has been given reasonably in advance to the client and to all
3 other parties who have appeared in the case.” The local rules further provide that if the client does
4 not consent to the withdrawal and no substitution of counsel is filed, the motion to withdraw shall be
5 granted on the condition that all papers from the court and from the opposing party shall continue to
6 be served on that party’s current counsel for forwarding purposes until the client appears by other
7 counsel or pro se. Civ. L.R. 11-5(b).

8 Withdrawal is governed by the California Rules of Professional Conduct. *See Nehad v.*
9 *Mukasey*, 535 F.3d 962, 970 (9th Cir. 2008). Rule 3-700(c) of the California Rules of Professional
10 Conduct sets forth several grounds under which an attorney may request permission to withdraw,
11 including if the client breaches an agreement or obligation to its counsel as to expenses or fees.
12 R. 3-700(C)(1)(f). The court has discretion to deny a motion to withdraw “where such withdrawal
13 would work an injustice or cause undue delay in the proceeding.” *Gong v. City of Alameda*, No. 03-
14 05495 TEH, 2008 WL 160964, at *1 (N.D. Cal. Jan. 8, 2008) (citing *Mandel v. Superior Court*, 67
15 Cal.App.3d 1, 4 (1977)) (holding there was no prejudice or undue delay to client where counsel
16 provided sufficient notice of its intent to withdraw and where no trial date had yet been set in the
17 case).

18 As explained in a declaration submitted in support of its motion to withdraw, Klinedinst was
19 retained in October 2013 by the Lewis Faction of the Picayune Rancheria of Chukchansi Indians to
20 represent Jack Duran, Jr. and Donna Howard in this matter. Duran was sued in his purported
21 official capacity as judge for the Tribal Court constituted by the Lewis Faction, while Howard was
22 sued in her purported official capacity as the clerk of that tribunal. The firm has not received any
23 compensation for its services since that time, due in part to an interpleader action that has frozen
24 funds belonging to the Tribe. Nevertheless, the firm has continued to represent Duran and Howard
25 throughout this proceeding, including the most recent motions for summary judgment and judgment
26 on the pleadings. The firm communicated with its clients on multiple occasions regarding payment;
27 finally, on June 2, 2014, the firm gave official notice to its clients of its intent to withdraw. The two
28 pending motions have been fully briefed, with Duran and Howard joining in full the briefs

1 submitted by the Lewis-Reid Faction. Although additional events have been calendared in this
2 matter, including further settlement discussions in August and a hearing on the two pending motions
3 in September, it does not appear that granting the motion to withdraw would prejudice Duran and
4 Howard or delay proceedings in this matter.

5 Good cause appearing, the motion to withdraw is granted, subject to the condition that
6 Klinedinst PC shall continue to accept service of papers on behalf of Duran and Howard for
7 forwarding purposes until they appear by other counsel or pro se. Counsel is instructed to notify
8 Duran and Howard of this condition.

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IT IS SO ORDERED.

Dated: 7/7/14



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE