

United States District Court
For the Northern District of California

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E-FILED on 9/29/2008

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

JOHN DOE,
Plaintiff,
v.
CITY OF SAN JOSE, *et al.*
Defendants.

No. C-06-06307 RMW

ORDER DENYING JOHN DOE'S MOTIONS TO VACATE HIS SETTLEMENT WITH THE COUNTY DEFENDANTS AND A REQUEST FOR FURTHER INFORMATION

[Re Docket Nos. 60, 62]

The court held a hearing on July 18, 2008 regarding the court's order to show cause after John Doe (Larry Lundy) failed to appear for a case management conference following the withdrawal of his attorneys. *See* Docket Nos. 50, 56. At the hearing, Mr. Lundy expressed his desire to move to set aside his settlement with the county defendants and to continue his case against the city defendants. The court therefore set a deadline for Mr. Lundy to file a motion to vacate his settlement with the County defendants. *See* Docket No. 61.

Mr. Lundy has since filed two documents, styled as motions for a "bill of particulars," submitting bills that he felt that the County had agreed to pay as part of his settlement. At the hearing on those motions, Mr. Lundy raised a variety of issues regarding his representation by

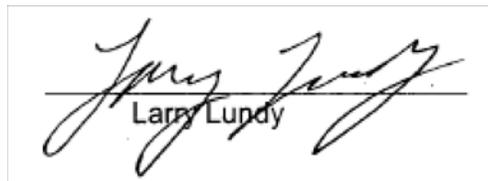
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No. C-06-06307 RMW
TSF

1 counsel up to the settlement agreement. The arguments and materials submitted to the court do not,
2 however, provide a basis for vacating Mr. Lundy's settlement with the County defendants.

3 Accordingly, Mr. Lundy's motions for a "bill of particulars" or to set aside his settlement are denied.

4 The court has concerns about what transpired between Mr. Lundy and his former counsel,
5 John L. Burris and Adante Pointer. Mr. Lundy states that his retention agreement with his attorneys
6 provided for him to receive 60% of any recovery from his case, and that he has so far received
7 nothing. Mr. Lundy also states that he did not sign the settlement agreement, but that his attorneys
8 forged his signature.

9 The County defendants have submitted the settlement agreement and a variety of materials
10 related to it. *See* Docket No. 63. The County defendants agreed to settle for \$25,000. On January
11 18, 2008, the County issued a check for that amount to "Burris, John L. Law Offices Of In Trust for
12 Larry Lundy." The check was endorsed by John Burris and appears to have been cashed on
13 February 1, 2008. The materials filed by the County also permit the following comparison:

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18 **Figure 1:** Larry Lundy's signature on
19 the Settlement Agreement.

20 Name John Doe V City of San Jose
21 Case Number 506-CV-6307, RMW

22


23 **Figure 2:** Larry Lundy's handwriting and signature from his *pro se* filings with the court. Docket No.
24 59.

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26 The court hereby requests Mr. Lundy's former counsel, John L. Burris and Adante Pointer, to
27 each file declarations with the court by October 17, 2008 addressing: (1) when, where & by whom

1 the settlement agreement with the County was signed, (2) whether the settlement agreement was
2 signed by Mr. Lundy or on his behalf, and (3) whether any of the monies held in trust by the Law
3 Offices of John L. Burriss have been distributed and, if so, to whom, when, and in what amounts.
4 Mr. Burriss and Mr. Pointer may include any other further explanation or information they wish.

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7 DATED: 9/26/2008



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Defendants:**

3 Clifford S. Greenberg cao.main@sanjoseca.gov

4 Counsel are responsible for distributing copies of this document to co-counsel that have not
5 registered for e-filing under the court's CM/ECF program.

6 **Notice of this document has been mailed to:**

7 **Plaintiff:**

8 Larry Lundy
9 1071 Culloden Court
10 San Jose, CA 95121

11 and

12 Larry Lundy
13 Mother Olson's Inn
14 202 S. 11th Street
15 San Jose, CA 95112

16 **Plaintiff's Former Counsel:**

17 Adante Pointer
18 Law Offices of John L. Burris
19 7677 Oakport Street
20 Suite 1120
21 Oakland, CA 94621

22 John L. Burris
23 Law Offices of John L. Burris
24 Airport Corporate Centre
25 7677 Oakport Street
26 Suite 1120
27 Oakland, CA 94621

28 **Dated:** 9/29/08

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Chambers of Judge Whyte