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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

<p>CLOANTO CORPORATION, AMIGA, INC., ITEC, LLC and AMINO DEVELOPMENT CORPORATION,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>HYPERION ENTERTAINMENT CVBA,</p> <p style="text-align: center;">Defendant.</p> <hr/> <p>HYPERION ENTERTAINMENT CVBA</p> <p style="text-align: center;">Counterclaim Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CLOANTO CORPORATION, AMIGA, INC., ITEC, LLC and AMINO DEVELOPMENT CORPORATION,</p> <p style="text-align: center;">Counterclaim Defendants.</p>
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No. C18-0381-RSM
(consolidated with C18-0535-RSM)

ORDER DENYING DEFENDANT
HYPERION'S MOTION FOR
RECONSIDERATION AND DENYING
PLAINTIFFS' MOTION TO BAR
WITHDRAWAL OF COUNSEL

ORDER DENYING DEFENDANT HYPERION'S MOTION FOR RECONSIDERATION
AND DENYING PLAINTIFFS' MOTION TO BAR WITHDRAWAL OF COUNSEL - 1

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I. INTRODUCTION

This matter comes before the Court on two pending motions: Defendant-Counterclaim Plaintiff Hyperion Entertainment CVBA (“Hyperion”)’s Motion for Reconsideration, Dkt. #119, and Plaintiffs-Counterclaim Defendants Cloanto Corporation, Amiga, Inc., ITEC LLC, and Amino Development Corporation (collectively, “Plaintiffs”)’s Motion to Bar Withdrawal and Substitution of Counsel, Dkt. #126. Neither party requests oral argument and the Court finds it unnecessary for resolution of the issues. Having reviewed parties’ briefing, the declarations and exhibits attached thereto, and the remainder of the record, the Court DENIES Defendant Hyperion’s Motion for Reconsideration and DENIES Plaintiffs’ Motion to Bar Withdrawal of Counsel.

II. BACKGROUND

On May 20, 2021, Plaintiffs filed an unopposed motion to vacate and reset pre-trial deadlines in this matter, and to allow parties time to depose a new witness. Dkt. #117. Defendant-Counterclaim Plaintiff Hyperion Entertainment CVBA (“Hyperion”) failed to file a response prior to the deadline. On May 28, 2021, pursuant to Plaintiffs’ proposed order, the Court reset case deadlines and allowed parties additional time to depose Evert Carton. Dkt. #118.

On June 3, 2021, Hyperion moved for reconsideration of the Court’s order resetting deadlines, explaining that Defendants’ counsel failed to respond because he was without internet access or cell phone reception at the time Plaintiff moved to vacate and reset pre-trial deadlines. Dkt. #119 at 2. Hyperion now requests that the Court amend its order to allow for depositions of Plaintiffs’ principals and require that parties participate in mediation following a ruling on summary judgment. *Id.* at 4-5. Hyperion also advises the Court that it intends to secure replacement counsel and seeks additional extension of the case deadlines to give their counsel more time to become acquainted with the case. *Id.* at 5-6.

On June 13, 2021, Hyperion moved to quash the deposition notice of Evert Carton on June 14, 2021 on the basis that Hyperion’s new counsel, hired on June 9, 2021, only just learned of the deposition and had not received adequate information on the logistics. Dkt. #123 at 5. Hyperion represented that Plaintiffs faced no potential prejudice from the Court quashing the notice of

1 deposition on June 14, given that its scheduling order allowed for taking of the deposition up until
2 June 27. *Id.* at 7. Mr. Harrison did “not permit the deposition of Evert Carton to proceed as noted,”
3 Dkt. #126 at 2, and on June 16, 2021, Hyperion withdrew its pending motion to quash. Dkt. #124.
4 That same day, Hyperion filed a notice of withdrawal of counsel advising that Eric Harrison at
5 Attorney West Seattle, P.S. was withdrawing and Hyperion was now represented by John Bamert
6 at Lowe Graham Jones PLLC (“Lowe Graham”). Dkt. #125.

7 On June 21, 2021, Plaintiffs filed a Motion to Bar Withdrawal and Substitution of Counsel,
8 arguing that Hyperion’s substitution violated this district’s local rules and amounted to an improper
9 attempt to interfere with the Carton deposition scheduled for June 25. Dkt. #126. Hyperion
10 opposes Plaintiffs’ motion on the basis that Mr. Harrison properly withdrew in accordance with
11 LCR 83.2 and should not be compelled to attend the deposition. Dkt. #128.

12 The Court will address both pending motions herein.

13 **III. DISCUSSION**

14 **A. Hyperion’s Motion for Reconsideration**

15 “Motions for reconsideration are disfavored.” Local Rules W.D. Wash. LCR 7(h)(1). “The
16 court will ordinarily deny such motions in the absence of a showing of manifest error in the prior
17 ruling or a showing of new facts or legal authority which could not have been brought to its
18 attention earlier with reasonable diligence.” *Id.*

19 Hyperion argues that the information set forth in its Motion for Reconsideration constitutes
20 “new evidence” that the Court could not previously consider in its ruling on Plaintiffs’ unopposed
21 motion. Dkt. #119 at 4. Hyperion provides no support for its proposition that evidence and
22 argument presented for the first time in a motion for reconsideration, due to counsel’s failure to
23 file a timely opposition, amounts to “new facts.” On the contrary, courts have denied motions for
24 reconsideration that attempted to present evidence or argument that could have been raised in a
25 timely opposition brief. *See LHF Prods., Inc. v. Koehly*, No. 216CV02028JADNJK, 2017 WL
26 4767673, at *4 (D. Nev. Oct. 20, 2017) (“LHF failed to file a response to the underlying motion
raising this argument, and a motion for reconsideration ‘may *not* be used to raise arguments or

1 present evidence for the first time when they could reasonably have been raised earlier in the
2 litigation.”) (quoting, *inter alia*, *Kona Enterps., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th
3 Cir. 2000)) (emphasis in original).

4 Having considered Hyperion’s explanation for its untimely arguments, the Court is not
5 persuaded that Hyperion’s failure to present its arguments earlier amounts to “reasonable
6 diligence” for purposes of LCR 7(h)(1). On May 5, 2021, with trial set for June 14, 2021, parties
7 discussed a joint stipulation to extend pretrial deadlines—an apparent acknowledgment that trial
8 would not proceed as scheduled. Dkt. #120 at ¶ 3. Hyperion’s counsel, Mr. Harrison, was
9 unavailable the following week and without internet access or cell phone reception from May 13-
10 17, 2021 and again from May 19-31, 2021. *Id.* at ¶ 4. On May 20, 2021, with jury trial still set in
11 this matter for June 14, Plaintiffs contacted Mr. Harrison with a proposed joint stipulation to
12 continue the trial date. *Id.* at ¶ 6. Upon receiving Mr. Harrison’s out-of-office reply, Plaintiffs
13 proceeded to file their motion to vacate and reset deadlines. *Id.* at ¶ 7.

14 While Hyperion’s motion suggests that Plaintiffs timed their motion to coincide with Mr.
15 Harrison’s out-of-office period, the Court need not address that issue here. Regardless of
16 Plaintiffs’ intention in filing their motion on May 20, 2021, it is apparent that both parties sought
17 to continue a jury trial date less than four weeks away. Indeed, one of the pre-trial deadlines had
18 already expired before Plaintiffs finally moved to strike the case schedule. *See* Dkt. #98 (motions
19 in limine due May 19, 2021). Given the imminence of trial, the expiration of a pre-trial deadline,
20 and the fact that parties had ample opportunity to reach an agreement outside of Mr. Harrison’s
21 out-of-office dates, the Court cannot conclude that Hyperion’s failure to file a timely response
22 regarding a rapidly-approaching trial deadline amounts to “reasonable diligence.” Moreover,
23 denial of Hyperion’s motion for reconsideration does not preclude Hyperion from seeking its
24 requested relief through stipulation or a properly-filed motion. For these reasons, Hyperion’s
25 Motion for Reconsideration is DENIED.

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1 **B. Plaintiffs’ Motion to Bar Withdrawal and Substitution of Counsel**

2 Turning to Plaintiffs’ motion to bar Mr. Harrison’s withdrawal, Plaintiffs argue that Mr.
3 Harrison’s withdrawal failed to comply with LCR 83.2(b)(2). LCR 83.2 provides:

4 (2) Where there has simply been a change of counsel within the same law firm, an
5 order of substitution is not required . . . However, where there is a change in counsel
6 that effects a termination of one law office and the appearance of a new law office,
7 the substitution must be effected in accordance with subsection (b)(1), which
8 requires leave of court.

9 (3) Where a party is represented by multiple attorneys from the same or different
10 firms and one or more attorneys wish to withdraw but will not leave the client
11 without representation, leave of the court to withdraw is not required. The
12 withdrawing attorney(s) shall file a Notice of Withdrawal, which shall include a
13 statement that the client remains represented and identifies the remaining attorneys.
14 The Notices shall be signed by the withdrawing attorneys and the remaining
15 attorney(s) of record to confirm that fact.

16 W.D. Wash. Local Rules LCR 83.2(b). Here, attorneys John Bamert and Kevin Regan at Lowe
17 Graham appeared on June 13, 2021 for Hyperion. Dkts. #121, #122. On June 16, 2021, Mr.
18 Harrison filed his Notice of Withdrawal pursuant to LCR 82.3(b)(3), which included the statement
19 that Hyperion was represented by Mr. Bamert and Lowe Graham. That Notice was properly signed
20 by both Mr. Harrison and Mr. Bamert. On this basis, the Court finds that Mr. Harrison’s withdrawal
21 complied with LCR 83.2(b)(3).

22 Given that Mr. Harrison has properly withdrawn from the case, the Court finds no basis to
23 compel Mr. Harrison’s attendance at the Carton deposition. To the extent Plaintiffs claim that Mr.
24 Harrison’s withdrawal will delay the newly-reset deadlines, including the deposition of Mr.
25 Carton, Hyperion has confirmed that it “agrees that the deposition can proceed as scheduled”
26 Dkt. #128 at 3. Plaintiffs’ Motion to Bar Withdrawal also claims that Hyperion’s new counsel is
“unauthorized” and cannot legally represent Hyperion. *See* Dkt. #126 at 4 (Arguing that
individuals at Hyperion “lack[] the requisite corporate power to engage new counsel.”). These
arguments regarding Lowe Graham’s potential disqualification are irrelevant to the issue at hand,

1 which is whether Mr. Harrison properly withdrew and, if not, whether he must be compelled to
2 attend the Carton deposition. Given that Mr. Harrison withdrew in accordance with LCR
3 83.2(b)(3), and considering Hyperion's claim that his withdrawal will not delay the scheduled
4 Carton deposition, the Court finds no basis to compel his attendance. For these reasons, Plaintiffs'
5 Motion to Bar Mr. Harrison's Withdrawal is DENIED.

6
7 **CONCLUSION**

8 For the reasons set forth above, the Court ORDERS as follows:

9 (1) Hyperion's Motion for Reconsideration, Dkt. #119, is DENIED;

10 (2) Plaintiffs' Motion to Bar Withdrawal and Substitution of Counsel and to Compel
11 Attorney to Attend Deposition, Dkt. #126, is DENIED.

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13 DATED this 22nd day of June, 2021.

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17 **RICARDO S. MARTINEZ**
18 **CHIEF UNITED STATES DISTRICT JUDGE**