

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE F. FORTE; EILEEN FORTE;
GABRIELLE FORTE; JORDAN FORTE;
NOEL FORTE and JUSTON FORTE,

Plaintiffs,

v.

HYATT SUMMERFIELD SUITES
PLEASANTON; ANA VILLA,
individually and as an employee
of HYATT SUMMERFIELD SUITES
PLEASANTON; PLEASANTON POLICE
DEPARTMENT; OFFICER JERRY
NICELEY, individually and in his
official capacity; OFFICER
MARDENE LASHLEY, individually and
in her official capacity; OFFICER
MARTENS, individually and in his
official capacity; and DOES 1
through 25, inclusive,

Defendants.

No. C 11-02568 CW

ORDER GRANTING
ATTORNEY'S MOTION
TO WITHDRAW AND
RESETTING CASE
MANAGEMENT
CONFERENCE FOR
DECEMBER 13, 2011
(Docket No. 9)

Movant William A. Lapcevic of Arata, Swingle, Sodhi & Van
Egmond, counsel for Plaintiffs Eugene E. Forte, Eileen Forte,
Gabrielle Forte, Jordan Forte, Noel Forte and Juston Forte, seeks
leave of this Court, pursuant to Local Rule 11-5(a), and under
California Rules of Professional Conduct Rule 3-700, to withdraw
as counsel for Plaintiffs. Plaintiff Eugene Forte alone has
opposed the motion and indicated that the other plaintiffs, who
comprise his wife and children, two of whom are minors, are unable
and unwilling to represent themselves. Having considered all of
the parties' submissions, the motion to withdraw is GRANTED.

1 California Rules of Professional Conduct require members of
2 the California Bar to withdraw from representation when "[t]he
3 member knows or should know that continued employment will result
4 in violation of these rules or of the State Bar Act." Cal. R.
5 Prof. Conduct 3-700(B)(2). In the present case, Movant contends
6 that a conflict of interest exists which precludes him from
7 representing Plaintiffs in this action. Plaintiffs allege claims
8 based on an altercation between themselves and the Pleasanton
9 police at a hotel. Movant has attested that an excess liability
10 pooling authority that covers Pleasanton retains his firm on
11 various cases for other municipalities. On this basis, withdrawal
12 is mandatory. Accordingly, the Court need not address whether
13 Movant has established grounds for permissive withdrawal.
14

15 The motion to withdraw is GRANTED. The requirement of
16 mandatory withdrawal also applies to Colleen Frances Van Egmond,
17 another counsel of record for Plaintiffs, who is a member of the
18 same firm as Lapcevic. "An attorney's disqualification extends to
19 the entire firm, because when attorneys practice together, they
20 presumptively share access to privileged and confidential
21 matters." North Pacifica, LLC v. City of Pacifica, 335 F. Supp.2d
22 1045, 1050-51 (N.D. Cal. 2004). Here, Movant indicates that the
23 conflict extends to the entire firm.
24

25 If Plaintiffs wish to pursue this litigation, they will have
26 to retain new counsel or represent themselves in propria persona,
27 except that those who are minor children cannot represent
28

1 themselves or appear without a guardian ad litem. None of the
2 non-minor Plaintiffs appear to be an attorney. It does not appear
3 that a guardian ad litem has been appointed. The minor Plaintiffs
4 have sixty days from the date this order is issued to find new
5 counsel and seek appointment of a guardian ad litem for purposes
6 of pursuing this action. In the event that no guardian ad litem
7 has been appointed to represent these Plaintiffs and they have not
8 secured new counsel, their claims shall be dismissed.

10 The parties are currently set to appear for a case management
11 conference on October 11, 2011 at 2 pm. This case management
12 conference date is RESET for December 13, 2011 at 2 pm. Pursuant
13 to this Court's Local Rule 16-9(a) and the Standing Order for All
14 Judges of the Northern District of California, the parties are to
15 submit a Joint Case Management Statement, or separate statements,
16 on or before December 6, 2011. In the event that any Plaintiff
17 fails to file a statement or does not appear at the conference in
18 person or through counsel, their claims will be dismissed for
19 failure to prosecute.

21 IT IS SO ORDERED.

23 Dated: 9/20/2011

24 
CLAUDIA WILKEN
United States District Judge