

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

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

No. C 11-02568 CW

7 Plaintiffs,

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

v.

15 HYATT SUMMERFIELD SUITES
16 PLEASANTON; ANA VILLA,
17 individually and as an employee
18 of HYATT SUMMERFIELD SUITES
19 PLEASANTON; PLEASANTON POLICE
20 DEPARTMENT; OFFICER JERRY
21 NICELEY, individually and in his
22 official capacity; OFFICER
23 MARDENE LASHLEY, individually and
24 in her official capacity; OFFICER
25 MARTENS, individually and in his
26 official capacity; and DOES 1
27 through 25, inclusive,

28 Defendants.

17 Movant William A. Lapcevic of Arata, Swingle, Sodhi & Van
18 Egmond, counsel for Plaintiffs Eugene E. Forte, Eileen Forte,
19 Gabrielle Forte, Jordan Forte, Noel Forte and Juston Forte, seeks
20 leave of this Court, pursuant to Local Rule 11-5(a), and under
21 California Rules of Professional Conduct Rule 3-700, to withdraw
22 as counsel for Plaintiffs. Plaintiff Eugene Forte alone has
23 opposed the motion and indicated that the other plaintiffs, who
24 comprise his wife and children, two of whom are minors, are unable
25 and unwilling to represent themselves. Having considered all of
26 the parties' submissions, the motion to withdraw is GRANTED.
27

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

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

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.
9

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.
20

21 IT IS SO ORDERED.
22

23 Dated: 9/20/2011
24


25 CLAUDIA WILKEN
26 United States District Judge
27
28