

United States District Court
For the Northern District of California

FILED

MAY 25 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NISENAN MAIDU TRIBE OF THE NEVADA) CITY RANCHERIA,)) Plaintiff,)) v.)) KEN SALAZAR, ET AL.,)) Defendant.)	Case No.: 10-CV-00270-JF (PSG) ORDER GRANTING-IN-PART APPLICATION FOR ORDER TO SHOW CAUSE TO FORMER COUNSEL AND REQUEST FOR SANCTIONS (Docket No. 27)
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On April 7, 2011, Plaintiff Nisenan Maidu Tribe of the Nevada City Rancheria ("Nevada City Rancheria") filed an application requesting that the court issue an order for non-party California Indian Legal Services ("CILS") to show cause why it had not produced Nevada City Rancheria's client file or allowed Nevada City Rancheria's attorneys to substitute as counsel in the *Tillie Hardwick, et al. v. United States of America, et al.*¹ class action. Nevada City Rancheria also seeks sanctions. Having considered the briefs and the agreement reached during the May 24, 2011 oral argument, and for the reasons below, the application for an order to show cause is GRANTED but only IN PART. The request for sanctions is DENIED.

I. BACKGROUND

On July 10, 1979, CILS filed the complaint in *Hardwick*. On February 28, 1983, the court granted class certification and defined the class as "all those persons who received any of the assets

¹ No. C 79-1710 JF (PVT).

1 of the following California Indian Rancherias pursuant to distribution plans purportedly prepared
 2 under the California Rancheria Act, Act of August 18, 1958 (72 Stat. 619), or as amended by the
 3 Act of August 11, 1964 (78 Stat. 390), any heirs or legatees of such persons and any Indian
 4 successors in interest to real property so distributed: . . . Nevada City.”² On December 22, 1983,
 5 CILS filed a Stipulation for Entry of Judgment resulting in benefits for persons who received any
 6 of the assets of seventeen Rancherias and any of those persons’ Indian heirs, legatees, or
 7 successors. Nevada City Rancheria was not mentioned in the stipulated judgment. On May 20,
 8 1992, a notice and order of dismissal was entered.

9 On January 20, 2010, Nevada City Rancheria filed the complaint in this action. In June
 10 2010, Nevada City Rancheria requested that CILS provide it with a copy of the client file from
 11 *Hardwick* and sign a substitution of attorney so Nevada City Rancheria’s attorneys could proceed
 12 as its counsel in *Hardwick*. CILS refused, claiming that Nevada City Rancheria was not a CILS
 13 client, the client file is protected by attorney-client privilege, and that substituting class counsel
 14 requires an order of the *Hardwick* court. After CILS refused to comply with Nevada City
 15 Rancheria’s informal request, Nevada City Rancheria represents that it “had sought to subpoena the
 16 documents [but] withdrew the subpoena when the [order to show cause] was calendared.”³

17 On May 24, 2011, the court heard oral argument on Nevada City Rancheria's instant
 18 motion. During the argument, the parties agreed that CILS would satisfy Nevada City Rancheria's
 19 production demand by tendering only the non-privileged, non-work product portion of the
 20 requested client file. The agreement did not extend to or address Nevada City Rancheria's request
 21 for sanctions or substitution of counsel.

22 II. DISCUSSION

23 A. Disclosure of the Client File

24 Based on the parties' agreement discussed above, the court HEREBY ORDERS that CILS
 25 shall produce all non-privileged, non-work product documents in the disputed file. CILS shall
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28 ² 4/7/11 Declaration of Michael E. Vinding Ex. 1, Order Re: Class Certification (Docket No. 27-1).

³ 5/10/11 Declaration of Michael E. Vinding in Support of Reply (Docket No. 36) ¶¶ 27-28.

1 make this production no later than June 10, 2011. The cost of the production shall be borne
2 entirely by CILS.

3 **B. Substitution of Counsel**

4 Whether CILS is required to sign a substitution of counsel to allow Nevada City
5 Rancheria's counsel to appear in Hardwick is not a discovery issue and, thus, is outside the scope
6 of the referral to the magistrate judge. The motion to issue an order for CILS to show cause why it
7 has not its agreed to a substitution of counsel in *Hardwick* is therefore DENIED without prejudice
8 to a renewed motion before the presiding judge.

9 **C. Sanctions**

10 Based on its review of the record and the arguments presented on May 24, the court finds
11 that sanctions are not warranted. In addition, Civ. L.R. 7-8 requires any motion for sanctions to be
12 filed separately. The instant request for sanctions was combined with the application for an order
13 to show cause and is therefore procedurally defective. The motion for sanctions is DENIED.

14 **IT IS SO ORDERED.**

15 Dated: 5/25/2011

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18 PAUL S. GREWAL
19 United States Magistrate Judge
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