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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

GLAS-WELD SYSTEMS, INC.
Plaintiff,

v.

**Michael P. BOYLE and
Christopher M. BOYLE,**
Defendants

Civil Action No.:6:12-cv-2273-AA

**MOTION TO TERMINATE PRO-BONO
APPOINTMENT AND WITHDRAW AS
COUNSEL**

Certificates of Compliance

Pursuant to LR 7-1, the undersigned counsel represents that he has conferred with Paul BERG of attorneys for GLAS-WELD SYSTEMS, INC. but received no indication whether Plaintiff would oppose the filing of the motion. Counsel has also attempted to contact *pro se* party Christopher BOYLE by email and text message, though without response.

This brief complies with the applicable word-count limitation under LR 7-2(b), 26-3(b), 54-1(c), or 54-3(e) because it contains 776 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

**MOTION TO TERMINATE APPOINTMENT
AND WITHDRAW AS COUNSEL**

PRO-BONO COUNSEL DAVID H. MADDEN respectfully moves the Court for an Order terminating his present appointment as counsel for Defendant Michael P. BOYLE and for an Order granting him leave of Court to withdraw as counsel on behalf of Defendant Michael BOYLE pursuant to LR 83.11. This motion is supported by the Memorandum below and the concurrently-filed Declaration of David MADDEN.

MEMORANDUM

The Court should grant this motion for an Order terminating the appointment of Mr. MADDEN as *pro bono* counsel and for an Order granting leave to allow Mr. MADDEN to withdraw as counsel for Defendant BOYLE because circumstances have arisen which comprise a current conflict of interest between Mr. MADDEN and Defendant BOYLE. As a result, the Oregon Rules of Professional Responsibility provide that Mr. MADDEN can no longer continue to represent Mr. BOYLE in this matter.

Leave to withdraw as counsel of record under LR 83.11 should be permitted because 1) the conflict of interest described in the concurrently filed Declaration of David MADDEN prevents him from continuing representation of Defendant BOYLE, 2) Mr. MADDEN's withdrawal will not prejudice any other litigants in this action; 3) the administration of justice will not be affected if withdrawal is permitted at this time; and 4) Mr. MADDEN's withdrawal is not likely to delay the resolution of the case because discovery is completed and *Markman* and summary judgment briefings have been completed and taken under submission. There are no motion, response or reply deadlines pending and no hearings or trials have been scheduled. In addition, Defendant BOYLE has advised Mr. MADDEN that he will obtain alternate representation no later than Monday, 9 June 2014.

Pursuant to LR 83.11 and *Muhlheim Boyd, LLP v. Miller (In re Ryan)*, 2008 U.S. Dist. LEXIS 88566, 8-9 (D. Or. Oct. 31, 2008) (citing factors in applying LR 83.11) *citing, Irwin v. Mascott*, 2004 U.S. Dist. LEXIS 28264 at 4 (N.D.Cal. December 1, 2004), Mr. MADDEN should be permitted to withdraw as counsel at this time.

CONCLUSION

Because a conflict of interest has arisen between Mr. MADDEN and Defendant BOYLE, there is good cause for the Court to terminate the appointment of Mr. MADDEN as his *pro bono* counsel in this matter. In addition, because of this conflict of interest and the absence of any factors weighing against permitting withdrawal at this time, the Court should also grant Mr. MADDEN's motion to withdraw as Mr. BOYLE's attorney of record.

Respectfully submitted,

6 June 2014

Date

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the document entitled:

Motion to Terminate Pro-Bono Appointment and Withdraw as Counsel

was served upon the parties listed below on the date indicated,

- by handing it to the person;
- by leaving it at the leaving it at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- by mailing it to the address indicated;
- by leaving it with the court clerk;
- by electronic filing notification (PACER); or
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DECLARATION OF DAVID H. MADDEN

**Declaration of David H. MADDEN in support of
Counsel's Motion to Terminate Pro-Bono Appointment**

I, David H. MADDEN, state and declare as follows:

1. I am a partner in the law firm of Mersenne Law LLP. I am the attorney of record for defendant Michael P. BOYLE in the present action. I have personal knowledge of the following facts and if called upon to do so, I could and would testify competently to the matters set forth below.

2. I submit this Declaration in support of the Motion to Terminate *Pro-Bono* Appointment.
3. On September 10, 2013, the Court conditionally appointed me as counsel for Defendant BOYLE and ordered me to accept the representation unless I had a conflict of interest or other specified reason to decline the appointment.
4. I investigated and determined that, at the time, I had no such conflict. Therefore, I accepted the representation.
5. I have served as counsel to Mr. BOYLE since that time, and have participated in discovery, *Markman* and MSJ proceedings, etc.
6. Recently, a number of events have occurred that led me to believe that a conflict of interest may have developed between me and Mr. BOYLE.
7. I investigated these events and the applicable rules, and I now believe that I cannot properly continue to represent Mr. BOYLE in this matter.
8. Specifically, I believe that the conflict of interest will cause a significant risk that the representation of one or more clients will be materially limited by my responsibilities to another client, a former client or a third person or by a personal interest of mine, within the meaning of ORPC 1.7(a)(2).
9. There are no pending motions, deadlines, hearings or trials scheduled in the present matter, so termination of the *pro-bono* appointment would not materially disadvantage Mr. BOYLE.
10. I am informed that Mr. BOYLE will obtain alternate representation no later than Monday, 9 June 2014.
11. For the foregoing reasons, I respectfully request that the Court grant the present

motion to terminate my appointment in this case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

6 June 2014

Date

David H. Madden