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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JAMES S. POBURSKY, et al.,	)	1:07cv0611 AWI DLB
	)	
	)	
Plaintiffs,	)	ORDER REGARDING PLAINTIFF’S EX
	)	PARTE MOTION FOR ORDER
v.	)	COMMANDING HEARING ATTENDANCE
	)	(Document 171)
	)	
MADERA COUNTY, et al.,	)	ORDER MOVING HEARING DATE AND
	)	SETTING BRIEFING SCHEDULE
	)	
Defendants.	)	CHANGE OF ADDRESS FOR PLAINTIFF
	)	JAMES S. POBURSKY only

Plaintiffs James S. and Wanda Pobursky (“Plaintiffs”) are proceeding pro se in this action. Defendants’ motion for involuntary dismissal is currently pending and set for hearing on March 12, 2010.

On February 8, 2010, Plaintiff James Pobursky filed an ex parte motion for an order commanding hearing attendance. According to the motion, Mr. Pobursky is incarcerated in the Madera County Jail.

Defendants filed a statement of “conditional non-opposition” on February 9, 2010. Defendants do not object to an arrangement that would allow Mr. Pobursky to appear by telephone, but contend that the hearing should go forward as scheduled regardless of whether Mr. Pobursky is able to attend.

As an initial matter, this Court will not dismiss this action without affording Mr. Pobursky an opportunity to be heard. Defendants contend that Ms. Pobursky, who is not incarcerated, “should be able to adequately represent the interests of Mr. Pobursky since the matters to be

1 considered at the hearing relate equally to both Plaintiffs.” Contrary to Defendants’ belief, Ms.  
2 Pobursky, as a pro se Plaintiff, cannot represent Mr. Pobursky in this action.

3 In any event, the Court has confirmed with the Madera County Jail that Mr. Pobursky can  
4 appear by telephone at the hearing. Mr. Pobursky’s incarceration, however, creates unavoidable  
5 delays in sending and receiving mail and it is therefore necessary to extend dates to ensure that  
6 Mr. Pobursky has an opportunity to oppose the motion. Defendants’ contention that Plaintiff will  
7 have “plenty of time to gather the pertinent documents and prepare and opposition” by February  
8 26, 2010, is optimistic given the common delays that exist when a party is incarcerated. While the  
9 Court recognizes that Defendants do not want to delay this matter further, the Court simply  
10 cannot proceed without assuring that Mr. Pobursky receives his due process right to be heard.

11 Therefore, the Court CONTINUES the hearing on Defendants’ motion for involuntary  
12 dismissal to March 26, 2010, at 9:00 a.m. in Courtroom 9. Plaintiffs’ opposition SHALL be due  
13 on or before March 12, 2010, and Defendants’ reply, if any, SHALL be due on or before March  
14 19, 2010.

15 The Court will arrange for a telephonic appearance by Mr. Pobursky.

16 The Court also notes that Mr. Pobursky referred to his address in the Madera County Jail  
17 as an “extra new address.” The Court therefore DIRECTS the Clerk fo Court to add this address  
18 as an address for service for Mr. Pobursky:

19 James Sanford Pobursky  
20 Madera County Jail  
21 #162696  
22 14191 Road 28  
23 Room #40  
24 Madera, CA 93638

25 IT IS SO ORDERED.

26 **Dated: February 10, 2010**

27 **/s/ Dennis L. Beck**  
28 UNITED STATES MAGISTRATE JUDGE