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

NARENDRA KUMAR, et al.,	)	No. CV-F-08-1044 OWW/GSA
)	
	)	MEMORANDUM DECISION AND
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS'
	)	REQUEST FOR CONTINUANCE
vs.	)	(Doc. 38), VACATING HEARINGS
	)	SET FOR FEBRUARY 9, 2009,
	)	AND CONTINUING HEARING ON
CHINA AIRLINES, et al.,	)	PLAINTIFFS' MOTION TO
	)	WITHDRAW AUTOMATIC
	)	ADMISSIONS TO MARCH 23, 2009
Defendants.	)	AND ON DEFENDANT'S MOTION TO
	)	DISMISS FOR LACK OF SUBJECT
	)	MATTER JURISDICTION TO APRIL
	)	4, 2009

Plaintiffs Narendra Kumar, Manish Kumar, Monica Kumar and Savitri Srivastava, then proceeding *in pro per*, filed a Complaint against Defendant China Airlines ("CAL") and Does 1-10 in the Stanislaus County Superior Court, arising out of the alleged denial of their boarding a China Airlines flight from New Delhi, India, to San Francisco, California, despite having received boarding passes and clearing airport security and immigration. The action was removed to this Court on July 21, 2008.

1 On August 13, 2008, CAL filed a motion to dismiss for lack
2 of subject matter jurisdiction, contending that Plaintiffs'
3 claims are governed exclusively by the Warsaw Convention, and
4 that the only places where Plaintiffs can bring suit against CAL
5 are Taiwan or India. CAL set the motion for hearing on October
6 27, 2008. The motion to dismiss was continued by the Court to
7 November 11, 2008 and again, at the request of CAL, to December
8 1, 2008. The hearing on the motion to dismiss was again
9 continued by the Court to February 9, 2009.

10 On December 4, 2008, Plaintiffs filed a motion to withdraw
11 automatic admissions, noticing the motion for hearing on February
12 9, 2009.

13 On January 16, 2009, the Law Offices of Jeffrey D. Bohn was
14 substituted as counsel for Plaintiffs and moved for continuance
15 of the hearing on the motion to withdraw automatic admissions to
16 a date beyond March 9, 2009 and on the motion to dismiss to a
17 date beyond March 23, 2009. Plaintiffs' request for continuance
18 of the hearings is supported by the Declaration of Teresa B.
19 Petty, counsel for Plaintiffs:

20 4. That it became apparent after a review
21 of the pleadings and facts in this matter
22 that this office needs additional time to
adequately prepare for the current motions on
the courts [sic] calendar in this matter.

23 5. That PLAINTIFFS' *Motion to Withdraw the*
24 *Automatic Admissions Resulting From Lack of*
25 *Response* should be heard first, because facts
26 to support PLAINTIFFS' opposition are
directly at issue in this motion and the
Courts [sic] decision will shape the
formation of PLAINTIFFS [sic] factual and

1 legal arguments opposing Defendant's motion
2 dramatically.

3 CAL does not oppose Plaintiffs' request for continuance.
4 However, CAL objects to continuance of its motion to dismiss
5 until after resolution of Plaintiffs' motion to withdraw
6 admissions. CAL asserts that Plaintiffs do not articulate
7 exactly why the two motions cannot be heard on the same date,
8 noting that Plaintiffs initially set their motion to withdraw
9 admissions for the same date as the motion to dismiss. CAL
10 contends that "its motion to dismiss stands on its own and CAL
11 has yet to rely upon or incorporate any of plaintiffs' default
12 admissions in its motion, although, CAL anticipates doing so in
13 its reply brief." CAL further contends that hearing the two
14 motions on different dates will prejudice CAL because CAL will be
15 required to twice incur attorneys fees for its counsel to travel
16 to Fresno from Los Angeles to hear the motions.

17 CAL's objection to continuing the hearing on the motion to
18 dismiss until after Plaintiffs' motion to withdraw admissions is
19 misplaced. Plaintiffs were proceeding *in pro per* when they
20 noticed their motion for the same date as the motion to dismiss.
21 Plaintiffs, through their counsel, have stated that resolution of
22 their motion is necessary to their opposition to the motion to
23 dismiss. CAL's contention that it will be prejudiced by two
24 different hearing dates is baseless. CAL requested telephonic
25 appearance for its motion to dismiss and can do so for the
26 hearing on Plaintiffs' motion.

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For the reasons stated:

1. Plaintiffs' request for continuance is GRANTED.

Plaintiffs' motion to withdraw admissions is continued from February 9, 2009 to Monday, March 23, 2009 at 10:00 a.m. CAL's motion to dismiss is continued to Monday, April 4, 2009 at 10:00 a.m.

IT IS SO ORDERED.

Dated: February 2, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE