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

**EFRAIN GARCIA and OFELIA
GARCIA,**

Plaintiffs,

v.

ALLSTATE INSURANCE,

Defendant.

1:12-CV-609 AWI SKO

**ORDER VACATING
JANUARY 9, 2013 HEARING
DATE AND DENYING
MOTION WITHOUT
PREJUDICE**

(Doc. No. 22)

On December 3, 2012, following the closure of this case, Defendant filed a motion for attorney’s fees pursuant to the Anti-SLAPP statute. Plaintiffs had failed to oppose the Anti-SLAPP motion, failed to object to the Findings and Recommendation that recommended granting the motion, and failed to file an amended complaint after Defendant’s motion was granted. However, on December 13, 2012, the Court construed a filing by Plaintiffs in a related case to be a Rule 59 or Rule 60 motion for relief in this case, and referred the matter to the Magistrate Judge.¹ It is possible that relief may be granted, the judgment in this case vacated, and a new complaint be filed.

Given the relief is possible, a hearing on Defendant’s motion for attorney’s fees before the Magistrate Judge issues a Findings and Recommendation would be premature. The Court will vacate the January 9, 2013, hearing date, and will deny the motion for attorney’s fees without prejudice to refiling once the Rule 59/Rule 60 issues have been resolved.


¹The Court ordered an opposition by Plaintiffs filed in Case No. 1:12-cv-1762 to be filed in this case as a “motion for relief.” The motion for relief is Document No. 24 in this case.

1 Accordingly, IT IS HEREBY ORDERED that:

- 2 1. The January 9, 2013, hearing date is VACATED; and
3 2. Defendant's motion for attorney's fees (Doc. No. 22) is DENIED without prejudice to
4 refiling once Plaintiffs' motion for relief has been resolved.

5 IT IS SO ORDERED.

6 Dated: December 14, 2012


UNITED STATES DISTRICT JUDGE

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