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

MARILYN DILLARD, et al.,

Plaintiffs,

No. 2:08-cv-01339 FCD KJN PS

v.

ORDER

VICTORIA M. MORTON
ENTERPRISES, INC., et al.,

Defendants.

RUTH GALTIERI-CARLSON, et al.,

Plaintiffs,

No. 2:08-cv-01777 FCD KJN PS

v.

ORDER

VICTORIA M. MORTON
ENTERPRISES, INC., et al.,

Defendants.

Presently set for hearing on April 22, 2010 is plaintiffs' Application for Default Judgment By Court, which according to the court's docket was filed only in the matter of Dillard, et al. v. Victoria M. Morton Enterprises, Inc., et al., No. 2:08-cv-1339 FCD KJN PS (Dkt. No. 44.) The court's docket does not reflect that plaintiffs in the matter of Galtieri-Carlson, et al. v.

1 Victoria M. Morton Enterprises, Inc., et al., No. 2:08-cv-1777 FCD KJN PS, separately filed an
2 application for default judgment in that case.¹

3 As noted in the court's Related Case Order entered in both matters, the Related
4 Case Order did not effectuate a consolidation of the two cases. (See Dillard, No. 2:08-cv-1339
5 FCD KJN PS, Dkt. No. 14; Galtieri-Carlson, No. 2:08-cv-1777 FCD KJN PS, Dkt. No. 7.)
6 Accordingly, no application for default judgment is currently pending in the Galtieri-Carlson
7 matter. However, plaintiffs in the Galtieri-Carlson matter apparently intended to move for
8 default judgment in that matter through the Application for Default Judgment By Court filed only
9 in the Dillard matter ("Dillard Application"). It appears from the caption of the Dillard
10 Application, which contains case information for both cases, that the Galtieri-Carlson plaintiffs
11 also intended to move for default judgment but errantly failed to file their motion in the correct
12 matter. Because no prejudice would befall the remaining defendants in either action, the
13 undersigned will deem the Dillard Application filed in the Galtieri-Carlson matter, and the April
14 22, 2010 hearing will remain on the court's calendar.

15 In anticipation of the April 22, 2010 hearing, the undersigned notes that certain
16 entity defendants against which plaintiffs seek default judgment previously appeared through
17 counsel in both the Dillard and Galtieri-Carlson matters. (See Dillard, No. 2:08-cv-1339 FCD
18 KJN PS, Dkt. No. 22; Galtieri-Carlson, No. 2:08-cv-1777 FCD KJN PS, Dkt. No. 21.) As a
19 result, plaintiffs in both actions are required to serve notice of their application for default
20 judgment on those previously appearing parties within seven (7) days of the hearing. Fed. R.
21 Civ. P. 55(b)(2).² Failure to do so may have adverse consequences for plaintiffs' default
22

23 ¹ The Galtieri-Carlson matter was reassigned to the undersigned from United States
24 Magistrate Judge Gregory G. Hollows by order (Dkt. No. 33).

25 ² Although the Dillard Application states that notice of the application was served on
26 defendants who have appeared, the related certificate of service filed with the court indicates that
plaintiffs only served their application on now-dismissed defendant Victoria M. Morton, an
individual. (Compare Dillard, No. 2:08-cv-1339 FCD KJN PS, Dkt. No. 44 at ¶ 2, with Dkt.

1 judgment to the extent it might be granted. See, e.g., Civic Ctr. Square, Inc. v. Ford (In re
2 Roxford Foods), 12 F.3d 875, 879 (9th Cir. 1993) (noting that failure to provide notice when
3 required is “a serious procedural irregularity” that usually justifies setting aside a default
4 judgment or reversing a default judgment on appeal).

5 Accordingly, the undersigned HEREBY ORDERS that:

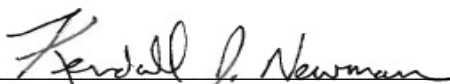
6 1. The Application for Default Judgment By Court shall be deemed filed in
7 Galtieri-Carlson, No. 2:08-cv-1777 FCD KJN PS.

8 2. The hearing presently set for April 22, 2010 will remain on calendar.

9 3. The Clerk of Court is directed to enter this order in the following matters:
10 Dillard, No. 2:08-cv-1339 FCD KJN PS, and Galtieri-Carlson, No. 2:08-cv-1777 FCD KJN PS.

11 4. Plaintiffs in both actions are required to serve notice of their application
12 for default judgment on those previously appearing parties within seven (7) days of the April 22,
13 2010 hearing, and file a proof of service with the court.

14 DATED: April 12, 2010

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE
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25 _____
26 No. 45.) It is unclear from the record whether plaintiffs have otherwise served notice of the application for default judgment on the entity defendants.