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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.

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

Defendants.

RUTH GALTIERI-CARLSON, et al.,

Plaintiffs,

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

v.

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

Defendants.

FINDINGS & RECOMMENDATION

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Defendant Victoria Morton is an individual who is a defendant in both above-captioned cases. On February 11, 2010, plaintiffs filed a “Notice of Dismissal As To Defendant Victoria Morton (Fed. R. Civ. P. 41(a)(1)(A)(I))” (the “Notice”) which was only filed in the matter of Dillard, et al. v. Victoria M. Morton Enterprises, Inc., et al., No. 2:08-cv-1339 FCD

1 KJN PS (“Dillard”) (Dkt. No. 42). Because Ms. Morton had already appeared in the Dillard case
2 and had filed an answer, the undersigned construed the Notice as a motion for dismissal of Ms.
3 Morton in the Dillard case, provided Ms. Morton with an opportunity to respond, and upon Ms.
4 Morton’s failure to respond, entered findings and recommendations recommending that Ms.
5 Morton be dismissed without prejudice. (See Dillard, No. 2:08-cv-1339 FCD KJN PS, Dkt. Nos.
6 43, 47.) Although the Notice filed in the Dillard case contained the captions and case
7 information for both the Dillard action and the related action in Galtieri-Carlson, et al. v. Victoria
8 M. Morton Enterprises, Inc., et al., No. 2:08-cv-1777 FCD KJN PS (“Galtieri-Carlson”), the
9 court’s docket reflects that the Notice was not filed in the Galtieri-Carlson case. However,
10 according to the caption contained in the Notice, which includes case information for both related
11 cases, it appears that the plaintiffs in Galtieri-Carlson also intended to dismiss Ms. Morton from
12 that case.

13 As noted in the court’s Related Case Order entered in both cases, the Related Case
14 Order did not effectuate a consolidation of the two cases.¹ Accordingly, the Notice was not
15 entered in the Galtieri-Carlson case and the undersigned’s proposed findings and
16 recommendations in the Dillard case regarding the dismissal of Ms. Morton were only entered in
17 the Dillard case. Because it appears that the plaintiffs in Galtieri-Carlson also intended to
18 effectuate a dismissal of Ms. Morton in that case, the undersigned will recommend that the
19 Notice be deemed filed in the Galtieri-Carlson case and that Ms. Morton be dismissed without
20 prejudice from Galtieri-Carlson, et al. v. Victoria M. Morton Enterprises, Inc., et al., No. 2:08-
21 cv-1777 FCD KJN PS. The undersigned finds that no prejudice would befall Ms. Morton as a
22 result of her dismissal from the Galtieri-Carlson action because she has been served with all
23 documents related to her requested dismissal, been provided multiple opportunities to respond,
24 and has not responded to any court filings since the middle of 2009, including those related to her

25 ¹ (See Dillard, No. 2:08-cv-1339 FCD KJN PS, Dkt. No. 14; Galtieri-Carlson, No. 2:08-
26 cv-1777 FCD KJN PS, Dkt. No. 7.)

1 requested dismissal.

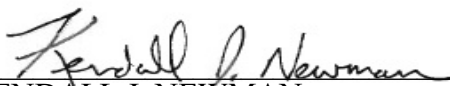
2 Accordingly, the undersigned RECOMMENDS that:

3 1. The “Notice of Dismissal As To Defendant Victoria Morton (Fed. R.
4 Civ. P. 41(a)(1)(A)(I)),” which the undersigned previously construed as a motion for voluntary
5 dismissal in the Dillard matter (Dillard, No. 2:08-cv-1339 FCD KJN PS, Dkt. No. 42), be
6 deemed filed in Galtieri-Carlson, et al. v. Victoria M. Morton Enterprises, Inc., et al., No. 2:08-
7 cv-1777 FCD KJN PS.

8 2. The motion for voluntary dismissal be granted and that defendant Victoria
9 Morton, an individual, be dismissed without prejudice from Galtieri-Carlson et al. v. Victoria M.
10 Morton Enterprises, Inc., et al., No. 2:08-cv-1777 FCD KJN PS.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
13 days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
16 within the specified time may waive the right to appeal the District Court’s order. Turner v.
17 Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir.
18 1991).

19 DATED: June 7, 2010

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23 KENDALL J. NEWMAN
24 UNITED STATES MAGISTRATE JUDGE
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