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

BRENT ALLEN WINTERS, et al.,

Plaintiffs,

No. 2:09-cv-00522 JAM KJN PS

v.

DELORES JORDAN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /
All of the plaintiffs in this case are proceeding without counsel. Three of the plaintiffs in this case—Joy Winters, Clark Winters, and Jill Winters—are minors who are not represented by an attorney or attorneys. On September 24, 2009, United States Magistrate Judge Edmund F. Brennan, who previously presided over this case, ordered that “[a]ll references to the minor plaintiffs are stricken from plaintiffs’ Third Amended Complaint” because those minor plaintiffs were not represented by an attorney or attorneys. (See Order, Sept. 24, 2009, Dkt. No. 68.) Magistrate Judge Brennan subsequently denied plaintiffs’ motion for reconsideration of the September 24, 2009 order. (See Order, Nov. 13, 2009, Dkt. No. 89.)

Although all references to the minor plaintiffs in the Third Amended Complaint have been stricken—and thus for all intents and purposes the minor plaintiffs have been dismissed from this action—the presence of those minor plaintiffs on the court’s docket has caused confusion among the parties in regards to service of documents and attempts to seek

1 stipulations. Thus, the undersigned recommends that the minor plaintiffs in this action be
2 dismissed without prejudice for failure to be represented by counsel.

3 As the court has repeatedly stated in this action, the other pro se parties in this
4 case, including the minor plaintiffs’ parents, may not pursue claims on behalf of the minor
5 plaintiffs. The Ninth Circuit Court of Appeals has plainly held that “a parent or guardian cannot
6 bring an action on behalf of a minor child without retaining a lawyer.”¹ Johns v. County of San
7 Diego, 114 F.3d 874, 877 (9th Cir. 1997); accord Lin v. Ashcroft, 377 F.3d 1014, 1025 (9th Cir.
8 2004). The rationale for this rule is a protective one, and the Court of Appeals has stated that
9 where minors “have claims that require adjudication, they are entitled to trained legal assistance
10 so their rights may be fully protected.” Johns, 114 F.3d at 877 (citation and internal quotation
11 marks omitted).

12 Accordingly, IT IS HEREBY RECOMMENDED that minor plaintiffs Joy
13 Winters, Clark Winters, and Jill Winters be dismissed from this case without prejudice.

14 These findings and recommendations are submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
16 days after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule 304(b).
18 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
19 Recommendations.” Any response to the objections shall be filed with the court and served on
20 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).
21 Failure to file objections within the specified time may waive the right to appeal the District

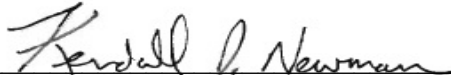
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24 ¹ Of course, the minor plaintiffs may not appear pro se to pursue their own alleged claims
25 in this action. See Johns, 114 F.3d at 876 (“The choice to appear pro se is not a true choice for
26 minors who under state law . . . cannot determine their own legal actions.”); see also Cal. Civ.
Proc. Code § 372.

1 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
2 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO RECOMMENDED.

4 DATED: December 16, 2010

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7 KENDALL J. NEWMAN
8 UNITED STATES MAGISTRATE JUDGE
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