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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.

ORDER

\_\_\_\_\_ /  
The following motions are presently set for hearing before the undersigned on December 30, 2010: (1) plaintiffs’ motion for default judgment against a group of defendants that the court will refer to in this order as the “Federal Defendants” (Dkt. No. 189); (2) plaintiffs’ motion to file electronically through the court’s CM/ECF system (Dkt. No. 203); (3) a motion to dismiss plaintiffs’ Third Amended Complaint filed by the Federal Defendants (Dkt. No. 186); (4) defendant John Taylor’s motion to dismiss plaintiffs’ Third Amended Complaint (Dkt. No. 199, 200); (5) defendant Valerie Logsdon’s motion for attorney’s fees (Dkt. No. 202); and (6) defendant Judy Ford’s motion for attorney’s fees (Dkt. No. 204).

On December 10, 2010, counsel for the Federal Defendants filed an *ex parte* motion to continue the hearing on the Federal Defendants’ motion to dismiss and plaintiffs’ motion for default judgment to January 27, 2011. (Dkt. No. 208.) On December 14, 2010, plaintiffs filed an *ex parte* motion to continue the hearing on these motions and the remainder of

1 the motions identified above. It appears that none of the parties attempted to seek a stipulation to  
2 continue the hearings.<sup>1</sup> In any event, the undersigned continues the hearing on the Federal  
3 Defendants' motion to dismiss and plaintiffs' motion for default judgment to February 3, 2011.

4 For the sake of judicial economy, the undersigned also continues the hearing on  
5 the remaining motions to February 3, 2011. Plaintiffs allege problems regarding service of two  
6 of the pending motions. First, plaintiffs contend that although defendant Ford's motion for  
7 attorney's fees was postmarked on November 17, 2010, plaintiffs did not receive the motion by  
8 mail until December 10, 2010. The Certificate of Service filed by defendant Ford reflects service  
9 of her motion on plaintiffs by U.S. Mail on November 17, 2010. (Dkt. No. 204, Doc. No. 204-4.)  
10 Plaintiff may wish to consult with the U.S. Postal Service or the provider of their P.O. Box in  
11 Illinois to remedy any problems regarding the timely delivery of their mail. In any event, the  
12 undersigned continues defendant Ford's motion for attorney's fees to February 3, 2011.

13 More troubling is plaintiffs' contention regarding the motion to dismiss filed by  
14 defendant John Taylor. Specifically, plaintiffs contend that they were never served with  
15 defendant John Taylor's motion to dismiss. A review of defendant Taylor's moving papers  
16 reveals that he did not file a proof of service with the court, let alone a proof of service  
17 demonstrating conventional service on the plaintiffs, who are proceeding pro se. See E. Dist.  
18 Local Rule 135(b). The court is thus left to presume that defendant Taylor did not serve his  
19 motion on plaintiffs. Accordingly, the court will continue defendant Taylor's motion to dismiss,  
20 but will require that defendant Taylor file a proper proof of service.

21 Plaintiffs allege no defects or inconveniences regarding defendant Logsdon's  
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23 <sup>1</sup> Counsel for the Federal Defendants contends that she did not seek a stipulation to  
24 continue the motion to dismiss and the motion for default judgment because the minor plaintiffs  
25 in this case are unrepresented and thus she could not secure a stipulation of all parties. Although  
26 technically true, it is nonetheless curious that counsel did not even attempt to seek a stipulation  
from plaintiffs, especially because it appears that plaintiffs would have agreed to such a  
stipulation.

1 motion for attorney's fees. Thus, the undersigned could keep that matter on calendar for  
2 December 30, 2010. However, as stated above, the undersigned continues defendant Logsdon's  
3 motion, which deals with issues similar to the motion for attorney's fees filed by defendant Ford,  
4 for the sake of efficiency.

5 For the reasons stated above, IT IS HEREBY ORDERED that:

6 1. The hearing on plaintiffs' motion for default judgment (Dkt. No. 189) is  
7 continued from December 30, 2010, to February 3, 2011.

8 2. The hearing on plaintiffs' motion to file electronically (Dkt. No. 203) is  
9 continued from December 30, 2010, to February 3, 2011.

10 3. The hearing on the motion to dismiss plaintiffs' Third Amended  
11 Complaint filed by the Federal Defendants (Dkt. No. 186) is continued from December 30, 2010,  
12 to February 3, 2011.

13 4. The hearing on defendant John Taylor's motion to dismiss plaintiffs' Third  
14 Amended Complaint (Dkt. No. 199, 200) is continued from December 30, 2010, to February 3,  
15 2011. At least 28 days prior to the continued hearing date, defendant John Taylor shall file a  
16 proof of service evidencing proper service of his motion on plaintiffs, who are proceeding pro se.

17 5. The hearing on defendant Valerie Logsdon's motion for attorney's fees  
18 (Dkt. No. 202) is continued from December 30, 2010, to February 3, 2011.

19 6. The hearing on defendant Judy Ford's motion for attorney's fees (Dkt. No.  
20 204) is continued from December 30, 2010, to February 3, 2011.

21 7. In their oppositions to the motions listed above, plaintiffs shall also state  
22 whether they will attend the February 3, 2011 hearing on the motions, unless the undersigned  
23 takes the motions under submission without a hearing.

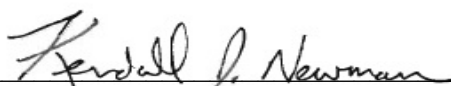
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IT IS SO ORDERED.

DATED: December 16, 2010

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE