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

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:10-cv-02591 MCE KJN PS

v.

JAMES O. MOLEN (also known as  
James-Orbin: Molen), et al.,

Defendants.

ORDER

Defendants James O. Molen (a.k.a. James-Orbin: Molen) and Sandra L. Molen (a.k.a. Sandra-Lyn: Molen) (collectively, the “Molens” or “defendants”) are proceeding without counsel. Between March 24, 2011, and March 31, 2011, the Molens filed six separate motions: a “Motion to Compel Request[s] for Admission” (Dkt. No. 48); a “Motion to Compel Request[s] for Interrogatories” (Dkt. No. 49); a “Motion for Judicial Notice Under 44 U.S.C. § 1507 - Federal Register Act and Administrative Procedure Act at 5 U.S.C. § 553(b)(c) & (d) [and] Motion to Render Judgment on Implied Contract under 28 U.S.C. § 1367(a)” (Dkt. No. 50); a “Motion for Judicial Notice Under 44 U.S.C. § 1507 - Federal Register Act and Administrative Procedure Act at 5 U.S.C. § 553(b)(c) & (d) [and] Motion to Dismiss under FRCP 12(b)(6) - Failure to state a claim upon which relief can be granted” (Dkt. No. 52); a “Motion for Judicial Notice as per FRCP 17 [and] Motion to Dismiss per FRCP 17(a) & (b):] Failure of Ratification and Commencement and Failure to produce Real Party in Interest and Capacity to Sue or Be

1 Sued” (Dkt. No. 53); and a “Motion for Judicial Notice as per Rule 201 [and] Motion to Dismiss  
2 per Title 4 Sect. 72” (Dkt. No. 54). These six motions will be referred to collectively as the  
3 “Motions.”<sup>1</sup> Plaintiff, the United States of America (the “plaintiff”), filed a written opposition to  
4 the Motions. (Oppo., Dkt. No. 59.)

5 The court heard oral arguments regarding these Motions on its law and motion  
6 calendar on May 5, 2011. Attorney Patrick Jennings attended on behalf of the plaintiff. James-  
7 Orbin: Molen and Sandra-Lyn: Molen attended on behalf of themselves. The undersigned has  
8 considered the briefs, oral arguments, and the record in this case and, for the reasons that follow,  
9 orders that the Motions are denied. As discussed below, notwithstanding their being styled as  
10 requests for judicial notice, most of the Motions attack the pleadings and request dismissal of the  
11 action. (Dkt. Nos. 50, 52-54.) Some of the Motions duplicate defendants’ prior filings.  
12 (Compare Dkt. Nos. 50, 52 with Dkt. No. 35.) The Motions were filed in contravention of the  
13 Local Rules and Federal Rules of Civil Procedure.

14 I. DISCUSSION

15 A. Duplicative And Improper Motions

16 When defendants filed their six Motions, their previously filed motion to dismiss,  
17 listed on the court’s docket as Docket Number 35, was already under submission before this  
18 court. The Molens filed essentially the same motion several different times. (Compare Dkt. Nos.  
19 50, 52 with Dkt. No. 35.) Of note, the court carefully considers the pleadings and record in this  
20 action and issues rulings in due course; multiple and duplicative filings do not expedite the  
21 process.

22 The multiplicity of defendants’ improper and duplicative filings is a burden on the  
23 court and the plaintiff, and impedes the progress of this action. In the future, such conduct may  
24 be sanctioned, and the sanctions may include entry of default judgment against the Molens. See,

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25 <sup>1</sup> This action was referred to the undersigned pursuant to Eastern District Local Rule  
26 302(c)(21). (See Dkt. No. 11.)

1 e.g., Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per curiam)  
2 (“District courts have inherent power to control their dockets. In the exercise of that power they  
3 may impose sanctions including, where appropriate, default or dismissal.”); accord In re  
4 Phenylpropanolamine (PPA) Products Liability, 460 F.3d 1217, 1227 (9th Cir. 2006) (quoting  
5 Thompson).

6 B. Motions To Compel Discovery Responses From Plaintiff

7 On March 24, 2011, the Molens filed a “ Motion to Compel Request for  
8 Admissions” and a “Motion to Compel Request for Interrogatories.” (Dkt. Nos. 48, 49,  
9 respectively.) The undersigned construes these filings as motions to compel discovery responses,  
10 and accordingly, the motions are denied for failure to comply with the Federal Rules of Civil  
11 Procedure and the Local Rules. As mandated by Local Rule 251, the parties must meet and  
12 confer, preferably in person or via telephone, prior to the filing of any motion to compel or other  
13 discovery motion. If that meet and confer effort is unsuccessful, the moving party shall draft and  
14 file a document entitled Joint Statement re: Discovery Disagreement, and *all parties shall assist*  
15 *in the preparation of* that joint statement. Local Rule 251(c). Additionally, if all other Federal  
16 Rules of Civil Procedure and Local Rules are complied with, the moving party must contact the  
17 undersigned’s courtroom deputy clerk to set that particular dispute on the court’s calendar prior  
18 to filing any Joint Statement. Despite the pro se nature of this case, the court still requires the  
19 parties to timely and productively meet and confer. The court expects and encourages the parties  
20 to work together so as to avoid any unnecessary discovery disputes. Pro se litigants are bound by  
21 the rules of procedure, even though pleadings are liberally construed in their favor. King v.  
22 Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

23 The denial of the Molens’ two discovery motions (Dkt. Nos. 48, 49), however, is  
24 without prejudice so that defendants may refile, if necessary, proper motion(s) to compel  
25 discovery that comply with the procedural and formatting requirements of Eastern District Local  
26 Rule 251. A continued failure to comply with the rules governing the filing of discovery motions

1 may result in the summary denial of improperly-filed motions.

2 C. Motions Attacking The Pleadings And Urging Dismissal Of The Case

3 As noted above, the Molens have filed multiple motions urging dismissal of this  
4 action. (Dkt. Nos. 50, 52, 53, 54.) Although several of the motions are styled as requests for  
5 judicial notice, the substance of these motions reveals that they actually seek dismissal the  
6 complaint.<sup>2</sup> However, Federal Rule of Civil Procedure 12(g)(2) prohibits the filing of successive  
7 motions to dismiss: “(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or  
8 (3), a party that makes a motion under this rule must not make another motion under this rule  
9 raising a defense or objection that was available to the party but omitted from its earlier motion.”  
10 Plaintiff has not amended its complaint, and the Molens’ repeated filings of motions to dismiss  
11 violate this Rule. A review of the pending motions urging dismissal of this action do not reveal  
12 any legitimate explanation for the Molens’ failure to include their arguments in their first two  
13 attacks on the pleadings. (Dkt. Nos. 8-9, 15, 35.)

14 Further, even though the Molens already answered the complaint (Dkt. No. 4), to  
15 date they have received *several* opportunities to challenge the pleading and the undersigned has  
16 reviewed those challenges on their merits. (Dkt. Nos. 8-9, 15, 35.) In consideration of the  
17 Molens’ pro se status, the undersigned has construed the late-filed motions to dismiss as motions  
18 for judgment on the pleadings and has addressed the substantive arguments within the motions.  
19 The Molens have had ample opportunity to attack the pleading and may not continue to file  
20 piecemeal motions challenging the sufficiency of the complaint based upon arguments that could  
21 have been raised in the Molens’ previous two motions to dismiss.

22 Plaintiff’s complaint is now “at issue” with respect to the Molens. The Molens

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24 <sup>2</sup> More accurately, the motions would need to be construed as motions for judgment on the  
25 pleadings given that the Molens have already filed an answer to the complaint in order to be  
26 procedurally proper. (Answer, Dkt. No. 4.) Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 954  
(9th Cir. 2004) (“A Rule 12(b)(6) motion must be made before the responsive pleading.”) (emphasis  
in original); see also Dent v. Cox Commc’ns Las Vegas, Inc., 502 F.3d 1141, 1143 n.3 (9th Cir.  
2007).

1 have already had several extra “bites at the apple” with respect to attacking plaintiff’s pleading.  
2 The court may determine that successive or piecemeal motions are interposed for improper  
3 motives and such motions may be denied on those grounds. See Fed. R. Civ. P. 11; Aetna Life  
4 Ins. Co. v. Alla Med. Servs. Inc., 855 F.2d 1470, 1475-77, n.2 (9th Cir. 1988) (“courts have  
5 discretion to hear a second motion under Rule 12(b)(6) if the motion is not interposed for delay  
6 and the final disposition of the case will thereby be expedited . . . .”); Federal Agr. Mortg. Corp.  
7 v. It’s A Jungle Out There, Inc., No. C 03-3721 VRW, 2005 WL 3325051, at \*5-6 (N.D. Cal.  
8 Dec. 7, 2005) (not reported) (“Although the Ninth Circuit has not had occasion to apply this  
9 principle, the weight of authority outside this circuit holds that where the complaint is amended  
10 after the defendant has filed a Rule 12(b) motion, the defendant may not thereafter file a second  
11 Rule 12(b) motion asserting objections or defenses that could have been asserted in the first  
12 motion.”) (citing out-of-district authorities); accord Buzayan v. City of Davis, No. 2:06-cv-1576-  
13 MCE-DAD, 2009 WL 514201, at \*3 (E.D. Cal. Feb. 26, 2009) (not reported). As to the Molens,  
14 this action has moved beyond the pleading stage. Should the Molens file additional motions  
15 attacking the sufficiency of the pleadings on the basis of defenses and/or objections that were  
16 available to the Molens but omitted from their earlier motions, such motions will be deemed  
17 procedurally improper pursuant to Federal Rule of Civil Procedure 12(g) and may be summarily  
18 denied.

19 i) Docket Number 50

20 The motion at Docket Number 50 was filed on March 24, 2011, and is entitled  
21 “Motion for Judicial Notice Under 44 U.S.C. § 1507 - Federal Register Act and Administrative  
22 Procedure Act at 5 U.S.C. § 553(b)(c) & (d) [and] Motion to Render Judgment on Implied  
23 Contract under 28 U.S.C. § 1367(a).” This filing is essentially substantively identical to the  
24 Molens’ filing at Docket Number 35. (Compare Dkt. No. 35 with Dkt. No. 50.) The  
25 undersigned previously construed the motion at Docket Number 35 as a motion for judgment on  
26 the pleadings, reviewed the motion on its merits, and denied the motion in its entirety in an order

1 dated April 20, 2011. (Dkt. No. 60.) Accordingly, because the filing at Docket Number 50  
2 duplicates an already-denied motion, the undersigned denies the motion on its merits for the  
3 same reasons stated in the undersigned's order dated April 20, 2011. (Dkt. No. 60.)

4 ii) Docket Number 52

5 The motion at Docket Number 52 was filed on March 24, 2011, and is entitled  
6 "Motion for Judicial Notice Under 44 U.S.C. § 1507 - Federal Register Act and Administrative  
7 Procedure Act at 5 U.S.C. § 553(b)(c) & (d) [and] Motion to Dismiss under FRCP 12(b)(6) -  
8 Failure to state a claim upon which relief can be granted." (Dkt. No. 52.) This filing also  
9 substantially duplicates the Molens' previously-filed motion at Docket Number 35. (Compare  
10 Dkt. No. 35 with Dkt. No. 52.) The Molens admit as much in the first pages of their motion.  
11 (Dkt. No. 52 at 1-2.)

12 The undersigned previously took the filing at Docket Number 35 under  
13 submission (Dkt. No. 42) after determining that oral arguments would not materially aid analysis  
14 of the issues raised therein. See Fed. R. Civ. P. 78(b); E. Dist. Local Rul 230(g). Apparently,  
15 because the Molens "wish to provide additional oral arguments concerning" their motion, the  
16 Molens "refiled" substantively the same document on March 24, 2011. (Dkt. No. 52.) The  
17 Molens explain that they intend the filing at Docket Number 52 to be a "refiling" of their prior  
18 motion at Docket Number 35. (Dkt. No. 52 at 1-2.) As explained above, the undersigned  
19 previously construed the motion at Docket Number 35 as a motion for judgment on the  
20 pleadings, reviewed the motion on its merits, and denied the motion in its entirety in an order  
21 dated April 20, 2011. (Dkt. No. 60.) Accordingly, because the filing at Docket Number 52  
22 duplicates an already-denied motion, the undersigned denies the motion on its merits for the  
23 same reasons stated in the undersigned's order dated April 20, 2011. (Dkt. No. 60.)

24 The Molens do not necessarily have a "right" to make oral arguments supporting  
25 each and every one of their motions. The undersigned may order that a given motion be  
26 submitted on the briefs and without oral argument. Eastern District Local Rule 230(g) provides:

1           Hearing and Oral Argument. Upon the call of the motion, the Court  
2           will hear appropriate and reasonable oral argument. Alternatively,  
3           *the motion may be submitted upon the record and briefs on file if*  
4           *the parties stipulate thereto, or if the Court so orders*, subject to  
5           the power of the Court to reopen the matter for further briefs or  
6           oral arguments or both.

7           E.D. Local Rule 230(g) (emphasis added). The undersigned again cautions the Molens against  
8           filing multiple copies of substantively identical motions in efforts to achieve their goals, whether  
9           those goals are making oral arguments or obtaining dismissal of the case against them.  
10          Successive and repetitious filings of substantially similar motions will not aid defendants and  
11          may result in sanctions, including a potential entry of default judgment against them. See  
12          Thompson, 782 F.2d at 831.

13                 Further, to the extent the motion at Docket Number 52 raises arguments that do  
14                 *not* necessarily duplicate those made in the previous motion at Docket Number 35 (see Dkt. No.  
15                 52 at 4-5 (arguing that the pleading should be dismissed pursuant to Rule 12(b)(6) for failure to  
16                 “cite any Assessment or Lien authority” or “Tax Levy authority”)), the undersigned denies the  
17                 motion on the separate procedural grounds that it contains defenses and/or objections that were  
18                 available to the Molens but omitted from their earlier motion, and therefore represents an  
19                 improper “successive” motion to dismiss. Fed. R. Civ. P. 12(g); Fed. R. Civ. P. 11; Aetna Life  
20                 Ins. Co., 855 F.2d at 1475-77, n.2; Federal Agr. Mortg. Corp., 2005 WL 3325051 at \*5-6; accord  
21                 Buzayan, 2009 WL 514201 at \*3.

22                 iii)     Docket Number 53

23                 The motion at Docket Number 53 was filed on March 29, 2011, and is entitled  
24                 “Motion for Judicial Notice as per FRCP 17 [and] Motion to Dismiss per FRCP 17(a) & (b)[:]  
25                 Failure of Ratification and Commencement and Failure to produce Real Party in Interest and  
26                 Capacity to Sue or Be Sued.” (Dkt. No. 53.) In the motion at Docket Number 53, the Molens  
                cite Federal Rule of Civil Procedure 17(a)-(b) and argue that plaintiff is not the real party in  
                interest and, accordingly, may not sue the Molens. (Dkt. No. 53 at 3-4.) Therein, the Molens

1 purport to “grant the Plaintiff a reasonable amount of time (45 days) to bring a verifiable human  
2 complainant that will state under oath or affirmation a lawful claim of injury. (Id. at 3.) For the  
3 third time in this action, to salvage the Molens’ procedurally-improper filings the undersigned  
4 construes this so-called “motion to dismiss” as a motion for judgment on the pleadings.<sup>3</sup> The  
5 motion is denied for the reasons described below.<sup>4</sup>

6           The Molens’ argument is, at its core, that the United States cannot sue anyone  
7 because the United States is not an “individual” and because a plaintiff must always “be a  
8 physical human being that the Defendants can face and cross-examine.” (Id. at 4.) Nothing in  
9 Rule 17 requires production of a “physical human being” or “individual” prior to the prosecution  
10 of a case on behalf of the United States, although there are other requirements for such  
11 prosecution. E.g., Fed. R. Civ. P. 17(a)(2) (requiring that “[w]hen a federal statute” provides, a  
12 suit may be maintained the name of the United States). The Molens do not cite compelling  
13 authority in support of their argument, and appear to ignore the plain text of Federal Rule 17(a),  
14 which expressly permits those who are authorized by statute to sue on behalf of the United  
15 States. Fed. R. Civ. P. 17(a)(2) (“[w]hen a federal statute so provides, an action for another’s use  
16 or benefit must be brought in the name of the United States.”). The IRS is so authorized. E.g.,  
17 28 U.S.C. §§ 1340, 1345; 26 U.S.C. § 7401-03. In any event, the Molens’ argument that “the  
18 Internal Revenue Service is not a real party in interest as a human, and therefore must provide a  
19 real human” prior to continuing this lawsuit (Dkt. No. 53 at 4) is not supported by any authority  
20 in the motion at Docket Number 53, and the motion is denied. At most, the Molens make  
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22           <sup>3</sup> E.g., Dkt. No. 60 at 3 (citing Elvig v. Calvin Presbyterian Church, 375 F.3d 951, 954 (9th  
23 Cir. 2004); Dent v. Cox Commc’ns Las Vegas, Inc., 502 F.3d 1141, 1143 n.3 (9th Cir. 2007).

24           <sup>4</sup> While the undersigned examines the merits of what is effectively the Molens’ *third* attack  
25 on the pleadings (Dkt. No. 53), the undersigned will not examine the merits of substantively similar  
26 motions filed in the future. As described *infra*, future filings of motions attacking the pleadings  
and/or requesting dismissal on substantively similar grounds raised in previous motions will be  
summarily denied, as will successive filings of motions in violation of Federal Rule of Civil  
Procedure 12(g).



1 passing reference to inapposite authorities relating to diversity jurisdiction (Dkt. No. 53 at 3) and  
2 passing reference to “the Constitution for the [U]nited States, 6th Amendment,” which sets forth  
3 rights related to criminal prosecutions and is inapposite in this civil case (Dkt. No. 53 at 4). The  
4 Molens do not cite any authorities requiring that, prior to the IRS’s initiation of a lawsuit in the  
5 name of the United States, some “individual” or “physical human being” must first be  
6 “produced.” Accordingly, the Molens’ motion at Docket Number 53 is denied.

7 Further, the undersigned denies the motion at Docket Number 53 on the separate  
8 and additional grounds that it contains defenses and/or objections that were available to the  
9 Molens but omitted from their earlier motions requesting dismissal (Dkt. Nos. 8-9, 15, 35), and  
10 therefore represents an improper “successive” motion to dismiss. Fed. R. Civ. P. 12(g). The  
11 undersigned again clarifies that, while the undersigned has examined the merits of what is  
12 effectively the Molens’ *third* attack on the pleadings, the undersigned will not examine the merits  
13 of future motions raising substantively similar arguments that have already been rejected. Such  
14 motions may be summarily denied. The same is true with respect to the filing of future  
15 successive motions to dismiss in violation of the Federal Rules of Civil Procedure. Fed. R. Civ.  
16 P. 12(g); Fed. R. Civ. P. 11; Aetna Life Ins. Co., 855 F.2d at 1475-77, n.2; Federal Agr. Mortg.  
17 Corp., 2005 WL 3325051 at \*5-6; accord Buzayan, 2009 WL 514201 at \*3.

18 iv) Docket Number 54

19 The Molens’ most recent filing at Docket Number 54 is dated March 31, 2011,  
20 and is entitled “Motion for Judicial Notice as per Rule 201 [and] Motion to Dismiss per Title 4  
21 Sect. 72.” (Dkt. No. 54.) Despite purporting to be a motion to dismiss “per” 4 U.S.C. § 72, the  
22 motion at Docket Number 54 must be construed as yet another motion to dismiss for failure to  
23 state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), apparently on grounds that the

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1 United States does not have authority to prosecute cases outside the District of Columbia.<sup>5</sup> (Dkt.  
2 No. 54 at 2 (“All offices attached to the seat of government shall be exercised in the District of  
3 Columbia, and not elsewhere, except as otherwise expressly provided by law” (quoting 4 U.S.C.  
4 § 72) and Dkt. No. 54 at 6 (“The jurisdictional area of this United States is limited only to the  
5 District of Columbia”).)

6 The undersigned has now addressed the substantive arguments within three  
7 separate motions each attacking the same original pleading (Dkt. Nos. 8, 9, 15, 35, 53) — the  
8 more recent of which each raise defenses and/or objections that were available to the Molens but  
9 were omitted from their first several motions — and the motion at Docket Number 54 represents  
10 yet another improper “successive” motion to dismiss. Fed. R. Civ. P. 12(g). Accordingly, the  
11 undersigned declines to discuss the substance of that motion except to note that he finds the  
12 Molens’ argument unpersuasive, and denies the motion at Docket Number 54 on the grounds that  
13 it contains defenses and/or objections that were available to the Molens but omitted from their  
14 several prior motions requesting dismissal (Dkt. Nos. 8, 9, 15, 35, 50, 52, 53). Fed. R. Civ. P.  
15 11, 12(g); Aetna Life Ins. Co., 855 F.2d at 1475-77, n.2; Federal Agr. Mortg. Corp., 2005 WL  
16 3325051 at \*5-6; accord Buzayan, 2009 WL 514201 at \*3.

17 D. Motions Styled As Requests For Judicial Notice

18 The undersigned has previously instructed the Molens against improperly styling  
19 their requests for dismissal as requests for “judicial notice.” (E.g., Dkt. No. 60 at 4-5, n.2.) In  
20 this action to date, the Molens have filed at least six motions for “judicial notice” that, in  
21 substance, actually request dismissal of the complaint for failure to state a claim. (Dkt. Nos. 19,  
22 35, 50, 52, 53, 54 (each purporting to request “judicial notice” but actually arguing for dismissal  
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25 <sup>5</sup> 4 U.S.C. § 72 does not provide a procedural mechanism to “dismiss” pending civil cases.  
26 The Molens apparently intend to argue that, based upon the legal authority contained in 4 U.S.C. §  
72, the action against them should be dismissed by way of the procedural mechanism set forth in  
Federal Rule of Civil Procedure § 12(b)(6).

1 of the entire case pursuant to Rule 12(b)(6)).<sup>6</sup> The motions reference statutes and regulations  
2 that the Molens believe support dismissal of the complaint, and the Molens appear simply to seek  
3 to have the undersigned review — or, in their words, “notice” — the statutes and regulations.  
4 The undersigned again informs the Molens that there is typically no need to request judicial  
5 notice of statutes and regulations pursuant to Federal Rule of Evidence 201, although that is what  
6 the Molens have requested in the filings at Docket Numbers 50, 52, and 53. Instead of  
7 requesting “judicial notice” of statutes and regulations they believe support their arguments, the  
8 Molens should simply include citations to the statutes and regulations within the legal argument  
9 portion of their motions.

10           The undersigned again directs the Molens to Federal Rule of Evidence 201. That  
11 rule provides that courts may consider certain kinds of documents that may be judicially noticed.  
12 E.g., Isuzu Motors Ltd. v. Consumers Union of U.S., Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal.  
13 1998). Rule 201 permits a court to take judicial notice of an adjudicative fact “not subject to  
14 reasonable dispute” because the fact is either: “(1) generally known with the territorial  
15 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to  
16 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). The court can  
17 also take judicial notice of matters of public record, such as pleadings in another action and  
18 records and reports of administrative bodies. Emrich v. Touche Ross & Co., 846 F.2d 1190 (9th  
19 Cir. 1988).

20           When a motion actually seeks to attack the pleadings and seeks dismissal of the  
21 action, labeling that motion as a “request for judicial notice” is misleading. It also causes undue  
22 burden to the undersigned, who must repeatedly guess at what relief the Molens *actually* intend  
23 to request. Future filings labeled as requests for judicial notice that actually seek other relief or  
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25           <sup>6</sup> While the undersigned has noted that the motions were improperly styled, however, the  
26 undersigned has proceeded to analyze the substantive arguments within these motions. (E.g., Dkt.  
No. 60 at 4-5.)

1 dismissal of the case may be summarily denied.

2 II. CONCLUSION

3 While the Molens are proceeding without counsel in this case, they are obligated  
4 to familiarize themselves with the Federal Rules of Civil Procedure and Eastern District of  
5 California Local Rules. Pro se litigants are afforded a degree of leniency with respect to their  
6 pleadings, but they are nonetheless required to comply with the rules of litigation procedure.  
7 King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

8 In the future, the Molens' failures to comply with the rules of litigation procedure  
9 may subject them to sanctions, and improperly-filed motions may be summarily denied. Local  
10 Rule 183, governing persons appearing in pro se, provides that failure to comply with the Federal  
11 Rules of Civil Procedure and Local Rules may be ground for dismissal, judgment by default, or  
12 other appropriate sanction. Local Rule 110 provides that failure to comply with the Local Rules  
13 "may be grounds for imposition by the Court of any and all sanctions authorized by statute or  
14 Rule or within the inherent power of the Court." Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.  
15 1995).

16 Accordingly, the Molens are cautioned that future and continued noncompliance  
17 with the Local Rules and Federal Rules of Civil Procedure may result in monetary or other  
18 sanctions or the summary denial of improperly-filed and/or duplicative motions. Going forward,  
19 such motions are a waste of judicial time and resources and will not be tolerated. The Molens  
20 are advised that a future failure to comply with the terms of this order may result in an order  
21 limiting their filings to only one motion pending at any time, as well as other limitations.

22 Accordingly, it is HEREBY ORDERED that:

23 1. Defendants' discovery filings labeled as "Motion to Compel Request for  
24 Admissions" (Dkt. No. 48) and "Motion to Compel Request for Interrogatories" (Dkt. No. 49)  
25 fail to comply with Eastern District Local Rule 251 and are therefore denied without prejudice to  
26 refiling. The Molens are directed to review and comply with Local Rule 251.

1           2.       Defendants' motion at Docket Number 50 is substantively identical to and  
2 duplicative of the Molens' prior motion to dismiss (Dkt. No. 35). The undersigned denies the  
3 motion (Dkt. No. 50) on its merits for the same reasons stated in the undersigned's order dated  
4 April 20, 2011. (Dkt. No. 60.)

5           3.       Defendants' motion at Docket Number 52 is, essentially substantively  
6 identical to and duplicative of the Molens' prior motion to dismiss (Dkt. No. 35). The  
7 undersigned denies the motion (Dkt. No. 52) on its merits for the same reasons stated in the  
8 undersigned's order dated April 20, 2011. (Dkt. No. 60.) To the extent its substance slightly  
9 differs from the motion at Docket Number 35, the motion (Dkt. No. 52) is also denied on the  
10 separate procedural grounds that it contains defenses and/or objections that were available to the  
11 Molens but omitted from their earlier motions attacking the pleadings (Dkt. No. 8-9, 15, 35).  
12 Fed. R. Civ. P. 12(g).

13           4.       Defendants' motion at Docket Number 53 is construed as a motion for  
14 judgment on the pleadings seeking dismissal on grounds that the United States is not the real  
15 party in interest pursuant to Federal Rule of Civil Procedure 17. The motion (Dkt. No. 53) is  
16 denied on its merits. The motion (Dkt. No. 53) is also denied on the separate and additional  
17 grounds that it contains defenses and/or objections that were available to the Molens but omitted  
18 from their prior filings requesting dismissal (Dkt. Nos. 8, 9, 15, 35, 50, 52), and therefore  
19 represents an improper "successive" motion to dismiss. Fed. R. Civ. P. 12(g).

20           5.       Defendants' motion at Docket Number 54 represents an improper  
21 "successive" motion to dismiss, the undersigned declines to reach the merits of that motion, and  
22 denies the motion at Docket Number 54 on the grounds that it contains defenses and/or  
23 objections that were available to the Molens but omitted from their earlier filings (Dkt. Nos. 8, 9,  
24 15, 35, 50, 52, 53) attacking the complaint and requesting dismissal. Fed. R. Civ. P. 12(g).

25           6.       Defendants shall file no further motions attacking the sufficiency of the  
26 complaint whether styled as requests for "judicial notice" or otherwise. Further such motions

