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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 Molen and Sandra Molen (the “defendants”) are proceeding without counsel in this action.¹ Defendants have filed two motions, a “Motion To File Amended Answer” (Dkt. No. 84), and a “Motion To Amend Answer to Complaint” (Dkt. No. 79), both requesting leave to amend their Answer (Dkt. No. 4).² Plaintiff the United States of America (the

¹ This action was referred to the undersigned pursuant to Eastern District Local Rule 302(c)(21). (See Dkt. No. 11.)

² Defendants have already received warnings from this court regarding their obligation to abide by the rules of litigation procedure, including their obligation to refrain from filing duplicative motions. (E.g., Dkt. Nos. 60, 65.) Defendants are cautioned that their filings at Docket Numbers 79 and 84 are substantively duplicative. However, it is possible that defendants did not intentionally violate the court’s order prohibiting duplicative motions, given that defendants erroneously noticed the former motion before the incorrect judge and, after filing the latter motion, may not have intended the former motion to remain at issue. While the undersigned gives defendants the benefit of the doubt in this particular instance, the undersigned again reminds defendants that duplicative

1 “plaintiff”) filed a written opposition to the motions. (Dkt. No. 90.) Because oral argument
2 would not materially aid the resolution of the pending motions, these matters are submitted on
3 the briefs and record without a hearing. See Fed. R. Civ. P. 78(b); E.D. Local Rule 230(g). The
4 undersigned has fully considered the parties’ briefs and the record in this case and, for the
5 reasons that follow, the undersigned denies both of defendants’ motions. (Dkt. Nos. 79, 84.)

6 I. BACKGROUND

7 On September 23, 2010, plaintiff filed its complaint against defendants, as well as
8 against defendants’ alleged trust and partnership entities. (Compl., Dkt. No. 1.) The complaint
9 alleges multiple failures to pay federal taxes by the defendants and the partnership. (Compl. ¶¶
10 17-18, 28, 30, 34, 36-41.) The complaint also alleges that the trust is both a sham and the
11 defendants’ alter ego, and plaintiff seeks to set aside the purported transfer of real property from
12 the defendants to the trust. (Id. ¶¶ 42-54, p. 13 ¶¶ D-E.) Plaintiff seeks foreclosure of tax liens
13 encumbering the defendants’ alleged real property in Butte County, California. (Id. at p. 13 ¶ I.)

14 Defendants filed a verified Answer to the complaint on November 15, 2010.
15 (Answer, Dkt. No. 4.) In that answer, defendants asserted defenses, including a lack of personal
16 jurisdiction, on behalf of themselves as individuals, as well as on behalf of entities (i.e., the trust
17 and the partnership). (Id. at 1-2, 5, 7, 8.) The portion of the Answer asserting defenses on behalf
18 of these entities has since been stricken. (Dkt. Nos. 26.)

19 II. DISCUSSION

20 Defendants have been explicitly informed of their obligation to abide by the rules
21 of litigation procedure. (E.g., Dkt. Nos. 60, 65.) Defendants have also been reminded that their
22 obligation to comply with these rules, including the Federal Rules of Civil Procedure and this
23 court’s local rules, exists despite the fact that they are proceeding without counsel in this case.
24 (Dkt. Nos. 60 at 12 n.6; 65 at 3,12.) The undersigned notified defendants that their failure to

25 _____
26 motions are prohibited and may result in summary denial(s) and/or sanctions.

1 comply with these rules could result in the summary denial of improperly-filed motions. (Dkt.
2 Nos. 60 at 12 n.6; 65 at 3, 12.)

3 Despite the foregoing, however, neither defendants’ Motion To File Amended
4 Answer (Dkt. No. 84) nor defendants’ Motion To Amend Answer to Complaint (Dkt. No. 79)
5 complies with the Eastern District Local Rules. In particular, Eastern District Local Rule 137(c)
6 provides, in pertinent part,

7
8 (c) Documents Requiring Leave of Court. If filing a
9 document requires leave of court, such as an amended
10 complaint after the time to amend as a matter of course has
 expired, counsel shall *attach the document proposed to be*
 filed as an exhibit to moving papers seeking such leave
 and lodge a proposed order as required by these Rules.

11 E.D. Local Rule 137(c) (emphasis added); see generally Fed. R. Civ. P. 15(a); E.D. Local Rule
12 220. Here, defendants have already filed an Answer (Dkt. No. 4) and the time to file an answer
13 as a matter of course has expired (Fed. R. Civ. P. 12(a)), yet defendants failed to attach a draft
14 *amended* Answer as an exhibit to their moving papers seeking leave to file such amended
15 Answer. See E.D. Local Rule 137(c). According to the applicable local rule, a request to amend
16 an Answer must be filed with a copy of the draft *amended* answer itself. Id.

17 Because defendants’ requests were not accompanied by a draft amended answer,
18 the court cannot properly gauge the propriety of the request. See id. Similarly, defendants’
19 moving papers fail to describe in any detail the sort(s) of amendment(s) defendants wish to make
20 to their Answer. (Dkt. No. 79 at 2 (stating that defendants seek leave to “amend their original
21 answer to reflect a clearer response to the Plaintiff’s pleading”, but offering no further detail
22 regarding the content of the proposed amendment(s).) Accordingly, defendants’ motions (Dkt.
23 Nos. 79, 84) run afoul of Local Rule 137(c) and are therefore denied. Such denial is without
24 prejudice to refileing.

25 For the foregoing reasons, IT IS HEREBY ORDERED that:

26 1. Defendants’ “Motion To Amend Answer to Complaint” (Dkt. No. 79) is

1 denied without prejudice to refiling.


2 2. Defendants' "Motion To File Amended Answer" (Dkt. No. 84) is denied
3 without prejudice to refiling.

4 3. The hearing dates for these motions (Dkt. Nos. 79, 84) are vacated.

5 IT IS SO ORDERED.

6 DATED: August 19, 2011

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE