

1 never formally presented to the Court for consideration. In any event, this is federal
2 court. Explain whether the Court should consider Nominal Defendants' joinder under
3 California Code of Civil Procedure § 382 or the Federal Rules of Civil Procedure. Is
4 there a basis in federal law that permits these Nominal Defendants to be joined? Under
5 federal law, would they be considered involuntary plaintiffs or defendants? Does the fact
6 that Plaintiffs did not even attempt to serve Nominal Defendants until this action had
7 been pending for over a decade affect the propriety of their joinder under federal law?
8 Relatedly, was service on Ms. Wintemberg proper when she was served before she was
9 individually substituted into this action?

10 2. Assuming Nominal Defendants are properly joined and permitted to
11 remain in this action, how is this Court supposed to try a case with involuntary parties?
12 More specifically, from a practical perspective, how exactly do the parties anticipate the
13 trial will be conducted? Provide a roadmap for how a federal court is logistically
14 supposed to conduct a trial when two parties refuse to appear. For example, how do
15 you plan to stipulate to evidence—or anything else—at trial if the parties cannot get
16 Nominal Defendants' approval to any stipulations? In addition, how do you plan to
17 introduce evidence as to Nominal Defendants' damages? How will you do this when
18 Nominal Defendants decline to participate?

19 3. According to Plaintiffs, Ms. Wintemberg is on active duty in the military.
20 Does the Servicemembers Civil Relief Act preclude the entry of default judgment against
21 her? Can this Court move forward with a trial when a non-participating Nominal
22 Defendant is serving in the military? How will it do that?

23 4. Given the complexity and confusion trying the wrongful death claim is
24 adding to this case, why should the Court not decline to exercise supplemental
25 jurisdiction over that cause of action and proceed to trial on the remaining claims? More
26 specifically, a state law claim is now dictating how a federal case is tried. Why is this not
27 a compelling circumstance that justifies dismissing this cause of action to be tried in
28 state court?

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5. If Nominal Defendants are dismissed from this action or the wrongful death claim is dismissed, will remaining Plaintiffs still consent to magistrate judge jurisdiction for trial?

6. Is there any other basis to dismiss Nominal Defendants for refusing to appear in this action?

IT IS SO ORDERED.

Dated: October 29, 2022



MORRISON C. ENGLAND, JR.
SENIOR UNITED STATES DISTRICT JUDGE