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United States District Court  
For the Northern District of California

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

FRANK AND DEBORAH MCDOWELL,  
Plaintiffs,  
v.  
CITY AND COUNTY OF SAN FRANCISCO,  
Defendants.

No. C 12-03192 JSW

**ORDER DENYING SECOND  
REQUEST FOR DEFAULT  
JUDGMENT DUE TO  
DEFENDANT'S FAILURE TO  
ANSWER FIRST AMENDED  
COMPLAINT**

**(Docket No. 42)**

On January 10, 2013, Plaintiffs filed a motion for default judgment on the basis that Defendants had requested an extension of time to file a response to the amended complaint for a reason Plaintiffs found unacceptable. The Court denied that motion, because Defendants filed a motion to dismiss on January 7, 2013, and the Court stated that the motion was timely filed.

On January 28, 2013, Plaintiffs filed a second motion for default judgment. Plaintiffs argue that Defendant's response to their First Amended Complaint was not timely. Plaintiffs filed their First Amended Complaint on December 21, 2012. Plaintiffs state that they were under "the impression that Defendants had fourteen days to respond to written motions." (Docket No. 47 at 1:16-17.) Although the Plaintiffs' First Amended Complaint is not a motion, pursuant to Federal Rule of Civil Procedure 15(a)(3), "[u]nless the Court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later."

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According to the Proof of Service attached to the First Amended Complaint, Plaintiffs served the First Amended Complaint by mail. Thus, Defendants' motion to dismiss was timely filed, because Defendants had an additional three days to respond. *See* Fed. R. Civ. P. 6(d).

Accordingly, the Court DENIES Plaintiffs' second motion for default judgment.

**IT IS SO ORDERED.**

Dated: February 8, 2013

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

FRANK AND DEBORAH MCDOWELL  
et al,

Case Number: CV12-03192 JSW

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

CITY AND COUNTY OF SAN  
FRANCISCO et al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 8, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Deborah McDowell  
Frank McDowell  
2800 Bellwort Court  
Antioch, CA 94531

Dated: February 8, 2013

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk