

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVISON DESIGN & DEVELOPMENT
INC., et al.,

Plaintiff(s),

No. C 11-2970 PJH

v.

**ORDER DENYING MOTION FOR
PROTECTIVE ORDER, DENYING
MOTION FOR JUDGMENT ON THE
PLEADINGS, AND DENYING LEAVE TO
FILE MOTION FOR RECONSIDERATION**

CATHY RILEY,

Defendant(s).

_____ /

Defendant Cathy Riley's motion for protective order and motion for judgment on the pleadings came on for hearing before this court on November 7, 2012. Plaintiffs appeared through their counsel, Leeor Neta. Defendant appeared through her counsel, Timothy Walton. Having read the papers filed in conjunction with the motions and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES Riley's motions, for the reasons stated at the hearing and as follows.

First, defendant apparently seeks judgment on the pleadings in her favor based on the court's dismissal of her counterclaims. She argues that the court's dismissal served to moot plaintiffs' declaratory judgment claims in her favor, thus justifying judgment on the pleadings. However, if any party would be entitled to judgment on the pleadings, it would be plaintiffs, who have not moved for such relief. Defendant's motion is better construed as a motion for the court to decline declaratory judgment jurisdiction over the case. However, even construed as such, the court finds that the more prudent course is to decide plaintiffs' claims on the merits, and thus DENIES defendant's motion.

1 Defendant also moves for a protective order, but that motion is premised on the idea
2 that the court should halt discovery while it considers defendant's motion for judgment on
3 the pleadings. Because the court finds that denial of the motion for judgment on the
4 pleadings is warranted, and that the case should proceed, defendant's motion for protective
5 order is also DENIED.

6 Finally, defendant has filed a request for leave to file a motion for reconsideration of
7 the court's order dismissing defendant's counterclaims. Defendant's request is based
8 solely on the U.S. Supreme Court's denial of certiorari in a case involving the same
9 preemption analysis at issue here. However, the Court's action does not present any
10 reason for the court to reconsider its previous order, because "denial of certiorari imports
11 no expression of opinion upon the merits of a case." Brown v. Allen, 334 U.S. 443, 456
12 (1953). Thus, defendant's request is DENIED.

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14 **IT IS SO ORDERED.**

15 Dated: November 9, 2012



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PHYLLIS J. HAMILTON
United States District Judge