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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KRISTINE BARNES,
Plaintiff,
v.
RICK MORTELL, et al.,
Defendants.

Case No. 14-cv-02373-KAW

ORDER DENYING DEFENDANTS'
MOTION TO DISMISS

Dkt. No. 34

On September 12, 2014, individual defendants Eric (Rick) Mortell, Darlene Mortell, and Erika Mortell filed a motion to dismiss Plaintiff Kristine Barnes' complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Defs.' Mot., Dkt. No. 34 at 2.)¹

Defendants, however, have already answered the complaint and, therefore, cannot properly file a motion to dismiss. Should Defendants wish to properly assert that one or more claims are barred by the applicable statute of limitations, they may file a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

Notwithstanding, Defendants' motion seeks resolution of several issues of disputed fact that may only be adjudicated by way of a motion for summary judgment. Fed. R. Civ. P. 56. Summary judgment is appropriate when, after adequate discovery, there is no genuine issue as to material facts and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). For example, whether Defendants Darlene Mortell and Erika Mortell were ever employed full time by Bay Islands Enterprises Investments, S.A. de C.V. is an issue of fact that cannot be resolved on a motion to dismiss or on a motion for judgment on

¹ The named corporate defendants did not join in this motion.

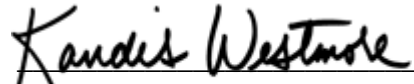
1 the pleadings. Also, the truth of the allegations in the complaint cannot be decided on a motion to
2 dismiss or a judgment on the pleadings, because all allegations are treated as true.

3 Defendants are again advised to obtain counsel, as the corporate entities involved must
4 appear through an attorney licensed to practice in the jurisdiction. *See, e.g., D-Beam Ltd. P'ship v.*
5 *Roller Derby Skates, Inc.*, 366 F.3d 972, 973 (9th Cir. 2004).

6 In light of the foregoing, the Court finds this matter suitable for resolution without oral
7 argument pursuant to Civil Local Rule 7-1(b), and DENIES Defendants' motion to dismiss.

8 IT IS SO ORDERED.

9 Dated: October 16, 2014



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KANDIS A. WESTMORE
United States Magistrate Judge