

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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NEW JERUSALEM DELIVERANCE CHURCH,

Plaintiff,

v.

Case No. 10-12566

THOMAS RABETTE, et al.,

Defendants.

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**ORDER DIRECTING DEFENDANTS TO FILE  
NOTICE OF COSTS AND ATTORNEY FEES**

In their responses to Plaintiff's motion to dismiss without prejudice, Defendants seek costs and attorney fees. Plaintiff's motion is before the court under Rule 41(a)(2), which allows the court to dismiss the action "on terms that the court considers proper." These terms may include the imposition of costs or fees upon a plaintiff, either at the time of dismissal, or if the matter is refiled. See *Bridgeport Music, Inc. v. Universal-MCA Music Publ'g, Inc.*, 583 F.3d 948, 953-54 (6th Cir. 2009). As it is Plaintiff's motion, the court must provide Plaintiff with notice of any terms of dismissal, and give Plaintiff an opportunity to withdraw its motion if the terms are unacceptable. *Duffy v. Ford Motor Co.*, 218 F.3d 623, 630-31 (6th Cir. 2000) (holding that where condition requires a plaintiff to pay costs, notice must include "approximate amount of costs"); see *Michigan Surgery Inv., LLC v. Arman*, 627 F.3d 572, 575 (6th Cir. 2010) (citing *United States v. One Tract of Real Property*, 95 F.3d 422, 425-26 (6th Cir. 1996)) (holding notice, opportunity to be heard, and opportunity to withdraw must be provided before motion to dismiss without prejudice may be "granted" as a dismissal with prejudice). Therefore,

both in order for the court to assess the propriety of any such terms, and in order to give Plaintiff notice as to the approximate cost associated with any such condition in anticipation of the hearing on the motion, scheduled for March 9, 2011, the court will direct Defendants to file a notice outlining the costs and attorney fees they have incurred in this action. Accordingly,

IT IS ORDERED that Defendants are DIRECTED to file a detailed notice outlining the costs and attorney fees Defendants have incurred in this action, including a reasonable approximation of the fees associated with the upcoming hearing. The notice must, at the very least, break the total expenses incurred into categories of “costs” and “attorney fees.” The notice must be filed by **March 4, 2011**.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 2, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 2, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
(313) 234-5522