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NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED
2004 NOV 10 PM 6:53
RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST OF CA

ROBERT-JOHN:FOTI, et al.,

Plaintiff,

No. C 04-2567 PJH

v.

SCHEDULING ORDER

OFFICER MCHUGH, et al.,

Defendants.



Defendants' motion for an order dismissing the complaint for lack of subject matter jurisdiction and for failure to state a claim came on for hearing before this court on November 10, 2004. Plaintiffs Robert-John:Foti and Ken Augustine appeared in pro per, plaintiff Joe Neufeld did not appear, and defendants United States Marshals Service, Federal Protective Services, and Officer McHugh appeared by their counsel, Assistant United States Attorney Tracie L. Brown.

On November 9, 2004, the day preceding the day set for the hearing on defendants' motion, plaintiffs filed a first amended complaint, adding allegations and at least one new cause of action. At the hearing, the court advised plaintiffs that the defendants would be given an opportunity to file a response to the amended complaint, and set a briefing schedule.

Also at the hearing, plaintiff Robert-John:Foti inquired why plaintiffs had not been given an immediate hearing on their request for injunctive relief. The court explained to Mr. Foti that because plaintiffs had filed no written motion for injunctive relief, with a statement of legal authority supporting such a request, but had simply written "Immediate Emergency Hearing requesting Injunctive Relief requested" on the caption page of their complaint, the

1 court did not consider that a motion had been made. The court asked Mr. Foti whether he
2 wished to file a written motion for injunctive relief, and he stated that he did not. The court
3 then advised him that defendants would be given an opportunity to file an opposition to the
4 request for injunctive relief set forth in the first amended complaint, and set a briefing
5 schedule.

6 The briefing schedule set by the court is as follows: Defendants may file an
7 opposition to the request for injunctive relief. Any such opposition shall be filed and served
8 no later than Wednesday, November 24, 2004. Plaintiffs may file a reply to the opposition.
9 Any such reply shall be filed and served no later than Wednesday, December 1, 2004.

10 Defendants may file a motion to dismiss the first amended complaint. Any such
11 motion shall be filed and served no later than Wednesday, November 24, 2004. Plaintiffs
12 may file an opposition to the motion. Any such opposition shall be filed and served no later
13 than Wednesday, December 8, 2004. Any reply to the opposition shall be filed and served
14 no later than Wednesday, December 15, 2004.

15 The court will issue a written decision on the papers. There will be no oral
16 argument. The case management conference is VACATED, and will be rescheduled after
17 the court has issued its rulings on the pending motions.

18
19 **IT IS SO ORDERED.**

20 Dated: November 10, 2004

21 
22 _____
23 PHYLIS J. HAMILTON
24 United States District Judge
25
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Foti et al,

Plaintiff,

v.

McHugh et al,

Defendant.

Case Number: C-04-2567 PJH

CERTIFICATE OF SERVICE

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 November 10, 2004, 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.

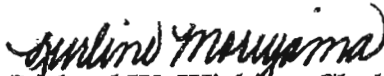
Joseph Leonard Neufeld
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Robert-John Foti
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Tracie L. Brown
U.S. Attorney's Office
450 Golden Gate Avenue
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San Francisco, CA 94102-3495

Dated: November 10, 2004


Richard W. Wieking, Clerk
By: Lurline Moriyama, Deputy Clerk