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11
 12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 14 SOUTHERN DIVISION

15	CAPTAIN PAMELA BARNETT, et al.,)	No. SACV 09-00082 DOC (ANx)
)	
16	Plaintiffs,)	<u>NOTICE OF FAILURE BY PLAINTIFFS</u>
)	<u>TO PROPERLY EFFECT SERVICE OF</u>
17	v.)	<u>PROCESS; DECLARATIONS OF DAVID</u>
)	<u>A. DeJUTE AND FLABIA DE LA ROSA</u>
18	BARACK H. OBAMA, et al.)	
)	
19	Defendants.)	
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1 Defendants, by and through their undersigned counsel, file
2 herewith this Notice to inform the Court that Plaintiffs have, to
3 date, thus far failed and refused to properly serve the United
4 States Attorney's Office, as required by Rule 4(i) of the Federal
5 Rules of Civil Procedure, and as further required by the oral Order
6 of this Court at the hearing on July 13, 2009, and the subsequent
7 Minute Order of this Court dated July 16, 2009.

8 This case was initiated by the filing of the Complaint herein
9 on January 20, 2009. On the same date, the Office of Clerk issued
10 a 60-day Summons upon that Complaint. As the Court was informed at
11 the hearing on July 13, 2009, the Office of the United States
12 Attorney was never served with the Summons and original Complaint.
13 At that hearing, the Court directed that service of the Summons and
14 Complaint be immediately effected by the Plaintiffs, upon a person
15 authorized to accept service at the United States Attorney's
16 Office.

17 Subsequent to the hearing, and at the request of the Court,
18 Assistant United States Attorney David DeJute accompanied
19 Plaintiffs' attorney to the United States Attorney's Office for the
20 purpose of introducing Plaintiffs' counsel to the appropriate
21 person employed by the United States Attorney to accept service.
22 (See attached Declaration of David A. DeJute, Exhibit 1 hereto at ¶
23 3.) Upon arriving at the Office of the United States Attorney,
24 Plaintiffs' counsel announced that she did not have a copy of the
25 Summons. (id. at ¶ 4.) Plaintiffs' counsel further announced that
26 she would immediately go to the Clerk's Office and obtain a copy of
27 the Summons. After approximately one hour, Plaintiffs' counsel
28 returned with the original Complaint, on which she had written by

1 hand "First Amended Complaint" as well as written the names of four
2 additional plaintiffs. She represented that there were no other
3 changes made to the original Complaint. Plaintiffs' counsel failed
4 to return with a Summons issued for either the original Complaint
5 or the first iteration of the First Amended Complaint. (id. at ¶
6 5.) Plaintiffs' counsel further represented that she would obtain
7 a Summons on the First Amended Complaint by the next day and
8 properly serve the United States Attorney's Office. (id. at ¶ 6.)

9 To date, the United States Attorney's Office has not been
10 served with the Summons and the original Complaint or the first
11 iteration of the First Amended Complaint, or the Summons and First
12 Amended Complaint. See Declaration of Flabia De La Rosa, attached
13 hereto as Exhibit 2.

14 On July 15, 2009, Plaintiffs filed a First Amended Complaint.
15 On or about July 30, 2009, Plaintiffs' counsel caused to be filed
16 six "Proof of Service" forms.¹ Copies of the "Proof of Service"
17 forms are attached hereto as collective Exhibit 3. As can be seen
18 from these forms, the Process Server, one Luis Osuna, declared
19 that, on July 15, 2009 at 3:42 p.m., he delivered "a true copy of
20 the: 1st Amended Complaint" to Flabia De La Rosa, who is a Docket
21 Clerk in the Office of the United States Attorney for the Central
22 District of California. As can be seen from a reading of Ms. De La
23 Rosa's Declaration, Mr. Osuna did indeed appear at the Office of
24 the United States Attorney on July 15, 2009 in the afternoon, with
25 copies of the First Amended Complaint. Ms. De La Rosa notified Mr.

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27 ¹These forms appear to be State Court forms, as they refer to "CCP
28 1011," presumably a reference to the California Code of Civil
Procedure.

1 Osuna that his attempt to serve the First Amended Complaint was a
2 failure, because he did not also have a Summons to serve with it.
3 (De La Rosa Declaration at ¶ 3.) Ms. De La Rosa informed Mr. Osuna
4 that she would note that the First Amended Complaint was received,
5 but she made it clear that she was only taking it as "courtesy
6 copy," that it was not proper service because it was not
7 accompanied by a Summons, and that he would have to return if he
8 obtained the Summons and re-serve the Summons and First Amended
9 Complaint. Mr. Osuna agreed with Ms. De La Rosa and left. (See De
10 La Rosa Declaration at ¶ 3).

11 On July 15, 2009, Plaintiffs also sent an email, a copy of
12 which is attached hereto as Exhibit 4, in which they requested a
13 waiver of the summons for all defendants on the First Amended
14 Complaint filed on that same day².

15 On July 21, 2009, Defendants responded by letter, a copy of
16 which is attached as Exhibit 5, explaining that Plaintiffs had
17 failed to properly file a First Amended Complaint under the Local
18 Rules and had further failed to serve any Complaint with a Summons
19 as ordered by this Court. Nevertheless, mindful of this Court's

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21 ²
22 It should be noted that the First Amended Complaint
23 electronically filed on July 15, 2009, differs markedly from the
24 first iteration of the First Amended Complaint provided to counsel
25 by hand on July 13, 2009. It should also be noted that Plaintiffs'
26 counsel appears to be playing fast and loose with the case caption
27 herein. Specifically, a comparison of the list of Plaintiffs in
28 the First Amended Complaint with the list of Plaintiffs in
Plaintiffs' "Notice of 28 U.S.C. § 636 Objections . . ." etc. filed
herein on or about August 18, 2009 reveals that Plaintiffs have,
without leave of Court, inserted the names of three individuals as
Plaintiffs who did not appear in the caption of the First Amended
Complaint. These three individuals are "Representative Casey
Guernsey, Missouri," "Representative Larry Rappaport, N.H.," and
"Carl S. Sneed, D.M.V."

1 preference to move beyond procedural issues, the United States
2 Attorney's Office represented that service would be accepted on
3 behalf of each of the named defendants *if* Plaintiffs would properly
4 file and serve the First Amended Complaint and Summons.

5 To date, the United States Attorney's Office has not received
6 proper service herein, as required by Rule 4(i), of the Federal
7 Rules of Civil Procedure, of the Summons and Complaint, of the
8 Summons and first iteration of the First Amended Complaint, or of
9 the Summons and First Amended Complaint. See De La Rosa
10 Declaration at ¶ 2.

11 Respectfully submitted,

12
13 DATED: August 19, 2009

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Chief, Civil Division

16 /s/ Roger E. West
17 ROGER E. WEST
Assistant United States Attorney
First Assistant Chief, Civil Division

18 /s/ David A. DeJute
19 DAVID A. DeJUTE
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