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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOTTA OGUNDIMO, et al.,)	1:09-cv-00231-OWW-SMS
)	
Plaintiffs,	)	ORDER DENYING PLAINTIFF'S MOTION
	)	FOR DEFAULT JUDGMENT (DOC. 17)
)	
v.	)	ORDER STRIKING PLAINTIFF'S
	)	PURPORTED AMENDED COMPLAINT (DOC.
STEADFAST PROPERTY &	)	19)
DEVELOPMENT, INC., et al.,)	
	)	ORDER DENYING PLAINTIFF'S MOTION
Defendants.	)	TO CONTINUE SCHEDULING CONFERENCE
	)	(DOC. 18)
)	
	)	ORDER VACATING SCHEDULING
	)	CONFERENCE OF JULY 8, 2009
)	
	)	ORDER RESETTING SCHEDULING
	)	CONFERENCE
	)	Date: September 15, 2009
	)	Time: 9:15. a.m.
	)	Courtroom: No. 3 (7th Floor)
	)	Judge Oliver W. Wanger

Plaintiff Carlotta Ogundimo and her minor children are proceeding pro se with an action for damages and other relief concerning alleged civil rights violations. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

I. Background

On March 12, 2009, the Court directed Plaintiff to complete

1 and return service documents according to the directions found on
2 USM civil instructions, which were sent by the Clerk to Plaintiff
3 with summons forms and the complaint on the same date. Plaintiff
4 was instructed to complete the service documents and return them
5 as instructed to the Court so that the Clerk could forward them
6 to the Marshal, who in turn would serve the complaint and related
7 documents on Defendants for Plaintiff.

8 Plaintiff sent the Court what appeared to be a proof of
9 service, an indication that Plaintiff herself attempted to
10 undertake service by mail of the documents on the Defendants by
11 herself. A delay in the service process ensued. The Court issued
12 an additional order of directions to Plaintiff concerning service
13 documents that was subject to a delay in processing; by the time
14 the order was filed and served on Plaintiff, Plaintiff had
15 submitted what the Court now understands to have been adequate
16 service documents.¹ Document 11, a filed notice of submission,
17 appears to reflect receipt of the required service documents.

18 In a handwritten letter to the Court from Plaintiff that was
19 filed in the docket on April 9, 2009, Plaintiff stated that she
20 sent proof of service before she received the service package,
21 and then she later completed the mail package and submitted the
22 documents. (Doc. 14.)

23 The documents docketed as proofs or certificates of service
24

25 ¹ Part of the confusion was engendered by another delay, namely, a delay in the processing of Plaintiff's
26 incoming documents; the docket reflects that the appropriate service documents returned by Plaintiff were filed as of
27 March 19, 2009, but the docket entry was not made until March 25, 2009, whereas the docket entry of the purported
28 proof of service by Plaintiff herself, filed the same day, was dated five days earlier. Where the docket does not
reflect the current state of receipt of documents, court staff outside of the docketing unit are necessarily uninformed
of the true state of affairs unless an internal note of some sort is made, which was lacking in this instance. Therefore,
resources of the Court as well as Plaintiff's own resources were unnecessarily expended.

1 filed by Plaintiff reflect service by mailing on February 5,
2 2009, of the complaint on Defendant Steadfast Properties and
3 Development, Inc., (Doc. 10); proof of service by mailing on
4 April 8, 2009, of a scheduling conference order and a standing
5 order, with return receipt dated April 8, 2009 (Doc. 15); and a
6 form for service that is not completed (Doc. 16).

7 II. Motion for Default Judgment

8 On April 9, 2009, Plaintiff filed a motion for default
9 judgment that was not scheduled for a hearing.

10 The clerk shall enter a party's default when a party against
11 whom a judgment for affirmative relief is sought has failed to
12 plead or otherwise defend as provided by the pertinent Federal
13 Rules of Civil Procedure. Fed. R. Civ. P. 55(a). Unless a
14 different time is prescribed by statute of the United States, a
15 defendant shall serve an answer within twenty days after being
16 served with the summons and complaint. Fed. R. Civ. P. 12(a).
17 Before a default will be entered, the clerk must be satisfied
18 from the request and accompanying documentation that 1) the
19 defendant has been served with the summons or has agreed to waive
20 service, 2) the time allowed by law for responding has expired,
21 and 3) the defendant has failed to file a pleading or motion
22 permitted by law. Hawaii Carpenters' Trust Funds v. Stone, 794
23 F.2d 508, 512 (9th Cir. 1986).

24 Here, Plaintiff's proofs of service by mail upon the private
25 party defendant do not demonstrate service of process pursuant to
26 Fed. R. Civ. P. 4. No default of any defendant has been entered
27 or could be entered because it has not been demonstrated that
28 legally sufficient service has been effected on any defendant.

1 Accordingly, Plaintiff's motion for default judgment IS
2 DENIED as premature.

3 Further, Plaintiff IS REMINDED that because Plaintiff is
4 proceeding in forma pauperis, service of the action will be
5 effected by the Marshal, not by Plaintiff.

6 III. Purported Amended Complaint

7 On April 9, 2009, Plaintiff filed a document headed as
8 "Amended & Corrected Copy," and docketed as "NOTICE Amended and
9 Corrected Copy by Carlotta Ogundimo," which was a copy of an
10 earlier order of the Court with the names of additional
11 Defendants (i.e., names of parties not contained in the original
12 complaint filed on February 5, 2009) added to the caption portion
13 of the order. The Court construes this filing as a purported
14 amended complaint.

15 Although Plaintiff may file one amended complaint as a
16 matter of right before being served with responsive pleading,
17 Plaintiff's purported amendment fails to comply with local rule
18 15-220, which requires that an amendment to a complaint must be
19 accomplished by filing an entirely new complaint that is complete
20 in itself. Local Rule 15-220.

21 A court may strike a document that does not conform to the
22 formal requirements of the pertinent rules of court. Fed. R. Civ.
23 P. 12(f); Transamerican Corp. v. National Union Fire Ins. Co. of
24 Pittsburgh, Pa., 143 F.R.D. 189, 191 (N.D. Ill. 1992).

25 Accordingly, Plaintiff's purported amendment of the
26 complaint IS ORDERED STRICKEN.

27 IV. Motion to Continue the Scheduling Conference

28 On April 9, 2009, Plaintiff filed a pleading docketed as a

1 motion "to Court to up the date set for mandatory scheduling
2 conference" (Doc. 18), which the Court deems to be a motion to
3 vacate the previously set scheduling conference and to continue
4 the scheduling conference to a later date based on Plaintiff's
5 physical condition.

6 Plaintiff's motion IS DENIED AS MOOT.

7 In view of the delay in service and apparent intention of
8 Plaintiff to attempt to add new parties to the action, the Court
9 on its own motion VACATES the presently set scheduling conference
10 on July 8, 2009, and RESETS the mandatory scheduling conference
11 for September 15, 2009, at 9:15 a.m., in Courtroom 3, before
12 Judge Oliver W. Wanger.

13 IT IS SO ORDERED.

14 **Dated:** April 10, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE