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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

NANCY L. CAPORALE, et al.,

No. CIV S-09-1744-JAM-CMK

Plaintiff,

vs.

ORDER

UNITED STATES POSTAL
SERVICE, et al.,

Defendants.

_____/

Plaintiffs, proceeding in this action in propria persona, bring this civil action pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346. Pending before the court is the Defendants' motion to dismiss (Doc. 8), and Plaintiff's motion for leave to file second amended complaint (Doc. 14). Plaintiff's motion is currently on calendar for a hearing on February 11, 2010. The court finds it appropriate to address the motion without the necessity of a hearing. The hearing will therefore be vacated.

Defendants' have filed a notice of withdrawal of their motion to dismiss (Doc. 18), in which they state the second amended complaint cures the defects raised in the motion. It therefore appears that Defendants have no objection to Plaintiff filing a second amended complaint. As such, that request will be granted. Defendants shall respond to the second

1 amended complaint within 30 days of the date of this order.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. Defendants' motion to dismiss (Doc. 8) is withdrawn;

4 2. The February 11, 2010, hearing on the motion for leave to file second
5 amended complaint is vacated;

6 3. Plaintiff's motion to file an amended complaint (Doc 14) is granted;

7 4. The Clerk of the Court is directed to terminate the motion to dismiss (Doc.
8 8) as a pending motion;

9 5. The Clerk of the Court is further directed to file Plaintiff's second
10 amended complaint, attached as an exhibit to her motion (Doc. 14); and

11 6. Defendants shall respond to Plaintiff's second amended complaint within
12 30 days of the date of this order.

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15 DATED: February 8, 2010

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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