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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROSLYN McCOY,

NO. CIV. S-09-1973 LKK/CMK

Plaintiff,

v.

O R D E R

DEPARTMENT OF THE ARMY -
ARMY CORPS OF ENGINEERS
and HONORABLE JOHN McHUGH,
SECRETARY OF THE ARMY,
collectively,

Defendants.

_____/

On November 18, 2010, the court entered a scheduling order in the above captioned case. The court granted plaintiff Rosyln G. McCoy leave of sixty (60) days to file an amended complaint. Further, the court cautioned plaintiff that "no further . . . amendments to pleadings is permitted except with leave of court, good cause having been shown." On December 17, 2011, plaintiff timely filed her second amended complaint.

On January 28, 2011, defendant John McHugh, Secretary of the Army, filed a motion to dismiss plaintiff's second amended

1 complaint for lack of subject matter jurisdiction, for failure to
2 state a claim, and for misjoinder. This motion is set to be heard
3 on February 28, 2011. Pursuant to Local Rule 230(c), plaintiff's
4 opposition or statement of non-opposition was due on February 14,
5 2011. Plaintiff did not file an opposition or statement of non-
6 opposition to the motion. Rather, on February 14, 2011, plaintiff
7 filed a third amended complaint. Plaintiff did not seek leave of
8 this court to file her third amended complaint. On February 16,
9 2011, defendant filed a reply to his motion in which he argued that
10 plaintiff has waived her right to oppose the motion. Also on this
11 date, defendant filed a motion to strike plaintiff's third amended
12 complaint because plaintiff failed to obtain permission of the
13 court to file the complaint. Defendant also moved to dismiss
14 portions of this complaint. This motion is set to be heard on March
15 28, 2011.

16 For the foregoing reasons the court ORDERS as follows:


17 (1) Counsel for plaintiffs is hereby ORDERED TO SHOW CAUSE in
18 writing why sanctions should not issue in accordance with
19 Local Rule 110, including a fine of \$150 and/or dismissal
20 of this case, for his failure to file an opposition or
21 statement of non-opposition to the motion and for his
22 failure to seek leave of this court prior to filing
23 plaintiff's third amended complaint. See also Fed. R.
24 Civ. P. 41(b), Link v. Wabash R.R., 370 U.S. 626, 633
25 (1962). Counsel shall file a response to this order to
26 show cause no later than March 3, 2011.

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- (2) Plaintiff's third amended complaint (Doc. No. 51) is STRICKEN for failure to obtain leave of this court prior to its filing.
- (3) Defendant's motion to strike and to dismiss the third amended complaint (Doc. No. 54) is GRANTED.
- (4) Hearing on defendant's motion to dismiss plaintiff's second amended complaint (Doc. No. 49) is VACATED.
- (5) Plaintiff SHALL FILE a motion for leave to file an amended complaint no later than March 3, 2011. Failure to do so will result in the court granting defendant's motion to dismiss plaintiff's second amended complaint with prejudice.

IT IS SO ORDERED.

DATED: February 18, 2011.


LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT