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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOEI LYN SANCHES,

No. C 08-1395 MEJ

Plaintiff(s),

**ORDER RE PLAINTIFF'S NOTICE
PURSUANT TO CIVIL LOCAL RULE 7-
13**

vs.

CITY OF CRESCENT CITY, et al.,

Defendant(s).

On February 26, 2009, Plaintiff Joei Lyn Sanches filed a Notice Pursuant to Civil Local Rule 7-13, informing the Court that Defendants' Motion to Dismiss, filed July 29, 2008 (Dkt. #32), has been under submission for more than 120 days. In the notice, Plaintiff also addresses two other case management issues: (1) whether Defendants' prior motion to dismiss, filed April 21, 2008 (Dkt #8), remains pending, and (2) whether deadlines established in the June 18, 2008 Case Management Order (Dkt. #23) remain in effect. The Court addresses the issues raised in Plaintiff's notice as follows:

A. Defendant's April 21, 2008 Motion to Dismiss

Plaintiff filed her original complaint on March 11, 2008. Pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b), Defendants filed a responsive pleading in the form of a Motion to Dismiss. (Dkt #8.) Plaintiff did not file an opposition to Defendants' motion and instead filed a First Amended Complaint ("FAC") on May 14, 2008. (Dkt. #13.) Under FRCP 15(a), a party may amend

1 its pleading once as a matter of course before being served with a responsive pleading. Fed. R. Civ.
2 P. 15(a)(1). "In all other cases, a party may amend its pleading only with the opposing party's
3 written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Here, Defendants did not consent to
4 the amended complaint, and the Court did not grant Plaintiff leave to file it. Thus, Plaintiff failed to
5 comply with FRCP 15(a) in filing her amended complaint.

6 On July 24, 2008, the Court held a hearing on Defendants' Motion to Dismiss. At that time,
7 Plaintiff argued that a motion to dismiss is not a responsive pleading and, therefore, her FAC was
8 properly filed. Although the Court did not rule on this issue at the hearing, Defendants subsequently
9 filed a Motion to Dismiss Plaintiff's FAC ("Second Motion"). Accordingly, the Court hereby
10 FINDS AS MOOT Defendant's April 21, 2008 Motion to Dismiss.

11 **B. Defendant's July 29, 2008 Motion to Dismiss**

12 As to Defendants' Second Motion to Dismiss, the Court vacated the hearing date and stated
13 that it would rule on the parties' papers. (Dkt. ## 41, 43.) The Court shall issue an order on
14 Defendants' Second Motion forthwith.

15 **C. Case Management Deadlines**

16 On June 18, 2008, the Court issued a Case Management Order establishing pretrial and trial
17 deadlines. (Dkt. #23.) Certain case management deadlines have since been continued and/or
18 vacated given the pending motion to dismiss. (Dkt. # 53.) As the ruling on Defendants' Second
19 Motion has been delayed, the Court hereby VACATES all pending pretrial and trial deadlines. The
20 Court shall issue a further case management order, if necessary, after ruling on Defendants' pending
21 motion to dismiss.

22 **IT IS SO ORDERED.**

24 Dated: February 27, 2009

25 
26 _____
27 MARIA-ELENA JAMES
28 United States Magistrate Judge