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

ANTHONY CHRISANTHIS,

No. C 08-02472 WHA

Plaintiff,

v.

**ORDER REGARDING
BRIEFINGS FOR DEFENDANTS'
MOTION TO DISMISS**

DR. BRIAN CASON, IRVING SPIVEY,
and DOES 1 to 10,

Defendants.

On August 4, 2008, defendants filed a "Motion to Dismiss or, in the Alternative, for Summary Judgment." (Dkt. No. 15). Plaintiff submitted no opposition. On August 22, 2008, defendants filed a reply and notice of non-receipt of opposition (Dkt. No. 24). Upon a request by plaintiff, the Court granted plaintiff leave to file a late response. Instead of filing an opposition, plaintiff filed a First Amended Complaint, as plaintiff was entitled to do as a matter of course. Fed. R. Civ. P. 15(a)(1)(A). The Court re-set the briefing schedule for defendants' motion to dismiss, if defendants were to re-notice it, and set a new hearing date for the motion.

Plaintiff filed a request for a continuance of the new briefing schedule and hearing date because plaintiff's attorney had been assigned "lifer" cases at California State Prison-Solano, and plaintiff indicated that the State of California had insufficient time to reassign the matters to a new attorney. The Court granted the request and rescheduled the hearing for October 30.

Defendants noticed a renewed motion to dismiss. Plaintiff's opposition was due October 9. Plaintiff failed to submit a timely opposition. On October 10, defendants filed a

1 notice of non-receipt of opposition requesting dismissal of the case, *inter alia*, because
2 defendants' motion was unopposed and plaintiff has failed to prosecute the case. Also on
3 October 10, plaintiff filed its opposition.

4 The Court repeatedly has warned the parties regarding late filings, and plaintiff's
5 opposition to defendants' motion to dismiss was again untimely. Plaintiff must respond to
6 defendants' notice of non-receipt, request leave to file a late opposition and show cause for its
7 late filing.

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9 **IT IS SO ORDERED.**

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11 Dated: October 20, 2008

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14 WILLIAM ALSUP
15 UNITED STATES DISTRICT JUDGE
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