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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 RE BRIEFING AND
HEARING ON 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.

Defendants noticed a renewed motion to dismiss; plaintiff filed a request for a continuance of the new hearing because plaintiff’s counsel had a conflict with prisoner cases counsel had previously been assigned by the State of California. The Court accommodated plaintiff and granted the requested continuance, and rescheduled the hearing on the motion for October 30. Plaintiff’s opposition was due October 9. Plaintiff failed to submit a timely opposition. On October 10, defendants filed a notice of non-receipt of opposition requesting

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dismissal of the case, *inter alia*, because defendants' motion was unopposed and plaintiff has failed to prosecute the case. Later that day, plaintiff filed its opposition.

The Court filed an order to show cause for the late response (Dkt. No. 42). Plaintiff responded to the order to show cause, and plaintiff indicated that the delay was a result of a calendaring error. The hearing is now in one week and defendant is left in the untenable position of being uncertain of the status of plaintiff's opposition and the need for a reply brief. The October 30 hearing is therefore **VACATED** and **RESCHEDULED FOR NOVEMBER 6, 2008**. Defendants shall have until **OCTOBER 30** to file any reply brief it may wish to file.

IT IS SO ORDERED.

Dated: October 22, 2008



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE