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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 PAMELA KOUSSA,  
8 Plaintiff,  
9 v.  
10 MING YEUNG, et al.,  
11 Defendants.

Case No. [16-cv-05137-JSC](#)

**ORDER RE: MOTION TO DISMISS  
AND EX PARTE APPLICATION TO  
STAY ACTION FOR 30 DAYS**

Re: Dkt. No. 11

United States District Court  
Northern District of California

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13 Plaintiff Pamela Koussa brings this action against Defendants Ming Yeung, Jia Yeung, and  
14 Leonicio Perez Santiago for disability discrimination in connection with access barriers she  
15 encountered at the Pup Hut, a restaurant in Richmond, California. On November 7, 2016,  
16 Defendants Ming Yeung and Jia Yeung filed a notice of motion to dismiss the complaint in its  
17 entirety pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. No. 11.) They noticed the  
18 motion for January 19, 2016 and represented that the “Memorandum of Points and Authorities,  
19 declaration, and supporting documents shall be filed in due course within 35 days of the date of  
20 the hearing set forth above.” (*Id.* at 2.) Plaintiff has since filed an objection to the motion to  
21 dismiss because, to date, Defendants still have not filed their memorandum of points and  
22 authorities. (Dkt. No. 13.)

23 Local Rule 7-2(b) requires parties to file “[i]n one filed document . . . the “notice of  
24 motion” . . . and “the points and authorities in support of the motion[.]” Defendants’ failure to  
25 comply with the Local Rule leaves Plaintiff unable to meaningfully respond to the motion and  
26 renders the motion procedurally improper, which alone is sufficient to deny the motion. *See Tri-  
27 Valley CARES v. U.S. Dep’t of Energy*, 671 F.3d 1113, 1131 (9th Cir. 2012) (“Denial of a motion  
28 as the result of a failure to comply with local rules is well within a district court’s discretion.”);

1 *see, e.g., Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 582 (9th Cir. 2010) (upholding  
2 district court’s denial of motion to tax costs which was not in compliance with the court’s local  
3 rules).

4 In response to Plaintiff’s motion, instead of filing the memorandum of points and  
5 authorities, Defendants have filed an ex parte application to stay this action for 30 days. (Dkt. No.  
6 14.) This application is also procedurally improper as it fails to cite a statute, Federal Rule, local  
7 rule or Standing Order that authorizes filing an ex parte motion in these circumstances. *See* N.D.  
8 Cal. Civ. L.R. 7-10. The Court nevertheless considers the application, in which Defendants  
9 concede that Plaintiff’s objection is well-taken and state that they “intend to withdraw the motion  
10 and refile[.]” (Dkt. No. 14 ¶ 2.) Defendants seek to stay the case until December 21, 2016 and  
11 request an extension of time to file the motion to dismiss. The Court declines to stay the case.  
12 But because this is Defendants’ first request for an extension of time to respond to the complaint,  
13 the Court will grant an extension.

14 Lastly, Defendants attached to their ex parte application a letter from Plaintiff’s counsel to  
15 Defendant Ming Yeung regarding failure to answer the complaint and the possibility of default  
16 entered against him. The Court reminds the parties not to engage in ex parte communication with  
17 represented parties.

18 Accordingly, the Court DENIES Defendants’ motion to dismiss without prejudice to  
19 refiling in compliance with the Local Rules. The Court DENIES Defendants’ ex parte application  
20 to stay but grants Defendants’ request for an extension of time to respond to the complaint.  
21 Defendants shall file an answer or motion to dismiss by **December 21, 2016**.

22 This Order terminates Docket Nos. 11 and 14.

23 **IT IS SO ORDERED.**

24 Dated: November 22, 2016

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JACQUELINE SCOTT CORLEY  
United States Magistrate Judge