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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IVANA KIROLA, et al.,

Plaintiffs,

vs.

THE CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants.

Case No: C 07-03685 SBA

ORDER

[Docket Nos. 317, 320]

Plaintiffs filed their complaint on July 17, 2007. Defendants answered Plaintiffs' complaint on September 6, 2007. On February 9, 2010, Plaintiffs filed a motion for leave to amend their complaint. By order dated April 12, 2010, this Court granted Plaintiffs' motion for leave to amend in the following respects: (1) to dismiss Michael Kwok as a plaintiff; (2) to narrow the class definition; and (3) to clarify, with respect to Plaintiffs' Sixth Cause of Action (for violations of Cal. Gov. Code §§ 11135 et seq.), Plaintiffs' theory requiring self-evaluation and transition plans pursuant to state regulations promulgated under section 11135. (Docket No. 238.) The Court denied Plaintiffs' motion in all other respects. (Id.)

Plaintiffs filed an Amended Complaint on June 24, 2010. (Docket No. 294.) On July 8, 2010, Defendant City and County of San Francisco ("the City") filed a Motion to Dismiss Claims in Plaintiffs' First Amended Complaint (Docket No. 317), along with an Ex Parte

1 Application to Obtain Hearing Date for Motion to Dismiss (Docket No. 320) seeking a motion
2 hearing date after the May 18, 2010 motion cut-off date. Plaintiffs have opposed the City's
3 Application.

4 By its motion to dismiss, the City seeks an order "dismissing plaintiffs' federal and state
5 claims relating to self-evaluation and transition plans, and ... an order dismissing plaintiffs'
6 claims relating to maintenance of accessible features." (Docket No. 317, p. 1.)

7 Two of the City's grounds for seeking dismissal are directed to allegations that have
8 been part of this case, in identical form, since the original complaint was filed on July 17, 2007.
9 Specifically, the City challenges Plaintiffs' allegations concerning the City's obligations under
10 the federal self-evaluation and transition plan regulations, as well as Plaintiffs' allegations
11 regarding the City's failure to maintain accessible features and its parks, pools, libraries, and
12 other facilities. These allegations remain unchanged from the original complaint, yet the City
13 previously had not moved for dismissal or to strike them from the complaint. The City has not
14 provided any reason as to why it did not move to dismiss these allegations earlier.

15 The City also challenges the newly added allegations in the Amended Complaint
16 regarding the City's obligations under Cal. Gov. Code §§ 11135 et seq. In particular, the City
17 argues that Title 22, sections 98251(a) and 98258 of the California Code of Regulations are
18 merely hortatory and impose no mandatory duties. However, this argument -- which the City
19 previously put before this Court in opposing Plaintiffs' motion to amend -- was specifically
20 rejected by this Court in granting Plaintiffs' motion to amend.

21 For these reasons, the City has not shown good cause as to why the May 18, 2010
22 hearing cut-off should be extended. Accordingly,

23 IT IS HEREBY ORDERED that Defendant City and County of San Francisco's Ex
24 Parte Application to Obtain Hearing Date for Motion to Dismiss is DENIED, and Defendant
25 City and County of San Francisco's Motion to Dismiss Claims in Plaintiffs' First Amended
26 Complaint is STRICKEN as untimely and unauthorized.

27 This Order terminates Docket Nos. 317 and 320.

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IT IS SO ORDERED.

Dated: July 12, 2010


SAUNDRA BROWN ARMSTRONG
United States District Judge