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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

JANE R. EVANS,

No. C 08-01066 SBA

Plaintiff,

**ORDER**

v.

[Docket No. 27]

SANDPLAY THERAPISTS OF  
AMERICA,

Defendant.

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10 Before the Court is defendant's Motion to Dismiss or, Alternatively, for Summary Judgment  
11 (the "Motion") [Docket No. 27]. For the following reasons, the Court sets an Order to Cause  
12 hearing regarding whether to grant or deny the Motion. Evans is proceeding in propria persona and  
13 *in forma pauperis*. She has filed a 150-page complaint which is not a model of clarity. The first  
14 page of the Complaint is from a Northern District of California form Employment Discrimination  
15 Complaint, which indicates Evans is proceeding under Title VII of the Civil Rights Act of 1964, 42  
16 U.S.C. § 2000e *et seq.* See Docket No. 1 at 1. Nonetheless, a review of the Complaint's first eight  
17 pages shows allegations of discriminatory, retaliatory, and harassing conduct on the basis of Evan's  
18 ethnicity, national origin, and/or perceived mental or emotional condition, by what could be agents  
19 of her employer, a fee-based educational institution she attended, or her therapist. See Docket No. 1  
20 at 1-8.

21 Defendant's Motion is predicated on two grounds: that it never employed Evans, and that it  
22 lacks sufficient employees to qualify as an "employer" as defined in Title VII. See Docket No. 23  
23 at 2:19-24. Neither of these allegations can be verified on the face of Evans' Complaint. Evans has  
24 not responded to defendant's Motion. Paragraph 8 of the Court's Standing Order for Civil Cases  
25 provides, "The failure of the opposing party to file a memorandum of points and authorities in  
26 opposition to any motion shall constitute a consent to the granting of the motion." Nonetheless,  
27 because plaintiff is proceeding without the benefit of counsel, and because the Court has questions  
28 regarding defendant's Motion, the Court sets an OSC hearing regarding defendant's Motion.

1 Accordingly, it is ORDERED that:

- 2 (1) Plaintiff shall appear in Courtroom 3 of the United States Courthouse, 1301  
3 Clay Street, Oakland, California, on **October 16, 2008, at 4:00 p.m.**, to show  
4 cause why the above-captioned case should not be dismissed without  
5 prejudice for failure to oppose defendant's Motion.
- 6 (2) At least ten days prior to the above hearing, Plaintiff must file a "Certificate  
7 of Plaintiff" with the Clerk of the Court, to explain why the case should or  
8 should not be dismissed for failure to oppose defendant's Motion. The  
9 Certificate shall set forth the nature of the cause, its present status, any basis  
10 for opposition to dismissal by any party, and its expected course if not  
11 dismissed.
- 12 (3) Please take notice that this Order requires **both** the specified court appearance  
13 **and** the filing of the Certificate of Plaintiff. Failure to fully comply with this  
14 order will be deemed sufficient grounds to dismiss the action and the related  
15 action.
- 16 (4) Any party to this action or the related action, other than plaintiff, may file a  
17 statement, as described in paragraph (2), or appear at the hearing set in paragraph (1),  
18 to argue why this action and the related action should not be dismissed.
- 19 (5) At least ten days prior to the above hearing, defendant must file a brief with  
20 the Court explaining why plaintiff's Complaint is subject to dismissal under  
21 Rule 12(b)(6) for failure to state a claim, given she alleges discriminatory,  
22 retaliatory, and harassing conduct on the basis of ethnicity, national origin,  
23 and/or perceived mental or emotional condition, by what could be agents of  
24 her employer, a fee-based educational institution she attended, or her  
25 therapist. Alternatively, defendants may withdraw their Motion.
- 26 (6) The hearing set for September 9, 2008, at 1:00 p.m., for defendant's Motion to  
27 Dismiss or, Alternatively, for Summary Judgment [Docket No. 27] is VACATED.
- 28 (7) The Case Management Conference set for September 9, 2008, at 1:00 p.m., is  
CONTINUED to October 16, 2008, at 4:00 p.m. The parties shall **meet and confer**  
prior to the conference and shall prepare a joint Case Management Conference  
Statement which shall be filed no later than ten (10) days prior to the Case

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Management Conference that complies with the Standing Order for all Judges of the Northern District of California and the Standing Order of this Court. **Defendant** shall be responsible for filing the statement.

IT IS SO ORDERED.

September 5, 2008

  
Sandra Brown Armstrong  
United States District Judge

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

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5  
6 EVANS et al,

Case Number: CV08-01066 SBA

7 Plaintiff,

**CERTIFICATE OF SERVICE**

8 v.

9 SANDPLAY THERAPISTS OF AMERICA et al,

10 Defendant.  
11 \_\_\_\_\_/

12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
Northern District of California.

13 That on September 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

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17  
18 Jane Rocio Evans  
19 PO Box 424886  
San Francisco, CA 94142

20 Dated: September 8, 2008

21 Richard W. Wieking, Clerk  
By: LISA R CLARK, Deputy Clerk

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