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

ANNETTE SHARLENE ELDER-EVINS,
TR.,

Plaintiff,

vs.

MICHAEL J. CASEY, et al.,

Defendants.

Case No: C 09-05775 SBA

ORDER

Dkt. 173

The parties are presently before the Court on pro se Plaintiff Annette Sharlene Elder-Evins' ("Plaintiff") motion to enlarge time to file a second amended complaint ("SAC"). Dkt. 173. Defendant Daniel Shacklett and the Municipal Doe Defendants oppose the motion. Dkt. 179. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby GRANTS the motion, for the reasons stated below.

On January 31, 2011, this Court issued an Order dismissing portions of Plaintiff's first amended complaint with prejudice, but permitted her to amend other portions by filing an amended pleading. Dkt. 106. The Court directed Plaintiff to file a SAC consistent with this Court's Order within twenty-one (21) days of the date of that Order. *Id.* Plaintiff did not do so. Instead, Plaintiff filed a motion for extension of time to file a SAC on March 15, 2011. Dkt. 114. On May 25, 2011, Plaintiff filed another motion for extension of time to file a SAC. Dkt. 133.

On September 13, 2011, this Court issued an Order directing Plaintiff to file a SAC consistent with the Court's January 31, 2011 Order within twenty (20) days of the date of that Order. Dkt. 167. Plaintiff, again, failed to do so. On October 6, 2011, Plaintiff filed

1 another motion for extension to file a SAC. Dkt. 173.

2 Here, because it is not absolutely clear that Plaintiff cannot amend her pleading to
3 state cognizable claims for relief, and because Plaintiff is a pro se litigant, the Court grants
4 Plaintiff leave to file a SAC. Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A
5 pro se litigant must be given leave to amend his or her complaint, and some notice of its
6 deficiencies, unless it is absolutely clear that the deficiencies of the complaint could not be
7 cured by amendment.”). Accordingly,


8 IT IS HEREBY ORDERED THAT:

9 1. Plaintiff’s motion for enlargement of time to file a SAC is GRANTED.
10 Plaintiff shall file a SAC consistent with this Court’s Order of January 31, 2011 within
11 twenty-one (21) days of the date of this Order. Plaintiff is reminded to address the
12 deficiencies of the first amended complaint as identified by this Court in its Order of
13 January 31, 2011. Plaintiff is also reminded of her obligation to allege facts and claims
14 only to the extent that she may do so in good faith. Fed. R. Civ. P. 11. If Plaintiff timely
15 amends her pleading, Defendants shall respond consistent with the Federal Rules of Civil
16 Procedure. The Court cautions Plaintiff that if she fails to timely amend her pleading, the
17 Court will not grant another extension of time for Plaintiff to file a SAC. See Swanson v.
18 U.S. Forest Serv., 87 F.3d 339, 343 (9th Cir. 1996) (granting or denying leave to amend
19 rests in the sound discretion of the trial court); Fidelity Financial Corp. v. Federal Home
20 Loan Bank of San Francisco, 792 F.2d 1432, 1438 (9th Cir. 1986) (a “court’s discretion to
21 deny leave to amend is particularly broad where the court has already given the plaintiff an
22 opportunity to amend his complaint”). The Court further cautions Plaintiff that if she fails
23 to timely file a SAC, the Court will dismiss with prejudice those claims in which the Court
24 dismissed with leave to amend in its Order of January 31, 2011.

25 2. This Order terminates Docket No. 173.

26 IT IS SO ORDERED.

27 Dated: December 12, 2011

28 
SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 ANNETTE SHARLENE ELDER-EVINS,

5 Plaintiff,

6 v.

7 MICHAEL J. CASEY et al,

8 Defendant.

9 _____/

Case Number: CV09-05775 SBA

10 **CERTIFICATE OF SERVICE**

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
13 Court, Northern District of California.

14 That on December 13, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
17 receptacle located in the Clerk's office.

18 Annette Sharlene Elder-Evins
19 Guenocamata Sovereign Trust
20 Guenocamata Rancheria
21 948 Leddy Avenue
22 Santa Rosa, CA 95407-6601

23 Dated: December 13, 2011

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

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