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E-FILED 7/17/2009

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHRISTINA SANCHEZ,

No. C07-04174 HRL

Plaintiff,

v.

**ORDER (1) DENYING PLAINTIFF’S
THIRD “MOTION TO RECONSIDER
SET ASIDE DISMISSAL ORDER”; AND
(2) DENYING PLAINTIFF’S THIRD
MOTION FOR EXTENSION OF TIME
TO FILE AMENDED COMPLAINT**

SUZETTE Z. TORRES, FIRST AMERICAN
TITLE, JANE E. BEDNAR, NAM NGUYEN,
HOMECOMINGS FINANCIAL NETWORK,
CITIMORTGAGE, INC., JEFFERY H.
LOWENTHAL, BRYAN M. KRAFT,
ANGELO PAUL RUSSO, CITY OF SALINAS,
ADAM M. GREELY, ANDY PHAM,
MONTEREY COUNTY, EXECUTIVE
TRUSTEE SERVICES, LOANCITY.COM,
JOHN H. MITCHELL,

[Re: Docket Nos. 86, 87]

Defendants.

Before the court are two motions filed by pro se plaintiff Christina Sanchez: (1) a third motion for reconsideration of this court’s December 18, 2008 dismissal order, as well as (2) a motion seeking a third extension of time to file an amended complaint. Defendants Suzette Z. Torres, First American Title Insurance Company, Nam Nguyen, Homecomings Financial Network, Inc., Citimortgage, Inc., Jeffrey H. Lowenthal, and Bryan M. Kreft (collectively, the “Nguyen defendants”) oppose the motion to “set aside dismissal order” and request that the court impose sanctions on plaintiff. Defendant County of Monterey (“County”) opposes

1 Sanchez’s request for an extension of time. Pursuant to Civil Local Rule 7-3, briefing on these
2 motions closed on July 7, 2009. Upon consideration of the moving and responding papers, this
3 court finds that no further briefing or oral argument is necessary, and the hearing noticed for
4 July 21, 2009 is vacated. See Civ. L.R. 7-1(b), 7-9(d). For the reasons stated below, both
5 motions are denied.

6 BACKGROUND

7 Sanchez, aka Sylvia Nicole, aka Van Kim Lai filed this action on August 14, 2007 and a
8 First Amended Complaint (FAC) on November 13, 2007. The gravamen of her complaint was
9 her unhappiness with an underlying state court action in which the Monterey County Superior
10 Court in early 2007 granted summary judgment and quieted title to real property at 834
11 Tumbleweed Drive in Salinas, California in favor of purchaser Nam Nguyen and two of his
12 mortgage lenders. Basically, Sanchez claimed that, although neither had been on title when
13 Nguyen acquired the property, both she and her business partner, Andrew Corson, were
14 preexisting equitable “owners.”

15 In the meantime, by virtue of several documents plaintiff submitted to this court which
16 were first filed by her in Bankruptcy Court, it appears that Sanchez (using the name Van Kim
17 Lai) filed a Chapter 13 Petition in Bankruptcy on November 27, 2007. This petition was
18 dismissed by the bankruptcy judge a few weeks later. Sanchez then filed a second Petition –
19 also quickly dismissed – and then a third. (See Docket Nos. 14, 16, 21). The third case
20 apparently was also dismissed.

21 The FAC was dismissed on April 10, 2008. Judge O’Farrell (the “quiet title” judge) and
22 the Monterey County Superior Court were dismissed on the basis of judicial immunity. There
23 clearly was no diversity jurisdiction; and, the court dismissed, without leave to amend, the 11
24 U.S.C. § 362 claim based on Corson’s bankruptcy because his bankruptcy stay would not bar
25 creditors from proceeding against Sanchez’s property interests. Because the court could not
26 conclude with certainty that there were no additional facts to be pled which might meet the
27 essential components (a constitutional violation by a person acting under the color of state law)
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1 under 42 U.S.C. §§ 1983 and 1985, the civil rights and conspiracy claims were dismissed with
2 leave to amend.

3 Sanchez filed her Second Amended Complaint (SAC) on May 9, 2008, further
4 muddying the “facts” by adding two additional properties into the mix. The SAC still provided
5 no basis for diversity jurisdiction and abandoned any claim based on either 42 U.S.C. § 1983 or
6 § 1985. It did not mention the bankruptcy automatic stay under 11 U.S.C. § 362. Nor did it cite
7 any federal statute upon which a claim could be based. It contained eighteen “causes of action”
8 – every one of which was based on state law.

9 On December 18, 2008, this court entered an order dismissing the SAC as to certain
10 defendants, including the Nguyen defendants, without leave to amend. The court found that
11 Sanchez (who, by that time, had several opportunities to allege facts which would support a
12 federal claim for relief) could not construct a federal claim out of her factual allegations.
13 Several other defendants were also dismissed because they apparently had never been served.
14 As for the County, the sole remaining defendant, the SAC was hardly the model of clarity. But
15 because this court could not say for certain that plaintiff would be unable to state a federal claim
16 for relief against the County for alleged violation of one of her bankruptcy stay orders, the SAC
17 was dismissed with leave to amend. Plaintiff was directed to file her amended complaint as to
18 the County by January 19, 2009. The order further stated that “[i]f Sanchez has not filed it by
19 that date, or secured an extension of time based on good cause, the court will dismiss as to
20 Monterey without further notice.” (Docket No. 52, December 18, 2008 Order at 11:24-25).

21 About a month later, Sanchez filed the first in a series of motions to set aside the
22 December 18, 2008 order. The court construed the motion as one seeking leave to move for
23 reconsideration. That motion was denied on January 29, 2009 because plaintiff failed to present
24 any material facts or legal issues which would warrant the filing of a motion for
25 reconsideration. See Civ. L.R.7-9(b). Sanchez contended that she was denied an opportunity to
26 oppose the underlying motions to dismiss and asserted that she had, in fact, served defendants.
27 It was not apparent that defendants were served (or served at all) as plaintiff claimed.
28 Additionally, plaintiff had ample opportunity to oppose the underlying motions to dismiss.

1 Indeed, the motion hearings were continued to accommodate her. Sanchez failed to timely file
2 her opposition papers, failed to appear for oral argument, and, late on the eve of the motion
3 hearing, faxed a letter to the Clerk’s Office in which she indicated that she would likely not
4 appear for oral argument and requested that the court “consider my oppositions in writing in
5 place of my appearance.” (Docket No. 50). The court did just that in ruling on the motions to
6 dismiss.

7 As for her amended pleading, Sanchez did not file one. Instead, when her amendment
8 was due, she filed a request seeking an unspecified additional period of time to do so. She
9 asserted that she could not file her amended pleading by the court-ordered deadline because of
10 an alleged “medical condition” and because she did not “obtain legal advice in time.” (See
11 Docket No. 55). This court found no good cause for the requested extension, but nonetheless
12 exercised its discretion and gave Sanchez several additional weeks to file her amended pleading
13 as to the County. In its order granting this extension of time, the court stated that no further
14 requests for an extension of this deadline would be entertained unless plaintiff submitted a
15 declaration under penalty of perjury from a physician licensed to practice in California that her
16 “medical condition” has, in fact, prevented her continuously since January 19, 2009 from
17 drafting and filing an amended pleading and stating the reason for her inability as well as the
18 date when she will be able. (Docket No. 59, January 29, 2009 Order).

19 The amendment deadline came and went. No amended pleading was filed. Some weeks
20 later, Sanchez appeared before this court during its regular civil law and motion calendar in the
21 mistaken belief that a motion hearing had been set in this case. Claiming that she recently had
22 moved to a different address, plaintiff said that she did not receive this court’s January 29, 2009
23 Orders at the 834 Tumbleweed Drive, Salinas, CA 93905 address of record. The docket report
24 indicates that, on February 6, 2009, those orders were returned by the post office as
25 undeliverable. (Docket No. 60). Sanchez was advised to review the court’s orders in the
26 Clerk’s Office. She was also directed to promptly file a notice of change of address.

27 Sanchez did not file a notice of change of address. She instead proceeded to file another
28 motion to set aside the December 18, 2008 dismissal order, as well as a second motion for

1 another extension of time to file an amended complaint. Curiously, both motions continued to
2 identify the address at 834 Tumbleweed Drive, Salinas, CA 93905 as her contact information.
3 (See Docket Nos. 61-64).

4 Her second motion for a “set aside” order was denied because Sanchez again failed to
5 present any material facts or legal issues which would warrant the filing of a motion for
6 reconsideration. In support of that motion, Sanchez submitted, nearly one year after the fact,
7 two proofs of service purporting to show that Loancity.com and one other (unidentified)
8 defendant had been served with the SAC. She also filed a one-page document titled “Patient
9 Visit Information” indicating she (under the name “Van K Lai”) received treatment for a skin
10 abscess on March 1, 2009. The court found that her proffered medical excuse did not
11 sufficiently explain the long delay in filing the above-referenced proofs of service. More to the
12 point, the belatedly filed proofs of service would not have changed this court’s decision that
13 Sanchez cannot construct a federal claim out of her allegations. (See Docket No. 77, May 14,
14 2009 Order). Sanchez was, however, given one final extension of time (to May 25, 2009) to file
15 an amended complaint. This final extension was granted solely because the court’s records
16 indicated that its prior January 2009 orders had been returned as undeliverable. (See Docket
17 No. 78, May 14, 2009 Order). Additionally, Sanchez was warned that the failure to (a) timely
18 file an amended pleading or (b) keep the court and opposing parties of her current contact
19 information would be grounds for dismissal. (Id.). Because plaintiff had provided no other
20 contact information, this court’s May 14, 2009 orders were mailed to her at 834 Tumbleweed
21 Drive, Salinas, CA 93905.

22 The next day, on May 15, 2009, Sanchez filed several additional documents purporting
23 to show that several defendants (some of them unspecified) were served with the SAC. Then on
24 May 20, 2009, Sanchez filed additional declarations in support of her second round of motions
25 for reconsideration and for an extension of time – even though briefing had already long since
26 closed and orders denying those motions had issued. (These May 15, 2009 and May 20, 2009
27 filings are discussed more fully below.)
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1 by the court clerk.”² She also suggests that she was not able to bring these additional proofs of
2 service to the court’s attention sooner because she had leg surgery on February 28, 2009.

3 Nothing in plaintiff’s instant motion presents grounds warranting reconsideration of this
4 court’s prior orders of December 18, 2008, January 29, 2009 and May 14, 2009. The
5 boilerplate physician declaration Sanchez filed on May 20, 2009 provides no bona fides as to
6 who the affiant is and does not sufficiently deal with the concerns the court said needed to be
7 addressed. Nor does it explain the more than one-year delay in filing the above-referenced
8 proofs of service. In essence, the declaration states, “Ms. Van Kim Lai is under my care. She
9 has been ill and unable to work since 1/15/09.” (See Docket No. 80, Ex. A). But despite her
10 many protestations that she has been unable to file an amended pleading, Sanchez has managed,
11 in the six or so months since her amended complaint originally was due, to file no less than six
12 motions seeking reconsideration of prior orders and several extensions of time.

13 More importantly, as stated in this court’s May 14, 2009 order, the essence of the
14 December 18, 2008 dismissal order was that Sanchez failed to allege any facts which would
15 support a federal claim for relief, despite having had several opportunities to do so. Her
16 additional proofs of service, belatedly filed on May 15, 2009, would not have changed that
17 conclusion. Accordingly, plaintiff’s motion is denied. Although the court finds no basis for
18 plaintiff’s motion, the Nguyen defendants’ request for sanctions is also denied.

19 B. Plaintiff’s Motion for a Third Extension of Time

20 In support of her motion for a further unspecified additional period of time to file an
21 amended complaint, Sanchez repeats many of the arguments made in connection with her third
22 motion for reconsideration. For the same reasons stated above, those arguments fail to
23 convince.

24 Sanchez also advances one additional argument here: she now claims that she was
25 unable to timely file her amended pleading by the May 25, 2009 deadline because she “did not
26 know about [the May 14, 2009 orders] until May 26, 2009, when I looked up the court file.”

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28 ² The brief delay in the docketing of Sanchez’s May 15, 2009 filings was not due to any “misfiling” in the wrong case file. Rather, the original documents inadvertently were delivered together with chambers copies of those filings to the undersigned’s chambers.

1 (Docket No. 86 at 1). As noted above, the May 14, 2009 orders were mailed to Sanchez at the
2 834 Tumbleweed Drive address because she chose to give that address as her contact
3 information, even though she claimed to have moved to a different location. Unlike this court's
4 January 29, 2009 orders, the May 14, 2009 orders were not returned as undeliverable.
5 Nevertheless, Sanchez says she did not receive them; and, she has, concurrently with the instant
6 motion, filed a "Notice of Change of Address," identifying her mailing address as 2350 Senter
7 Rd. #407, San Jose, CA 95112.

8 Sanchez's contact information has been a moving target. Indeed, she seems to take
9 refuge in that ambiguity, depending upon whether she believes it will be advantageous for her
10 to say that she did or did not receive certain papers. Moreover, as discussed in prior orders, the
11 fact remains that throughout these proceedings, Sanchez has consistently failed to (a) timely file
12 papers with the court, (b) meet court-ordered deadlines, and (c) make scheduled court
13 appearances. The fact that Sanchez is representing herself does not absolve her of the
14 responsibility to diligently prosecute her case and to adhere to rules that all litigants are required
15 to follow. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (finding that pro per litigants
16 must follow the same procedural rules as represented parties). Additionally, plaintiff has, on
17 more than one occasion, made representations to the court that were demonstrably false (see,
18 e.g., Docket No. 13, November 27, 2007 Order at 4; Docket No. 52, December 18, 2008 Order
19 at 9 n.5), such that this court now has little, if any, confidence in her credibility.

20 As discussed above, the SAC, on its face, contained claims based solely on state law.
21 Leave to amend as to the County was granted upon the slim possibility that she might be able to
22 state a federal claim for relief – and the court believed it to be a very thin reed, indeed. Sanchez
23 was, at her request, granted two extensions of time in which to file her amended complaint. She
24 failed to comply with those deadlines and has not established good cause for her failure to
25 comply with the court's May 14, 2009 order. At this point, and given plaintiff's conduct
26 throughout these proceedings, this court finds that she has had more than ample opportunity to
27 amend her complaint. She is now simply dragging her feet. This court finds no good cause for
28 yet another extension of time, and plaintiff's motion is denied.

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CONCLUSION

In summary, Sanchez's third motion to set aside the dismissal order as to certain defendants is denied. Her third request for an extension of time to file a Third Amended Complaint against the County of Monterey is also denied.

The Clerk of the Court shall enter judgment of dismissal and close the file.

SO ORDERED.

Dated: July 17, 2009



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 **5:07-cv-4174 Notice electronically mailed to:**

2 Edward Egan Smith esmith@steyerlaw.com, aroque@steyerlaw.com

3 Georgina Berenice Mendoza georgina@ci.salinas.ca.us, julian@ci.salinas.ca.us,

4 susanm@ci.salinas.ca.us

5 Jessica Carolyn Grannis jgrannis@steyerlaw.com

6 Lucas Erskine Gilmore lgilmore@steyerlaw.com, aroque@steyerlaw.com,

7 jcohoe@steyerlaw.com

8 Susan J. Matcham susanm@ci.salinas.ca.us, georgina@ci.salinas.ca.us, julian@ci.salinas.ca.us

9 William K. Rentz rentzb@co.monterey.ca.us, merillanac@co.monterey.ca.us

10 **Counsel are responsible for distributing copies of this document to co-counsel who have**
11 **not registered for e-filing under the court's CM/ECF program.**

12 **5:07-cv-4174 Notice mailed to:**

13 Christina Sanchez
14 2350 Senter Road #407
15 San Jose, CA 95112

16 Christina Sanchez
17 834 Tumbleweed Drive
18 Salinas, CA 93905

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