

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE HAMLINE COMMUNITY GARDENS,)
KAREN MCCREDDIN, and)
ANN CHARLOTTE JOSEPH)

Plaintiff,)

v.)

THE CITY OF SAN JOSE,)

Defendant.)

Case No.: 12-CV-000464-LHK

ORDER DISMISSING CASE WITHOUT
PREJUDICE

Before the Court is Plaintiff Karen McCreddin’s and Ann Charlotte Joseph’s (hereinafter “individual Plaintiffs”) motion to dismiss without prejudice. For the reasons set forth below, the Court GRANTS the motion.

On January 30, 2012, Plaintiff the Hamline Community Gardens, Karen McCreddin, and Ann Charlotte Joseph (collectively “Plaintiffs”) filed a complaint, ECF No. 1, and an *ex parte* motion for a temporary restraining order (“TRO”). ECF No. 2. The Court denied the motion for an *ex parte* TRO without prejudice for failure to comply with Federal Rules of Civil Procedure 11 and 65. ECF No. 8. Neither the complaint nor the motion was signed, as required by Rule 11, and Plaintiffs failed to set forth “specific facts in an affidavit or a verified complaint clearly show[ing] that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition,” as required by Rule 65. *Id.* at 3. The Court gave Plaintiffs an opportunity to cure these defects; set a briefing schedule; and scheduled a hearing on the motion for March 1, 2012. *Id.* at 4-5.

1 Plaintiffs failed to cure the defects in their pleadings and original motion and instead the
2 individual Plaintiffs filed the instant motion to dismiss on February 8, 2012. ECF No. 10.
3 Pursuant to Federal Rule of Civil Procedure 41(a), a “plaintiff may dismiss an action without a
4 court order by filing a notice of dismissal before the opposing party serves either an answer or a
5 motion for summary judgment.” Defendant has filed neither an answer nor a motion for summary
6 judgment. Accordingly, the individual Plaintiffs may dismiss this action without a court order.

7 Plaintiff Hamline Community Gardens does not join the individual Plaintiffs. However,
8 Plaintiff Hamline Community Garden has failed to cure the defects that run afoul of Federal Rules
9 of Civil Procedure 11 and 65 discussed above and in the Court’s prior order, ECF No. 8.
10 Moreover, pursuant to Civil Local Rule 3-9, “A corporation, unincorporated association,
11 partnership or other such entity may appear only through a member of the bar of this Court.” The
12 Hamline Community Gardens is currently appearing *pro se*, in violation of this rule. Accordingly,
13 this action is dismissed without prejudice as to Plaintiff Hamline Community Gardens as well.

14 For the foregoing reasons, the individual Plaintiffs’ motion is GRANTED, and the above
15 captioned matter is DISMISSED, without prejudice. The Clerk shall close the file.

16
17 **IT IS SO ORDERED.**

18 Dated: February 16, 2012

19
20
21
22
23
24
25
26
27
28


LUCY H. KOH
United States District Judge