

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
SOUTHERN DISTRICT OF CALIFORNIA**

JESSICA SEYMOUR,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
DEFENSE, et al.,

Defendants.

CASE NO. 10-CV-983 JLS (POR)

**ORDER: (1) CONSTRUING
PLAINTIFF’S AMENDED
COMPLAINT AS A MOTION FOR
LEAVE TO AMEND;
(2) GRANTING PLAINTIFF’S
MOTION FOR LEAVE TO
AMEND; (3) DENYING
DEFENDANTS’ MOTION TO
DISMISS AS MOOT**

(Doc. Nos. 33, 48)

On September 27, 2010, the Court accepted for filing Plaintiff’s amended complaint *nunc pro tunc* to September 17, 2010. (*See* Doc. Nos. 47, 48.) Plaintiff filed her amended complaint twenty-four days after Defendants filed a motion to dismiss Plaintiff’s complaint. (Doc. No. 33.) Thus, Plaintiff did not file her amended complaint within the twenty-one-day time limit for amendment as of right. Fed. R. Civ. P. 12(a)(1)(B). Plaintiff did not seek leave to amend her complaint. *See* Fed. R. Civ. P. 12(a)(2).

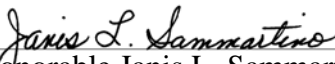
The Court construes Plaintiff’s untimely amended complaint as a motion for leave to amend her complaint. *See Woods v. Carey*, 525 F.3d 886, 889–90 (9th Cir. 2008) (“A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” (internal quotation marks omitted));

1 *Popov v. Countrywide Fin. Corp.*, 2009 WL 5206679, at *2 (E.D. Cal. Dec. 18, 2009) (construing pro
2 se litigants' opposition, "together with their proposed amended complaint, as a request for leave to
3 amend their complaint"). Good cause appearing, Plaintiff's motion for leave to amend her complaint
4 is **GRANTED**. Plaintiff's amended complaint shall be the operative complaint in this action.

5 As a result of Plaintiff's amended complaint, the Court **DENIES AS MOOT** Defendants'
6 pending motion to dismiss and **VACATES** the hearing presently set for October 28, 2010.
7 Defendants' time to respond to Plaintiff's amended complaint shall run from the date the Court's
8 Order is electronically docketed.

9 IT IS SO ORDERED.

10
11 DATED: September 29, 2010

12 
13 _____
14 Honorable Janis L. Sammartino
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27
28