

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02708-REB-KLM

VONNE I. TORREZ,

Plaintiff,

v.

CLIFFORD E. ELEY,

Defendant(s).

MINUTE ORDER

ENTERED BY MAGISTRATE JUDGE KRISTEN L. MIX

This matter is before the Court on Plaintiff's **Motion for Court to Strike, Refuse Defendant's Motion to Dismiss** [Docket No. 8; Filed January 23, 2009] (the "Motion to Strike") and Plaintiff's **Motion for Hearing** [Docket No. 9; Filed January 23, 2009] (the "Motion for Hearing"). The Court notes that both parties appear in this action *pro se*.

Plaintiff first requests that the Court strike Defendant's Motion to Dismiss [Docket No. 4; Filed January 9, 2009]. As grounds, Plaintiff argues that Defendant's Motion to Dismiss does not have a signature or a certificate of service, and is not double-spaced, as is required by the Local Rules for the District of Colorado. *Motion to Strike* [#8] at 1-2. The Court notes that, on January 23, 2009, Defendant filed an Amended Motion to Dismiss [Docket No. 11], that contains a signature, and is double-spaced, but is otherwise identical to the original Motion to Dismiss [Docket No. 4]. Further, also on January 23, 2009, Plaintiff filed her Response to the original Motion to Dismiss [Docket No. 7]. It is clear that Defendant's Amended Motion to Dismiss is still not in compliance with Local Rule D.C.COLO.LCivR. 5.1(F), which requires that "[e]ach paper, other than one filed *ex parte*, shall be accompanied by a certificate of service indicating the date it was served, the name and address of the person to whom it was sent, and the manner of service." However, considering that Plaintiff has already filed her Response to the Motion to Dismiss, and therefore indicated that she received the Motion to Dismiss and has suffered no prejudice due to the lack of a certificate of service, the Court will not strike the Amended Motion to Dismiss at this time. In the future, Defendant is warned that any filings that do not comply with the Local Rules may be stricken by the Court.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's **Motion for Court to Strike, Refuse Defendant's Motion to Dismiss** [Docket No. 8; Filed January 23, 2009] is **GRANTED**. Defendant's Motion to Dismiss [Docket No. 4; Filed January 9, 2009] is

STRICKEN and will not be considered by the Court. Plaintiff's Response [Docket No. 7] will be considered as filed in response to the Amended Motion to Dismiss [Docket No. 11]. Defendant shall file his reply, if any, on or before **February 9, 2009**.

IT IS FURTHER ORDERED that Plaintiff's **Motion for Hearing** [Docket No. 9; Filed January 23, 2009] is **DENIED**. Defendant's Amended Motion to Dismiss [Docket No. 11] will be decided on the briefings. A hearing is not necessary.

IT IS FURTHER ORDERED that the Scheduling Conference currently set for **February 12, 2009** is **VACATED**, and will be reset by the Court if necessary.

Dated: January 26, 2009