

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

KRISSY SANCHEZ,

Plaintiff,

vs.

FRIDEL LLC, et al.,

Defendants.

Cause No. CV 18-91-BLG-SPW-TJC

ORDER

On October 1, 2019, on Plaintiff Sanchez’s motion, the Court extended deadlines in this case. The parties’ time to file disclosure statements was extended from mid-October to November 7, 2019. The time to file a motion to amend the pleadings was extended from November 8 to November 21, 2019. *See* Scheduling Order (Doc. 26) at 1, 5; Order (Doc. 31) at 2 ¶¶ 1–2.

On November 8, 2019, Sanchez filed a motion aimed at three cases and making several requests. *See* Pl. Mot. (Doc. 35). It is not clear that she was referring to her complaint in this case, but she stated that she wanted to amend her complaint “to clarify which friedels she meant when she said friedels” and to “clarify generic words and frame each person’s actions.” She says her original pleadings “did say what the actions were.” *See* Pl. Mot. (Doc. 35) at 3–4 (“Motion 2”), 4 (“Motion 5”). Sanchez filed the motion well in advance of the extended

November 21 deadline for amending the pleadings. She also requested an extension of time to December 20, 2019, “to turn in amended complaints” in this and another case. *See id.* at 4 (“Motion 5”).

On November 21, 2019, the day she filed her reply in support of her motion, Sanchez filed a 17-page, single-spaced second amended complaint (Doc. 38) with 50 pages of exhibits (Doc. 38-1).

The following day, November 22, 2019, Defendants filed a motion for summary judgment on the grounds that they were not acting “under color of state law” as required for liability under 42 U.S.C. § 1983. And on November 25, 2019, they filed a motion to strike Sanchez’s second amended complaint.

Sanchez timely moved to amend her complaint. Although she should have attached her proposed second amended complaint to her motion to amend on November 8, 2019, she submitted the new pleading on the deadline. Her motion to amend the complaint will be granted. The second amended complaint (Doc. 38) will be the controlling pleading.

The Court intends to consider Defendants’ motion for summary judgment before it addresses any other issue. It will construe the motion to address any claims under 42 U.S.C. § 1983 for constitutional violations. Sanchez will have an opportunity to respond to the Defendants’ legal arguments. In their reply, Defendants will have an opportunity to address any allegations in the second

amended complaint that might alter their legal analysis of the federal claims. But if the reply raises new issues to which Sanchez should have an opportunity to respond, the Court will give her that opportunity.

The Court notes that the second amended complaint alleges a civil RICO violation. The Court will address that claim after briefing is complete on the Defendants' motion for summary judgment on the § 1983 claims and will issue one Findings and Recommendation addressing all federal claims.

Based on the foregoing, the Court enters the following:

ORDER

1. Sanchez's motion for an extension of time to December 20, 2019, to amend her complaint (Doc. 35) is DENIED.
2. Sanchez's motion to amend her complaint (Doc. 35) is GRANTED.
3. The complaint filed on November 21, 2019 (Doc. 38), the second amended complaint, is DEEMED FILED and is the controlling complaint in this case.
4. Defendants' motion to strike the second amended complaint (Doc. 45) is DENIED.
5. Ruling is RESERVED on Sanchez's motion to strike or objection to release of file (Doc. 32).
6. On or before **December 20, 2019**, Sanchez may respond to the

Defendants' motion for summary judgment (Doc. 41). Sanchez's response must be limited to 6500 words and may address only Defendants' motion for summary judgment in this case. Defendants may reply per L.R. 7.1.

7. Other than a motion for extension of time, neither party may submit additional motions at this time.

8. The schedule imposed on August 13, 2019 (Doc. 26), is STAYED.

Plaintiff must immediately advise the Court of any change in her mailing or email address. Failure to do so may result in dismissal of the action without notice to her.

DATED this 27th day of November, 2019.

/s/ Timothy J. Cavan
Timothy J. Cavan
United States Magistrate Judge