

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 \* \* \*

4 ANGELA CUMMINGS,

5 Plaintiff,

6 v.

7 VALLEY HEALTH SYSTEM, LLC, a  
8 Delaware Limited-Liability Company d/b/a  
9 DESERT SPRINGS HOSPITAL;  
RAEJOHNE FOSTER, an individual,

10 Defendants.

Case No. 2:13-CV-00479-APG-GWF

**ORDER ON MOTION FOR SUMMARY  
JUDGMENT AND MOTION FOR  
JUDGMENT ON THE PLEADINGS**

(Dkt. ##55, 60)

11 Defendants moved for summary judgment. (Dkt. #55.) However, when filing their  
12 motion, they had not yet filed an answer to plaintiff's complaint (despite that the deadline to do so  
13 was in April of 2014).

14 In lieu of filing a response to the motion for summary judgment, plaintiff moved to strike  
15 or stay consideration of defendants' motion. Among other things, plaintiff argued that she could  
16 not properly oppose defendants' motion without an answer being filed. Defendants admitted they  
17 mistakenly failed to file an answer but argue I should ignore this technical defect and rule on their  
18 motion for summary judgment as if it were unopposed.

19 Plaintiff, in turn, moved for judgment on the pleadings. (Dkt. #60.) Plaintiff premised its  
20 motion on the fact that defendants had not filed an answer and therefore, plaintiff argued,  
21 defendants are deemed to have admitted all of plaintiff's allegations. Subsequently, Magistrate  
22 Judge Foley granted defendants leave to file an answer and granted plaintiff additional discovery.

23 I now deny both of these motions. While defendants are permitted to file a motion for  
24 summary judgment before they file an answer, their failure to file a timely answer unfairly  
25 prejudiced plaintiff in this case. Plaintiff could not know whether I would grant defendants'  
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1 motion to file an untimely answer, and whether I allowed an answer to be filed implicated how  
2 plaintiff might respond. I therefore deny defendants' motion for summary judgment without  
3 prejudice.

4 I also dismiss plaintiff's motion for judgment on the pleadings. Plaintiff's motion is  
5 premised on there being no answer filed in this case. But in light of Judge Foley's ruling an  
6 answer is now on file. Further, plaintiff's motion was untimely.<sup>1</sup>

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8 In order to give both parties the opportunity to re-file and respond to dispositive motions, I  
9 will extend the dispositive motion deadline by 30 days from the date of entry of this order.

10 IT IS THEREFORE ORDERED that defendants' motion for summary judgment (Dkt.  
11 #55) is DENIED without prejudice.

12 IT IS FURTHER ORDERED that plaintiff's motion for judgment on the pleadings (Dkt.  
13 #60) is DENIED without prejudice.

14 IT IS FURTHER ORDERED that the parties will have 30 days from the date of entry of  
15 this order to file dispositive motions.

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17 Dated: March 16, 2015.

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21 ANDREW P. GORDON  
22 UNITED STATES DISTRICT JUDGE  
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28 <sup>1</sup> Plaintiff filed her motion in October of 2014 and the dispositive motion deadline was August 1, 2014.