

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KELLY GUERRERO,

Plaintiff,

vs.

VINCENT NEIL WHARTON,

Defendant.

Case No.: 2:16-cv-01667-GMN-NJK

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 17), filed by Defendant Vincent Neil Wharton (“Defendant”). For the reasons discussed below, the Court **DENIES as moot** Defendant’s Motion to Dismiss.

I. BACKGROUND

Plaintiff Kelly Guerrero (“Plaintiff”) originally filed this lawsuit on July 14, 2016. (Compl., ECF No. 1). On October 25, 2016, Defendant filed a Motion to Dismiss Plaintiff’s third cause of action for attorney’s fees. (ECF No. 17). Plaintiff did not file a response, and the deadline to do so has passed. Instead, Plaintiff filed an Amended Complaint, (ECF No. 18), removing as a cause of action the claim for attorney’s fees.

II. DISCUSSION


Local Rule 7-2(d) provides that “[t]he failure of an opposing party to file points and authorities in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent to the granting of the motion.” D. Nev. R. 7-2(d). Although Plaintiff failed to respond to the Motion to Dismiss, Plaintiff filed her Amended Complaint and removed the cause of action that Defendant sought to dismiss. As such,

1 Plaintiff's Amended Complaint consents to Defendant's Motion to Dismiss, thereby rendering
2 the Motion moot.

3 **III. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 17), is
5 **DENIED** as moot.

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7 **DATED** this 13 day of April, 2017.

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12 Gloria M. Navarro, Chief Judge
13 United States District Judge
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