1 2 3 4 5 UNITED STATES DISTRICT COURT 6 **DISTRICT OF NEVADA** 7 8 SHERYL MOULTON, 3:09-cv-00016-RCJ-VPC 9 Plaintiff, ORDER 10 ٧. CITY OF SPARKS, JUDGE KEVIN 11 HIGGINS, both as individual and Sparks Justice Court Judge; JUDGE SUSAN 12 DERISO, both as individual and Sparks Justice Court Judge; SPARKS POLICE 13 DEPARTMENT; WASHOE COUNTY; WASHOE COUNTY SHERIFF'S 14 DEPARTMENT; EUGENE BURGER MANAGEMENT CORPORATION, a 15 California Corporation; EUGENE J. BURGER; KEVIN BERG; JOHN COLEMAN; 16 GAYLE A. KERN, LTD; GAYLE A. KERN; 17 ULLA CHRISTENSEN, both as individual and Lakeside Plaza Board Director; DANIEL JOSEPH, both as individual and Lakeside 18 Plaza Board Director; FRANK A. PERAU, 19 both as individual and Lakeside Plaza Board Director; RICH SVIHLA, both as individual 20 and Lakeside Plaza Board Director; MICHAEL S. GRADY, both as individual and Lakeside Plaza Board Director; MARY L. 21 HARRIS, both as individual and Lakeside 22 Plaza Board Director: LAKESIDE PLAZA CONDOMINIUM ASSOCIATION; and DOES 23 1-500. 24 Defendants. 25 Currently before the Court is Defendants City of Sparks and Sparks Police Department 26 (collectively referred to herein as the "Sparks Defendants") Motion to Dismiss (#37) filed on 27 September 11, 2009. Plaintiff Sheryl Moulton ("Plaintiff") did not file an opposition.¹ 28 ¹ Local Rule 7-2 provides that the "failure of an opposing party to file points and authorities in

response to any motion shall constitute a consent to the granting of the motion." LR 7-2.

Plaintiff filed a Complaint (#1) in this action on January 13, 2009, against various defendants including the Sparks Defendants.² Plaintiff's Complaint alleged thirty-three causes of action and sought both injunctive relief and \$10,000,000 in damages. On January 27, 2009, the Sparks Defendants filed a motion for more definite statement on the basis that "the Complaint in the instant matter [was] vague, ambiguous, and speculative." (Motion for More Definite Statement (#4) at 3). According to the Sparks Defendants, the Complaint did not allow them to prepare a reasonable response, to adequately deny any claim, or to properly assert any defenses that might have been available. <u>Id.</u> In addition, the Sparks Defendants stated that the Complaint failed to provide specific factual allegations against the Sparks Defendants to which they could properly respond.

On July 28, 2009, the Court granted the Sparks Defendants' motion for a more definite statement. (Order (#26)). In its Order, the Court held that Plaintiff's Complaint was so vague and ambiguous that the Sparks Defendants could not reasonably prepare a response. According to the Court, not only did Plaintiff's causes of action fail to identify the legal elements, but the complaint also failed to state what acts or omissions the Sparks Defendants engaged in that entitled her to relief against them.

As a result of Plaintiff's vague and ambiguous allegations, the Court ordered Plaintiff to file an amended complaint as to the Sparks Defendants which clearly stated how the Sparks Defendants violated Plaintiff's legal rights. Plaintiff had until August 14, 2009 to file an amended complaint.

On September 11, 2009, the Sparks Defendants filed the current motion to dismiss. The Sparks Defendants note that Plaintiff failed to file an amended complaint in this action. As such, the Sparks Defendants now request that the claims asserted against them be dismissed.

In this matter, the Court finds that because Plaintiff failed to file an amended complaint as ordered, the Sparks Defendants are entitled to an order dismissing the claims asserted against them.

² All defendants aside from the Sparks Defendants have been dismissed from the lawsuit at this time.

CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant City of Sparks and Sparks Police Department's Motion to Dismiss (#37) is GRANTED.

Dated this 30th day of March, 2010.

United States District Judge

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