IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

LINDSEY SHAW, Plaintiff, v. CITY OF PORTOLA, et al., Defendants.	No. 2:25-CV-02461-DJC-DMC ORDER

Plaintiff, who is proceeding pro se, brings this civil action. On October 1, 2025, Defendants City of Portola, Ryan Bonk, Steve Gross, Jon Kennedy, Jim Murphy, and Susan Scarlett filed a motion to dismiss. See ECF No. 5. Pursuant to Local Rule 302(c)(21), the matter was set before the undersigned. See ECF Nos. 6 and 7.

On October 20, 2025, Defendants City of Portola, Gross, Scarlett, Murphey, Bonk and Kennedy filed a notice of non-opposition, requesting their motion to dismiss be granted due to Plaintiff's failure to file an opposition to Defendants' motion to dismiss. See ECF No. 9. On October 27, 2025, Plaintiff filed an opposition to Defendants' motion to dismiss, ECF No. 10, and a motion for acceptance of opposition, ECF No. 11. The District Judge assigned to the matter issued a minute order notifying Plaintiff that her motion for acceptance of opposition was defective pursuant to Local Rule 302(c)(21), as it was noticed before the District Judge, rather than the undersigned. See ECF No. 13.

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In her opposition, Plaintiff contends that Defendants' service was improper because the email address listed on the proof of service was incorrect. See ECF No. 10. Plaintiff states that though she had not served Defendants Kennedy or Scarlett, the motion to dismiss filed on their behalf constitutes a waiver of any objection to lack of service and personal jurisdiction under Fed. Rule Civ. Pro. 12 (h)(1). See id. Plaintiff explains her delay in filing an opposition as a misunderstanding of electronic filing access and once clarified by the Clerk's Office, Plaintiff mailed her opposition in accordance with such requirements. See ECF No. 11.

As to Plaintiff's challenge to Defendants' service of the motion to dismiss, the Court notes that Plaintiff's email listed on the proof of service is Lindsey.Schuck@gmail.com, whereas the email listed on Plaintiff's original complaint is LindseySchuck@gmail.com. However, according to Gmail, "Dots don't matter in Gmail addresses."[1] Further, the proof of service indicates that Defendants mailed the motion to dismiss via United States Postal Service to Plaintiff at the address she listed on her complaint. See ECF No. 5-1, pg. 24. Thus, any service by email was not necessary and Defendants properly served the motion to dismiss when such motion was mailed to Plaintiff at her address.

As to the motion to dismiss, the Court is not inclined to grant the motion to dismiss based on a Plaintiff's failure to file an opposition within the deadline given the several considerations here, including the Plaintiff's pro se status, Plaintiff's efforts to file an opposition, albeit seven days past the deadline, and that Plaintiff provided the Corut with a reasonable explanation for the delay. Thus, the Court will accept Plaintiff's opposition as timely, reset the briefing schedule to allow Defendants an opportunity to reply, and reset the hearing for the motion to dismiss.

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[1] See https://support.google.com/mail/answer/7436150?hl=en&sjid=10839895172104442656-NC.

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Accordingly, it is hereby ORDERED that:

1. Plaintiff's opposition to Defendants' motion to dismiss, ECF NO. 10, is deemed timely;

2. Plaintiff's motion for acceptance of opposition, ECF No. 11, is DENIED as MOOT;

3. Motion to dismiss hearing set for November 12, 2025, is VACATED;

4. Defendants may file a reply to Plaintiff's opposition within 10 days of this order; and

5. Motion to dismiss hearing is reset before the undersigned for November 19, 2025, 10:00 a.m., in Redding, California.

Dated: October 31, 2025

DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE