

DISTRICT COURT, COUNTY OF BOULDER, COLORADO  
Boulder Justice Center  
1777 6th Street  
Boulder, CO 80302

AMI SADLER; COMPASSION & CHOICES; COMPASSION  
& CHOICES OF COLORADO; STEPHEN KREBS, MD;  
SHANNON LEWIS; COLORADO RELIGIOUS COALITION  
FOR REPRODUCTIVE CHOICE; AND ASSOCIATES IN  
WOMEN'S HEALTH, P.C.,

Plaintiffs,

v.

COMMUNITY FIRST FOUNDATION f/k/a LUTHERAN  
MEDICAL CENTER FOUNDATION; SISTERS OF  
CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.;  
EXEMPLA, INC., in its corporate capacity and in its trade dress  
of EXEMPLA LUTHERAN MEDICAL CENTER; EXEMPLA  
GOOD SAMARITAN MEDICAL CENTER LLC; KAISER  
HOSPITAL ASSET MANAGEMENT, INC.; and KAISER  
FOUNDATION HEALTH PLAN OF COLORADO

Defendants.

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Case Number: 07CV1113

Div.: 2

Ctrm:

**PLAINTIFFS' MOTION TO RECONSIDER AND VACATE RULINGS AND ORDERS  
REGARDING DEFENDANT SISTERS OF CHARITY LEAVENWORTH, INC.'S  
MOTION TO DISMISS PLAINTIFFS' FIRST AND SECOND CLAIM FOR RELIEF  
AND DEFENDANT COMMUNITY FIRST FOUNDATION'S MOTION TO DISMISS**

Plaintiffs, Ami Sadler, Compassion & Choices, Compassion & Choices of Colorado, Stephen Krebs, MD, Shannon Lewis, Colorado Religious Coalition for Reproductive Choice, and Associates in Women's Health, P.C. (collectively the "Plaintiffs"), through their counsel, Koncilja & Associates, P.C. and Heizer Paul LLP, move the Court to Reconsider and Vacate the Court's Rulings and Orders Regarding Defendant Sisters of Charity Leavenworth, Inc.'s Motion to Dismiss Plaintiffs' First and Second Claim for Relief and Defendant Community First Foundation's Motion to Dismiss, on the following grounds:

Pursuant to C.R.C.P. 121, Section 1-15(8), undersigned counsel hereby certifies that they have conferred in good faith with opposing counsel concerning the relief sought by this motion. Counsel for Defendant Sisters of Charity of Leavenworth Health System, Inc. neither consents nor formally objects to the relief requested herein. Counsel for Defendant Community First Foundation does not oppose the relief requested herein.

1. On February 26, 2008, this Court granted Defendant Sisters of Charity of Leavenworth Health System, Inc. ("SCLHS") and Defendant Community First Foundation's ("CFF") Motions to Dismiss on the basis that Plaintiffs did not file responses to these motions as required by the Colorado Rules of Procedure 121 § 1-15.

2. However, Plaintiffs did timely respond to SCLHS and CFF's Motions to Dismiss on February 5, 2008 by serving the parties and filing with the Court, as a matter of right, a First Amended Complaint addressing the issues raised in the Motions to Dismiss and by joining additional parties.

3. Pursuant to C.R.C.P. 15(a): "A party may amend his pleading once as a matter of course at any time before a responsive pleading is filed . . ." Furthermore, a motion to dismiss, such as those filed by SCLHS and CFF, do not constitute responsive pleadings. *See Davis v. Paolino*, 21 P.3d 870, 873 (Colo. App. 2001) ("For purposes of [C.R.C.P. 15(a)], a motion to dismiss does not constitute a responsive pleading."); *Fladung v. City of Boulder*, 165 Colo. 244, 438 P.2d 688 (1968).

4. Moreover, in recognition of Plaintiffs' First Amended Complaint, CFF filed a Motion to Dismiss the First Amended Complaint on February 25, 2008. In addition, on February 20, 2008, SCLHS filed a request for an extension of time to respond to the First Amended Complaint.

5. As the validity of Plaintiffs' First Amended Complaint is not contested, Plaintiffs were not obligated to file a brief in response to SCLHS and CFF's Motions to Dismiss. *See*

*Davis v. Paolino, supra*, 21 P.3d at 873 (“A trial court should allow an amendment to a complaint under these circumstances even following its grant of a motion to dismiss.”); *see, e.g., In re Marriage of Lockwood*, 857 P.2d 557, 561 (Colo. App. 1993) (“An amended complaint supersedes the original complaint and becomes the sole statement of the plaintiff’s cause of action.”).

WHEREFORE, Plaintiffs respectfully request this Court to Reconsider and Vacate the Court’s Rulings and Orders dated February 26, 2008 Regarding Defendant SCLHS and Defendant CFF’s Motions to Dismiss.

DATED this 27th day of February, 2008.

Respectfully submitted,

KONCILJA & ASSOCIATES, P.C.

*In accordance with C.R.C.P. 121 §1-29(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.*

By: s/ Frances A. Koncilja  
Frances A. Koncilja

HEIZER|PAUL LLP

By: s/ Dean C. Heizer  
Dean C. Heizer

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2008, I caused a true and correct copy of the above and foregoing **PLAINTIFFS' MOTION TO RECONSIDER AND VACATE RULINGS AND ORDERS REGARDING DEFENDANT SISTERS OF CHARITY LEAVENWORTH, INC.'S MOTION TO DISMISS PLAINTIFFS' FIRST AND SECOND CLAIM FOR RELIEF AND DEFENDANT COMMUNITY FIRST FOUNDATION'S MOTION TO DISMISS** to be served upon the following via the method indicated for each:

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