

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

GARY L. KAISER and VERLENE D. KAISER;)	
COMMUNITY HOME HEALTH, INC.;)	
GARY S. KAISER; SHAWN EXLINE; and)	
SHARIE MONTEFERRANTE, EXLINE; and)	
SHARIE MONTEFERRANTE,)	
)	
Plaintiffs,)	Case No. CV 05-235-S-LMB
)	
v.)	ORDER
)	
BLUE CROSS OF CALIFORNIA, a California)	
corporation; and THE UNITED STATES OF)	
AMERICA, DEPARTMENT OF HEALTH)	
AND SOCIAL SERVICES, HEALTH CARE)	
FINANCING AGENCY; MIKE LEAVITT,)	
Secretary, UNITED STATES DEPARTMENT)	
OF HEALTH AND SOCIAL SERVICES,)	
)	
Defendants.)	
)	

On June 17, 2005, Plaintiffs filed a Complaint with this Court. (Docket No. 1). In response, Defendant United States of America filed a Motion to Dismiss or for Judgment on the Pleadings. (Docket Nos. 9, 10). Plaintiffs sought and received an extension of time to respond to Defendant's Motion. (Docket Nos. 13, 14, 16). Plaintiffs filed their Memorandum in Response on November 28, 2005. (Docket No. 19). Plaintiffs then filed an Amended Complaint¹ and, on December 1, 2005, also filed a Supplemental Memorandum Opposing

¹ Under Rule 15(a), "[a] party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Defendant United States filed a motion to dismiss instead of an answer. A motion to dismiss is not a "responsive pleading" within the meaning of Rule 15. *Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000) (citation omitted).

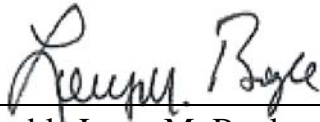
Defendants' Motion to Dismiss.² (Docket Nos. 21, 22). Plaintiffs' Amended Complaint seeks to clarify their claims and adds three defendants in their personal and official capacities. *Supp. Memo.*, p. 2 (Docket No. 22).

Defendant United States has not replied to either of Plaintiffs' memorandums. The Court concludes that a reply by Defendant United States would be beneficial to address any issues related to the Motion to Dismiss that have been raised or resolved by Plaintiffs' Amended Complaint or their Supplemental Memorandum. Accordingly, Defendant United States shall file a reply brief within ten (10) days of the filing of this Order to address the arguments made by Plaintiffs in their response memorandums and any issues raised by Plaintiffs' Amended Complaint.

THEREFORE IT IS HEREBY ORDERED that within ten (10) days of the filing of this Order, Defendant United States shall file a reply brief addressing the arguments made by Plaintiffs in their response memorandums and any issues raised by Plaintiffs' Amended Complaint.



DATED: **January 4, 2006.**



Honorable Larry M. Boyle
Chief U. S. Magistrate Judge

² The Court notes that Plaintiffs' response memorandum was due on a first extension on November 27, 2005. (Docket No. 16). Thus, both memorandums were filed late and without any corresponding request to extend the filing deadline. Despite this failure, the Court will consider Plaintiffs' Memorandums when ruling on Defendant's Motion.