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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Vernon Rawls,

Plaintiff,

vs.

Maricopa County, et al.,

Defendant.

No. CV-10-231-PHX-GMS

ORDER

Pending before the Court are the Motion for Reconsideration filed by Defendant Maricopa County (the “County”) (Doc. 22) and the Request for Dismissal without Prejudice of the § 1983 claim against Sheriff Joseph Arpaio and the County filed by Plaintiff Vernon Rawls (Doc. 25). As set forth below, the Court denies both the Motion and the Request.

DISCUSSION

I. The County’s Motion for Reconsideration

Generally, “arguments raised for the first time” in a defendant’s “reply brief will not be consider[ed] by the Court.” *Beckhum v. Hirsh*, 2010 WL 582095, at *8 (D. Ariz. Feb. 17, 2010) (citing *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1066 n. 5 (9th Cir. 2003); see *Dilley v. Gunn*, 64 F.3d 1365, 1367 (9th Cir. 1995) (“Issues not raised in the opening brief usually are deemed waived.”) (citation omitted). Arguments made *in response* to those that are set forth in the opposing party’s opposition brief, however, “are not new; they are rebuttal arguments, which are permitted in a reply brief.” *Beckhum*, 2010 WL 582095, at *8 (citing

1 *EEOC v. Creative Networks, LLC and Res-Care, Inc.*, 2008 WL 5225807, *2 (D. Ariz. Dec.
2 15, 2008)).

3 In its previous Order, the Court declined consideration of an argument that the County
4 raised for the first time in its Reply Memorandum. (Doc. 21, at 4 n. 1). There, the County
5 asserted for the first time that the claims against it should be dismissed because it has no right
6 of control over the Sheriff, his deputies, or the jail where the alleged misconduct occurred.
7 (Doc. 22 at 3). The County now moves for reconsideration of the Court’s refusal to reach the
8 merits of that argument.

9 According to the County, its failure to raise this argument in the motion to dismiss
10 should be excused because the County was merely responding to arguments raised in
11 Plaintiff’s Response to the motion to dismiss. (*See id.*) The County contends that its
12 argument was merely *responsive* because Plaintiff’s “allegations[] that the County ‘directed’
13 SRT officers, who are jail employees, to take specific action[] are not present in Plaintiff’s
14 Complaint.” (Doc. 22 at 3). Upon further review of the filings, the Court finds that the
15 County’s argument was not made in rebuttal to issues raised in Plaintiff’s response. Instead,
16 that argument raised a *new* issue that was not briefed in the motion to dismiss. *See Beckham*,
17 582095, at *8.

18 The Original Complaint alleges that “Maricopa County . . . owed Plaintiff . . . a duty
19 to use reasonable care in hiring, training, and *supervising* SRT officers.” (Doc. # 1, Ex. 1 at
20 17). Plaintiff then alleges that the County “breached this duty.” (*Id.*) If this were not enough,
21 the Complaint also alleges that the SRK officers were “following . . . *directives* issued by
22 Defendants” when Plaintiff was “subjected to . . . unreasonable and excessive force.” (*Id.*)
23 As utilized throughout the Complaint, the term “Defendants” included the County. (*See*
24 *generally id.*) Hence, the County’s argument that it was merely rebutting new allegations
25 made in Plaintiff’s Response is not supported by the record.

26 There is nothing that precluded the County from arguing in the motion to dismiss that
27 it lacks a right of control over the Sheriff, his deputies, or the jail. The County should have
28 contemplated this argument based on the allegations in the Complaint. Consideration of this

1 issue when it was raised for the first time in the County's Reply would deprive Plaintiff of
2 an opportunity to brief and respond to the County's argument. Indeed, if the County can
3 characterize the issue raised in its Reply as a "rebuttal argument," that would eviscerate the
4 rule that courts do not consider issues raised for the first time in a reply memorandum.

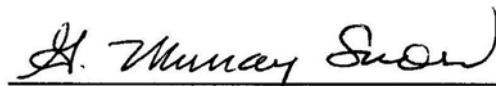
5 **II. Plaintiff's Request for Dismissal without Prejudice.**

6 In his request, Plaintiff seeks dismissal of his § 1981 claim, but only as to the County
7 and the Sheriff. Because the Court has already dismissed these claims pursuant to
8 Defendants' Motion, Plaintiff's Request is denied as moot. To the extent that Plaintiff
9 apparently seeks an indefinite right to later amend and reassert these claims, the Court need
10 not determine at this time whether a future amendment, which has not yet been offered,
11 would be appropriate. In the event Plaintiff seeks to amend his complaint to reassert these
12 claims, he must seek leave of the Court to do so, as required by the Federal Rules of Civil
13 Procedure.

14 **IT IS THEREFORE ORDERED** that the County's Motion for Reconsideration
15 (Doc. 22) is **DENIED**.

16 **IT IS FURTHER ORDERED** that Plaintiff's Request for Dismissal without
17 Prejudice of his § 1983 claim against Sheriff Joseph Arpaio and the County (Doc. 25) is
18 **DENIED** as moot.

19 DATED this 23rd day of July, 2010.

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22 _____
23 G. Murray Snow
24 United States District Judge
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