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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

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JAVIER SOLIS,
Plaintiff,

v.

CITY OF CERES POLICE
DEPARTMENT; OFFICER GRIEBEL,
(ID NUMBER 363) individually
and in his official capacity,
OFFICER QUIROZ, (ID NUMBER
656) individually and in his
official capacity, OFFICER
NIEWENHUIS individually and
in his official capacity,
OFFICER KING individually and
in his official capacity,
OFFICER ALBONETTI
individually and in his
official capacity,

Defendants.

CIV. NO. 1:14-937 WBS BAM
ORDER RE: FINDINGS AND
RECOMMENDATIONS

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Plaintiff Javier Solis filed this pro se action under
42 U.S.C. § 1983 based on alleged excessive force used against
him on December 28, 2012. Because plaintiff is proceeding in
forma pauperis, the assigned magistrate judge screened his

1 complaint pursuant to 28 U.S.C. § 1915(e)(2). The magistrate
2 judge recommended that plaintiff be able to proceed with the
3 claims against the individual officers, but that the claims under
4 Monell v. Dep't of Soc. Servs. of the City of N.Y., 436 U.S. 658
5 (1978), should be dismissed without leave to amend. (Docket No.
6 13.) Plaintiff filed timely objections to the magistrate judge's
7 recommendation that his Monell claim be dismissed. (Docket No.
8 14.)

9 Because § 1983 does not provide for vicarious
10 liability, a municipality can be liable only "when execution of a
11 government's policy or custom, whether made by its lawmakers or
12 by those whose edicts or acts may fairly be said to represent
13 official policy, inflicts the injury" Monell, 436 U.S.
14 at 693. Generally, a local government may be held liable under
15 § 1983 under three broad theories: (1) "when implementation of
16 its official policies or established customs inflicts the
17 constitutional injury," id. at 708 (Powell, J. concurring); (2)
18 "for acts of 'omission,' when such omissions amount to the local
19 government's own official policy," Clouthier v. County of Contra
20 Costa, 591 F.3d 1232, 1249 (9th Cir. 2010); and (3) "when the
21 individual who committed the constitutional tort was an official
22 with final policy-making authority or such an official ratified a
23 subordinate's unconstitutional decision or action and the basis
24 for it," Clouthier, 591 F.3d at 1250 (internal quotation marks
25 and citation omitted).

26 There can be little doubt that plaintiff attempted to
27 plead a Monell claim in his Third Amended Complaint. (See Third
28 Am. Compl. ¶ 3 ("The City of Ceres Police department fosters a

1 policy an [sic] environment of brutality and office [sic]
2 misconduct. . . . [T]he deliberate inaction by the Department has
3 led to a policy and environment of unlawful tactics.".) The
4 Third Amended Complaint includes factual allegations that could
5 support a plausible Monell claim. (See id. ("The city has a
6 large number of complaints for a department it sized [sic] and at
7 the time of the incident was not investigating complaints in a
8 timely or thorough manor [sic]. Supervisors ignored reports of
9 officers administering beating [sic] on a regular basis and had
10 or should have had knowledge of a group of six officers that
11 acted in concert to rid the community of the 'undesirables'.
12 Small parts of the community were aware of this group, its
13 tactics and the apparent impunity which they acted under, the
14 deliberate inaction by the Department has led to a policy and
15 environment of unlawful tactics. . . . The Ceres Police
16 Department has since terminated several officers for their
17 actions and has reversed may [sic] of the changes made in their
18 reorganization of the last few years.".)

19 While these allegations by a pro se plaintiff are
20 sufficient to survive screening at this early stage, the
21 magistrate judge correctly points out that plaintiff has not
22 named the City of Ceres as a defendant. The court will therefore
23 give plaintiff leave to join the City of Ceres as a defendant in
24 this case.

25 IT IS THEREFORE ORDERED that the court ADOPTS the
26 magistrate judge's recommendations that (1) this action proceed
27 on plaintiff's Third Amended Complaint, (Docket No. 11), against
28 defendants Griebel and Quiroz in their individual capacities for

1 excessive force in violation of the Fourth Amendment and against
2 defendants Niewenhuis, King, and Albonetti in their individual
3 capacities for failure to intercede and (2) plaintiff's claims
4 against those officers in their official capacities be dismissed.

5 IT IS FURTHERED ORDERED that plaintiff has thirty days
6 from the date this Order is signed to file a Fourth Amended
7 Complaint joining the City of Ceres as a defendant. After
8 plaintiff files a Fourth Amended Complaint, the magistrate judge
9 shall enter an order finding service of the City of Ceres
10 appropriate.

11 Dated: October 26, 2015

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13 **WILLIAM B. SHUBB**
14 **UNITED STATES DISTRICT JUDGE**

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