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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JASON EUGENE DEOCAMPO; JESUS  
SEBASTIAN GRANT; and JAQUEZS  
TYREE BERRY,

Plaintiffs,

v.

JASON POTTS, individually and  
in his capacity as a Vallejo  
police officer; JEREMY  
PATZER, individually and in  
his capacity as a Vallejo  
police officer; ERIC JENSEN,  
individually and in his  
capacity as a Vallejo police  
officer; and DOES 1 through  
25, inclusive,

Defendants.

CIV. NO. 2:06-1283 WBS CMK

MEMORANDUM AND ORDER RE: MOTION  
FOR RELIEF FROM FINAL JUDGMENT

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Plaintiffs Jason Eugene Deocampo, Jaquezs Tyree Berry,  
and Jesus Sebastian Grant brought this civil rights action  
against defendants Jason Potts, Jeremy Patzer, and Eric Jensen  
arising out of defendants' conduct while employed as police

1 officers by the City of Vallejo ("the City"). Following a  
2 stipulated dismissal of plaintiffs' claims against the City and  
3 Chief of Police Robert Nichelini, the case went to trial against  
4 the remaining defendants. After a thirteen-day jury trial,  
5 Deocampo obtained a judgment of \$50,000 against Potts and Jensen.  
6 The court subsequently awarded plaintiffs \$314,497.73 in  
7 attorney's fees. Defendants now move for relief from final  
8 judgment pursuant to Federal Rule of Civil Procedure 60(b) on the  
9 basis that the judgment and attorney's fee award are liabilities  
10 of the City that were discharged in bankruptcy.<sup>1</sup>

11 Rule 60(b) authorizes a court to relieve a party from a  
12 final judgment on the basis, among others, that the judgment has  
13 been discharged. Fed. R. Civ. P. 60(b)(5). Section 944 of the  
14 Bankruptcy Code provides that a municipal entity is discharged of  
15 its debts as of the time when its plan of adjustment is  
16 confirmed. 11 U.S.C. § 944(b)(1). Section 901(a) of the  
17 Bankruptcy Code also incorporates by reference § 524(a), which  
18 provides that a discharge voids any judgment and enjoins any  
19 party from collecting on the judgment "to the extent that such  
20 judgment is a determination of the personal liability of the  
21 debtor." 11 U.S.C. § 524(a)(1)-(2). The applicability of these  
22 provisions therefore turns on whether the judgment against Potts  
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24 <sup>1</sup> On May 23, 2008, the City filed for bankruptcy in the  
25 United States Bankruptcy Court for the Eastern District of  
26 California pursuant to Chapter 9 of the Bankruptcy Code. (See  
27 Docket No. 207-1.) On August 4, 2011, the bankruptcy court  
28 confirmed the City's Second Amended Plan of Adjustment. (See  
Defs.' Mot. Ex. 4 (Docket No. 207-4).) The Plan provides, with  
exceptions not relevant here, that the City is discharged of any  
liabilities arising prior to August 5, 2011. (Docket No. 207-3.)

1 and Jensen and the attorney's fee award are liabilities of the  
2 City.

3 At trial, plaintiffs attempted to prove that each of  
4 the three officer defendants used excessive force and unlawfully  
5 seized them in violation of the Fourth Amendment, and sought  
6 damages to remedy the harm they suffered. In so doing,  
7 plaintiffs sought--and obtained--relief from Potts and Jensen  
8 only in their individual capacities.<sup>2</sup> See Price v. Akaka, 928  
9 F.2d 824, 828 (9th Cir. 1990). A claim against an officer in his  
10 individual capacity seeks to impose personal liability on that  
11 officer for his own wrongdoing, and can be executed only against  
12 the officer's personal assets. Kentucky v. Graham, 473 U.S. 159,  
13 165-66 (1985). As a result, "[a] victory in a personal-capacity  
14 action is a victory against the individual defendant, rather than  
15 against the entity that employs him." Id. at 167-68.

16 Defendants contend that the judgment and attorney's fee  
17 award against Potts and Jensen operate as liabilities of the City  
18 because the City is required to defend and indemnify its officers  
19 against claims arising out of the scope of their employment. See  
20 Cal. Gov't Code §§ 825, 995. However, the Ninth Circuit has

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22 <sup>2</sup> Although the caption states that plaintiffs sued each  
23 defendant both individually and "in his capacity as a Vallejo  
24 police officer," plaintiff did not pursue any claims against the  
25 officers in their official capacity at trial. See Cent. Reserve  
26 Life Ins. Co. v. Struve, 852 F.2d 1158, 1161 (9th Cir. 1988)  
27 (relying on the "basis of the claims asserted and nature of  
28 relief sought," rather than the caption, to determine the  
capacity in which the defendants were sued). In fact, while  
plaintiffs initially asserted Monell claims against the City and  
Chief of Police Robert Nichelini, plaintiffs voluntarily  
dismissed those claims and parties in July 2007, over six years  
before the trial began. (Docket No. 60.)

1 repeatedly emphasized in the Eleventh Amendment context that a  
2 state's indemnification of its officers is a "'purely intramural  
3 arrangement' between a state and its officers" and does not  
4 shield those officers from liability for individual-capacity  
5 claims, even when the judgment will ultimately be paid out of the  
6 state's treasury. Demery v. Kupperman, 735 F.2d 1139, 1147 (9th  
7 Cir. 1984) (quoting Ronwin v. Shapiro, 657 F.2d 1071, 1074 n.5  
8 (9th Cir. 1981)); see also Ashker v. Cal. Dep't of Corr., 112  
9 F.3d 392, 395 (9th Cir. 1997) ("Following Demery, we hold  
10 California's indemnification of Brodeur and Astorga does not  
11 render California the real party in interest.").

12 Two judges in this district have applied Demery to hold  
13 that the City's Plan of Adjustment does not discharge liabilities  
14 against officers of the City in their individual capacities, even  
15 though the City must indemnify them. For instance, in Wilson v.  
16 City of Vallejo, the court reasoned that because "[t]he Ninth  
17 Circuit has found that section 1983 claims against public  
18 officials in their individual capacities are distinguishable from  
19 claims against the employing public entity regardless of  
20 California's indemnification laws . . . [t]he City's discharge of  
21 its liabilities did not result in discharge of the individual  
22 officers' liabilities as well." Civ. No. 2:12-547 JAM CKD, 2013  
23 WL 4780742, at \*3 (E.D. Cal. Sept. 5, 2013). And in V.W. ex rel.  
24 Barber v. City of Vallejo, the court held that "a claim against a  
25 City official is not essentially one against the City for  
26 bankruptcy discharge purposes, even if state law requires the  
27 City to indemnify the official." Civ. No. 2:12-1629 LKK GGH,  
28 2013 WL 3992403, at \*6 (E.D. Cal. Aug. 2, 2013). In so holding,

1 the court emphasized that "'indemnification' is a claim separate  
2 and apart from the Section 1983 liability claim that underlies  
3 it," and that an officer's right to bring an action for indemnity  
4 against the City does not transmute the plaintiff's claim against  
5 the officer into one against the City itself. Id. at \*7.

6 Defendants contend that Wilson and V.W. are contrary to  
7 the consensus of courts in this district that claims against an  
8 officer in his individual capacity are treated as claims against  
9 the City itself for bankruptcy purposes. Not so. The cases  
10 defendants cite uniformly concern whether 11 U.S.C. §§ 362 and  
11 922, which govern stays of litigation during bankruptcy  
12 proceedings, also apply to stay an action against an officer of  
13 the municipality in his individual capacity. See, e.g., In re  
14 City of Stockton, 484 B.R. 372, 378-79 (E.D. Cal. B.R. 2012)  
15 (Klein, J.); Tavake v. Allied Ins. Co., Civ. No. 2:11-3259 KJM  
16 DAD PS, 2013 WL 35611, at \*2-3 (E.D. Cal. Jan. 2, 2013); Smith-  
17 Downs v. City of Stockton, Civ. No. 2:10-2495, 2012 WL 3202265,  
18 at \*1-2 (E.D. Cal. Aug. 3, 2012). Those courts have justified  
19 staying actions against individual officers on a variety of  
20 grounds, including the avoidance of duplicative litigation while  
21 Chapter 9 proceedings are ongoing, see Tavake, 2011 WL 35611 at  
22 \*3, the difficulty of disaggregating litigation against the  
23 officers from litigation against the municipality, see Smith-  
24 Downs, 2012 WL 3202265 at \*2, and preventing parties from  
25 circumventing the automatic stay provisions of § 922, City of  
26 Stockton, 484 B.R. at 377-78.

27 These concerns are inapplicable here: the City is not a  
28 party to this action, plaintiffs have dismissed their Monell

1 claims against the City and Chief Nichelini with prejudice, the  
2 automatic stay has been lifted, and the City's plan of adjustment  
3 has already resolved any pending litigation between the City and  
4 its creditors. Even if an action against an officer in his  
5 individual capacity must be stayed during ongoing Chapter 9  
6 proceedings, defendants have cited no authority for the  
7 proposition that a judgment against that officer is discharged  
8 upon approval of the City's plan of adjustment. By contrast,  
9 multiple cases have explicitly held the opposite. See, e.g.,  
10 Wilson, 2013 WL 4780742 at \*3; V.W., 2013 WL 3992403 at \*7.  
11 Accordingly, because the judgment against Potts and Jensen and  
12 the attorney's fee award were not discharged in bankruptcy, the  
13 court must deny defendants' motion for relief from final  
14 judgment.

15 IT IS THEREFORE ORDERED that defendants' motion for  
16 relief from final judgment be, and the same hereby is, DENIED.

17 Dated: May 21, 2014

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19 **WILLIAM B. SHUBB**  
20 **UNITED STATES DISTRICT JUDGE**  
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