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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD NELSON, et al.,

Plaintiffs,

v.

BUTTE COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

No. 2:09-cv-02776 JAM-EFB

**ORDER VACATING AND REVERSING
MAGISTRATE JUDGE'S CLARIFICATION
ORDER AND DENYING PLAINTIFFS'
REQUESTS FOR ATTENDANCE AT TRIAL
AND FOR SETTLEMENT CONFERENCE**

This matter comes before the Court on a sua sponte reconsideration of the order entered by the Magistrate Judge on March 11, 2013, clarifying as to whether "Donald Nelson and Thomas Brewer remain as plaintiffs in the cause of action against the County of Butte." Clarification Order, Doc. #110, at 1. In addition, before the Court are Plaintiffs' Request for Attendance at Trial (Doc. #106) and Request for Settlement Conference (Doc. #106, Ex. 1).

Pursuant to the Local Rules, "The assigned Judge may also reconsider any matter at any time sua sponte." L.R. 303(g). For the reasons set forth below, the Clarification Order is VACATED AND REVERSED and the requests for attendance at trial and for settlement conference are DENIED.

1 I. OPINION

2 A. Clarification Order

3 In the Clarification Order, the Magistrate Judge found that
4 "Plaintiffs Donald Nelson and Thomas Brewer therefore remain as
5 plaintiffs in the Eighth Amendment claim against defendants
6 Jones and the Butte County Sheriff's Department regarding the
7 excessive force policy." Clarification Order at 2. However,
8 upon review, it is clear as a matter of law that Plaintiffs
9 Nelson and Brewer cannot maintain this claim.

10 Under § 1983, "an individual may recover only when that
11 individual's federal rights have been violated." Quintanilla v.
12 City of Downey, 84 F.3d 353, 356 (9th Cir. 1996). As a result,
13 when there is no underlying constitutional violation, a
14 plaintiff cannot maintain a claim for municipal liability. Id.
15 (citing City of Los Angeles v. Heller, 475 U.S. 796, 799
16 (stating "[i]f a person has suffered no constitutional injury at
17 the hands of the individual police officer, the fact that the
18 departmental regulations might have *authorized* the use of
19 constitutionally excessive force is quite beside the point")
20 (emphasis in original)).

21 Here, Plaintiffs Nelson and Brewer's remaining Eighth
22 Amendment claim against Defendants Jones and the Butte County
23 Sheriff's Department is a Monell claim. See Findings and
24 Recommendations, Doc. #78, at 32-35; Order Adopting Findings and
25 Recommendations, Doc. #79, at 2. However, Nelson's and Brewer's
26 underlying constitutional violations were dismissed. Id.
27 Therefore, they cannot maintain a Monell claim. Because the
28 Monell claim was their only remaining claim, Nelson and Brewer

1 can no longer be plaintiffs.

2 Accordingly, the Court dismisses Donald Nelson and Thomas
3 Brewer as plaintiffs in this action.

4 B. Request for Attendance at Trial

5 Plaintiffs request Joseph Simpson and Thomas Brewer's
6 attendance at trial. In the Pretrial Order, the parties were
7 informed that "[i]f any of the plaintiffs are incarcerated and
8 upon plaintiffs' request, the court will, [no] later than four
9 weeks before trial, issue all necessary writs to provide for
10 plaintiffs' attendance." Pretrial Order, Doc. #87, at 12. The
11 request was made less than two weeks before the trial date,
12 which is set for March 18, 2013. Therefore, Plaintiffs' request
13 is untimely. Moreover, the request as to Brewer is now moot
14 because he is no longer a plaintiff in this action.

15 Accordingly, the Court denies the Plaintiffs' request for
16 attendance at trial.

17 C. Request for Settlement Conference

18 Finally, Plaintiffs also request a settlement conference.
19 Defendants oppose the request because they do not believe that a
20 settlement conference would be helpful. As mentioned above, the
21 request was made less than two weeks before the trial date.
22 Accordingly, the Court denies the request for a settlement
23 conference as untimely.

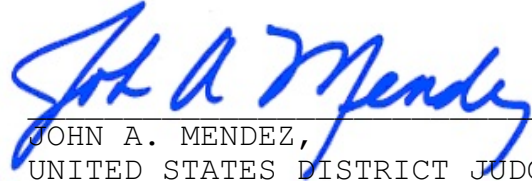
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25 II. ORDER

26 For the reasons set forth above, the Clarification Order is
27 VACATED AND REVERSED. In addition, Plaintiffs' Requests for
28 Attendance at Trial and for Settlement Conference are DENIED.

1 Finally, this Court will consider any further filings not in
2 compliance with the Pretrial Order as a violation of the
3 Pretrial Order and may be grounds for sanctions.

4 IT IS SO ORDERED.

5 Dated: March 11, 2013



6 JOHN A. MENDEZ,
7 UNITED STATES DISTRICT JUDGE

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