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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VONTRE KNIGHT, et al.,  
Plaintiffs,

v.

CITY OF SACRAMENTO POLICE  
DEPT., DOG HANDLERS AARON  
THOMPSON, GARY DAHL, JOHN  
AZEVEDO,  
Defendants.

No. 2:12-CV-0346 JAM-KJN

**ORDER DENYING DEFENDANTS' MOTION  
TO SEVER**

This matter is before the Court on Defendants' City of Sacramento, Aaron Thompson, John Azevedo, and Gary Dahl's (collectively "Defendants") Motion to Sever (Doc. #15), pursuant to Rule 21 of the Federal Rules of Civil Procedure ("FRCP"). Plaintiffs VonTre Night, Robert Price, Ricky Lee Sims, Tommy Martinez, Todd Jamison, Jerry Tolliver, Shylow Thurman, Kevin Stern, and Jason Blevins (collectively "Plaintiffs") oppose the motion (Doc. #16). Defendants filed a reply (Doc. #17).<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for May 7, 2014.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Plaintiffs are nine individuals who were bitten by K-9 units  
3 in Defendant City of Sacramento's police force. Second Amended  
4 Complaint ("SAC") ¶¶ 11-23. Each individual Plaintiff was bitten  
5 on a separate occasion. Two Plaintiffs were bitten by K-9  
6 Bandit, who is handled by Defendant Dahl. SAC ¶¶ 12-14. Four  
7 Plaintiffs were bitten by K-9 Blitz, who is handled by Defendant  
8 Azevedo. SAC ¶¶ 19-22. One Plaintiff was bitten by an  
9 unidentified K-9 unit handled by Defendant Thompson. SAC ¶ 23.  
10 Two Plaintiffs were bitten by K-9 units handled by officers who  
11 are unidentified in the complaint. SAC ¶¶ 16, 18.

12 On February 9, 2012, the Court issued an order (Doc. #2)  
13 severing Defendants from a previous action (Dobrowski, et al. v.  
14 Sacramento City Police Department, et al. - 2:11-cv-01390-JAM-  
15 KJN) and creating the current action. Pursuant to that order, on  
16 March 7, 2012, Plaintiffs filed the SAC (Doc. #4) against  
17 Defendants. The SAC includes the following causes of action:  
18 (1) "Violation of Civil Rights under 42 U.S. 1983 by Dog  
19 Handlers;" (2) "Violation of Civil Rights under 42 USC 1983:  
20 Fourth Amendment violations by Defendant Handlers;"  
21 (3) "Violation of Civil Rights: Deliberate Indifference by Dog  
22 Handlers;" (4) "Violation of Bane Act, California Civil Code 52:  
23 Threats and Violence by Dog Handlers;" (5) "Intentional/Negligent  
24 Infliction of Emotional Distress by Dog Handlers;" (6) "Assault  
25 and Battery by Dog Handlers;" (7) "Negligence by Dog Handlers;"  
26 (8) "Negligent Training;" (9) "Negligent Supervision;" and  
27 (10) "Deliberate Indifference." Although not entirely clear from  
28 the face of the SAC, it appears that the first through seventh

1 causes of action are brought against the individual dog handlers  
2 (Defendants Thompson, Azevedo, and Dahl), whereas that the eighth  
3 through tenth causes of action are brought against Defendant City  
4 of Sacramento. Moreover, although the Tenth Cause of Action does  
5 not expressly cite 42 U.S.C. § 1983, it can reasonably be read as  
6 a Monell claim against Defendant City of Sacramento.

7 The Court's status/scheduling Order was filed on November 2,  
8 2012. (Doc.#8) For reasons unclear to the Court, Defendants  
9 waited until April 2, 2014 to file the instant motion. The final  
10 pretrial conference is currently set for May 29, 2014 and the  
11 trial is set for June 30, 2014.

## 12 13 II. OPINION

### 14 A. Legal Standard

15 Rule 21 of the FRCP provides that a court "may . . . sever  
16 any claim against a party." The Ninth Circuit has noted that "a  
17 district court's decision regarding severance may be set aside  
18 only for abuse of discretion." Davis v. Mason Cnty., 927 F.2d  
19 1473, 1479 (9th Cir. 1991), overruled on other grounds by Davis  
20 v. City & Cnty. of San Francisco, 976 F.2d 1536, 1556 (9th Cir.  
21 1992). On a Rule 21 motion, the Court must first consider  
22 whether the parties were properly joined under Rule 20. Coughlin  
23 v. Rogers, 130 F.3d 1348, 1350 (9th Cir. 1997). Even if the  
24 Court finds that the parties were properly joined, the Court may  
25 still grant the motion to sever upon a finding that (1) a joint  
26 trial would result in substantial prejudice to the moving party,  
27 or (2) a joint trial would result in substantial jury confusion.

1           B.    Discussion

2           Defendants argue that the Court should sever each individual  
3 Plaintiff's claims against Defendants, creating nine separate  
4 lawsuits. Defendants' primary argument is that Plaintiffs were  
5 improperly joined under Rule 20. Mot. at 2. Defendants also  
6 argue that failure to sever the individual Plaintiffs would  
7 create "severe and undue prejudice" to Defendants. Mot. at 2.  
8 Finally, Defendants argue that severance will prevent "confusion  
9 to a jury who would be hearing different factual scenarios they  
10 would need to separate and align with particular Plaintiffs and  
11 Defendants." Reply at 2. In a five-page opposition, Plaintiffs  
12 argue that "it is not the use of a K-9 that ties these plaintiffs  
13 together," but rather "it is the city policy" that justifies the  
14 joinder. Opp. at 4.

15           1.    Rule 20(a) - Permissive Joinder

16           Rule 20(a) of the FRCP governs "Permissive Joinder of  
17 Parties." Rule 20(a)(1) provides that "persons may join in one  
18 action as plaintiffs if: (A) they assert any right to relief  
19 . . . with respect to or arising out of the same transaction,  
20 occurrence, or series of transactions or occurrences; and (B) any  
21 question of law or fact common to all plaintiffs will arise in  
22 the action." Accordingly, plaintiffs are properly joined in an  
23 action if both of these requirements are satisfied.

24           In the case at bar, Plaintiffs' Tenth Cause of Action  
25 asserts a § 1983 Monell claim against Defendant City of  
26 Sacramento for deliberate indifference, on behalf of all  
27 Plaintiffs. SAC ¶¶ 51-54. The Tenth Cause of Action satisfies  
28 both prongs of Rule 20(a)(1). First, each Plaintiff's right to

1 relief under the Monell claim arises out of the same "series of  
2 transactions or occurrences" - namely, the City's alleged failure  
3 to address the pattern of misconduct by K-9 handlers. Notably,  
4 the first prong of Rule 20(a)(1) does not require that all claims  
5 in the complaint arise from the same series of transactions or  
6 occurrences; rather it only requires that any claim for relief,  
7 common to all Plaintiffs, arises from the same series of  
8 transactions and occurrences. Second, a common question of fact  
9 will arise in the action - namely, whether the City's acts or  
10 omissions in training K-9 handlers constituted deliberate  
11 indifference.

12 Defendants' Motion to Sever fails to acknowledge that the  
13 City of Sacramento is a "common defendant" among all nine  
14 Plaintiffs. Accordingly, contrary to Defendants' argument, each  
15 plaintiff's claim does not "arise[] from a unique and separate  
16 transaction or occurrence *against a separate and unique*  
17 *defendant.*" Mot. at 1 (emphasis added). Therefore, Defendants'  
18 argument that Plaintiffs were improperly joined under Rule 20(a)  
19 has no merit. Both prongs of Rule 20(a)(1) are satisfied and the  
20 joinder of Plaintiffs in a single action was not improper.

## 21 2. Prejudice to Individual Defendants

22 Defendants argue that "severe and undue prejudice" would  
23 result from a joint trial. Mot. at 2. In a nearly identical  
24 case, the Ninth Circuit directly addressed and rejected this  
25 argument. Davis v. Mason Cnty., 927 F.2d 1473, 1479 (9th Cir.  
26 1991), overruled on other grounds by Davis v. City & Cnty. of San  
27 Francisco, 976 F.2d 1536, 1556 (9th Cir. 1992). In Davis,  
28 several plaintiffs brought a § 1983 action against a county, its

1 sheriff, and several deputies. Id. at 1479. Each plaintiff's  
2 claim arose from a separate traffic stop by a separate officer -  
3 and each stop culminated in the arrest and beating of that  
4 individual plaintiff. Id. at 1479. The Ninth Circuit held that  
5 the district court did not abuse its discretion when it denied  
6 the defendants' motion to sever each plaintiff's § 1983 claim  
7 into a separate trial. Id. at 1480. In part, defendants had  
8 argued that prejudice would result from a joint trial because  
9 "evidence of the series of incidents of excessive force involving  
10 different police officers [would be] admissible against the  
11 County and the Sheriff's Department," despite the fact that that  
12 evidence "would have been inadmissible against individual  
13 defendants not involved in the particular episode." Id. at 1479.  
14 The Ninth Circuit rejected that argument:

15 "Yet, while severing the defendants would have surely  
16 eliminated this prejudice, severing the plaintiffs  
17 would not have solved the problem. Even if each  
18 plaintiff had a separate trial, evidence of a pattern  
19 of misconduct would still have been admitted because  
20 each plaintiff . . . presented a claim against at least  
one defendant *and* against the County. Since defendants  
requested severance of the *plaintiffs'* claims, the  
court below did not abuse its discretion in rejecting  
the motion." Id. at 1479-80 (emphasis in original).

21 The case at bar presents the same situation. Even if the Court  
22 were to grant Defendants' motion to sever each Plaintiff's claim  
23 into a separate trial, the same evidence of each individual  
24 incident would be admissible, at each trial, to show a pattern of  
25 misconduct by Defendant City. Just as in Davis, the motion  
26 before the Court is to sever *Plaintiffs*, not Defendants.  
27 Accordingly, the Court's denial of Defendants' motion to sever  
28 would not result in any prejudice to individual Defendants.

1                   3.     Juror Confusion/Judicial Economy

2             Defendants argue that a joint trial would result in  
3 "confusion to the jury" and "would in no way promote judicial  
4 economy." Mot. at 2. Plaintiffs do not address the issue of  
5 jury confusion, but do note that "severance and litigating  
6 separately would be an extreme waste of court time." Opp. at 2-  
7 3.

8             Evaluation of these factors is soundly within the Court's  
9 discretion. Davis, 927 F.2d at 1479. Proper jury instructions  
10 would substantially mitigate any potential juror confusion.  
11 Moreover, the interest of judicial economy cuts strongly in favor  
12 of holding a joint trial: holding nine separate trials would not  
13 only be substantially burdensome on the Court's calendar, but  
14 would also likely result in the repeated presentation of  
15 identical evidence against Defendant City at each trial.  
16 Accordingly, the factors of juror confusion and judicial economy  
17 do not support Defendants' motion.

18             Finally, Defendants failed to explain why they waited over  
19 two years (and approximately two months before the trial date) to  
20 file this motion. Such a last minute request for relief that  
21 would cause significant disruption to the Court's calendar is  
22 neither encouraged nor, as in this case, likely to be granted.

23                                   III.    ORDER

24             For the reasons set forth above, the Court DENIES  
25 Defendants' Motion to Sever:

26             IT IS SO ORDERED.

27             Dated:   May 9, 2014

  
JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE