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6 UNITED STATES DISTRICT COURT
7 FOR THE EASTERN DISTRICT OF CALIFORNIA
8

9 ANTHONY TYRONE GARRISON,

No. 2:13-cv-0479 JAM KJN P

10 Plaintiff,

11 v.

ORDER

12 OFFICER BAUTISTA,

13 Defendant.
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15 I. Introduction

16 On July 1, 2014, the Magistrate Judge issued an order denying plaintiff's third request to
17 add the City of Vallejo as a defendant in this action. (See ECF No. 56.) On July 24, 2014,
18 plaintiff filed a motion for reconsideration.¹ (ECF No. 57.) Defendant has filed an opposition to
19 the motion (ECF No. 58); plaintiff has filed a reply (ECF No. 59). For the following reasons,
20 plaintiff's motion for reconsideration is denied.

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24 ¹ Although plaintiff's motion was entered on the court's docket on July 24, 2014, substantially
25 past the 14 days allowed for seeking reconsideration of the court's July 1, 2014 order, see Local
26 Rule 303(b), the motion is timely under the "mailbox rule." See Douglas v. Noelle, 567 F.3d
27 1103, 1107 (9th Cir. 2009) ("the mailbox rule" established in Houston v. Lack, 487 U.S. 266, 276
28 (1988), applies to Section 1983 suits filed by pro se prisoners, thus rendering the "filing date" of a
court document as the date plaintiff signs and delivers the document to prison authorities for
mailing). Because plaintiff signed his motion for reconsideration on July 10, 2014 (see ECF No.
57 at 1, 5), it is deemed timely filed by application of the mailbox rule.

1 I. Background

2 The Magistrate Judge's challenged order reviewed each of plaintiff's prior requests to add
3 the City of Vallejo as a defendant in this action, and the court's reasoning in denying those
4 requests. In denying plaintiff's third request, as set forth in plaintiff's request for leave to file his
5 proposed Third Amended Complaint (TAC), the Magistrate Judge stated (ECF No. 56 at 6-7):

6 Plaintiff explains that he recently obtained the lay legal assistance
7 of Mr. Frederick Cooley, who has been a plaintiff in other actions
8 in this court alleging excessive force by Vallejo Police Officers.
9 (See ECF No. 50, Exh. A (Plaintiff's Declaration).) Mr. Cooley has
10 filed a declaration in which he similarly avers that he is a "member
11 of a group of Vallejo residents who have or currently are attempting
12 to vindicate their rights against the City of Vallejo and Vallejo
13 Police Officers for claims of excessive force." (See ECF No. 50 at
14 11, Exh. B (Cooley Declaration).) Plaintiff states that Mr. Cooley
15 assisted him with the preparation of the instant motion and
16 proposed TAC. [¶] In addition, plaintiff has identified several
17 allegedly similar actions filed in this court, in which the City of
18 Vallejo has been named as a defendant based on allegations of
19 excessive force by City police officers. . . .

20 The undersigned finds that the delay and prejudice to defendant, if
21 amendment were allowed, outweighs any potential benefit to
22 plaintiff. Plaintiff's proposed allegation against the City --
23 "Defendant Bautista's conduct reflects a municipal practice, policy
24 or custom" (ECF No. 49-1 at 2) -- reflects no more than a
25 respondeat superior theory. Monell, 436 U.S. at 694-95. [Monell
26 v. Department of Social Services, 436 U.S. 658, 694 (1978).] This
27 proposed allegation is no more than a "naked assertion" devoid of
28 "further factual enhancement," Bell Atlantic Corp. v. Twombly,
550 U.S. 544, 557 (2007), quoted with approval in Ashcroft v.
Iqbal, 556 U.S. 662, 678 (2009). As such, it fails to meet the
pleading standard of Rule 8, Federal Rules of Civil Procedure.
Iqbal, 556 U.S. at 677-78 (claim must have facial plausibility).
Plaintiff's deposition testimony underscores this assessment --
"[b]ecause he's employed by the City of Vallejo. . . . He was
trained to assault me." (Pltf. Depo. at 34).

29 Review of the excessive force cases identified by plaintiff
30 reinforces this conclusion. While some cases have permitted the
31 action to proceed against the City, as well as the named officer,
32 others have refused to include the City on the ground that the
33 operative complaint failed to include sufficient allegations to
34 support a claim that official policy was responsible for the officer's
35 alleged misconduct. See, e.g., Muhammad v. City of Vallejo et al.,
36 Case No. 2:12-cv-01304 JAM DAD P (see ECF No. 4 at 2) ("the
37 City of Vallejo is not a proper defendant because there are no
38 allegations in the complaint that an official policy was responsible
for a deprivation of plaintiff's constitutional rights"); Black v. City
of Vallejo, Case No. 2:12-cv-01439 GEB DAD P (see ECF No. 14
at 1-2) ("if [plaintiff] wished to proceed against the City of Vallejo

1 he would need to allege facts indicating wrongdoing on the city's
2 part.)

3 These considerations support this court's assessment that it would
4 be futile to add the City of Vallejo to this action, in addition to
5 causing delay and prejudice to defendant. Allen, supra, 911 F.2d at
6 373. [Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir.
7 1990).] The filing of plaintiff's motion on the eve of the discovery
8 deadline (motion filed on February 18, 2014, three days before the
9 February 21, 2014 discovery deadline), while perhaps not indicative
10 of bad faith, would necessarily cause undue delay and significant
11 burden to defendant.

12 For these reasons, the undersigned finds that justice in this action
13 does not require further amendment of the complaint. See Fed. R.
14 Civ. P. 15(a) (leave to amend "shall be freely given when justice so
15 requires"). Accordingly, plaintiff's motion for leave to file his
16 proposed TAC is denied.

17 III. Motion for Reconsideration

18 A. Legal Standards

19 Local Rule 230 requires that a motion for reconsideration include identification of "what
20 new or different facts or circumstances are claimed to exist which did not exist or were not shown
21 upon such prior motion, or what other grounds exist for the motion," and a statement explaining
22 "why the facts or circumstances were not shown at the time of the prior motion." Local Rule
23 230(j)(3), (4). This rule derives from the "law of the case" doctrine, which provides that legal
24 decisions made in a case "should be followed unless there is substantially different evidence . . . ,
25 new controlling authority, or the prior decision was clearly erroneous and would result in
26 injustice." Handi Inv. Co. v. Mobil Oil Corp., 653 F.2d 391, 392 (9th Cir. 1981); see also
27 Waggoner v. Dallaire, 767 F.2d 589, 593 (9th Cir. 1985), cert. denied, 475 U.S. 1064 (1986).

28 In addition, Rule 60, Federal Rules of Civil Procedure, authorizes relief from an order for
"any . . . reason that justifies relief," Fed. R. Civ. P. 60(b)(6), subject to an "extraordinary
circumstances" standard, so as not to permit "a second bite at the apple," but to avoid inequitable
results and accomplish justice, In re Pacific Far East Lines, Inc., 889 F.2d 242, 250 (9th Cir.
1989).

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1 B. Analysis

2 In his present motion, plaintiff again seeks to amend his complaint to add the following
3 claim against the City of Vallejo:

4 Plaintiff is a member of a group of people and associate [sic] with
5 City of Vallejo resident[s] who have sought, is seeking and/or will
6 seek vindication of their Fourth Amendment rights not to be
7 subjected to unnecessary and excessive force by Vallejo Police
8 Officers. Plaintiff will be seeking damages for “Monell claims”
against the City of Vallejo for their longstanding [] practice, policy
or custom of allowing Vallejo Police Officers to use excessive
force. More specifically, Defendant Bautista’s conduct reflects a
municipal practice, policy or custom.

9 (ECF No. 49-1 at 1-2; see also ECF No. 57 at 2.) Plaintiff avers that this allegation, as framed,
10 mirrors the allegation in Hunter v. County of Sacramento, 652 F.3d 1225 (9th Cir. 2011), which
11 the Ninth Circuit found adequate to state a cognizable claim against the County of Sacramento.

12 Plaintiff’s reliance on Hunter is misplaced. In Hunter, the Ninth Circuit reversed the
13 district court’s denial of a motion for new trial filed by plaintiff Sacramento County Jail inmates.
14 The Ninth Circuit noted that, in an earlier ruling on defendants’ motion for summary judgment,
15 “the District Court dismissed all of plaintiffs’ claims except for their Monell claim against the
16 County of Sacramento . . . [which] alleged that they were subjected to excessive force, in
17 violation of their rights under 42 U.S.C. § 1983, pursuant to defendant’s longstanding practice or
18 custom of subjecting inmates at the Main Jail to excessive force.” Id. at 1227 (fn. omitted). The
19 Ninth Circuit emphasized that record evidence supported this claim.² Therefore, the Ninth Circuit

20 _____
21 ² The Ninth Circuit summarized the evidence supporting the district court’s earlier ruling as
22 follows:

23 In its ruling denying summary judgment on this claim, the District
24 Court’s opinion placed primary emphasis upon a declaration
25 submitted by plaintiffs’ expert, Lieutenant Twomey, a former
26 employee of the Sacramento County Sheriff’s Department . . . that
27 there were 40 to 50 “major incidents” of excessive force at the
Main Jail from 2000 to 2005. . . . The Court found that all of this
evidence created a material issue of fact as to whether the County
had a practice or custom of using excessive force, despite the fact
that the County had formal written policies prohibiting the use of
excessive force.

28 Hunter, 652 F.3d 1227-28.

1 found prejudicial error in the district court's rejection of plaintiffs' proposed Monell jury
2 instructions and remanded the action for a new trial.

3 In Hunter, record evidence supported plaintiffs' excessive force Monell claim, and thus
4 the summary allegations of plaintiffs' complaint. Although discovery has not concluded in the
5 instant case, the Magistrate Judge appropriately found that plaintiff's proposed claim against the
6 City of Vallejo fails to allege any specific facts from which to infer that the challenged conduct of
7 defendant officers was premised on a City policy or practice. Nor does plaintiff's briefing
8 identify specific facts that raise such an inference. The Magistrate Judge properly characterized
9 plaintiff's proposed claim as no more than a "naked assertion." (ECF No. 56 at 6.) Plaintiff
10 asserts no new or different facts or circumstances warranting reconsideration of the court's ruling.
11 See L.R. 230(j).

12 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for reconsideration (ECF
13 No. 57) is denied.

14 DATED: November 14, 2014

15 /s/ John A. Mendez

16 UNITED STATES DISTRICT COURT JUDGE
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