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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY TYRONE GARRISON,  
Plaintiff,  
v.  
OFFICER BAUTISTA,  
Defendant.

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

ORDER

Plaintiff is a state prisoner, currently incarcerated at California State Prison–Solano. Plaintiff proceeds, in forma pauperis and without counsel, in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff alleges that defendant Bautista, a police officer with the City of Vallejo Police Department, used excessive force during the course of an arrest by kicking plaintiff in the jaw. Presently before the court is defendant’s motion for summary judgment. (ECF No. 60.) Plaintiff filed an opposition (ECF No. 61), and defendant filed a reply (ECF No. 63).

Defendant submitted a declaration in support of his summary judgment motion. (ECF No. 60-4 at 1-2.) He therein avers:

I arrived at the scene of plaintiff's arrest after plaintiff had crashed and exited his vehicle. When I arrived, plaintiff was being taken into custody and handcuffed. I wrote a report that day confirming this and my involvement in the pursuit. A true and correct copy of the entire report is attached hereto as Exhibit 1. The portion I authored is entitled "Supplemental Report" and starts at page 10 of 11.

1 (Id. ¶ 5.)

2 The court has reviewed the police report which defendant filed. (ECF No. 60-4 at 3-16.)  
3 A portion of that report, apparently written by one Corporal Estudillo, provides as follows:

4 I purposely utilized a ‘round house’ kick striking the suspect in the  
5 side of his head to keep from reaching into his waistband. I utilized  
6 this emergency strike zone acting under the belief that the suspect  
was retrieving a gun. Upon kicking him he appeared to stop  
reaching and showed his hands.

7 (Id. at 14.)

8 Based on prior filings in this matter, the court is of the view that plaintiff may have  
9 misunderstood this portion of the police report. Plaintiff has, on at least three prior occasions,  
10 moved to file an amended complaint in this matter (to name the City of Vallejo and/or the Vallejo  
11 Police Department as defendants), and thrice been denied. (See ECF Nos. 22, 41, 49.) In  
12 conjunction with the last such motion, plaintiff filed a proposed Third Amended Complaint in  
13 which he alleged:

14 Defendant Bautista attempted to cover up his police report by  
15 saying he did a round house kick but the report clearly states  
16 Plaintiff was on the ground. Defendant Bautista attempted to make  
it seem like plaintiff had a weapon.

17 (ECF No. 49-1 at 1.) The court infers from this passage that plaintiff misread the quoted passage  
18 from the police report and believed it to be written by defendant, rather than by Corporal  
19 Estudillo, a non-party. The court is of the view that, particularly in light of his status as a pro se  
20 litigant, plaintiff should not be prejudiced by his misreading of the report, and should be  
21 permitted to proceed against the party who may have actually inflicted the injury on which he  
22 sues. Cf., Rand v. Rowland, 154 F.3d 952, 957, 958 (9th Cir. 1998) (noting that “we tolerate  
23 informalities from civil pro se litigants” and expressing “concern for the pro se prisoner litigant  
24 who also faces the unique handicaps of incarceration.”) Moreover, it would be a waste of  
25 resources, for all involved, to permit plaintiff to continue to proceed against the incorrect  
26 defendant.

27 The court has the power to sua sponte permit the amendment of a complaint to name  
28 additional defendants. See Fed R. Civ. P. 21 (“On motion or on its own, the court may at any


1 time, on just terms, add or drop a party.”) Moreover, “[t]he court should freely give leave [to  
2 amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Leave to amend is entrusted to the  
3 sound discretion of the trial court . . . .” Pisciotta v. Teledyne Indus., Inc., 91 F.3d 1326, 1331  
4 (9th Cir. 1996).

5 The court is mindful that there may be aspects of this case of which it is unaware and that  
6 ought to bear on its decision as to whether to allow plaintiff to proceed against Corporal Estudillo.  
7 Accordingly, the court will solicit defendant’s view as to the propriety of permitting plaintiff to  
8 amend the operative complaint to name Corporal Estudillo as a defendant.

9 In light of the foregoing, IT IS HEREBY ORDERED that:

- 10 1. Counsel for defendant Officer Bautista is ordered to show cause in writing, within  
11 fourteen days of entry of this order, as to why plaintiff should not be granted leave to  
12 file an amended complaint that names Corporal Estudillo as an additional defendant.  
13 If counsel does not oppose such an amendment, she should so indicate in her response  
14 to this order. Counsel should also indicate whether she is willing to accept service of  
15 an amended complaint on behalf of Corporal Estudillo.
- 16 2. The court will defer issuing findings and recommendations regarding defendant’s  
17 motion for summary judgment (ECF No. 60) until it decides the issue of whether  
18 plaintiff will be permitted to file an amended complaint herein.

19 Dated: May 4, 2015

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22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

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