

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 ANTHONY TYRONE GARRISON,

12 Plaintiff,

13 v.

14 OFFICER BAUTISTA,

15 Defendant.
16

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

ORDER OF CLARIFICATION

17 Plaintiff is a former state prisoner, who proceeds in forma pauperis and without counsel,
18 in this civil rights action filed pursuant to 42 U.S.C. § 1983.

19 By order filed July 29, 2015, the court directed plaintiff to either (i) notify the court if he
20 wished to continue to proceed against Officer Bautista as the sole named defendant in this action,
21 or else (ii) amend his complaint to add Corporal Estudillo as an additional named defendant.¹
22 Plaintiff was given 14 days to file his response. Defendant Bautista was advised that he would be
23 given an opportunity to oppose any motion to amend. (ECF No. 69.)

24 On August 11, 2015, plaintiff timely filed a motion to amend his complaint, together with
25 a proposed complaint and a declaration which provides in pertinent part as follows:²

26 _____
27 ¹ Both Officer Bautista and Corporal Estudillo were employed by the City of Vallejo Police
Department at the time of the alleged incident.

28 ² All typographical errors are as set forth in plaintiff's declaration.

1 2. On July 29, 2015, the Court issued an order directing me notify
2 the Court whether (i) I wish to continue against Valley Police
3 Officer Bautista as the sole named defendant in this action, or (ii) I
wish to amend his complaint to add Corporal Estudillo as an
additional named defendant.

4 3. I am requesting that the Court to clarify whether (ii) means that I
5 will only be allowed to amend Corporal Estudillo if Officer
6 Bautista is a continued defendant or will my amendment be allowed
to list Corporal Estudillo only to the complaint.

7 4. Because my intentions is to bring action against the officer that
8 kicked me in my face there would be no need to seek litigation
against two defendants when there was only one who violated my
constitutional rights.

9 5. If I am allowed to file an amended complaint amending Brian
10 Estudillo only to my complaint that would be my chose.


11 (ECF No. 70-1 at 1-2.)

12 Plaintiff is hereby advised that the court will permit plaintiff to proceed on his motion to
13 amend, with the understanding that he now wishes to proceed solely against Corporal Estudillo.
14 In response to the court's prior order to show cause, counsel for defendant Officer Bautista
15 indicated that "[i]n the event the court does move forward and adds Corporal Estudillo, counsel
16 will accept service on his behalf." (ECF No. 66 at 3.) The court has therefore proceeded to
17 establish herein a briefing schedule on plaintiff's motion to amend.

18 Accordingly, IT IS HEREBY ORDERED that, within twenty-one days of entry of this
19 order, proposed defendant Corporal Estudillo is directed to serve and file either an opposition or a
20 statement of non-opposition to plaintiff's motion to amend. If Corporal Estudillo files an
21 opposition, plaintiff is granted seven days thereafter in which to file a reply.

22 Dated: August 28, 2015

23
24 garr0479.clarify


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE