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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. CV-09-1366 MHP

RODNEY GEE
Plaintiff,

MEMORANDUM & ORDER

v.

Re: Motion to Vacate the Court’s August 14, 2009 Memorandum and Order Regarding County Defendants’ Motion to Dismiss

SUSAN DELL’ARA, *et al.*,
Defendants.

Plaintiff Rodney Gee brings this action against the County of San Mateo, County of San Mateo Sheriff’s Department, Sheriff’s Deputy Susan Dell’Ara, Sheriff Greg Munks, Lead Special Agent Michael Toscano, and Special Agent Supervisor Michael Price, (collectively “County defendants), and the City of Pacifica, Pacifica Police Department, Police Chief James Saunders, and Police Officers Steve Sheldon, Fernando Really Vasquez, David Bertini and Joe Spanheimer, collectively (“Pacific defendants”), alleging constitutional violations in relation to the search of his home and his arrest, actionable under 42 U.S.C. section 1983. The County defendants brought a motion to dismiss the complaint for failure to state a claim and for lack of subject matter jurisdiction, and, at that time, asked the court to take judicial notice of the search warrants at issue in this action. The court took such notice and, after considering the parties arguments and submissions, treated the motion as a motion for partial summary judgment. In so doing, the court held that there was no probable cause supporting the search warrants obtained by Sheriff’s Deputy Susan Dell’Ara and

United States District Court
For the Northern District of California

1 Lead Special Agent Michael Toscana. The Pacifica defendants did not participate in the briefing or
2 arguments.

3 The Pacifica defendants now move the court to vacate its order invalidating the warrants.
4 They argue that the court's ruling as to the County defendants' motion to dismiss is moot because
5 plaintiff has since settled his claims with the County defendants and that because the Pacifica
6 defendants did not have notice that the court would treat the motion to dismiss as a motion for partial
7 summary judgment, they did not have the opportunity to present arguments in support of their
8 position that the warrants were valid. The court declines to vacate its previous order. Rather, the
9 court will not consider its conclusions with respect to the County defendants' motion as the law of
10 the case with respect to the remaining claims against the Pacifica defendants. The court invites the
11 Pacifica defendants to proceed with their own motion for summary judgment as to plaintiff's
12 remaining claims. At that time, the court will consider any new arguments advanced by the Pacific
13 defendants as well as the court's previous conclusions in its August 2009 memorandum and order.

14
15 IT IS SO ORDERED.

16
17 Dated: March 29, 2011



MARILYN HALL PATEL
United States District Court Judge
Northern District of California