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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOVENDER FLEMING,)	
)	
Plaintiff(s),)	No. C09-1613 BZ
)	
v.)	
)	
NADIA CLARK, et al.,)	
)	and Consolidated Case
Defendant(s).)	
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VICTOR JONES,)	
)	
Plaintiff(s),)	No. C09-4757 BZ
)	
v.)	
)	
NADIA CLARK, et al.,)	ORDER DENYING MOTION TO
)	REOPEN DISCOVERY
Defendant(s).)	
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IT IS HEREBY ORDERED that plaintiffs' motion to reopen discovery is **DENIED** for the following reasons:

1. Plaintiffs were given leave to file a motion for reconsideration of the Court's earlier Order Declining to Reopen Discovery. Instead they filed this motion. Plaintiffs have not met the standards for reconsideration under Civil L.R. 7-9(a)(2).

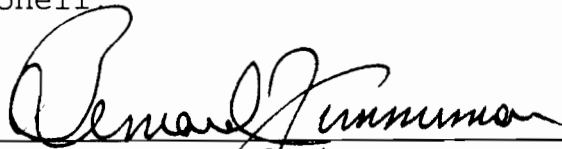
1 2. Even assuming that the motion is proper, plaintiffs
2 have failed to show good cause for reopening discovery.
3 Plaintiffs' legal argument is the ultimate boot strap. Having
4 induced the Court to permit plaintiffs to amend their
5 complaint to include a Monell claim by, among other grounds,
6 asserting that no additional discovery was needed on the
7 Monell claim, plaintiffs now attempt to reopen discovery on
8 the grounds that "this Court granted plaintiff [sic] leave to
9 amend their complaint to include a municipal liability claim
10 against the City of Oakland, however without the opportunity
11 to conduct discovery directed to this claim." (Motion p.2,
12 lines 21-23). The Court did not grant them that opportunity
13 because it was told it wasn't needed.

14 3. Plaintiffs have not satisfactorily explained why the
15 discovery they now seek was not conducted earlier. While it
16 is true that the Jones case only had a discovery window of a
17 few months, discovery was open in Fleming for over a half
18 year. In Fleming's case management statement, she advised the
19 Court last June that an issue in the case is whether
20 defendants "knew or should have known that Victor Jones had a
21 valid marijuana grower's permit" and that she intended to
22 depose "those who have information on the city of Oakland's
23 training" and propound interrogatories and document requests.
24 (Document 18, p.6, lines 4-5). While plaintiffs concede they
25 took some discovery on the Monell issues, they do not explain
26 why they did not take the discovery they now seek, especially
27 the request for document production and the interrogatories.
28 It is hard for the Court to understand why plaintiffs could

1 not request documents and serve interrogatories on the Monell
2 claim until after they had finished taking depositions on the
3 narrower tort claims.

4 4. Nor have plaintiffs established an overriding need
5 for this discovery, such that the Court would be willing to
6 overlook their earlier conduct. At the hearing, it appeared
7 that in discovery plaintiffs have learned that defendants have
8 no policy on whether in deciding to search the property of an
9 Oakland resident suspected of growing marijuana, police
10 officers are required to check first to see whether the
11 resident has a permit for growing marijuana for medical
12 purposes. Defendants agreed that there is no such policy. It
13 does not appear that further discovery on this point is
14 necessary for purposes of presenting plaintiffs' Fourth
15 Amendment claim under Monell.

16 Dated: July 7, 2010



17
18 Bernard Zimmerman
United States Magistrate Judge

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20 DISCOVERY.wpd
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