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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT DABNEY, et al.,)	
)	
Plaintiff(s),)	No. C09-4116 BZ
)	
v.)	
)	ORDER GRANTING SECOND MOTION
CITY OF HAYWARD, et al.,)	TO DISMISS
)	
Defendant(s).)	
_____)	

Before the Court is the defendant's second motion to dismiss this civil rights complaint on two grounds. When counsel for plaintiffs failed to appear at oral argument, I continued the hearing for two weeks. Upon reflection, I have concluded that there is no need for argument at this time and **VACATE** the hearing presently scheduled for **May 19, 2010**.

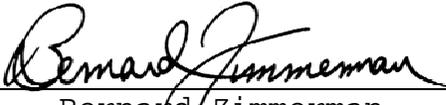
Defendant is correct that the amended complaint still fails to adequately plead a Monell claim. Under Monell v. Department of Social Services, 436 U.S. 658, 692-95 (1978), "A local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is

1 when execution of a government's policy or custom, whether
2 made by its lawmakers or by those whose edicts or acts may
3 fairly be said to represent official policy, inflicts the
4 injury that the government as an entity is responsible under §
5 1983." Id. at 694. Plaintiffs were cautioned about this
6 failing when I granted the earlier motion to dismiss. Yet
7 plaintiffs failed to meaningfully amend their complaint. The
8 amended complaint is simply devoid of any allegations
9 regarding a policy, custom, or action of a policymaker. Nor
10 did plaintiffs explain in their opposition why they did not
11 need to meet the Monell standard.

12 In as much as the City of Hayward is the only defendant,
13 I see no reason to consider its other argument - that the
14 complaint fails to state sufficient facts to constitute a
15 plausible claim against the Doe defendants.

16 **IT IS THEREFORE ORDERED** that defendant's motion to
17 dismiss is **GRANTED** with leave to amend. Plaintiffs are given
18 one final opportunity to plead an adequate civil rights claim
19 against defendant. Their amended complaint shall be filed by
20 **May 19, 2010.**

21 Dated: May 5, 2010

22 
23 _____
24 Bernard Zimmerman
25 United States Magistrate Judge

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27 DISMISS.wpd
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