

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA

4 RONALD BOYEDE OLAJIDE,

5 Plaintiff,

6 v.

7 MICHAEL ARSANIS, et al.,

8 Defendants.

Case No. [12-cv-04303-WHO](#)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT; SETTING
DEPOSITION DATE**

9
10 Re: Dkt. No. 120

11 **INTRODUCTION**

12 Pro se plaintiff Ronald Olajide has filed a motion for leave to file a first amended
13 complaint. Dkt. No. 120. For the reasons states below, the motion is GRANTED IN PART and
14 DENIED IN PART. The Court also addresses issues regarding the deposition of Mr. Olajide.

15 **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

16 According to Mr. Olajide, his proposed amended complaint provides additional factual
17 allegations, changes the statutes on which his claims are based, and adds five individual
18 defendants: Oakland Mayor Jean Quan, Alameda Supervisor Keith Carson, Oakland City
19 Councilmember Larry Reid, and Alameda law enforcement officers Anthony Banks Jr. and
20 Valmore Courtney.

21 The Court GRANTS Mr. Olajide leave to file an amended complaint adding officers Banks
22 and Courtney as defendants. Mr. Olajide alleges that Officers Banks and Courtney were directly
23 involved in the conduct at issue and the allegations as to them relate to the same facts alleged in
24 the initial complaint. The high-level issues regarding Officers Banks and Courtney are therefore
25 already known to defense counsel¹ and the officers are not prejudiced by being added to this action
26 at this stage, especially in light of the new trial schedule set by the Court during the case

27
28 ¹ At oral argument, Alameda County Counsel stated that he would likely represent officers Banks and Courtney if they were added to the action.

1 management conference on December 3, 2013.

2 The Court DENIES Mr. Olajide leave to file an amended complaint adding Mayor Quan,
3 Supervisor Carson, and Councilmember Reid as defendants. Mr. Olajide does not allege that these
4 public officials were directly involved in the conduct at issue. Rather, Mr. Olajide alleges that
5 these officials ratified the law enforcement officers' conduct by failing to investigate and arrest the
6 officers. These allegations do not relate to the facts already alleged in the Complaint and it would
7 be prejudicial to add these defendants at this stage. Moreover, the Court finds that granting leave
8 to amend to add Mayor Quan, Supervisor Carson, and Councilmember Reid as defendants would
9 be futile. To hold a policymaker liable for ratifying underlying conduct, "there must be evidence
10 of a 'conscious, affirmative choice' by the policymaker to approve a subordinate's decision, and
11 the basis for it." *Gillette v. Delmore*, 979 F.2d 1342, 134-48 (9th Cir. 1992). Mr. Olajide has
12 pleaded no evidence of a "conscious, affirmative choice" by Mayor Quan, Supervisor Carson, or
13 Councilmember Reid and his claims against them fail.

14 Mr. Olajide's original complaint moved for relief under Title 42 of the United States Code,
15 including sections 1981 and 1983. His proposed amended complaint instead moves for relief
16 under 42 Stat.27 and 17 Stat.13 of the Civil Rights Acts of 1866 and 1871. At oral argument, Mr.
17 Olajide stated that he wishes to move under the Civil Rights Acts rather than under Title 42
18 because Title 42 is not passed by Congress and he only wishes to resort to original laws passed by
19 Congress. The distinction drawn by Mr. Olajide is not compelling to the Court. The Civil Rights
20 Acts of 1866 and 1871 have been codified at 42 U.S.C. Sections 1981, 1982 and 1983. *See, e.g.,*
21 *Wyatt v. Cole*, 112 S. Ct. 1827, 1831 (1992) (noting that the Civil Rights Act of 1871 "is codified
22 at 42 U.S.C. § 1983"); *Scott v. Eversole Mortuary*, 522 F.2d 1110, 1113 (9th Cir. 1975) (noting
23 that the Civil Rights Act of 1866 was "recodified in its present form in 42 U.S.C. ss 1981, 1982").
24 Accordingly, 42 U.S.C. Section 1983 is the proper vehicle for Mr. Olajide's claims. Whether Mr.
25 Olajide cites the Civil Rights Acts or Title 42, the Court will interpret his Complaint as alleging
26 claims under 42 U.S.C. Section 1983.²

27 _____
28 ² For an overview of the process of codification, see
<http://uscode.house.gov/codification/legislation.shtml>

1 **DEPOSITION OF MR. OLAJIDE**

2 The parties indicated that they have been unable to settle on a date to depose Mr. Olajide.
3 As ordered at the case management conference, Mr. Olajide shall be deposed on January 23, 2014.
4 The defendants shall arrange for a certified court reporter and, with prior notice, a videographer to
5 report and record the deposition. The defendants shall disclose the reporter and his/her reporting
6 certification to Mr. Olajide at least 48 hours in advance of the deposition. The Court will be
7 available by telephone, through the Courtroom Deputy, if an emergency arises during the
8 deposition that requires the Court’s attention. The parties and counsel are expected to treat each
9 other with respect and not obstruct the deposition.

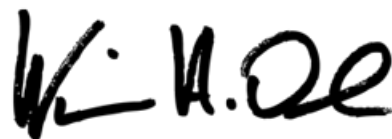
10 **CONCLUSION**

11 Mr. Olajide’s motion for leave to file an amended complaint is GRANTED IN PART and
12 DENIED IN PART. **Within 10 days of this Order, Mr. Olajide shall file his amended**
13 **complaint with the Court.** The amended complaint shall strike (not include) allegations
14 regarding Mayor Quan, Supervisor Carson, or Councilmember Reid and shall strike the following
15 paragraphs as they relate only to the futile ratification theory of liability discussed above: F, G, H,
16 29, 30, 31, 42, 57, 58, 59. Mr. Olajide shall serve the new defendants promptly with the amended
17 complaint if their counsel is unable to accept service for them. Defendants’ responsive pleading or
18 motion shall be filed **no later than** January 13, 2014 and shall be set for hearing **no later than**
19 February 19, 2014.

20 Mr. Olajide shall be deposed on January 23, 2014, according to the guidelines stated
21 above.

22
23 **IT IS SO ORDERED.**

24 Dated: December 4, 2013

25 

26
27 WILLIAM H. ORRICK
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RONALD BOYEDE OLAJIDE,
Plaintiff,

Case Number: CV12-04303 WHO
CERTIFICATE OF SERVICE

v.

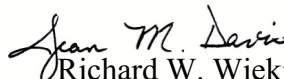
MICHAEL J. GAFFEY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 4, 2013, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the U.S. Mail.

Ronald Boyede Olajide
C/O 4200 PARK BLVD
137
OAKLAND, CA 94602

Dated: December 4, 2013


Richard W. Wieking, Clerk
By: Jean Davis, Deputy Clerk