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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK J TOBIN,
Plaintiff,

v.

CITY & COUNTY OF SAN FRANCISCO
POLICE DEPARTMENT, et al.,
Defendants.

Case No. [13-cv-01504-MEJ](#)

**ORDER CONTINUING HEARING ON
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT; REQUIRING
FURTHER BRIEFING**

Re: Dkt. No. 94

The July 14, 2016 hearing scheduled in this matter is hereby **CONTINUED** until August 11, 2016. The Court further **ORDERS** the parties to file supplemental briefs on the following issues the Court finds relevant to Defendant's motion for summary judgment:

1. Plaintiff did not present his claims to the City in compliance with the California Government Tort Claims Act (Cal. Govt. Code § 900, et seq.) until December 2011. Can Plaintiff "relate" his state law claims back to the original complaint, which had not been presented to the City as required by California Government Code sections 900, et seq.?
2. If Plaintiff's claims accrued no later than May 2010 (*see* Mot., Dkt. No. 94-1 at 13), are his claims barred by both California Government Code sections 945.6(a)(1) & (2)?

The parties shall file these supplemental briefs no later than **July 21, 2016**. The briefs shall not exceed two double-spaced pages and shall consist of a response to each question posed and supporting legal authority. Arguments unsupported by legal authority shall be stricken.

In addition, the Court observes that in many instances, Plaintiff has not "cit[ed] to particular materials in the record" (Fed. R. Civ. P. 56(c)) to establish a triable fact exists as to

1 certain issues. Plaintiff also has failed to identify “additional facts that establish a genuine issue of
2 material fact or otherwise preclude judgment in favor of” defendant (*see* Case Management Order,
3 Dkt. No. 43 at 3). Pursuant to Rule 56(e)(1), the Court will allow Plaintiff the opportunity to
4 identify specific portions of the record that create a triable fact regarding the following five issues:

- 5 1. When and how Plaintiff engaged in protected speech.
- 6 2. Why Plaintiff acted as a private citizen and not in his capacity as a public employee
7 when he engaged in protected speech.
- 8 3. Whether officers other than Plaintiff earned Like Work Like Pay (“LWLP”) after
9 2009.
- 10 4. Whether Plaintiff was denied LWLP for retaliatory reasons, or rather because there
11 was no assigned lieutenant whose duties Plaintiff would be performing and/or
12 because Plaintiff never received permission to receive LWLP from his Captain,
13 Commander, or Deputy Chief.
- 14 5. When and how Defendant took retaliatory action against Plaintiff after May 2010,
15 and why that action was retaliatory.

16 No later than **July 21, 2016**, Plaintiff shall file another supplemental statement identifying, by
17 Docket Number, page, and where appropriate, line number, those portions of the record *on*
18 *summary judgment* (i.e., Dkt. Nos. 94-102) that he contends create a triable fact on these five
19 issues as they are framed by the summary judgment briefs. Plaintiff shall only address evidence
20 referenced in the summary judgment briefs; he may not augment the record. The declaration shall
21 consist only of specific citations to the record on summary judgment relating solely to these five
22 issues; it shall include no argument.


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No later than **July 28, 2016**, Defendant may file a supplemental response to Plaintiff's statement identifying specific citations to the record that respond to Plaintiff's evidence and/or objecting to the evidence.

IT IS SO ORDERED.

Dated: July 12, 2016



MARIA-ELENA JAMES
United States Magistrate Judge