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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOEL RAMIREZ,
Plaintiff,
v.
CITY OF HAYWARD, et al.,
Defendants.

Case No. [14-cv-01264-MEJ](#)
**ORDER RE: MOTION TO DISMISS
AND MOTION TO STRIKE**
Re: Dkt. Nos. 9, 10

INTRODUCTION

Plaintiff Noel Ramirez brings this 42 U.S.C. § 1983 case against Defendants City of Hayward (the “City”), Police Chief Diane Urban, Officer Jonathan McLeod, and Officers Doe 1-25 for alleged use of excessive force. Before the Court is the City’s Motion to Dismiss pursuant to Federal Rule of Civil Procedure 21, filed April 14, 2014 (Dkt. No. 10), as well as the City’s Motion to Strike Portions of the Complaint pursuant to Federal Rule of Civil Procedure 12(f)(2), filed April 14, 2014 (Dkt. No. 9). Having considered the parties’ papers and relevant legal authority, the Court **GRANTS** the City’s Motion to Dismiss WITH LEAVE TO AMEND. The Court also **GRANTS** the City’s Motion to Strike Portions of the Complaint.

BACKGROUND

The following background is taken from Plaintiff’s Complaint, filed March 18, 2014. Dkt. No. 2 (“Compl.”). Plaintiff alleges that on the morning of March 4, 2013, an officer of the Hayward Police Department stopped the vehicle in which Plaintiff and his friends were riding. *Id.* ¶ 13. Plaintiff originally believed this officer was Jonathan McLeod. *Id.* ¶ 14. Once Plaintiff and his friends complied with the police officer’s request for identification, the officer allowed them to

1 leave. *Id.*

2 Approximately one hour later, Hayward police officers again stopped Plaintiff and his
3 friends. *Id.* ¶ 15. Plaintiff alleges that at this point, without justification or cause, the police
4 officers used excessive and unreasonable force against him by pulling him from the car, throwing
5 him face down on the cement, and placing him in handcuffs. *Id.* ¶¶ 15-16.

6 On March 18, 2014, Plaintiff filed the present Complaint, alleging nine causes of action
7 related to the incident: (1) a claim under 42 U.S.C. § 1983 against Officer Jonathan McLeod, Doe
8 Officers 1-25, and Police Chief Diane Urban, both individually and in their official capacities for
9 depriving Plaintiff of his rights under the Fourth and Fourteenth Amendments; (2) a claim under
10 42 U.S.C. § 1983 against Officer Jonathan McLeod, Doe Officers 1-25, and Police Chief Diane
11 Urban, both individually and in their official capacities for depriving Plaintiff of his rights under
12 the Equal Protection Clause of the Fourteenth Amendment; (3) a claim under 42 U.S.C. § 1983
13 against Officer Jonathan McLeod, Doe Officers 1-25, and Police Chief Diane Urban, both
14 individually and in their official capacities pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S.
15 658 (1978), for their failure to develop proper policies regarding racial discrimination and the
16 provision of medical care, and for their failure to properly train Officer McLeod in the use of force
17 during arrest; and state law claims of (3) assault and battery, (4) false arrest, (5) intentional
18 infliction of emotional distress, (6) violation of California Civil Code section 52.1; and (7)
19 negligence against Officer McLeod. Dkt. No. 2.

20 On April 14, 2014, the City filed a Motion to Strike (Dkt. No. 9) and a Motion to Dismiss
21 (Dkt. No. 10). In the Motion to Strike, the City moves to strike all claims against Chief Urban as
22 redundant of the official capacity suit. Mot. to Strike at 4. Plaintiff filed an Opposition¹ on April
23 30, 2014 (Dkt. No. 11) and the City filed a Reply on May 4, 2014 (Dkt. No. 13). In the Motion to
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25 ¹ In his Opposition, the Court requested the Court enter sanctions against the City, arguing that its
26 motions were frivolous and premature. Opp'n to Mot. to Strike at 4. Plaintiff's Motion for
27 Sanctions fails to comply with Federal Rule 11(c)(2) which requires a motion for sanctions to be
28 made separately from any other motion. It also fails to comply with Local Rule 7-2(a), which
requires motions to be noticed not less than 35 days after filing. Accordingly, the Court denies
Plaintiff's request to impose sanctions.

1 Dismiss, the City argues that this Court should dismiss Officer Jonathan McLeod as a party
2 because he was erroneously named as a defendant in this matter. Mot. to Dismiss at 2. Plaintiff
3 filed an Opposition to the motion on April 30, 2014 (Dkt. No. 12) and the City filed a Reply on
4 May 4, 2014 (Dkt. No. 14). On May 20, 2014, the Court found the motions suitable for
5 disposition without oral argument and vacated the noticed May 22, 2014 hearing. Dkt. No. 15.

6 **DISCUSSION**

7 **A. Motion to Strike Redundant Claims**

8 The City moves to strike all claims alleged against Chief Urban as redundant of the official
9 capacity claims alleged against the City. Mot. to Strike at 4. Plaintiff argues that this motion is
10 unnecessary because he has already agreed to strike the redundant claims. Opp'n at 3. As
11 Plaintiff does not oppose the motion, the Court GRANTS the Motion to Strike.

12 **B. Motion to Dismiss an Incorrectly Named Party**

13 The City moves to dismiss Officer Jonathan McLeod pursuant to Federal Rule of Civil
14 Procedure 21 because he was erroneously named as a defendant. Mot. to Dismiss. at 4. In
15 response, Plaintiff asks that the motion to dismiss be denied with prejudice and that Plaintiff be
16 granted leave to amend to dismiss Officer Jonathan McLeod and add Officer Richard McLeod as a
17 defendant. Opp'n to Mot. to Dismiss at 3.

18 “On motion or on its own, the court may at any time, on just terms, add or drop a party.
19 The court may also sever any claim against a party.” Fed. R. Civ. P. 21. Rule 21 ““should be
20 construed and administered to secure the just, speedy, and inexpensive determination of every
21 action and proceeding.”” *Otsuka v. Polo Ralph Lauren Corp.*, 2010 WL 366653, at *7 (N.D. Cal.
22 Jan. 25, 2010) (quoting Fed. R. Civ. 21).

23 As Plaintiff does not oppose the merits of the City’s Motion to Dismiss, the Court
24 GRANTS the motion WITH LEAVE TO AMEND to add Officer Richard McLeod as a defendant.

25 **CONCLUSION**

26 Based on the foregoing, the Court GRANTS the City’s Motion to Strike the claims against
27 Chief Urban as redundant of the official capacity suit. The Court also GRANTS the City’s
28 Motion to Dismiss Officer Jonathan McLeod as an incorrectly named party, with leave to amend

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to add Officer Richard McLeod as a defendant. Plaintiff shall file an amended complaint by August 28, 2014.

IT IS SO ORDERED.

Dated: August 14, 2014



MARIA-ELENA JAMES
United States Magistrate Judge