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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY MCCARTHY III, an individual,

Plaintiff,

No. C 16-06782 WHA

v.

RYAN MONTOYA, individually and in his  
capacity as a Deputy Sheriff for the Contra  
Costa County Sheriff’s Department,

Defendant.

**ORDER RE MOTION FOR  
LEAVE TO FILE AMENDED  
COMPLAINT AND  
VACATING HEARING**

The Court has read the proposed amended complaint and finds it confusing and ambiguous. One point of confusion is whether plaintiff merely “presumably warned” (Third Amd. Compl. ¶ 8) versus actually “alerted defendant Montoya” (*Id.* at ¶6). Further, does “alerted” mean *expressly* told? Plaintiff was there and should know. A second point of confusion is that Hacker is now listed as “Cornbread,” but in the past was “Cornfed.” Which one was it? Additionally, the sequence of events in paragraphs six through nine are not in chronological order and jump back and forth between events on October 21 and October 22, making it impossible to understand what plaintiff told Montoya and when (since it appears that there were *two* interchanges between plaintiff and Montoya).


The Court will give plaintiff one last final opportunity to fix these problems as well as problems identified by defendant. The Court is not suggesting that if these ambiguities and points of confusion are fixed the pleading will fly. The Court is only saying it is impossible to

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evaluate the proposed pleading because of its form. A revised complaint is due one week from today on June 6, 2018. Defendant will then have two weeks, until June 20, to file a response. Plaintiff will then have one week, until June 27 to reply. The hearing date is vacated, the new hearing date is **JULY 5, 2018, AT 8:00 A.M.** The pending motion is **DENIED WITHOUT PREJUDICE** to file a new motion.

**IT IS SO ORDERED.**

Dated: May 30, 2018.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE