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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6 KRISTOPHER KLAY,
7 Plaintiff,

8 v.

9 SANTA CRUZ COUNTY SHERIFF'S
10 OFFICE, et al.,
11 Defendants.

Case No. 14-cv-00326-BLF

**ORDER VACATING MOTION
HEARINGS AND SUBMITTING
PENDING MOTIONS WITHOUT ORAL
ARGUMENT; GRANTING MOTION
FOR LEAVE TO AMEND THE
COMPLAINT; AND DENYING AS
MOOT MOTION TO DISMISS**

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14 Before the Court are (1) a motion to dismiss the operative first amended complaint
15 (“FAC”) filed by Defendant City of South Lake Tahoe (“City”) and set for hearing on February
16 19, 2015; and (2) a motion for leave to file a second amended complaint (“SAC”) filed by Plaintiff
17 Kristopher Klay and set for hearing on April 2, 2015.

18 Plaintiff’s proposed SAC attempts to cure the deficiencies raised in City’s motion to
19 dismiss the FAC and also adds new claims. City nonetheless urges the Court to proceed with
20 hearing its motion to dismiss on February 19 without consideration of Plaintiff’s proposed
21 amendments. City contends that if the Court were to permit the proposed amendment, City would
22 be prejudiced in that the case would be delayed and discovery that is under way would have to be
23 modified. City also contends that in any event the proposed amendments are futile and that
24 Plaintiff’s addition of new claims contravenes the Court’s verbal directions given at the last CMC.

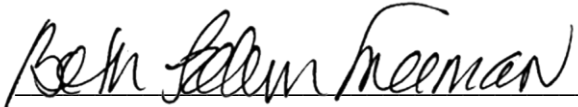
25 The proposed amendments are not obviously futile. Nor does Plaintiff’s motion for leave
26 to add new claims contravene this Court’s directions. While the Court did comment at the CMC
27 that Plaintiff would not be permitted to add new claims if the FAC were dismissed with leave to
28 amend, the Court indicated that Plaintiff could file a motion for leave to amend to add new claims,

1 which is precisely what Plaintiff has done. The Court is sensitive to City's concerns regarding
2 delay of the case. Having considered the matter carefully, the Court concludes that for reasons of
3 judicial economy and to avoid delay, the most sensible course is to vacate the hearings on the
4 pending motions, grant Plaintiff's motion for leave to file a SAC, and deny as moot City's motion
5 to dismiss the FAC. Moreover, the Court will give City the option of noticing a new motion to
6 dismiss the SAC for April 2, 2015 – the date previously reserved for Plaintiff's motion for leave to
7 amend – so long as City files its motion on or before March 5, 2015. Deadlines for opposition and
8 reply are fourteen and seven days, respectively, consistent with Civil Local Rule 7-3.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 (1) City's motion to dismiss and Plaintiff's motion for leave to amend are
11 SUBMITTED without oral argument and the hearings on those motions are
12 VACATED;
- 13 (2) Plaintiff's motion for leave to amend is GRANTED; Plaintiff shall file his SAC on
14 or before February 11, 2015;
- 15 (3) City's motion to dismiss the FAC is DENIED AS MOOT; and
- 16 (4) City may notice a motion to dismiss the SAC for April 2, 2015 so long as the
17 motion is filed on or before March 5, 2015.

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19 Dated: February 9, 2015

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21 BETH LABSON FREEMAN
22 United States District Judge
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