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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIASHIKEB SADDOZAI,
Plaintiff,

v.

LOMU, et al.,
Defendants.

Case No. 18-04047 BLF (PR)

**ORDER DENYING MOTIONS FOR
RECONSIDERATION OF
APPOINTMENT OF COUNSEL;
GRANTING EXTENSION OF TIME;
DENYING LEAVE TO FILE
AMENDED COMPLAINT;
GRANTING MOTION TO STRIKE;
TERMINATING MOTIONS;
INSTRUCTIONS TO CLERK**

(Docket Nos. 44, 48, 51, 52, 61, 62)

Plaintiff, a state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against employees at the Maguire Correctional Facility (“MCF”) in San Mateo County. On July 11, 2019, the Court found the amended complaint, Dkt. No. 10, liberally construed, stated a cognizable Eighth Amendment claim for deliberate indifference to serious medical needs against Defendants Deputy Sheriffs Lomu and Copeland. Dkt. No. 22 at 2. The Court ordered the matter served on Defendants, directing them to file a dispositive motion or notice regarding such motion. *Id.* On December 31, 2019, Defendants filed a motion for summary judgment. Dkt. No. 46. Defendants then filed an amended motion to change the hearing date in their original motion. Dkt. No. 48. The Court thereafter vacated all hearings as the matter was deemed submitted upon the

1 filing of Defendants’ reply. Dkt. No. 50. Accordingly, the Court shall order the Clerk to
2 terminate the pending motion under Docket No. 48, as this matter shall proceed on the
3 summary judgment motion filed under Docket No. 46. The Court will address below
4 several pending motions other than Defendants’ summary judgment motion, which will be
5 addressed in a separate order.

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7 **DISCUSSION**

8 **A. Motions for Reconsideration Regarding Appointment of Counsel**

9 Plaintiff filed a motion for reconsideration of the last court order denying him
10 appointment of counsel, asserting new grounds. Dkt. No. 51. Defendants oppose the
11 motion. Dkt. No. 57. In his motion, Plaintiff also generally requests a preliminary
12 injunction and court order for prison officials to “cease and desist violence, harassment and
13 retaliation to interfere[e] with plaintiff’s civil action.” *Id.* at 2. At the time he filed the
14 motion, Plaintiff was housed at Corcoran State Prison (“CSP”), which is not a party to this
15 action. Accordingly, the Court has no jurisdiction over CSP or any of its employees in this
16 action to issue an injunctive order against them. Plaintiff must file any new claims against
17 CSP employees in a separate civil rights action.

18 As Defendants point out, this is now Plaintiff’s fourth attempt to have counsel
19 appointed in this matter. Dkt. No. 57 at 2. Defendants assert that Plaintiff fails to show
20 that his changed circumstances warrant appointment of counsel. *Id.* at 4-5. Plaintiff
21 asserts the following grounds for appointment of counsel: lack of legal material and access
22 to the law library and legal assistance, and the need for assistance to conduct discovery.
23 Dkt. No. 51 at 4-7. The Court notes that despite the challenges he alleges, Plaintiff has
24 managed to litigate this case by filing numerous documents, including an opposition to
25 Defendants’ summary judgment motion along with exhibits in support as well as a motion
26 for leave to file an amended complaint. *See* Dkt. Nos. 41-1, 49, 51, 52, 53, 54.
27 Accordingly, the motion for reconsideration is DENIED for lack of changed
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1 circumstances. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th
2 Cir. 2004); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997); *Terrell v. Brewer*, 935
3 F.2d 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.
4 1986). For the same reasons discussed above, Plaintiff’s nearly identical motion for
5 reconsideration, filed shortly after Defendants’ summary judgment motion became
6 submitted, is DENIED. Dkt. No. 61.

7 **B. Motion for Extension of Time**

8 In the same motion for reconsideration, Plaintiff concurrently requested an
9 extension of time without specifying what the extension of time was for. Dkt. No. 51 at 2,
10 13. The Court notes that at the time he filed the motion, Plaintiff’s opposition was due no
11 later than twenty-eight days after Defendants’ summary judgment was filed, *i.e.*, no later
12 than January 28, 2020. *See* Dkt. Nos. 22, 46. Plaintiff filed his opposition on February 19,
13 2020. Dkt. No. 54. Accordingly, to the extent that Plaintiff was seeking an extension of
14 time to file an opposition, the motion is GRANTED. Plaintiff’s opposition filed on
15 February 19, 2020, is deemed timely filed.

16 **C. Motion for Leave to File Amended Complaint**

17 Plaintiff filed a motion for leave to file another amended complaint to add the
18 Sheriff of San Mateo County and the City of Redwood City (the “City”) as defendants to
19 this action. Dkt. Nos. 52, 51-1. He asserts that the grounds for liability is that Defendants
20 Copeland and Lomu were each acting as the “agent, servant, and employee” of the Sheriff
21 when they acted with deliberate indifference to Plaintiff’s serious medical needs. *Id.* at 2,
22 4. Plaintiff claims that the Sheriff “conspired or acted jointly under the color of state law
23 pursuant to a policy or custom with... the City of Redwood City, California, and liable for
24 the Sheriff’s actions whom are county policymakers at least for the purpose of the jail
25 management [*sic*].” *Id.* Plaintiff claims generally that these newly named Defendants
26 deprived his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments. *Id.*
27 Plaintiff also seeks to add state law claims under supplemental jurisdiction. *Id.*

1 Federal Rule of Civil Procedure 15(a) is to be applied liberally in favor of
2 amendments and, in general, leave shall be freely given when justice so requires. *See*
3 *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994); *cf. id.* (attempt to amend
4 complaint requiring amendment of scheduling order under Fed. R. Civ. P. 16 must be
5 based upon good cause). “In the absence of any apparent or declared reason—such as
6 undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to
7 the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—
8 the leave sought should, as the rules require, be ‘freely given.’” *Hall v. City of Los*
9 *Angeles*, 697 F.3d 1059, 1073 (9th Cir. 2012) (internal quotations and citations omitted).
10 Leave need not be granted where the amendment of the complaint would cause the
11 opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or
12 creates undue delay. *See Janicki Logging Co.*, 42 F.3d at 566; *Roberts v. Arizona Bd. of*
13 *Regents*, 661 F.2d 796, 798 (9th Cir. 1981). A district court’s discretion to deny leave to
14 amend is particularly broad where the plaintiff has previously filed an amended complaint.
15 *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir. 2003); *Ferdik v. Bonzelet*, 963
16 F.2d 1258, 1261 (9th Cir. 1992).

17 Defendants oppose the motion based on undue delay, undue prejudice, and futility.
18 Dkt. Nos. 55 at 3, 56 at 3. Defendants assert that Sheriff Bolanos, the name of the Sheriff
19 of San Mateo County, was named in Plaintiff’s original complaint, but the Court found
20 there were no factual allegations made against him. *Id.* When given an opportunity to
21 allege such facts, Plaintiff filed an amended complaint which did not name Sheriff Bolanos
22 as a defendant. Dkt. No. 15. Defendants assert that in the year since he filed the amended
23 complaint, Plaintiff failed to conduct any discovery whatsoever. Dkt. Nos. 55 at 3, 56 at 3.
24 Defendants assert that Plaintiff had an opportunity over a year ago to allege facts against
25 Sheriff Bolanos, and he fails to establish good cause for why he should be allowed to name
26 Sheriff Bolanos now. *Id.* Defendants also assert there is no good cause for Plaintiff to
27 amend to add the City as defendant because Plaintiff fails to articulate any reason why he
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1 should be granted leave to do so a year and a half into the litigation. *Id.* at 5. Defendants
2 also assert that they will suffer undue prejudice if Plaintiff is granted leave to amend
3 because they will have to file another dispositive as to the new defendants. *Id.* Lastly,
4 Defendants assert leave to amend would be futile because Plaintiff’s allegations against
5 Sheriff Bolanos and the City are threadbare and insufficient to state a *Monell*¹ claim. *Id.* at
6 4-5. Defendants also point out that the Sheriff of San Mateo County operates County jails,
7 implying that the City has no authority over the county jails. *Id.* As such, Defendants
8 assert that the proposed claims against the Sheriff and the City cannot be saved by any
9 further amendment. *Id.*

10 Before the Court granted him leave to do so, Plaintiff filed a second amended
11 complaint which contains nearly identical allegations against the Sheriff and the City that
12 were stated in his motion for leave to amend. Dkt. No. 61 at 4, 6. Defendants move to
13 strike the second amended complaint because the time for filing an amendment as a matter
14 of course has long since expired and Plaintiff did not obtain leave of court under Rule
15 15(a)(2) of the Federal Rules of Civil Procedure. Dkt. No. 62 at 3-4. Defendants also
16 assert that in the alternative, the second amended complaint should be dismissed because it
17 fails to state a claim upon which relief can be granted. *Id.* at 6-8.

18 After reviewing Plaintiff’s allegations in his motion and his proposed second
19 amended complaint, Dkt. Nos. 52, 61, and for the several reasons asserted by Defendants
20 in opposition, the Court finds Plaintiff’s motion for leave to amend should be denied. *See*
21 *Janicki Logging Co.*, 42 F.3d at 566. The Court has particularly broad discretion to deny
22 leave here since Plaintiff has previously filed an amended complaint. *Wagh*, 363 F.3d at
23 830. Furthermore, Plaintiff was made aware of the standard to state a *Monell* claim in the
24 Court’s initial order dismissing his original complaint with leave to amend. Dkt. No. 11 at
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26 ¹ Local governments are “persons” subject to liability under 42 U.S.C. § 1983 where
27 official policy or custom causes a constitutional tort. *See Monell v. Dep’t of Social Servs.*,
28 436 U.S. 658, 690 (1978).

1 3. Plaintiff provides no explanation as to why he did not attempt to allege sufficient facts
2 to state a claim against Sheriff Bolanos in his first amended complaint or why he waited
3 well over a year thereafter to seek leave to add a *Monell* claim against the City.
4 Accordingly, Plaintiff fails to justify the delay in seeking leave to file a second amended
5 complaint. Furthermore, Defendants' summary judgment motion is fully briefed and
6 submitted, such that they would be unduly prejudiced by a second amendment adding new
7 defendants at this late stage in the proceedings.

8 Lastly, an amendment to add new defendants would be futile because Plaintiff does
9 not allege sufficient facts to support a claim against Sheriff Bolanos and the City. Based
10 on his general allegations, Plaintiff is attempting to hold the Sheriff and the City liable
11 solely based on the acts of their subordinates and employees, which is not sufficient to
12 state a claim. *See supra* at 3. First of all, under no circumstances is there liability under §
13 1983 solely because one is responsible for the actions or omissions of another. *See Taylor*
14 *v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Nor can a city or county be held vicariously
15 liable for the unconstitutional acts of its employees under the theory of respondeat
16 superior, *see Board of Cty. Comm'rs. of Bryan Cty. v. Brown*, 520 U.S. 397, 403 (1997);
17 *Monell*, 436 U.S. at 691; *Fuller v. City of Oakland*, 47 F.3d 1522, 1534 (9th Cir. 1995).
18 To impose municipal liability under § 1983 for a violation of constitutional rights resulting
19 from governmental inaction or omission, a plaintiff must show: "(1) that he possessed a
20 constitutional right of which he was deprived; (2) that the municipality had a policy; (3)
21 that this policy amounts to deliberate indifference to the plaintiff's constitutional rights;
22 and (4) that the policy is the moving force behind the constitutional violation." *Oviatt By*
23 *and Through Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (quoting *City of*
24 *Canton v. Harris*, 489 U.S. 378, 389 (1989) (internal quotation marks omitted). Plaintiff's
25 allegations in his motion to amend regarding a conspiracy and a policy are merely
26 conclusory and not supported by any factual allegations; the allegations in the proposed
27 second amended complaint are identical and therefore do not cure this deficiency. Dkt.

1 Nos. 52, 60. Based on the foregoing, the motion for leave to amend is DENIED.

2 Defendants' motion to strike the second amended complaint is GRANTED.

3 **D. Administrative Motion to File Under Seal**

4 In support of their summary judgment motion, Defendants filed an administrative
5 motion to file under seal exhibits containing excerpts from Plaintiff's medical records.

6 Dkt. No. 44. Plaintiff filed opposition, asserting that he needs full access to these
7 documents and that there is no basis to deem them "confidential." Dkt. No. 53.

8 Defendants filed a reply in which they withdraw their motion, inferring by Plaintiff's
9 opposition that he consents to his unredacted medical records being filed with the Court
10 and being publicly accessible. Dkt. No. 58. Accordingly, the administrative motion shall
11 be terminated as moot.

12
13 **CONCLUSION**

14 For the foregoing reasons, the Court orders as follows:

15 1. Plaintiff's motion for an extension of time is **GRANTED** such that his
16 opposition filed on February 19, 2020, Dkt. No. 54, is deemed timely filed.

17 2. Plaintiff's motions for reconsideration of appointment of counsel are
18 **DENIED**. Dkt. Nos. 51, 61.

19 3. Plaintiff's motion for leave to file a second amended complaint to add the
20 Sheriff and the City of Redwood City as defendants in this action is **DENIED**. Dkt. No.
21 52. Defendants' motion to strike Plaintiff's second amended complaint, Dkt. No. 60, is
22 **GRANTED**. Dkt. No. 62.

23 4. The Clerk shall terminate the pending "amended" motion under Docket No.
24 48, as this matter shall proceed solely on Defendants' summary judgment motion filed
25 under Docket No. 46.

26 5. The Clerk shall also terminate Defendants' administrative motion to file
27 under seal as Defendants have withdrawn the motion. Dkt. No. 58.

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This order terminates Docket Nos. 44, 48, 51, 52, 61, and 62.

IT IS SO ORDERED.

Dated: August 5, 2020


BETH LABSON FREEMAN
United States District Judge

Order Denying Recon; Granting Ext, of Time; Denying LTA; Terminating Motions
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