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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT MARK BROWN, II,

Plaintiff,

v.

DEPUTY #1, Deputy Sheriff; et al.,

Defendants.

Case No. 12-cv-1938-GPC-BGS

**ORDER ADOPTING REPORT
AND RECOMMENDATION
REGARDING PLAINTIFF’S
VARIOUS MOTIONS TO AMEND
COMPLAINT**

(ECF NO. 82)

INTRODUCTION

On August 8, 2012, plaintiff Robert Mark Brown, II (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, brought this action for violations of his civil rights under 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff alleges Defendants violated his civil rights by using excessive force resulting in severe injuries. (ECF No. 1.)

Currently before the Court are multiple motions by Plaintiff requesting to add defendants, to extend the time in which to join other parties, amend the pleadings, or file additional pleading. (ECF Nos. 53, 57, 59, 64, 69.) Defendants Erick Villarreal and Jason Weber (“Defendants”), filed an opposition to Plaintiff’s motions. (ECF No.

1 79.) In their opposition, Defendants do not oppose Plaintiff's request to file an
2 amended complaint and add deputy defendants. (Id.) Defendants, however, object to
3 Plaintiff adding the County of San Diego ("County") and Sheriff William Gore
4 ("Gore") as defendants because Defendants believe that Plaintiff's claim against the
5 County and Gore is based on Plaintiff being denied access to a law library. (Id.)

6 On June 24, 2013, Magistrate Judge Bernard G. Skomal issued a report and
7 recommendation, recommending Plaintiff's Motion to Supplement his Complaint by
8 adding Sheriff William Gore and the County of San Diego, (ECF No. 64), be
9 **DENIED**; Plaintiff's Motion for leave to Amend his Complaint to add Deputy Garcia,
10 Henton, Pierson, Lawson, and Whittaker as Defendants, (ECF Nos. 53, 59, 69), be
11 **GRANTED**; and Plaintiff's Motion for Extension of Time, (ECF No. 57), be **DENIED**
12 as moot.

13 For the reasons set forth below, this Court: (1) **ADOPTS** the Report and
14 Recommendation as to Plaintiff's Motion to Supplement his Complaint by adding
15 Sheriff William Gore and County of San Diego and therefore **DENIES** Plaintiff's
16 Motion to Supplement his Complaint by adding Sheriff William Gore and County of
17 San Diego; (2) **ADOPTS** the Report and Recommendation as to Plaintiff's Motions for
18 leave to Amend his Complaint to add Deputy Garcia, Henton, Pierson, Lawson, and
19 Whittaker as Defendants and therefore **GRANTS** Plaintiff's Motions for leave to
20 Amend his Complaint to add Deputy Garcia, Henton, Pierson, Lawson, and Whittaker
21 as Defendants; and (3) **ADOPTS** the Report and Recommendation as to Plaintiff's
22 Motion for Extension of Time and therefore **DENIES** Plaintiff's Motion for Extension
23 of Time as moot.

24 **BACKGROUND**

25 On August 6, 2012, Plaintiff filed a Complaint under 42 U.S.C. § 1983, alleging
26 that Defendants violated his civil rights for, among other things, using excessive force
27 resulting in severe injuries. (ECF No. 1.) Plaintiff did not know the identities of all
28 the guards who allegedly violated his rights, so he identified them as "Deputy" in his

1 Complaint. (Id.) After the parties engaged in discovery, Plaintiff identified the guards
2 referenced in the Complaint and discovered the names of additional defendants that
3 allegedly violated his civil rights. (ECF Nos. 53, 59, 64, 69.) Plaintiff has since filed
4 various motions requesting leave to add the new defendants. (Id.) The Court ordered
5 Defendants to respond to Plaintiff’s motions. (ECF Nos. 60, 70.) On May 24, 2013,
6 Defendants filed their Response in Opposition to Plaintiff’s Motions to Amend. (ECF
7 No. 79.)

8 **A. Motions to Add Additional Deputies as Defendants**

9 On April 12, 2013, Plaintiff filed a motion to add Deputy Lauset Garcia as a
10 defendant in this action, identifying him as Doe Deputy No. 5 referenced in his
11 Complaint. (ECF No. 53.) Plaintiff alleges that Deputy Garcia was “involved in the
12 assault” against him. (Id.) On April 12, 2013, Plaintiff filed a motion to add Deputy
13 Scott Henton and Deputy Robert Pierson as defendants in this action, identifying them
14 as Doe Deputy No. 3 and Doe Deputy No. 5, respectively, referenced in his Complaint.
15 (ECF No. 59.) Plaintiff does not make any factual allegations in support of this
16 Motion. On April 30, 2013, Plaintiff filed a motion seeking to again add Deputy
17 Lauset Garcia as a defendant, along with two new deputies, Michael Lawson and L.
18 Wittaker. (ECF No. 69.) In support of this Motion, Plaintiff alleges that “[a]ll three
19 deputys [sic] were present on the scene of the incident on May 2, 2012 and had ample
20 [sic] opportunity to intervene in the alleged assault against [him] and did nothing to
21 stop it.” (ECF No. 69.)

22 **B. Motion to Add Sheriff William Gore and County of San Diego as**
23 **Defendants**

24 On April 30, 2013, Plaintiff filed a motion to add Sheriff William Gore and the
25 County of San Diego as Defendants. (ECF No. 64.) In support of this motion, Plaintiff
26 alleges that “since this case is pending I have been denied physical access to the law
27 library and legal research needed in order to adequately represent myself in this case,
28 and all my grievance submitted to jail officials concerning this matter have been

1 denied.” (Id.)

2 **C. Motion for Second Extension of Time to Join Parties, Amend Pleadings, or**
3 **File Additional Pleadings**

4 On April 3, 2013, Plaintiff also filed a motion for a second extension of time of
5 the deadline to join other parties, to amend the pleadings, or to file additional
6 pleadings. (ECF No. 57.)

7 **D. Defendants’ Response to Plaintiff’s Motions**

8 On May 24, 2013, Defendants filed their Opposition to Plaintiff’s motions.
9 (ECF No. 79.) While Defendants do not oppose Plaintiff’s request to add the deputy
10 defendants and file an amended complaint, Defendants object to Plaintiff’s request to
11 add the County of San Diego and Gore as defendants. (Id.) Defendants believe
12 Plaintiff wishes to add the County and Gore because Plaintiff wants to add a claim that
13 he was denied access to the law library in violation to his civil rights. (Id.) Defendants
14 argue that the facts which underlie Plaintiff’s new claim of denial of access to a law
15 library “do not arise out of the same operative faces as those set out in the original
16 complaint,” and therefore Plaintiff should not be allowed to amend his complaint to
17 include the claim.

18 **STANDARD OF REVIEW**

19 The district court’s role in reviewing a magistrate judge’s report and
20 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, the district
21 court “shall make a de novo determination of those portions of the report . . . to which
22 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings
23 or recommendations made by the magistrate [judge].” Id. When no objections are
24 filed, the Court may assume the correctness of the magistrate judge’s findings of fact
25 and decide the motion on the applicable law. Campbell v. United States Dist. Court,
26 501 F.2d 196, 206 (9th Cir. 1974); Johnson v. Nelson, 142 F. Supp. 2d 1215, 1217
27 (S.D. Cal. 2001). Under such circumstances, the Ninth Circuit has held that “a failure
28 to file objections only relieves the trial court of its burden to give de novo review to

1 factual findings; conclusions of law must still be reviewed de novo.” Barilla v. Ervin,
2 886 F.2d 1514, 1518 (9th Cir. 1989) (citing Britt v. Simi Valley Unified Sch. Dist., 708
3 F.2d 452, 454 (9th Cir. 1983)).

4 DISCUSSION

5 **I. Report and Recommendation as to Plaintiff’s Motion for Leave to** 6 **Supplement Complaint to Add Sheriff William Gore and the County of San** 7 **Diego**

8 Judge Skomal recommends that Plaintiff’s Motion for Leave to Supplement
9 Complaint to Add Sheriff William Gore and the County of San Diego be denied.
10 Neither party has filed a specific objection to the magistrate judge’s findings or
11 conclusions as they pertain to this Motion. As such, the Court assumes the correctness
12 of the Magistrate Judge’s factual findings and adopts them in full.

13 The Court has conducted a de novo review, independently reviewing the Report
14 and Recommendation and all relevant papers submitted by both parties, and finds that
15 the Report and Recommendation provides a cogent analysis of the issues presented in
16 Plaintiff’s Motion. Accordingly, the Court **ADOPTS** the Report and Recommendation
17 as to Plaintiff’s Motion for Leave to Supplement Complaint to Add Sheriff William
18 Gore and the County of San Diego in its entirety and therefore **DENIES** Plaintiff’s
19 Motion.

20 **II. Report and Recommendation as to Plaintiff’s Motions for Leave to** 21 **Amend to Add Deputies as Defendants**

22 Judge Skomal recommends that Plaintiff’s Motions for Leave to Amend to Add
23 Deputies as Defendants be granted. Neither party has filed a specific objection to the
24 magistrate judge’s findings or conclusions as they pertain to these Motions. As such,
25 the Court assumes the correctness of the Magistrate Judge’s factual findings and adopts
26 them in full.

27 The Court has conducted a de novo review, independently reviewing the Report
28 and Recommendation and all relevant papers submitted by both parties, and finds that

1 the Report and Recommendation provides a cogent analysis of the issues presented in
2 Plaintiff's Motions. Accordingly, the Court **ADOPTS** the Report and
3 Recommendation as to Plaintiff's Motions for Leave to Amend to Add Deputies as
4 Defendants in its entirety and therefore **GRANTS** Plaintiff's Motions.

5 **III. Report and Recommendation as to Plaintiff's Motion for Extension of**
6 **Time**

7 Judge Skomal recommends that Plaintiff's Motion for Extension of Time be
8 dismissed as moot. Neither party has filed a specific objection to the magistrate judge's
9 findings or conclusions as they pertain to this Motion. As such, the Court assumes the
10 correctness of the Magistrate Judge's factual findings and adopts them in full.

11 The Court has conducted a de novo review, independently reviewing the Report
12 and Recommendation and all relevant papers submitted by both parties, and finds that
13 the Report and Recommendation provides a cogent analysis of the issues presented in
14 Plaintiff's Motion. Accordingly, the Court **ADOPTS** the Report and Recommendation
15 as to Plaintiff's Motion for Extension of Time in its entirety and therefore **DENIES**
16 Plaintiff's Motion as moot.

17 **CONCLUSION AND ORDER**

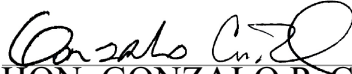
18 For the reasons set forth above, **IT IS HEREBY ORDERED** that:

- 19 1. Judge Skomal's Report and Recommendation as to Plaintiff's Motion for
20 Leave to Supplement Complaint to Add Sheriff William Gore and the
21 County of San Diego is **ADOPTED** in its entirety;
- 22 2. Plaintiff's Motion for Leave to Supplement Complaint to Add Sheriff
23 William Gore and the County of San Diego, (ECF No. 64), is **DENIED**;
- 24 3. Judge Skomal's Report and Recommendation as to Plaintiff's Motions for
25 Leave to Amend to Add Deputies as Defendants is **ADOPTED** in its
26 entirety;
- 27 4. Plaintiff's Motions for Leave to Amend to Add Deputies as Defendants,
28 (ECF Nos. 53, 59, 69), are **GRANTED**;

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5. Judge Skomal's Report and Recommendation as to Plaintiff's Motion for Extension of Time is **ADOPTED** in its entirety; and
6. Plaintiff's Motion for Extension of Time, (ECF No. 57), is **DENIED** as moot.

DATED: October 8, 2013


HON. GONZALO P. CURIEL
United States District Judge