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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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10 ALI ALEJANDRO MENDOZA,
11 an individual,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA;
14 CITY OF NATIONAL CITY; THOMAS
15 MALANDRIS; BENJAMIN PECK; and
16 MICHAEL NUTTALL,

16 Defendants.

Case No.: 15cv1528-JAH (BGS)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
NATIONAL CITY AND BENJAMIN
PECK'S MOTION TO AMEND
SCHEDULING ORDER**

17
18 **INTRODUCTION**

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20 On March 31, 2017, this Court granted in part and denied in part Defendants City
21 of National City and Benjamin Peck's ("Defendants") Motion for Summary Judgment
22 and Partial Summary Judgment as to Plaintiff Ali Mendoza's ("Plaintiff") Second
23 Amended Complaint. Doc No. 116. On January 5, 2018, Defendants filed a motion to
24 amend or correct the scheduling order to allow the filing of a second summary judgment
25 motion. Doc. No. 141. The motion has been fully briefed. Doc. Nos. 150, 151. After
26 review of the parties' submissions, the Court deemed Defendants' motion to amend the
27 scheduling order suitable for adjudication without oral argument. See CivLR 7.1 (d.1).
28 After a careful review of the pleadings and for the reasons set forth below, Defendants'

1 motion to amend the scheduling order is **GRANTED IN PART** and **DENIED IN**
2 **PART**.

3 DISCUSSION

4 Defendants' move to amend the scheduling order to file a successive motion for
5 summary judgment on three grounds: (1) to reassert a qualified immunity defense as to
6 Defendant Peck, (2) to challenge the City's liability under section 1983 in the absence
7 of a Monell claim in the Third Amended Complaint, and (3) to challenge the viability
8 of the Bane Act claims. Defendants' motion focuses primarily on the issue of qualified
9 immunity, highlighting the importance of deciding qualified immunity "at the earliest
10 possible stage in litigation" in order to preserve the essence of its purpose as "immunity
11 from suit rather than a mere defense to liability." *Pearson v. Callahan*, 555 U.S. 223,
12 231 (2009); *Morales v. Fry*, 873 F.3d 817, 822 (9th Cir. 2017).

13 Plaintiff argues that Defendants have not shown good cause to amend the
14 scheduling order. He contends not only have Defendants already raised the issue of
15 qualified immunity, but any failure on Defendants' part to raise it effectively is solely
16 a result of their lack of diligence. Plaintiff further asserts that Defendants' motion to
17 amend the scheduling order amounts to a belated motion for reconsideration of this
18 Court's ruling on prior Motion for Summary Judgment and that Plaintiff would suffer
19 prejudice as a result.

20 In response, Defendants' maintain that a successive motion would neither be
21 frivolous nor repetitive. Defendants assert that the issue of whether the alleged conduct
22 unreasonably violated a "clearly established" legal standard under the Fourth¹ or Fifth
23 Amendment was not addressed or decided by this Court; nor has the Court determined
24

25 ¹ The Fourth Amendment protects against unreasonable searches and seizures. However, whether the
26 law, at the time, clearly established that it is unreasonable for an officer to rely on the apparent
27 consent of a person under the same or similar circumstances as Plaintiff in the instant case has yet to
28 be brought before the Court. "Thus, the relevant question is whether a reasonable officer could have
believed [Mendoza's blood draw] to be lawful, in light of clearly established law and the information
the [investigating] officer possessed. *Knox v. Sw. Airlines*, 124 F.3d 1103, 1108 (9th Cir. 1997)
(citing *Kennedy v. Los Angeles Police Dep't*, 901 F.2d 702, 706 (9th Cir.1989).

1 how entitlement to qualified immunity would impact Plaintiff's Bane Act claims.
2 Defendant also questions whether Mendoza can even assert a 42 U.S.C. §1983 claim
3 based on an alleged Fifth Amendment violation because he was never subject to any
4 criminal proceeding.

5 **1. ANALYSIS**

6 **A. Successive Summary Judgment Motion**

7 "[D]istrict courts have discretion to entertain successive motions for summary
8 judgment." *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010). Allowing a
9 second summary judgment motion is a matter concerning case management, over which
10 district court judges have broad discretion. *Avila v. Willits Envtl. Remediation Tr.*, 633
11 F.3d 828, 833 (9th Cir. 2011).

12 Defendants' posture their request in the form of a Rule 16(b) motion to amend
13 the scheduling order to allow for a successive summary judgment motion. However, in
14 many respects, Defendants' motion is akin in to an untimely motion to alter or amend
15 the judgment pursuant to Fed. R. Civ. P. Rule 59(e). While the Court recognizes it may
16 tailor and adjust scheduling orders to the needs of the case as it progresses to permit
17 successive motions for summary judgment it is not appropriate to reexamine issues
18 already addressed or advance arguments that could have been raised prior to entry of
19 the judgment. Fed.R.Civ.P. Rule 59; *J & J Sports Prods., Inc. v. Brummell*, No.
20 15CV2601-MMA (MDD), 2016 WL 4595140, at *1 (S.D. Cal. Sept. 2, 2016) (citing
21 *Exxon Shipping Co. v. Baker*, 544 U.S. 471, 486-87 (2008) (Rule 59 may not be used
22 to relitigate old matters, raise new arguments, or present evidence that could have been
23 raised prior to entry of the judgment.)

24 The arguments Defendants wish to assert in a successive summary judgment
25 motion could have previously been raised, as Defendants do not assert a change in law
26 or the discovery of new evidence. Nonetheless, the Court recognizes that the core
27 principles underlying the doctrine would be diluted, depriving a defendant of a speedy
28 and just resolution, if a defendant were forced to trial despite assertion of a viable

1 qualified immunity defense. *Mitchell v. Forsyth*, 472 U.S. 511, 526, (1985); See also
2 *Gordon v. Veneman*, 61 F. App'x 296, 298 (7th Cir. 2003)(acknowledging three grounds
3 for allowing a renewed or successive summary judgment motion: 1) when the
4 controlling law has changed; 2) when new evidence has been discovered; and 3) when
5 allowing such a motion would be necessary to correct a clear error or prevent a manifest
6 injustice.) (Emphasis added.).

7 B. Qualified Immunity

8 The United States Supreme Court has discussed the purpose behind the creation
9 of doctrine of qualified immunity.

10 Because qualified immunity is an immunity from suit rather than a mere defense
11 to liability ... it is effectively lost if a case is erroneously permitted to go to trial.
12 Indeed, we have made clear that the “driving force” behind creation of the
13 qualified immunity doctrine was a desire to ensure that insubstantial claims
14 against government officials [will] be resolved prior to discovery. Accordingly,
15 we repeatedly have stressed the importance of resolving immunity questions at
16 the earliest possible stage in litigation. (Citations and quotations omitted).
17 *Pearson*, 555 U.S. at 231.

18 The issue of whether the alleged conduct by Officer Peck, in light of the
19 undisputed facts, violated a “clearly established” legal standard under the Fourth or
20 Fifth Amendment was not briefed by the parties nor addressed by this Court. Neither
21 has the Court determined how entitlement to qualified immunity would impact
22 Plaintiff’s Bane Act claims. The Supreme Court “clarified that while it ‘do[es] not
23 require a case directly on point ... existing precedent must have placed the statutory or
24 constitutional question beyond debate,’ such that ‘every’ reasonable official—not just
25 ‘a’ reasonable official—would have understood that he was violating a clearly
26 established right. *Morales v. Fry*, 873 F.3d 817, 823 (9th Cir. 2017) (quoting *Ashcroft*,
27 563 U.S. at 741).

28 In light of *Pearson* and *Morales*, the Court finds it appropriate to permit
Defendants to file a successive motion for summary judgment on the sole issue of
qualified immunity.

1 Accordingly, **IT IS HEREBY ORDERED:**

- 2 1. Defendants' motion to amend the Scheduling Order is **GRANTED** and the
3 pretrial motion deadline of June 13, 2016 is **VACATED** only as to the
4 qualified immunity issue concerning Plaintiff's Fourth and Fifth Amendment
5 and Bane Act claims;
- 6 2. Defendants' motion is **DENIED** in all other respects;
- 7 3. Defendants may file a second motion for summary judgment concerning
8 Plaintiff's Fourth or Fifth Amendment and Bane Act claims no later than **May**
9 **11, 2018;**
- 10 4. Plaintiff's response to Defendants' motion for summary judgment shall be
11 filed no later than **May 29, 2018;**
- 12 5. Defendant's reply brief, if any, shall be filed and served no later than **June 5,**
13 **2018;**
- 14 6. The motion hearing shall be held on **July 6, 2018, at 10:30 a.m.,** unless
15 otherwise ordered by this Court.

16 **IT IS SO ORDERED.**

17 DATED: April 19, 2018

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20 HON. JOHN A. HOUSTON
21 UNITED STATES DISTRICT JUDGE
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