

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE**

Civil Case No. 08-cv-02049-LTB-MJW

JAMES N. LANGE, JR.,

Plaintiff,

v.

CITY OF GRAND JUNCTION, COLORADO,
STAN HILKEY, in his official capacity as Mesa County Sheriff,
GLEN COYNE, in his individual capacity,
BRANDI POWER, in her individual capacity,
MICHAEL MILLER, in his individual capacity,
DEREK ROSALES, in his individual capacity,
CRAIG TYER, in his individual capacity,
WAYNE WEYLER, in his individual capacity, and
KEITH WILSON, in his individual capacity,

Defendants.

ORDER

This police misconduct case is before me on Defendants' Motion to Dismiss [**Docket # 4**]. While the motion was pending, Plaintiff sought leave of the Court to file a second amended complaint [**Docket # 22**]. Leave was granted and Plaintiff filed a Second Amended Complaint on February 9, 2009 [**Docket ## 26, 27**]. The Second Amended Complaint contains additional parties and allegations that appear pertinent to Defendants' motion to dismiss. Rather than attempt reconciliation of the present motion—which addressed only the allegations of the original Complaint [**Docket # 1**—with the Second Amended Complaint, the Court concludes dismissal without prejudice is the better action. If Defendant believes the Second Amended Complaint does not remedy the inadequacies of the first Complaint, it may file a new motion to

dismiss.

Accordingly, Defendants' Motion to Dismiss [**Docket # 4**] is DENIED WITHOUT PREJUDICE. Plaintiff's unopposed motion to vacate the date on which Plaintiff is required to file a response to the motion to dismiss [**Docket # 28**] is DENIED AS MOOT.

Dated: February 18, 2009.

BY THE COURT:

s/Lewis T. Babcock
Lewis T. Babcock, Judge