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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVE ALEXANDERSON,

Plaintiff,

v.

SCOTT LANGTON, et al.,

Defendants.

CASE NO. C13-1764JLR

ORDER GRANTING LEAVE TO
AMEND

I. INTRODUCTION

This matter comes before the court on Plaintiff's motion to amend his complaint. (Mot. (Dkt. # 19).) The court has considered the submissions of the parties, the governing law, and the record in this case. Having done so, and considering itself fully advised, the court GRANTS Plaintiff's motion.

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II. BACKGROUND

A. Factual Background

One evening in June, 2011, Plaintiff Dave Alexanderson and his neighbor had a dispute over the ownership of a toy car. (Compl. (Dkt. # 1) ¶¶ 3.1-3.6.) Plaintiff's neighbor called the police, and Defendant Scott Langton, a police officer for Defendant City of Blaine, responded. (See *id.*) Plaintiff alleges that, without provocation, Officer Langton yelled at him, pushed him, told him he was under arrest, struck him on the head, neck, and back, drug him across the parking lot, and threw him on the ground. (*Id.* ¶¶ 3.7-3.11.) Plaintiff is 54 years old, legally blind, and has several crushed vertebra in his spine that limit his mobility. (*Id.* ¶ 3.12.) After the arrest, Plaintiff filed this action against the City of Blaine ("City") and Officer Langton, alleging claims under 42 U.S.C. § 1983 and *Monell v. Dep't of Soc. Servs. of City of N. Y.*, 436 U.S. 658, 669 (1978).

In its scheduling order, the court set the deadline for expert disclosures and reports for July 30, 2014, the deadline for amending the pleadings for July 30, 2014, the discovery deadline for September 29, 2014, and trial for January 26, 2015. (Sched. Order (Dkt. # 16).) Plaintiff filed a motion to amend his complaint on July 30, 2014. (See Mot.) On that day, Plaintiff also disclosed an expert witness who will testify regarding, among other things, probable cause, excessive force, and the City's police force customs and policies. (Plf. Disclosure (Dkt. # 21).) For their part, Defendants disclosed an expert witness who it appears will testify only as to excessive force. (Def. Disclosure (Dkt. # 18).) Defendants oppose Plaintiff's motion to amend. (Resp. (Dkt. # 22).) That motion is now before the court.

1 **B. Proposed Amendments**

2 In his original complaint, Plaintiff alleged:

3 4.2 Langton arrested Dave without probable cause and without a warrant in
4 violation of his civil rights.

5 4.3 Langton used excessive force when he placed Dave under arrest and
6 after the arrest.

7 ...

8 4.6 Langton’s arrest and use of excessive force was pursuant to a custom or
9 policy of the Blaine Police Department. As such, the City of Blaine is
10 liable for Langton’s actions.

11 (Compl. ¶¶ 4.2, 4.3, 4.6.)

12 Plaintiff’s proposed amendment, which contains changes to only three
13 paragraphs, reads in relevant part:

14 4.3 Langton used excessive force when he detained Dave, when he placed
15 Dave under arrest and after the arrest.

16 4.6 Langton’s arrest without probable cause and use of excessive force
17 were pursuant to custom~~s~~ or policie~~s~~ of the Blaine Police Department. As
18 such, the City of Blaine is liable for Langton’s actions.

19 (Prop. Compl. (Dkt. # 20) ¶ V.2 (changes denoted by underline).) The third
20 change is the addition of a citation to 42 U.S.C. § 1988 to the complaint’s request
21 for costs and attorneys’ fees. (Id. ¶ V.2.)

22 **III. ANALYSIS**

A. Law Governing Motions to Amend

Federal Rule of Civil Procedure 15 provides that, after an initial period for
amendment as of right, pleadings may be amended only with the opposing party’s written

1 consent or by leave of the court. Fed. R. Civ. P. 15(a). “The court should freely give
2 leave [to amend pleadings] when justice so requires.” Fed. R. Civ. P. 15(a)(2). This rule
3 should be interpreted and applied with “extreme liberality.” *Morongo Band of Mission*
4 *Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Federal policy favors freely
5 allowing amendment so that cases may be decided on their merits. See *Martinez v.*
6 *Newport Beach City*, 125 F.3d 777, 785 (9th Cir. 1997).

7 Courts consider five factors when determining whether to grant leave to amend:
8 “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of
9 amendment,” and (5) whether the pleadings have previously been amended. *Allen v. City*
10 *of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). For each factor, the party opposing
11 amendment has the burden of showing that amendment is not warranted. *DCD*
12 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987); see also *Richardson v.*
13 *United States*, 841 F.2d 993, 999 (9th Cir. 1988). Moreover, the court must grant all
14 inferences in favor of allowing amendment. *Griggs v. Pace Am. Group, Inc.*, 170 F.3d
15 877, 880 (9th Cir. 1999).

16 **B. The Five Factors**

17 There is no evidence in the record, and no suggestion by Defendants, that Plaintiff
18 advances his amendments in bad faith or that the amendments would be futile.
19 Additionally, the complaint has not been previously amended. As such, these three
20 factors all weigh in favor of granting leave to amend.

21 In assessing undue delay, a court considers not just whether the motion complies
22 with the court’s scheduling order, but also when the moving party “knew or should have

1 known the facts and theories raised by the amendment.” *Amerisource Bergen Corp. v.*
2 *Dialysist W., Inc.*, 465 F.3d 946, 953 (9th Cir. 2006). Here, Plaintiff’s amendment was
3 timely under the court’s scheduling order. (See Sched. Ord.) Plaintiff’s amendment does
4 not add new facts, but rather seeks to clarify legal theories predicated on facts already
5 alleged in the complaint. (See Prop. Compl.) It has been almost a year since Plaintiff
6 filed his original complaint, and he gives no explanation as to why he could not have
7 raised these clarifications earlier. (See generally Dkt.; Mot.) As such, this factor weighs
8 against granting amendment. However, because the clarifications are minor, this factor
9 weighs against granting amendment only slightly.

10 The final factor—prejudice to the opposing party—is the “touchstone of the
11 inquiry under rule 15(a).” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052
12 (9th Cir. 2003). To show prejudice, the party opposing amendment “must show that it
13 was unfairly disadvantaged or deprived of the opportunity to present facts or evidence
14 which it would have offered had the . . . amendments been timely.” *Mansfield v. Pfaff*,
15 No. C14-0948JLR, 2014 WL 3810581, at *4 (W.D. Wash. Aug. 1, 2014) (citing *Bechtel*
16 *v. Robinson*, 886 F.2d 644, 652 (3d Cir. 1989)). Here, Defendants argue that they are
17 unfairly prejudiced by the amendment because (1) the amendment seeks to add an
18 entirely new Monell claim against the City for Plaintiff’s arrest and (2) the deadline for
19 expert disclosures has passed. (See Resp.) These arguments are unpersuasive.

20 First, the amendment does not seek to add a new claim. Plaintiff’s original
21 complaint adequately pleaded Monell claims against the City for both the arrest and the
22 alleged use of excessive force. To wit: the complaint began by alleging claims against

1 Officer Langton for both unconstitutional arrest and use of excessive force. (See Compl.
2 ¶¶ 4.2 (“Langton arrested Dave without probable cause and without a warrant in violation
3 of his civil rights.”), 4.3 (“Langton used excessive force when he placed Dave under
4 arrest and after the arrest.”)) The complaint then alleged that “Langton’s arrest and use
5 of excessive force was pursuant to a custom or policy of the Blaine Police Department.
6 As such, the City of Blaine is liable for Langton’s actions.” (Id. ¶ 4.6 (emphasis added).)
7 Consequently, the complaint plainly alleged that the City was liable for both Langton’s
8 actions of (1) making an unconstitutional arrest and (2) using excessive force. (See id.)
9 The fact that the complaint referred to a singular custom or policy made for clumsy
10 grammar, but did not affect the substance of the allegations. Similarly, the fact that the
11 complaint did not modify its second mention of Plaintiff’s arrest with the phrase “without
12 probable cause” is inconsequential when the complaint clearly stated, a mere four
13 paragraphs earlier, that Plaintiff’s arrest was without probable cause and therefore
14 unconstitutional. (Compare id. ¶ 4.6 with id. ¶ 4.2.) Accordingly, permitting those
15 changes now does not add a new claim to the complaint. Rather, the changes simply
16 clarify that the arrest and use of excessive force were pursuant to different City policies.

17 Second, the passing of the expert disclosure deadline prior to this amendment
18 does not unfairly disadvantage Defendants or deprive them of the opportunity to present
19 evidence. See *Mansfield*, 2014 WL 3810581, at *4. Plaintiff’s proposed amendment
20 clarifies that Officer Langton employed excessive force both after Plaintiff was arrested
21 and before, when Plaintiff was merely “detained.” (Prop. Compl. ¶ 4.3.) Defendants
22 have already disclosed an expert who will opine regarding “the overall use of force used

1 | in this encounter and the tactics deployed by the officers.” (Def. Expert Rep. (Dkt. # 18-
2 | 1) at 1.) A review of this expert’s report shows that he addresses all of the uses of force
3 | alleged in the original complaint, regardless of whether those uses of force could be
4 | considered to have occurred during Plaintiff’s arrest or during Plaintiff’s detainment.
5 | (See generally Def. Expert Rep.) Even if Defendants feel that the report does not address
6 | this clarification adequately, they are free to supplement the report under Rule 26. Fed.
7 | R. Civ. P. 26(a)(2)(E). In addition, because discovery does not close for another six
8 | weeks, Defendants will have the opportunity to depose Plaintiff’s expert on the
9 | clarification and to undertake any additional factual discovery necessitated by the
10 | amendments.

11 | To the extent that Defendant’s expert is not prepared to discuss a Monell claim
12 | predicated on Plaintiff’s arrest, the fault lies with Defendants, not with Plaintiff’s
13 | proposed amendments. A pleading is adequate under Rule 8 if it “contain[s] sufficient
14 | factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
15 | *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); see also Fed. R. Civ. P. 8(a) (requiring only
16 | “a short and plain statement of the claim showing that the pleader is entitled to relief”).
17 | Plaintiff’s original Monell claim against the City for his arrest meets that standard. The
18 | fact that Defendants misinterpreted that claim is not a basis for rejecting Plaintiff’s
19 | clarifying amendments. After all, Defendants were already on notice that Plaintiff was
20 | bringing a claim against Officer Langton for both unconstitutional arrest and excessive
21 | force. If Defendants were confused by paragraph 4.6 in the original complaint, they
22 | could have inquired with Plaintiff as to its meaning via discovery requests or otherwise.

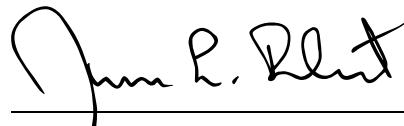
1 Because any lack of expert evidence that Defendants are facing is due not to Plaintiff's
2 proposed amendment, but rather to their misapprehension and lack of diligence, they are
3 not unfairly disadvantaged by the amendment. As such, Defendants have failed to carry
4 their burden to show that they will be prejudiced. See DCD Programs, 833 F.2d at 187.
5 This factor weighs in favor of amendment.

6 In sum, four of the five factors (including the most important factor of prejudice to
7 the opposing party) weigh in favor of permitting amendment. Only one factor weighs
8 slightly against permitting amendment, and it is well-settled that undue delay, by itself, is
9 insufficient to justify denying a motion to amend. Bowles v. Reade, 198 F.3d 752, 758
10 (9th Cir. 1999); see also Howey v. United States, 481 F.2d 1187, 1191 (9th Cir. 1973).
11 Therefore, consistent with the federal policy of liberally granting leave to amend, the
12 court grants Plaintiff's motion to amend. See Morongo, 893 F.2d at 1079.

13 IV. CONCLUSION

14 For these reasons, the court GRANTS Plaintiff's motion to amend (Dkt. # 19).

15 Dated this 18th day of August, 2014.

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18 JAMES L. ROBART
19 United States District Judge
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