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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RICHARD CONELY,  
  
Plaintiff,  
  
v.  
  
CITY OF LAKEWOOD, a Municipal  
Corporation, JAMES SYLER, in his  
official and individual capacity and JANE  
DOE SYLER and their marital  
community,  
  
Defendants.

CASE NO. C11-6064 RJB  
  
ORDER ON PLAINTIFF'S MOTION  
TO FILE AMENDED COMPLAINT

This matter comes before the court on plaintiff's motion to file an amended complaint.  
Dkt. 14. The court has considered the relevant documents and the remainder of the file herein.

The incident that is the subject of the complaint occurred on September 26, 2009, when  
plaintiff was allegedly injured by police dog Astor. Astor was allegedly under the control of  
Office James Syler, who was acting within the scope of his employment with the City of  
Lakewood.

1 On May 8, 2012, the court issued an order, granting in part and denying in part the City  
2 of Lakewood's motion for judgment on the pleadings. Dkt. 17. Pursuant to that order, (1) the  
3 federal civil rights claims against the City of Lakewood were dismissed; (2) the direct liability  
4 claims against the City of Lakewood for assault and battery, negligence, negligent use of  
5 excessive force, intentional infliction of emotional distress, and negligent infliction of emotional  
6 distress were dismissed; (3) the strict liability claim asserted against the City of Lakewood  
7 pursuant to RCW 16.08.040 and the vicarious liability claims asserted against the City of  
8 Lakewood through a theory of *respondeat superior* remain; and (4) the strict liability claim  
9 against Officer Syler pursuant to RCW 16.04.040 remains. Dkt. 17. The federal constitutional  
10 and state law claims against Officer Syler were not addressed by the City of Lakewood's motion  
11 for judgment on the pleadings or the court's May 8, 2012 order.

12 On April 30, 2012, plaintiff filed a motion to file an amended complaint, and attached a  
13 copy of the proposed amended complaint. Dkt. 14. The proposed amended complaint eliminates  
14 the federal civil rights claims against the City of Lakewood, and clarifies "the City of  
15 Lakewood's role with respect to training and using Police Dog Astor." Dkt. 14, at 2.

16 In response to the motion to amend, defendants do not oppose amendment of the  
17 complaint. Instead, defendants request that the court direct plaintiff to revise the proposed  
18 amended complaint to be consistent with the court's May 8, 2012 order, "to the extent that  
19 plaintiff is requesting to amend his complaint to reassert previously dismissed causes of action,  
20 specifically any direct causes of action against the City, exclusive of strict liability." Dkt. 18, at

21 1.

22 Fed.R.Civ.P. 15(a) provides in relevant part as follows:

23 **(a) Amendments Before Trial.**

1 (1) **Amending as a Matter of Course.** A party may amend its pleading once as a matter of  
2 course within:

3 (A) 21 days after serving it, or

4 (B) if the pleading is one to which a responsive pleading is required, 21 days after  
5 service of a responsive pleading or 21 days after service of a motion under Rule 12(b),  
(e), or (f), whichever is earlier.

6 (2) **Other Amendments.** In all other cases, a party may amend its pleading only with the  
7 opposing party's written consent or the court's leave. The court should freely give leave  
when justice so requires.

8 In deciding whether to grant a motion to amend, the court considers a number of factors,  
9 including undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by  
10 amendments previously allowed, undue prejudice to opposing parties, harm to the movant if  
11 leave is not granted, and futility of the amendment. *Foman v. Davis*, 37 U.S. 178, 182 (1962);  
12 *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9<sup>th</sup> Cir. 1997).

13 In this case, there does not appear to be undue delay, bad faith or dilatory motive,  
14 repeated failure to cure deficiencies by amendments previously allowed, or undue prejudice to  
15 defendants. There would be harm to plaintiff if he were unable to clarify his claims.  
16 Amendment of the complaint would does not appear to be futile.

17 The issue here is whether the proposed amended complaint meets the pleading standards  
18 for stating a claim for relief.

19 Fed.R.Civ.P. 8(a) provides as follows:

20 (a) **Claim for Relief.** A pleading that states a claim for relief must contain:

21 (1) a short and plain statement of the grounds for the court's jurisdiction, unless  
22 the court already has jurisdiction and the claim needs no new jurisdictional  
support;

23 (2) a short and plain statement of the claim showing that the pleader is entitled to  
24 relief; and

1 (3) a demand for the relief sought, which may include relief in the alternative or  
2 different types of relief.

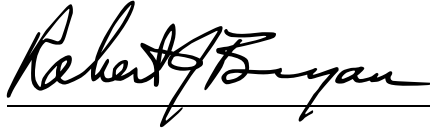
3 The proposed amended complaint eliminates the federal civil rights claims against the  
4 City of Lakewood, and alleges the claims only against Officer Syler; accordingly, the proposed  
5 amended complaint meets the legal standard for stating a federal constitutional claim. The  
6 proposed amended complaint also states a claim against the City of Lakewood under RCW  
7 16.08.040.

8 With regard to the state law claims of assault and battery, negligence, negligent use of  
9 excessive force, intentional infliction of emotional distress/outrage, and negligent infliction of  
10 emotional distress, it is difficult to determine whether plaintiff is alleging liability on the basis of  
11 *respondeat superior* for Officer Syler's actions in controlling and handling Astor; whether  
12 plaintiff is alleging direct causes of action against the City of Lakewood, based upon Officer  
13 Syler's conduct (these direct causes of action were dismissed by the court's May 8, 2010 order);  
14 and/or whether plaintiff is alleging that the City of Lakewood has direct liability for Astor's  
15 conduct, independent of Officer Syler. If he wishes to proceed with these state law claims,  
16 plaintiff should be required to clarify bases upon which he alleges liability. As it stands, the  
17 proposed amended complaint is not a short and plain statement of the claims showing that  
18 plaintiff is entitled to relief.

19 Therefore, although an amendment is appropriate, it is hereby **ORDERED** that plaintiff's  
20 motion to file this amended complaint (Dkt. 14) is **DENIED WITHOUT PREJUDICE**.

21 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
22 to any party appearing *pro se* at said party's last known address.  
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1 Dated this 22<sup>nd</sup> day of May, 2012.

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4 ROBERT J. BRYAN  
5 United States District Judge  
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