UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ALANA CAIN ET AL.	CIVIL ACTION
VERSUS	NO. 15-4479
CITY OF NEW ORLEANS ET AL.	SECTION "R" (2)

ORDER ON MOTION

Plaintiffs' Motion to Amend Complaint, Record Doc. No. 161, is pending before me. Both the remaining and the previously dismissed defendants filed memoranda in opposition. Record Doc. Nos. 163, 173, 174. Plaintiffs received leave to file a reply memorandum. Record Doc. Nos. 168, 169, 170. For the following reasons, IT IS ORDERED that the motion is DENIED.

The policy of the Federal Rules of Civil Procedure is liberal in favor of permitting amendment of pleadings, and Rule 15(a) evinces a bias in favor of granting leave to amend. Unless there is a substantial reason to deny leave to amend, the discretion of the district court is not broad enough to permit denial. Stripling v. Jordan Prod. Co., 234 F.3d 863, 872 (5th Cir. 2000) (citing Foman v. Davis, 371 U.S. 178, 182 (1962); Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521, 524 (5th Cir. 1994); Martin's Herend Imports, Inc. v. Diamond & Gem Trading U.S. Am. Co., 195 F.3d 765, 770 (5th Cir. 1999); Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594, 597-98 (5th Cir. 1981)). Thus, "[t]he court should freely give leave when justice so requires," Fed. R. Civ. P. 15(a)(2), but such leave "is by no means automatic." Wimm v. Jack Eckerd Corp., 3 F.3d 137, 139 (5th Cir. 1993) (quotation omitted). Relevant factors to consider include "undue delay, bad faith or dilatory motive

on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility of amendment." Id.

However, where–as here–the court has entered a scheduling order setting a deadline for the amendment of pleadings, Record Doc. No. 62, the schedule "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4) (emphasis added). "Rule 16(b) governs amendment of pleadings after a scheduling order deadline has expired. Only upon the movant's demonstration of good cause to modify the scheduling order will the more liberal standard of Rule 15(a) apply to the district court's decision to grant or deny leave." S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA, 315 F.3d 533, 536 (5th Cir. 2003). "In determining good cause, we consider four factors: '(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.'" Sw. Bell Tel. Co. v. City of El Paso, 346 F.3d 541, 546 (5th Cir. 2003) (citing Fed. R. Civ. P. 16(b)) (quoting S & W Enters., 315 F.3d at 535); accord Fahim v. Marriott Hotel Servs., Inc., 551 F.3d 344, 348 (5th Cir. 2008); Nunez v. U.S. Postal Serv., 298 F. App'x 316, 319 (5th Cir. 2008); In re Int'l Marine, LLC, No. 07-6424, 2009 WL 498372, at *1-2 (E.D. La. Feb. 26, 2009) (Fallon, J.).

Although a new scheduling order was entered in this case, Record Doc. No. 121, the new order did not include a new deadline for amending pleadings. Plaintiffs' motion for extension of the amendment deadline, Record Doc. No. 156, has not yet been determined

by the district judge. Under these circumstances, the original deadline remains in place, and the Rule 16 standard applies.

I find that plaintiffs have not established good cause for their proposed amendment. First, their explanation for their failure timely to move for leave to amend is inadequate and unpersuasive. They waited to seek leave until long after the December 7, 2015 deadline to amend pleadings, Record Doc. No. 62, had passed. Plaintiffs did not move to amend until after the court had granted motions to dismiss that were fully briefed and considered, including accepting all well-pleaded facts as true and viewing them in the light most favorable to plaintiffs.

Second, the proposed amendment is not important. It is unnecessary to add another named plaintiff to this putative class action to bring identical types of claims that the existing representative plaintiffs have already asserted. If the proposed new plaintiff is a member of the class, she may receive relief through that vehicle. Otherwise, she is free to pursue her own separate claim. In addition, the claims alleged by all plaintiffs in the proposed amended complaint are substantively the same as those already placed at issue by plaintiffs' first amended complaint. Plaintiffs may obtain complete relief on their claims from the remaining defendants.

In addition, the amendment would be futile as to the City and the Sheriff. Plaintiffs do not plead any new facts that would likely change the outcome of the dismissals of the City and the Sheriff. The "new" facts alleged by plaintiffs are not sufficient to establish that the alleged actions were the policy either of the Sheriff or the City. The City does not fund

the Criminal District Court. The City does not run the court, which is a separate juridical and political entity from the City. The fact, if true, that City officials were aware of what the Criminal District Court judges were doing does not make it the City's policy. For purposes of Monell liability, the relevant policymaker must be the

> final policymaker who has "the responsibility for making law or setting policy in any given area of a local government's business." Exercising discretion in an area of governmental action is not enough. The official must be the one responsible for setting controlling policy:
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> > The fact that a particular official–even a policymaking official–has discretion in the exercise of particular functions does not, without more, give rise to municipal liability based on an exercise of that discretion. The official must also be responsible for establishing final government policy respecting such activity before the municipality can be held liable.
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> . . . . [M]unicipal liability under § 1983 attaches where–and only where–a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.

Culbertson v. Lykos, 790 F.3d 608, 624 (5th Cir. 2015) (quoting City of St. Louis v. Praprotnik, 485 U.S. 112, 125 (1988); Pembaur v. City of Cincinnati, 475 U.S. 469, 481-83, 483-84 (1986)). "[T]he unconstitutional conduct must be directly attributable to the municipality through some sort of official action or imprimatur" by the final policymaker. Rivera v. Houston Indep. Sch. Dist., 349 F.3d 244, 247 (5th Cir. 2003). Thus, mere awareness of a policy does not make the policy the City's. Nothing in the new allegations is sufficient to establish that the City is the "policymaker" of the subject procedures for Monell purposes. Neither the City nor the Sheriff can be held liable merely because their officers executed facially valid warrants. In addition, the presiding district judge has

already held that the Sheriff has no policymaking authority to act with respect to judicial functions such as issuing warrants and setting bail. The Sheriff cannot decline to maintain in custody persons arrested on facially valid warrants who cannot post bail, and he cannot refuse to enforce state law. The alleged new facts do not change these conclusions.

The proposed amendment as to the judicial administrator, Robert J. Kazik, is futile because, as the court has already ruled, he is protected from liability for his actions taken as administrator by quasi-judicial absolute immunity. The alleged new facts would not change this result. Similarly, the proposed amendment does not allege any new facts that would defeat the Eleventh Amendment immunity of the Criminal District Court.

Finally, the amendment will cause undue prejudice by re-asserting substantively similar claims against defendants who have been dismissed after thorough briefing and consideration of the well-pleaded facts and relevant law. These defendants would have to re-litigate claims that have already been dismissed. That type of prejudice cannot be cured by a continuance. In any event, the district judge will determine whether a continuance of the amendment deadline is available when she rules on plaintiff's pending motion to do so.

For all of the foregoing reasons, the motion is denied.

New Orleans, Louisiana, this 4th day of August, 2016.

JOSEPH C. WILKINSON, JR.
UNITED STATES MAGISTRATE JUDGE