

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAMES THEODORE SHARKEY,

Plaintiff - Appellant,

v.

J. DUKE,

Defendant - Appellee,

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Defendant.

No. 24-7801

D.C. No.

2:23-cv-00449-CDS-DJA

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

Cristina D. Silva, District Judge, Presiding

Submitted August 25, 2026**

Before: SILVERMAN, N.R. SMITH, and DE ALBA, Circuit Judges.

James Theodore Sharkey appeals pro se from the district court's summary

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

judgment in his 42 U.S.C. § 1983 action alleging that Sergeant Justin Duke violated his Fourteenth Amendment rights by threatening to arrest him. We have jurisdiction under 28 U.S.C. § 1291. We review de novo cross-motions for summary judgment. *U.S. Sec. & Exch. Comm’n v. Hui Feng*, 935 F.3d 721, 728 (9th Cir. 2019). We affirm.

The district court properly granted summary judgment in favor of Duke because Sharkey failed to raise a genuine dispute of material fact as to whether Duke violated his Fourteenth Amendment rights when he told Sharkey he would arrest him for breaking the law. *See Scott v. Harris*, 550 U.S. 372, 380 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.”); *Spencer v. Pew*, 117 F.4th 1130, 1133 (9th Cir. 2024) (explaining that where “the uncontested video evidence from the officers’ body cameras establishes the timing and occurrence of events, we view the facts in the light depicted by the videotape” (citation, internal quotation marks, and brackets omitted)); *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993) (describing requirements of Fourteenth Amendment claim).

The district court did not abuse its discretion in deeming matters admitted after Sharkey failed to respond to Duke’s requests for admission. *See Fed. R. Civ.*

P. 36(a)(3) (“A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection”); *Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 825, 837 (9th Cir. 2021) (“A matter admitted under this rule is conclusively established unless the court grants a motion to waive or amend under Rule 36(b).” (citation and internal quotation marks omitted)); *Conlon v. United States*, 474 F.3d 616, 621 (9th Cir. 2007) (standard of review).

The district court did not abuse its discretion in denying leave to amend because Sharkey failed to establish good cause for filing his motion to amend the complaint six months after the deadline for amended pleadings had expired. *See* Fed. R. Civ. P. 16(b)(4) (stating that a scheduling order “may be modified only for good cause and with the judge’s consent”); *Kamal v. Eden Creamery, LLC*, 88 F.4th 1268, 1277 (9th Cir. 2023) (standard of review).

The district court did not abuse its discretion in denying Sharkey’s motion to consolidate this action with the second action Sharkey filed using the proposed amended complaint from this action. *See Mendoza v. Amalgamated Transit Union Int’l*, 30 F.4th 879, 886 (9th Cir. 2022) (“Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” (citation and internal quotation marks omitted)); *Pierce v. County of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008)

(standard of review).

Sharkey's motion (Docket Entry No. 10) to supplement the record is denied.

Duke's motions (Docket Entry Nos. 13, 20, 25, 28) to strike, transmit a physical exhibit, and for judicial notice are granted.

AFFIRMED.