IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

SUE McCLELLAND, **Plaintiff**, **v.** **CITY OF MODESTO, COUNTY OF STANISLAUS, STANISLAUS DRUG ENFORCEMENT AGENCY, ROBERT HUNT, STEVE HOEK, PATRICK CRANE, OFFICER McGILL, OFFICER GILLESPIE, OFFICER RAMAR, SARGEANT YOUNG and ROY WASDEN,** **Defendants.**	**CV F 09 - 1031 AWI dlb** **ADDENDUM TO MEMORANDUM ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS** **Documents #'s 29 and 30**

On September 10, 2009, the court issued a memorandum opinion and order granting in part and denying in part Defendants' motion to dismiss Plaintiff's First Amended Complaint. It has been brought to the court's attention that the order of September 10, 2009, granted leave to amend but did not specify a time limit for the filing of a second amended complaint. In addition, the court was requested to clarify the court's dismissal with prejudice of Plaintiff's fourth claim for relief for violation of provisions of the California Constitution in light of the court's discussion which stated that leave to amend would be granted. The court herewith corrects the inadvertent omission of the due date for the filing of any second amended

complaint and provides the requested clarification as to its ruling with regard to Plaintiff's fourth claim for relief.

As to Plaintiff's fourth claim for relief alleging violation of Plaintiff's rights under Article 1, section 7(a) and under Article 1, section 13 of the California Constitution, the court found that these provisions of the California Constitution do not provide a basis for an award of money damages. Since money damages are the sole objective of Plaintiff's fourth claim for relief, the court held Plaintiff's fourth claim for relief fails to state a claim for which relief can be granted. The claim under sections 7(a) and 13 of the California Constitution are dismissed with prejudice to the extent the claim is for money damages. What the court attempted to convey in the discussion and clarifies here is that if Plaintiff's objective is to recover money damages under California law for violation of section 7(a) of the California Constitution, she may plead a claim pursuant to California Civil Code section 52.1 or may plead a common law claim for excessive force, or may find some other provision that permits recovery of money damages. However, she may not state a claim for money damages directly under sections 7(a) or 13.

As to the court's oversight in setting a deadline for submission of any second amended complaint, it is hereby ORDERED that any second amended complaint shall be filed and served not less than twenty-one (21) days from the date of service of this order.

IT IS SO ORDERED.

Dated: September 11, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE