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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

EUGENE FORTE

Plaintiff,

v.

**COUNTY OF MERCED; DISTRICT
ATTORNEY LARRY MORSE; DEPUTY
DISTRICT ATTORNEY ALAN
TURNER; COUNTY COUNSEL JAMES
FINCHER; MERCED COUNTY
SHERIFF MARK PAZIN; MERCED
COUNTY SHERIFF DEPUTIES
PACINICH, JASKOWIEAC, HILL and
LEUCHNER; JAMES PADRON;
SUPERVISOR JERRY O'BANION;
CITY OF LOS BANOS; LOS BANOS
POLICE OFFICERS GARY BRIZZEE
and ANTHONY PARKER; CATHOLIC
DIOCESE OF FRESNO; CONNIE
McGHEE; McCLATCHY
NEWSPAPERS; LOS BANOS
ENTERPRISE; GENE LIEB; COREY
PRIDE; and DOES 1 through 100, et al.,**

Defendants.

1:11-CV-0381 AWI SKO

**ORDER REGARDING
PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION
TO CORRECT CLERICAL
ERROR AND ORDER ON
SAME**

Doc. # 101

On January 19, 2012, Defendants filed a motion to correct a clerical error in the court's Memorandum Opinion and Order filed January 11, 2012, granting in part and denying in part Defendants' motions to dismiss (hereinafter, the "January 11 Order," Doc. # 96). On

1 February 14, 2012, the court determined on its own motion that there had been a clerical error
2 and issued an order correcting the identified clerical error. Plaintiff submitted an opposition
3 to Defendants' motion to correct on February 13, 2012 and submitted an amended opposition
4 on the following day. Doc. # 103 (hereinafter, Plaintiff's "Opposition"). Plaintiff's
5 Opposition does not address the clerical nature of the correction requested by Defendants but
6 rather "requests that this court deny what is not a correction to a clerical error and to
7 reconsider and reverse its ruling dismissing the [D]efendants until after there has been
8 minimal discovery which would reveal how deep the conspiracy is between the [D]efendants
9 that has caused the violation of [P]laintiff's civil rights." Doc. # 103 at 11:14-17.

10 To the extent Plaintiff's Opposition can be construed as an opposition to Defendant's
11 motion to correct, that opposition is duly noted. The court finds no reason to modify or
12 amend its prior order because Plaintiff's Opposition does not address in any way the clerical
13 nature of the error that resulted in the failure of the court to dismiss from Plaintiff's second
14 claim for relief parties that had not been named as defendants to that claim.

15 To the extent Plaintiff's Opposition can be construed as a motion for reconsideration
16 of its January 11 Order, that motion will be denied for the following reasons.

17 Motions to reconsider are committed to the discretion of the trial court. Combs v.
18 Nick Garin Trucking, 825 F.2d 437, 441 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456,
19 460 (9th Cir. 1983) (*en banc*). To succeed, a party must set forth facts or law of a strongly
20 convincing nature to induce the court to reverse its prior decision. See, e.g., Kern-Tulare
21 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *aff'd in part and*
22 *rev'd in part* on other grounds, 828 F.2d 514 (9th Cir. 1987), *cert. denied*, 486 U.S. 1015, 108
23 S.Ct. 1752, 100 L.Ed.2d 214 (1988).

24 Plaintiff's Opposition alleges or re-alleges facts centering on a few contentions that
25 appear to be central to Plaintiff's motivations in bringing this action, but that are not at all
26 pertinent to the legal issues that are addressable by this court. The court's January 11 Order
27 pointed to the issues the court found were pertinent and the issues that were not. Essentially,
28 Plaintiff's Opposition is an attempt to reargue the facts and issues the court's January 11

1 Order found not pertinent to this action. The court will briefly summarize and reiterate those
2 issues and facts here.

3 First, Plaintiff alleges a number of “facts” pertaining to the handling (or mis-handling)
4 of Plaintiff’s 2009 “citizen’s complaint” which purports to set forth the factual basis for his
5 claims of unlawful arrest and unlawful use of force arising out of the 2009 arrest that is the
6 subject of his claim for unlawful use of force in violation of his Fourth Amendment rights in
7 this action. The Fourth Amendment provides Plaintiff a basis for redress of instances of
8 excessive use of force by police officers. It does not provide for any particular disposition or
9 handling or consideration of any citizen complaints or claims he may submit directly to the
10 offending police agency. Similarly, the Fourteenth Amendment guarantees Plaintiff fair
11 access to this court and its processes to seek redress for the unlawful application of force in
12 this court, not for any particular handling of a citizens’ complaints by the offending agency.
13 Therefore, in this case, the question is whether Plaintiff can adduce facts sufficient to show
14 that he suffered the application of excessive force by police officers.

15 In a similar vein, whatever the fate of Plaintiff’s citizen’s complaint, neither the
16 complaint nor anything that happened after it was filed constitutes evidence of any
17 constitutional conspiracy against Plaintiff. As the court’s January 11 Order pointed out,
18 evidence of a conspiracy to deprive Plaintiff of any constitutional right must pre-exist any
19 actual deprivation of the right. The only right in play in this action is Plaintiff’s Fourth
20 Amendment right against excess use of force and there is absolutely no evidence alleged by
21 Plaintiff that would indicate that a plan to cause such a deprivation pre-existed the arrest
22 where it is alleged the deprivation occurred. The court does not rule out the possibility there
23 may have been a conspiracy to “bury” the citizen’s report; but since there is no constitutional
24 right that guarantees the consideration of, or any particular resolution of, a citizen’s report by
25 police or municipal officials, any such conspiracy cannot rise to the level of constitutional
26 harm. Plaintiff asks, perhaps rhetorically, “Doesn’t the breaking of Government Code 1222
27 for the alleged ulterior purpose to obstruct an investigation of police brutality and abuses
28 done under the color of law by the [D]efendants mean anything to this court?” Doc. # 103 at

1 5:9-11. In general, the answer is “Yes.” However, in this case, the court is concerned with
2 the alleged occurrence of police brutality, not the investigation of it by someone else.
3 Plaintiff has at his disposal this forum to prove his claim of police brutality if he is able to do
4 so. Plaintiff cannot bootstrap whatever dead-end his citizen’s report may have suffered into a
5 separate basis of liability against all the individuals who had anything to do with the report.

6 Second, Plaintiff alleges or re-alleges a number of facts that pertain to the prosecution
7 of Plaintiff in Merced Superior Court on pending criminal charges by personnel of the
8 District Attorney’s office, who Plaintiff alleges previously stated had a “conflict of interest”
9 with regard to Plaintiff’s criminal prosecution. As the court determined in its January 11
10 Order, the court is compelled under the doctrine of Younger abstention to *stay* any action that
11 would have any tendency to interfere with the action(s) currently pending in the Superior
12 Court. This includes any claim or allegation of conflict of interest. Such matters cannot be
13 passed upon by this court because any decision reached by this court would directly interfere
14 with the Superior Court’s own determination of the same issue. If Plaintiff has a concern
15 with any potential conflict of interest, he is required to raise that issue first in the forum
16 where the alleged conflict of interest exists. This court is not that forum.

17 Third, Plaintiff’s Opposition appears to dispute the court’s dismissal of Defendant
18 Padron, the *pro tem* judge Plaintiff requested be subjected to a citizen’s arrest, at least to the
19 extent the court may have noted such an arrest was unlawful. The court has reviewed its
20 January 11 Order and notes that, after taking into account all of Plaintiff’s allegations as set
21 forth in the FAC and all of the allegations in the proposed amendment, the court concluded
22 there was no plausible legal cause for an arrest of Padron, whether citizen’s or otherwise.
23 Plaintiff protests that no actual arrest occurred and alleges that he “was having Padron
24 arrested for obstruction of justice by Padron portending [sic] to be a judge during a hearing
25 that he was disqualified from.” Doc. # 103 at 9:12-15. As the court noted in its January 11
26 Order, there is no constitutionally guaranteed right to effectuate a citizen’s arrest. Plaintiff
27 objected to the jurisdiction of a *pro tem* judge and there is no allegation that a *pro tem* judge
28 asserted jurisdiction over any aspect of Plaintiff’s Superior Court case. The fact that Plaintiff

1 now labels Padron's service as a *pro tem* judge an "obstruction of justice" does not add
2 anything to Plaintiff's claim of infringement of constitutional rights. Plaintiff's restated
3 claim against Padron is as devoid of merit in his Opposition as in his original claim and the
4 court finds no reason whatsoever to reverse its dismissal of Padron with prejudice.

5 Finally, Plaintiff's Opposition misquotes the court's January 11 Order to suggest that
6 the court has forbade Plaintiff from pursuing other avenues of redress of his grievances. This
7 is emphatically not the case. The court's January 11 Order concludes that "Plaintiff has
8 alleged claims of unreasonable use of force under the Fourth Amendment against Defendants
9 Picinich and Parker that are sufficient to withstand Defendants' motion to dismiss. Plaintiff
10 may proceed with this claim and no others." Doc. # 96 at 43:13-15. There is nothing stated
11 or implied in the court's order that in any way limits Plaintiff's efforts to further seek redress
12 of is grievances through the FBI or by any other means. The court's order merely states that
13 in *this* court, in *this* action, Plaintiff may go forward at *this* time only with his excessive force
14 claims against Picinich and Parker. This remains the essence of the court's January 11 Order.

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16 To the extent that Plaintiff's Opposition may be construed as being a motion for
17 reconsideration of the court's January 11 Order, that motion is hereby DENIED.

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19 IT IS SO ORDERED.

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21 Dated: February 23, 2012


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CHIEF UNITED STATES DISTRICT JUDGE