

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELTON W. ERVIN,

Plaintiff,

v.7

**MERCED POLICE DEPARTMENT,
MERCED POLICE OFFICERS:
CHAVEZ – BADGE # 156, ALPONTE,
SALLYER – BADGE # 191 and
PADGETT – BADGE # 180, and DOES
1 to 4,**

Defendants.

1:13-cv-0446 AWI GSA

**COURT’S RESPONSE TO REQUEST TO
CLARIFY ORDER GRANTING MOTION
TO DISMISS, DOCUMENT NUMBER 13,
AND AMENDMENT OF ORDER**

Doc. #'s 6 and 14

On October 23, 2013, the court filed a Memorandum Opinion and Order (the “October 23 Order”) granting Defendants’ motion to dismiss claims alleged in Plaintiff’s First Amended Complaint (“FAC”). The court deemed Plaintiffs’ FAC to allege eight claims for relief, of which only one – Plaintiff’s eighth claim for relief – was deemed by the court to allege violation of Plaintiff’s Fourth Amendment rights against arrest without probable cause and application of excessive force. The court construed Defendants’ motion to dismiss as seeking dismissal of all claims for relief alleged in the FAC *except* for Plaintiff’s eighth claim for relief. The court granted Defendants’ motion to dismiss in its entirety meaning that Plaintiff’s claims that alleged violations of constitutional rights on any ground *other than* violation of Fourth Amendment

1 rights were to be dismissed with prejudice. Unfortunately, a late edit to the “Conclusion and
2 Order” portion of the October 23 Order resulted in an inadvertent ambiguity which Defendants
3 point out in a communication filed on November 12, 2013. Doc. # 14. The court regrets the
4 inadvertent ambiguity and hereby amends its October 23 Order as follows:

5
6 It is hereby ORDERED that the second sentence of the final paragraph of the court’s
7 October 23 Order, Document Number 13, which currently reads “Plaintiff’s First Amended
8 Complaint is hereby DISMISSED with prejudice as to all Defendants and as to all claims alleged
9 therein” is hereby STRIKEN and the following sentence is INSERTED in its place: “Plaintiff’s
10 claims for relief numbered one through seven, inclusive, are hereby DISMISSED as to all
11 Defendants with prejudice.”

12 IT IS SO ORDERED.

13 Dated: November 13, 2013

14 
15 SENIOR DISTRICT JUDGE

16
17
18
19
20
21
22
23
24
25
26
27
28