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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KENYA DARRICK CALDWELL,

Plaintiff,

v.

CITY OF SELMA, et al.,

Defendants.

Case No. 1:13-cv-00465-SAB

ORDER CLARIFYING CLAIMS AND
REQUIRING DEFENDANTS TO RESPOND

Ever Jean Kelley filed this action as conservator for Plaintiff Kenya Darrick Caldwell on March 28, 2013. (ECF No. 1.) On April 21, 2013, a first amended complaint was filed alleging unreasonable search and seizure in violation of the Fourth and Fourteenth Amendments; denial of due process in violation of the Fifth and Fourteenth Amendments; excessive force in violation of the Fourth, Fifth, and Fourteenth Amendments, denial of equal protection in violation of the Fourteenth Amendment, right to be free from interference with Plaintiff's zone of privacy in violation of the Fourth and Ninth Amendments; and the right to free from malicious prosecution. (ECF No. 7.) This action arises out of an incident in which Plaintiff was shot while he was physically attacking Officer Burgamy.

On July 25, 2014, Defendants moved for summary judgment on the Fourth Amendment claims. (ECF No. 24-29.) On August 29, 2014, this court entered partial summary judgment for Defendants on the Fourth Amendment claims raised in the first amended complaint. (ECF No.

1 48, as amended September 3, 2014.)

2 On January 26, 2015, after the Court granted Defendants' motion to file a second motion
3 for summary judgment, Defendants filed a second motion for summary judgment. In their
4 second motion for summary judgment, Defendants erroneously state that pursuant to the Court's
5 September 3, 2014 order the only triable claims remaining are the Equal Protection and Due
6 Process claims. The Court has never found that only the equal protection and due process claims
7 remain in this action. Specifically, when Defendants requested the Court amend the September
8 3, 2014 order to include dismissal of Plaintiff's Ninth Amendment claim, the Court denied the
9 request stating that Defendants did not move for summary judgment on the Ninth Amendment
10 claims. Similarly, Plaintiff's malicious prosecution claim was not raised in the prior motion to
11 dismiss and the claim was not addressed in the September 3, 2014 order as no facts or argument
12 relevant to the claim were raised in the prior motion.

13 Based upon review of Plaintiff's complaint and the prior order granting partial summary
14 judgment, the Court finds that the claims remaining in this action are against Defendant
15 Burgamy for violation of Plaintiff's right to due process of law and equal protection in violation
16 of the Fourteenth Amendment and interference with the zone of privacy in violation of the Ninth
17 Amendment; and against Defendants City of Selma and Whiteside for policies and procedures in
18 violation of due process and equal protection of the laws under the Fourteenth Amendment and
19 the right to be free from malicious prosecution.

20 Accordingly, the Court shall require Defendants to either inform the Court of why these
21 claims are not remaining in this action or if they did not move for summary judgment because
22 they intend to proceed to trial on the claims. In the alternative, Defendants may file a
23 supplement to their motion for summary judgment to address the Ninth Amendment and
24 malicious prosecution claims.

25 Based on the foregoing, IT IS HEREBY ORDERED that:

- 26 1. Defendants shall file a response to this order as set forth herein on or before
27 March 31, 2015; and
- 28 2. Plaintiff's opposition to the motion for summary judgment and Defendants'

1 response to this order shall be filed on or before April 6, 2015;

2 3. Defendants' reply, if any, shall be filed on or before April 10, 2015; and

3 4. The April 15, 2015 hearing shall remain on calendar unless the Court issues an
4 order vacating the hearing.

5 IT IS SO ORDERED.

6 Dated: March 26, 2015

7 
8 UNITED STATES MAGISTRATE JUDGE