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UNITED STATES DISTRICT COURT

DISTRICT COURT OF NEVADA

CONNIE SEMPER, an individual; COREY
JOHNSON, an individual; ASHLEY
MEDLOCK, an individual; CORY BASS, an
individual; MICHAEL GREEN, an individual;
DEMARLO RILEY, an individual;
BREANNA NELLUMS, an individual;
CLINTON REECE, an individual; ANTONIO
WILLIAMS, an individual; LONICIA
BOWIE, an individual; CARLOS BASS, an
individual; and DEMETREUS BEARD, an
individual,

Plaintiffs,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, in its official capacity;

Case Number: 2:20-cv-01875-JCM-EJY

**PLAINTIFFS' MOTION FOR
CLARIFICATION, OR IN THE
ALTERNATIVE, RECONSIDERATION**

ANDREW BAUMAN, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; MATTHEW KRAVETZ, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; SUPREET KAUR, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; DAVID JEONG, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer; THERON YOUNG, individually and in his capacity as a Las Vegas Metropolitan Police Department Officer,

Defendants.

Plaintiffs LONICIA BOWIE, MICHAEL GREEN, COREY JOHNSON, ASHLEY MEDLOCK, CLINTON REECE, DEMARLO RILEY, and CONNIE SEMPER, represented by the ACLU of Nevada, file this Motion for Clarification or, in the Alternative, Reconsideration of the Court's July 5, 2023, Order [ECF 113] regarding Plaintiffs' fifth and seventh causes of action of their Second Amended Complaint.

This Motion is brought in accordance with Rule 59(e) and Rule 60(a) of the Federal Rules of Civil Procedure and Local Rule 59-1. It is based upon the Memorandum of Points and Authorities below, the record hereto, all papers and exhibits on file herein, and any oral argument this Court sees fit to allow should a hearing on this matter be set.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs respectfully ask for clarification regarding the Court's July 5, 2023, Order [ECF No. 113], granting in part and denying in part Defendants' Motion for Partial Dismissal [ECF. 92] as to whether the individual defendant officers have been dismissed entirely or only in their official capacity from Plaintiffs' causes of action five and seven. The Plaintiffs do *not* seek clarification or reconsideration regarding the reasoning the Court provided in the discussion section of the Order. Rather the Plaintiffs are only concerned about potential ambiguity in a statement in the Order's conclusion and request clarification out of an abundance of caution.

In the discussion section of its July 5, 2023, Order, the Court expressly dismissed the

1 individual defendants in their official capacity from all causes of action and in their individual
2 capacity from causes of action two, three, and four. The discussion section did not state that
3 individual defendants were dismissed in their individual capacity from causes of action five or
4 seven. However, in concluding the July 5, 2023, Order, the Court stated that the individual
5 defendants were dismissed from *all* causes of action in both their official and individual capacities
6 without apparent limitation.

7 Plaintiffs only request clarification as to whether the July 5, 2023, Order dismissed the
8 individual defendants in their official capacity alone or entirely from causes of action five and
9 seven. If the order in fact dismissed the individual defendant officers from causes of action five or
10 seven in their individual capacity, Plaintiffs respectfully request that the Court either reconsider in
11 regards to those causes of action or grant Plaintiffs leave to amend those specific causes of action.

12 **II. BACKGROUND**

13 Defendants removed this action on October 8, 2020, based upon Plaintiffs' First Amended
14 Complaint. [ECF No. 1 and 1-1]. Select Defendants filed a Motion for Partial Dismissal on October
15 19, 2020 [ECF No. 17], which was granted in part and denied in part in the Court's April 9, 2021
16 Order. [ECF No. 38].

17 Defendants' October 19, 2020, Motion for Partial Dismissal [ECF No. 17] sought to dismiss
18 Plaintiffs' causes of action accusing the Defendants of unreasonable search and seizure and
19 unlawful detention, which included claims against the Defendant LVMPD officers in their
20 individual capacity. The April 9, 2021 Order [ECF No. 38], when discussing unreasonable search
21 and seizure and unlawful detention specifically stated, "[b]ased upon the totality of the
22 circumstances, plaintiffs bring sufficient facts to state a Fourth Amendment claim against LVMPD
23 defendants."¹ That Order went on to state, "[b]ased on the totality of the circumstances, this court
24 finds that the plaintiffs state a plausible claim against the LVMPD defendants based on the
25 contention that reasonable officers in LVMPD's shoes could not have objectively perceived *all*
26 plaintiffs as an immediate threat to their safety or the safety of others,"² thereby upholding these

27 ¹ ECF No. 38 at 7:1-2.

28 ² ECF No. 38 at 7:14-18.

1 claims.

2 Plaintiffs filed a Second Amended Complaint on September 1, 2022 [ECF No. 89].
3 Mirroring the fifth and seventh causes of action in Plaintiffs' First Amended Complaint that the
4 Court addressed in its April 9, 2021 Order, the Second Amended complaint's fifth and seventh
5 causes of action likewise claimed that the individual defendant officers unreasonable stopped,
6 searched, and detained the Plaintiffs and sought to hold those officers liable in their individual
7 capacity.³

8 Defendants responded to the Second Amended Complaint with a Motion for Partial
9 Dismissal of Plaintiffs' Second Amended Complaint [ECF No. 92] on September 26, 2022.
10 Regarding causes of action five and seven, the Defendants' Motion only sought to have the
11 individual defendant officers dismissed in their official capacity, a request that the Plaintiffs
12 conceded in their Opposition [ECF No. 94].

13 After motion practice, the Court issued the Order at issue herein [ECF No. 113] on July 5,
14 2023.

15 The July 5, 2023 Order opened its discussion by dismissing the individual defendant officers
16 from the Plaintiffs' first cause of action, pertaining to Title VI, and dismissed causes of action nine
17 and ten in their entirety.⁴ Next the Order dismissed the individual officers in their official capacity
18 from causes of action two through eight.⁵ As stated in the Order, these dismissals were requested
19 by the Defendants and uncontested by the Plaintiffs.⁶

20 Next the Court turned to "the remaining issues before the court . . . (1) whether plaintiffs'
21 procedural due process claim fails as a matter of law, and (2) whether plaintiffs can demonstrate
22 they are protected under the First Amendment."⁷ The Court found that "[n]one of the remaining
23 claims specifically addressed any of the officers in their individual capacities."⁸ The Court then

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³ ECF No. 89 at 63:17–19, 65:20–22.

25 ⁴ ECF No. 113 at 5:11-13.

26 ⁵ *Id.* at 5:14-16.

27 ⁶ *Id.* at 5:11–14.

28 ⁷ *Id.* at 5:16–19.

⁸ *Id.* at 5:21–22.

ordered that “the claims against the officers in in their individual capacity in causes of action two, three, and four” be dismissed.⁹ The Order did not similarly dismiss the officers in their individual capacity for causes of action five or seven in the discussion section, nor did it address any Fourth Amendment issues that those causes of action are based upon in that section.¹⁰

However, in its conclusion section, the Order states that “the court dismisses the individual defendants from all causes of action in both their official and individual capacities, as well as the ninth and tenth causes of action in their entirety.”¹¹ The statement does not distinguish causes of action five and seven, which were not discussed in the body of the order, from causes of action two, three, and four, which were.¹²

III. LEGAL STANDARD

In considering a motion for clarification, a court “may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” FRCP 60(a); *see Pruzinsky v. Gianetti*, 282 F.3d 434, 441 (6th Cir. 2002) (“The basic purpose of the rule is to authorize the court to correct errors that are mechanical in nature that arise from oversight or omission.”); *Lou v. MA Labs., Inc.*, 2013 U.S. Dist. LEXIS 53637, *2 (N.D. Ca April 15, 2013) (“A number of courts have interpreted a “motion for clarification” after the issuance of an order as a motion for relief from a judgment or order under Federal Rule of Civil Procedure 60.”).

In considering a motion for reconsideration, a court may alter or amend a judgment issued by that court. FRCP 59(e). “Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). There may be other circumstances, though “highly unusual”, that

⁹ *Id.* at 5:24–25.

¹⁰ *Id.* at 5:20–27.

¹¹ *Id.* at 12:17–19.

¹² *Id.*

1 warrant reconsideration. *Id.* “A party seeking reconsideration . . . must state with particularity the
2 points of law or fact that the court has overlooked or misunderstood.” LR 59–1.

3 **IV. DISCUSSION**

4 Plaintiffs respectfully request clarification from the Court whether the July 5, 2023, Order
5 [ECF No.113] dismissed the defendant officers in their individual capacity from causes of action
6 five and seven. The pertinent discussion in the Order [ECF No. 113] states the LVMPD officers
7 are dismissed from (1) cause of action one entirely based on the Defendants’ uncontested request,
8 (2) causes of action two through eight in their official capacity based on Defendants’ request, and
9 (3) causes of action two, three, and four in their individual capacity due to insufficient notice in
10 the pleading.¹³ The Plaintiffs do not request any clarification or reconsideration in regards to that
11 decision section analysis. Rather, Plaintiffs’ only concern is a potential ambiguity in the Order’s
12 conclusion regarding causes of action five and seven, as the conclusion states that, “the court
13 dismisses the individual defendants from all causes of action in both their official and individual
14 capacities, as well as the ninth and tenth causes of action in their entirety.”¹⁴

15 To the extent the ruling that, “the court therefore dismisses the individual defendants from
16 all causes of action in both their official and individual capacities...” did not include causes of
17 action five and seven, Plaintiffs only request clarification pursuant to FRCP 60(a) that the
18 conclusion is meant to reflect the Court’s analysis in the discussion section and that the individual
19 defendant officers have not been dismissed in their individual capacity from causes of action five
20 and seven.

21 If the Order did dismiss the officers entirely from causes of action five and seven in their
22 individual capacity, Plaintiffs respectfully seek reconsideration pursuant to FRCP 59(e) and LR 59-
23 1. Causes of action five and seven in Plaintiffs’ Second Amendment Complaint are only against
24 the individual defendants, not Defendant LVMPD.¹⁵ Each cause of action specifically identifies the
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27 ¹³ ECF No. 113, 5:11–27.

28 ¹⁴ *Id.* at 12:17–19.

¹⁵ ECF No. 89 at 63:17–19, 65:20–22.

individual defendant officers by name.¹⁶ Each cause of action specifies the actions taken by the individual defendants that the action arises from, with “handcuffing, detaining, frisking, or patting down each Plaintiff” as the basis for the cause of action five and “seiz[ing] and subsequently detain[ing] Plaintiffs for several hours” as the basis for cause of action seven.¹⁷ Furthermore, Plaintiffs provide significant details supporting these causes of action in the rest of the complaint.¹⁸ *See Rockstar, Inc. v. Original Good Brand Corp.*, 2010 U.S. Dist. LEXIS 80935, *6–7 (D. Nev. August 9, 2010) (“[T]he cases addressing incorporation by reference do not dice up a complaint into individual paragraphs which incorporate or do not incorporate a reference, but rather address the pleading as a whole.”). Finally, that causes of action five and seven are sufficiently pled are further evidenced by the fact that these causes of action were not subject to Defendants’ Motion to Dismiss [ECF No. 92], and the Court’s previous finding that functionally identical causes of action in the First Amended Complaint were sufficiently pled.¹⁹ If the Court has dismissed the individual defendants entirely from causes of action five and seven, the Plaintiffs respectfully request reconsideration or the opportunity to amend their complaint in regards to those causes of action.

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¹⁶ *Id.* at 63 ¶ 469, 65 ¶ 482.

¹⁷ *Id.* at 63 ¶ 470 (identifying the defendants’ actions of “handcuffing, detaining, frisking, or patting down each Plaintiff” as the basis for the cause of action), 65 ¶ 482 (identifying the officers action of “seiz[ing] and subsequently detain[ing] Plaintiffs for several hours” as the basis for the cause of action).

¹⁸ *See e.g., id.* at 15 ¶ 87, 16 ¶ 95, 17 ¶ 101, 17 ¶ 103, 17 ¶ 107, 17 ¶ 108, 18 ¶ 112, 18 ¶ 113, 18 ¶ 117, 18 ¶ 118, 18 ¶ 122, 18 ¶ 123, 19 ¶ 127, 19 ¶ 128, 19 ¶ 131, 19 ¶ 132, 19 ¶ 135, 19 ¶ 136.

¹⁹ *Compare* ECF No. 1–1 at 21:17–22, 23:16–21, *with* ECF No. 89 at 63:17–19, 65:20–22.

1 **V. CONCLUSION**

2 The July 5, 2023, Order provides clear, cogent analysis in its discussion section regarding
3 what defendants have been dismissed from which causes of actions in what capacity and why.
4 However, Plaintiffs are concerned that there is a potential ambiguity in the Order's conclusion as
5 to whether the Order dismisses the individual defendant officers from causes of action five and
6 seven in their individual capacity. If the Order did not dismiss the defendant officers entirely from
7 the causes of action five and seven, the Plaintiffs respectfully request clarification. If Order
8 dismissed the individual defendants in their individual capacity from causes of action five and
9 seven, Plaintiffs request that this court reconsider that decision or the opportunity to amend their
10 pleading regarding those claims.

11
12 Dated: August 2, 2023

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14 **AMERICAN CIVIL LIBERTIES
UNION OF NEVADA**

15
16 /s/ Christopher Peterson
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **PLAINTIFFS' MOTION FOR CLARIFICATION OR, ALTERNATIVELY, RECONSIDERATION** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on August 2, 2023.

/s/ Christopher Peterson
An employee of ACLU of Nevada