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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAMES HENRY RODRIGUEZ,  
  
                    Plaintiff,  
  
          v.  
  
C. LEWIS, et al.,  
  
                    Defendants.

Case No. 1:15-cv-01215-LJO-BAM-PC  
  
FINDINGS AND RECOMMENDATION  
THAT DEFENDANT LOPEZ BE  
DISMISSED FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF COULD BE  
GRANTED  
  
OBJECTIONS DUE IN FOURTEEN DAYS

Plaintiff, a Fresno County Jail inmate, brings this action against Fresno County Sheriff’s Deputies Christopher Lewis and Lawrence Lopez. Plaintiff claims he was subjected to excessive force. On December 30, 2015, the Court screened Plaintiff’s complaint and found that Plaintiff stated a cognizable claim against Defendant Lewis for excessive force. Plaintiff failed to state a claim against Defendant Lopez. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). The Court ordered Plaintiff to either file an amended complaint curing the deficiencies identified or notify the Court that he is willing to proceed only on his cognizable claims. On January 8, 2016, Plaintiff filed a notice stating that he does not intend to amend and is willing to proceed only on the claims found by the Court to be cognizable.

In the December 30, 2015 order, the Court informed Plaintiff of the deficiencies in his complaint regarding Defendant Lopez, and granted Plaintiff the opportunity to file an amended

1 complaint that corrects the deficiencies identified as to Defendant Lopez. Because Plaintiff has  
2 filed a notice indicating his desire to proceed against Defendant Lewis only, the Court  
3 recommends dismissal of Defendant Lopez for Plaintiff's failure to state a claim upon which the  
4 Court could grant relief. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2007)(pro se litigant  
5 must be given leave to amend his or her complaint unless it is absolutely clear that the  
6 deficiencies of the complaint could not be cured by amendment). See Ferdik v. Bonzelet, 963  
7 F.2d 1258, 1261 (9th Cir. 1992)(dismissal with prejudice upheld where court had instructed  
8 plaintiff regarding deficiencies in prior order dismissing claim with leave to amend).

9 Accordingly, IT IS HEREBY RECOMMENDED that Defendant Deputy Lopez be  
10 dismissed for failure to state a claim upon which relief can be granted.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 18 U.S.C. § 636(b)(1)(B). Within  
13 FOURTEEN days after being served with these findings and recommendations, Plaintiff may file  
14 written objections with the Court. Such a document should be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
16 objections within the specified time may result in waiver of rights on appeal. Wilkerson v.  
17 Wheeler, 77 F.3d 834 (9th Cir. 2014)(citing Baxter v. Sullivan), 923 F.2d 1394 (9th Cir. 1991))

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19 IT IS SO ORDERED.

20 Dated: January 11, 2016

21 /s/ Barbara A. McAuliffe  
22 UNITED STATES MAGISTRATE JUDGE  
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