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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

EMELITO EXMUNDO,

Plaintiff,

v.

A. K. SCRIBNER, et al.,

Defendants.

CASE NO. 1:06-cv-00205-AWI-GBC PC

ORDER DISMISSING CERTAIN CLAIMS  
AND DEFENDANTS, AND REFERRING  
MATTER BACK TO MAGISTRATE JUDGE  
TO INITIATE SERVICE OF PROCESS

(Docs. 22, 32, 35)

THIRTY-DAY DEADLINE

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Plaintiff Emelito Exmundo (“Plaintiff”) is a state prisoner who is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 23, 2006. (Doc. 1.) A second amended complaint was filed on June 16, 2009. (Doc. 32.) On October 8, 2010, the Magistrate Judge screened Plaintiff’s complaint, and found that it states a claim against Defendants Bell and Johnson for excessive force in violation of the Eighth Amendment, but does not state any other claims for relief under section 1983. 28 U.S.C. § 1915A. Plaintiff was ordered to file an amended complaint or notify the Court of his willingness to proceed only on the claims found to be cognizable. (Doc. 35.) On November 3, 2010, Plaintiff filed a notice stating that he does not wish to file an amended complaint and is willing to proceed only on his cognizable excessive force claim.

Accordingly, based on Plaintiff’s notice, it is HEREBY ORDERED that:

1. This action shall proceed against Defendants Bell and Johnson for excessive force in violation of the Eighth Amendment;

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- 2. All remaining claims and Defendants are dismissed from this action for failure to state a claim;
- 3. Defendants Robertson, Moore, Hajadjri, Valtierra, and Kavanaugh are dismissed from this action based on Plaintiff 's failure to state any claims against them; and
- 4. This matter is referred back to the Magistrate Judge to initiate service of process proceedings.

IT IS SO ORDERED.

Dated: November 13, 2010

  
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CHIEF UNITED STATES DISTRICT JUDGE