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

DWAYNE MAYFIELD,

CASE NO. 1:10-cv-01091-OWW-GBC PC

Plaintiff,

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

v.

M. MIX, et al.,

(Docs. 1, 9, 13)

Defendants.

ORDER STRIKING FINDINGS AND  
RECOMMENDATIONS RECOMMENDING  
ACTION BE DISMISSED WITH PREJUDICE

(Doc. 11)

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Plaintiff Dwayne Mayfield (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 16, 2010. On October 22, 2010, the Magistrate Judge screened Plaintiff’s [complaint](#), and found that it states a claim against Defendant M. Mix for use of 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 either [file an amended complaint or notify the Court](#) of his willingness to proceed only on the claim found to be cognizable. On December 14, 2010, the Magistrate Judge issued [findings and recommendations](#) recommending this action be dismissed for failure to obey a court order. On January 6, 2011, Plaintiff filed a [notice](#) stating that he does not wish to amend his complaint and is willing to proceed only on his cognizable excessive force claim.

///

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

- 2 1. This action shall proceed on the complaint filed June 16, 2010, against M. Mix for  
3 use of excessive force, in violation of the Eighth Amendment;
- 4 2. Plaintiff's excessive force claim against Defendant E. Mason is dismissed for failure  
5 to state a claim;
- 6 3. Plaintiff's state law claims are dismissed for failure to state a claim;
- 7 4. Defendant E. Mason is dismissed from this action based on Plaintiff's failure to state  
8 any claims against him;
- 9 5. The findings and recommendations recommending dismissing the action for failure  
10 to obey a court order, issued December 14, 2010, is stricken from the record; and
- 11 6. This matter is referred back to the Magistrate Judge to initiate service of process  
12 proceedings.

13  
14 IT IS SO ORDERED.

15 **Dated: January 11, 2011**

**/s/ Oliver W. Wanger**  
**UNITED STATES DISTRICT JUDGE**