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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUPE NIETO, JR.,

Plaintiff,

vs.

DRAKE HODGE, et al.,

Defendants.

Case No.: 1:10-cv-01397-AWI-JLT

**CORRECTED ORDER FINDING
SERVICE OF AMENDED COMPLAINT
APPROPRIATE AND FORWARDING
SERVICE DOCUMENTS TO PLAINTIFF
FOR COMPLETION WITHIN THIRTY
DAYS**

_____/

Lupe Nieto, Jr. (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his Amended Complaint in this action on November 17, 2010. (Doc. 9). The Court screened Plaintiff’s Amended Complaint pursuant to 28 U.S.C. §1915A, and found that it states cognizable claims against defendant Drake Hodge on Fourth and Fourteenth Amendment claims related to the use of excessive force.¹ See Fed.R.Civ.P. 8(a); *Erickson v. Pardus*, 127 S.Ct. 2197, 2200 (2007); *Alvarez v. Hill*, 518 F.3d 1152, 1157-58 (9th Cir. 2008). If the allegations in Plaintiff’s Amended Complaint are proven, Plaintiff has a reasonable opportunity of prevailing on the merits of this claim.

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¹ In separate order issued concurrently with this Order, the Court dismissed the other claims raised in Plaintiff’s Amended Complaint for failure to state a claim, and dismissed the City of Clovis, County of Fresno, and “Doe” defendants.

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Accordingly, it is **HEREBY ORDERED** that:

1. Service of Plaintiff's amended complaint is appropriate for, and shall be initiated on the following defendant: Drake Hodge.
2. The Clerk of the Court shall send Plaintiff one (1) USM-285 form, one (1) summons, a Notice of Submission of Documents form, an instruction sheet and a copy of the Amended Complaint filed November 17, 2010.
3. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the attached Notice of Submission of Documents and submit the completed Notice to the Court with the following documents:
 - a. One completed summons for the defendant listed above;
 - b. One completed USM-285 form for the defendant listed above; and
 - c. Two (2) copies of the endorsed amended complaint filed November 17, 2010.
4. Plaintiff need not attempt service on the defendant and need not request waiver of service. Upon receipt of the above-described documents, the Court will direct the United States Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4 without payment of costs.
5. Plaintiff is cautioned that failure to comply with this order will result in a recommendation that this action be dismissed with prejudice.

IT IS SO ORDERED.

Dated: December 16, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE