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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 (PC)

ORDER ADOPTING THE MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS DISMISSING
PLAINTIFF’S EIGHTH AMENDMENT
CLAIM AND DEFENDANTS CITY OF
CLOVIS, COUNTY OF FRESNO, AND
DOES 1-20, INCLUSIVE

_____ /

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. The Magistrate Judge 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 grounds related to the use of excessive force, but Plaintiff failed to state claims against other defendants. Therefore, the Magistrate Judge ordered Plaintiff to either file an amended complaint or notify the Court that he wished to proceed only on the claims found to be cognizable. (Doc. 10).

On December 6, 2010, Plaintiff notified the Court that he does not wish to amend his complaint, and Plaintiff is willing to proceed only on the cognizable claim within his Amended Complaint identified by the Court in its Order. (Doc. 11). Therefore, the Magistrate Judge recommended that (1) Plaintiff’s claim for a violation of his Eighth Amendment right to freedom

1 from cruel and unusual punishment be dismissed; and (2) defendants City of Clovis, County of
2 Fresno, and “Does 1-20, inclusive” be dismissed from the action. (Doc. 12).

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and *Britt v. Simi Valley*
4 *United School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), this Court has conducted a *de novo* review of
5 the case. Having carefully reviewed the entire file, the Court finds that the findings and
6 recommendation are supported by the record and by proper analysis.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. The Findings and Recommendations filed December 15, 2010, are **ADOPTED IN**
9 **FULL**;
- 10 2. Plaintiff’s claim for a violation of his Eighth Amendment right from cruel and
11 unusual punishment is **DISMISSED**;
- 12 4. Defendants City of Clovis, County of Fresno, and “Does 1-20, inclusive” are
13 **DISMISSED**.

14
15 IT IS SO ORDERED.

16 Dated: January 18, 2011


CHIEF UNITED STATES DISTRICT JUDGE