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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT LEWIS,

CASE NO. 1:11-cv-01415-LJO-SKO

Plaintiff,

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

v.

CITY OF FRESNO, et al.,

(Docs. 1, 8, and 10)

Defendants.

_____ /

Plaintiff Robert Lewis, proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants City of Fresno, Fresno Police Department, and Police Officer Catton. (Doc. 1.) On December 20, 2011, the Magistrate Judge screened Plaintiff's complaint and found that it states a Section 1983 claim for damages against Defendant Catton for alleged excessive force, but it fails to state any other claims for relief. 28 U.S.C. § 1915(e)(2). (Doc. 8.) Plaintiff was ordered to either file an amended complaint or notify the Court of his willingness to proceed only on his cognizable excessive force claim. (Doc. 8.)

Plaintiff sought an extension of time to file either a statement of his willingness to proceed with the cognizable excessive force claim or file an amended complaint (Doc. 9), and the Court granted Plaintiff until March 5, 2012, to comply with the Court's December 20, 2011, order. (Doc. 10.) Plaintiff was warned that if he failed to comply with the order, this action would proceed on the excessive force claim and the other claims and parties would be dismissed. (*See* Docs. 8, 10.)

1 More than thirty days have passed and Plaintiff has not filed an amended complaint or
2 otherwise responded to the order. Plaintiff has had more than three months to draft and file an
3 amended complaint. The Court has reviewed the Magistrate Judge's screening order, and in light
4 of Plaintiff's failure to file an amended complaint, this action shall proceed at this time on Plaintiff's
5 cognizable claim against Defendant Catton for alleged excessive use of force. 28 U.S.C.
6 § 1915(e)(2).

7 Accordingly, it is HEREBY ORDERED that:

- 8 1. This action for damages shall proceed on Plaintiff's complaint, filed August 22, 2011,
9 against Defendant Officer Catton on Plaintiff's claim arising out of alleged excessive
10 use of force;
- 11 2. Plaintiff's claims for wrongful arrest and wrongful prosecution are dismissed, with
12 prejudice, for failure to state a claim;
- 13 3. Defendants City of Fresno and the Fresno Police Department are dismissed from this
14 action based on Plaintiff's failure to state a claim against them; and
- 15 4. This matter is referred back to the Magistrate Judge to initiate service of process
16 proceedings.

17 IT IS SO ORDERED.

18 **Dated: April 4, 2012**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE