1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 CARLOS BURNETT, Case No.: 1:16-cv-01671-SAB (PC) 12 Plaintiff, SECOND ORDER DIRECTING PLAINTIFF TO NOTIFY THE COURT OF INTENT TO PROCEED 13 v. ONLY ON EXCESSIVE FORCE CLAIM OR FILE AN AMENDED COMPLAINT IN COMPLIANCE 14 L. LIMA, et al., WITH THE COURT'S APRIL 5, 2017, ORDER 15 Defendants. [ECF Nos. 1, 10, 11] 16 Plaintiff Carlos Burnett is appearing pro se and in forma pauperis in this civil rights action 17 18 pursuant to 42 U.S.C. § 1983. 19 On April 5, 2017, the Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and 20 found that Plaintiff stated a cognizable excessive force claim against Defendants Christopher 21 Constello, Brent Urban and William Jones and a cognizable claim for failing to intervene against Defendant M. Lefler. (ECF No. 10.) The Court found that Plaintiff's allegations did not give rise to 22 23 an unrelated claim of denial of access to the Courts. (Id.) The Court directed Plaintiff to either file an 24 amended complaint or notify the Court of his intent to proceed only on the excessive force and failure

On April 17, 2017, Plaintiff filed a response to the Court's April 5, 2017, order; however, the Court cannot determine whether Plaintiff is intending to proceed solely on the excessive force and failure to intervene claims. The caption of the notice states "NOTIFY THE COURT OF (ELITE) IN

to intervene claims found to be cognizable. (Id.)

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SUPPORT OF OFFICIAL OF STRATFORD INSTITUTE; LEAVE OF DENIAL OF INJURY VIOLATE CONSTITUTION CLAIM; IN ORIGINAL COMPLAINT INTENT TO PROCEED ON CLAIM TO BE FOUND COGNIZABLE." (ECF No. 11.) Although Plaintiff states that he intends to proceed on the cognizable claims, Plaintiff's notice appears to elaborate on the alleged denial of access to the courts claim which was found to be non-cognizable and unrelated. (ECF No. 10.) In light of the ambiguity present in Plaintiff's notice, the Court will direct Plaintiff to file a further response to the Court's April 5, 2017, order.

Accordingly, it is HEREBY ORDERED that:

- 1. Within **twenty-one** (21) days from the date of service of this order, Plaintiff shall either file an amended complaint or a notice clearly stating that he intends to proceed solely on the excessive force and failure to intervene claims; and
- 2. Failure to comply with this order will result in dismissal of the action for failure to comply with a court order.

IT IS SO ORDERED.

Dated: **April 18, 2017**

UNITED STATES MAGISTRATE JUDGE

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