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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LUIS NUNO,

Plaintiff,

v.

JANAE REYES, et al.,

Defendants.

/

Case No. 1:18-cv-0263-DAD-SKO

**ORDER REQUIRING PLAINTIFF TO
ELECT EITHER TO REQUEST A STAY
OF THE ACTION OR TO DISMISS
CLAIMS WITHOUT PREJUDICE TO BE
REFILED AFTER CRIMINAL
PROCEEDINGS ARE COMPLETED**

TWENTY-ONE (21) DAY DEADLINE

(Docs. 4 & 7)

Plaintiff, Luis Nuno, is a prisoner in the custody of the Kings County Jail in Hanford, California. On February 23, 2018, Plaintiff, proceeding *pro se*, filed a civil rights complaint against Defendants Janae Reyes, Martin Gutierrez, the City of Lemoore, and the Lemoore Police Department purporting to allege causes of action under 42 U.S.C. § 1983 (“Section 1983”) for “unlawful arrest” in violation of the Fourth Amendment, “excessive force” in violation of the Eighth Amendment, apparently arising out of his arrest by Defendants. (Doc. 1 at 3–5.) Plaintiff also filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, which was granted on March 1, 2018. (Docs. 2 & 3.)

On April 16, 2018, the undersigned found that Plaintiff’s Complaint failed to state a cognizable federal claim. (Doc. 4.) The Court’s screening order noted that “[b]ecause a determination in this proceeding as to Plaintiff’s claims of false arrest, excessive force, and filing of a false police report could invalidate the ongoing criminal proceedings, or at the very least, would be ‘related to rulings that will likely be made in a pending or anticipated criminal trial,’ *Wallace [v.*

1 *Kato*], 549 U.S. [384,] 393 [(2007)], the Court here is not permitted to proceed.” (*Id.* at 8.) Plaintiff
2 was granted thirty (30) days leave to file an amended complaint curing the pleading deficiencies
3 identified in the order, and was advised that, in conjunction with filing the amended complaint, he
4 should elect to either request the Court to stay the action until his criminal proceedings are
5 terminated, or choose to dismiss his case without prejudice and refile this action after the criminal
6 proceedings are completed. (*See id.* at 8–9.)

7 Plaintiff filed his First Amended Complaint on June 20, 2018, but did not indicate his
8 election. (*See* Doc. 7.) Accordingly, it is HEREBY ORDERED that, **within twenty-one (21) days**
9 **from the date of service of this order**, Plaintiff must file a statement indicating whether: (1) he
10 requests dismissal of the action without prejudice, subject to be being refiled upon completion of
11 his criminal proceedings, or (2) should the claims in the First Amended Complaint be found
12 cognizable after screening, he wishes to stay the action until his underlying criminal proceedings
13 are concluded.

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15 IT IS SO ORDERED.

16 Dated: June 25, 2018

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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