

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

EDMUND JONES,

Plaintiff,

v.

Case No. 04-3497-JWL

DAVID THEODOROFF, et al.

Defendants.

MEMORANDUM & ORDER

Plaintiff has filed this *Bivens*¹ action seeking unspecified compensatory and injunctive relief, and punitive damages. Specifically the plaintiff asserts that he was subject to excessive force by officers David Theodoroff, Paul Miller and Shawn Williams and that the assault resulted in the plaintiff suffering pain. This matter is presently before the court on defendants' motion to dismiss (doc. 19). For the reasons set forth below, defendants' motion to dismiss is granted and plaintiff's case is dismissed in its entirety.

On September 28, 2005, defendants filed a motion to dismiss. Plaintiff did not file a response to defendants' motion to dismiss within the time period provided in Local Rule 6.1(e)(2). Thus, the court could have considered and decided defendants' motion as an uncontested motion and could have granted the motion without further notice to the plaintiff. *See* D. Kan. R. 7.4. Nonetheless, in an abundance of caution, the court issued an order (doc. 23) directing plaintiff to respond to the motion to dismiss before November 21, 2005. The court's

¹*Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

order was sent to plaintiff via certified mail and the certified mail receipt filed with the clerk's office indicates that it was signed for and received on November 12, 2005 by a representative of Luzerne Community Corrections. As of this date, plaintiff has not filed a response to the show cause order and has not filed a response to defendants' motion to dismiss. Thus, the defendants' motion is uncontested and the court grants the motion to dismiss.

IT IS THEREFORE ORDERED BY THE COURT that defendants David Theodoroff, Shawn Williams, Paul Miller and Shawn Grant's motion to dismiss (doc. 19) is granted and plaintiff's complaint is dismissed in its entirety.

IT IS SO ORDERED.

Dated in Kansas City, Kansas this 1st day of December, 2005.

s/ John W. Lungstrum
John W. Lungstrum
District Judge