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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT GONZALES SAENZ,

Plaintiff,

vs.

1: 09 CV 00557 YNP GSA (PC)

ORDER RE MOTIONS (DOCS 10,11)

M. SPEARMAN, et al.,

Defendants.

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the exercise of magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

On October 1, 2009, an order was entered, finding that the August 12, 2009, first amended complaint stated a claim against Defendant Reeves for retaliating against Plaintiff's exercise of his First Amendment rights, but failed to state a claim against the remaining defendants. Plaintiff was advised of the deficiencies in his first amended complaint, and provided an opportunity to correct those deficiencies. Plaintiff was specifically advised that if he chooses to proceed on the claims against Defendant Reeves only, he should notify the court that he wishes to proceed on the claims against Defendant Reeves. Plaintiff was also advised that if he chose to proceed on the claims against Reeves in the first amended complaint, the court

1 would recommend dismissal of the remaining claims. Plaintiff was advised that should he  
2 desire to correct the deficiencies as to the remaining defendants, he could file a second amended  
3 complaint.

4 In response, Plaintiff filed a motion for reconsideration. Specifically, Plaintiff seeks  
5 reconsideration of the October 1<sup>st</sup> order by a District Judge. Plaintiff disagrees with the analysis  
6 that the first amended complaint fails to state a claim against the remaining defendants. Plaintiff  
7 also filed a request for a stay of this action pending the resolution of the motion for  
8 reconsideration. Plaintiff also filed a document titled as a notice to proceed on cognizable  
9 claims. In this document, Plaintiff indicates his confusion regarding how to proceed.

10 As to Plaintiff's motion for reconsideration, Plaintiff has consented to magistrate judge  
11 jurisdiction pursuant to 28 U.S.C. § 636(c)(1). That subsection provides that the magistrate  
12 judge "may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of  
13 judgment. . . ." The Magistrate Judge in consent cases sits as the District Judge, and therefore  
14 hears and rules on all motions brought in the case.

15 As to the motion for reconsideration, Plaintiff is advised that he has two options - file a  
16 second amended complaint or proceed on the claims against Defendant Reeves only. If Plaintiff  
17 disagrees with the analysis in the October 1<sup>st</sup> order, he may file a second amended complaint.  
18 Should Plaintiff desire to proceed on the first amended complaint, he will be provided service  
19 documents to initiate service upon Defendant Reeves, and the court will dismiss the remaining  
20 defendants and claims. The dismissal of the first amended complaint is without prejudice to the  
21 filing of a second amended complaint. If Plaintiff seeks to proceed against any other defendant  
22 than Reeves, he should file a second amended complaint. If Plaintiff fails to file a second  
23 amended complaint, this action will proceed on the first amended complaint as to Defendant  
24 Reeves, and the court will dismiss the remaining defendants. The October 1, 2009, order is not a  
25 final order, as Plaintiff is granted leave to file a second amended complaint. The motion for  
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