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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 MICHAEL SIMONS,

9 Plaintiff,

10 vs.

11 J. SUNDARAM, et al.,

12 Defendants.
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1:15-cv-00130-GSA-PC

ORDER REQUESTING CLARIFICATION
FROM PLAINTIFF

THIRTY DAY DEADLINE TO RESPOND

14 This order is being issued for Plaintiff to clarify whether (1) he intends to proceed only
15 against defendants Sundaram and Ugueze on the medical claims found cognizable by the Court
16 in the original Complaint filed on January 26, 2015 (ECF No. 1); or (2) he intends to proceed
17 with the First Amended Complaint filed on December 21, 2015 (ECF No. 11). Plaintiff shall
18 have thirty days to respond.

19 **I. BACKGROUND**

20 Michael Simons (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
21 with this civil rights action pursuant to 42 U.S.C. § 1983. On November 25, 2015, the Court
22 found that Plaintiff stated cognizable claims in the original Complaint, filed on January 1,
23 2015, against defendants Sundaram and Ugueze, on Plaintiff’s medical claims under the Eighth
24 Amendment. (ECF No. 10.) Plaintiff was granted thirty days in which to either: (1) file a First
25 Amended Complaint; or (2) notify the Court that he is willing to proceed only with the claims
26 found cognizable by the Court. (Id.)

27 On December 31, 2015, Plaintiff filed both a First Amended Complaint and a notice
28 that he is willing to proceed only with the cognizable claims. (ECF Nos. 11, 12.)

1 The Court's December 21, 2015 order gave Plaintiff a choice, and Plaintiff was required
2 to make one choice or the other. Plaintiff has made both choices and therefore the Court does
3 not know how Plaintiff wishes to proceed in this action. Therefore, the Court now requests
4 clarification from Plaintiff of his intentions within thirty days.

5 If Plaintiff wishes to proceed with the original Complaint, the Court shall initiate
6 service of process upon defendants Sundaram and Ugueze by sending Plaintiff service
7 documents to complete and return to the Court. If Plaintiff wishes to proceed with the First
8 Amended Complaint, the Court shall screen the First Amended Complaint in due course.

9 **III. CONCLUSION**

10 Based on the foregoing, IT IS HEREBY ORDERED that:

11 1. Within thirty days of the date of service of this order, Plaintiff shall respond in
12 writing to this order, clarifying whether:

13 (a) He wishes to proceed only against defendants Sundaram and Ugueze on
14 the medical claims found cognizable by the Court in the original
15 Complaint filed on January 26, 2015;

16 OR

17 (b) He wishes to proceed with the First Amended Complaint filed on
18 December 21, 2015;

19 **Plaintiff must make only one choice;** and

20 2. If Plaintiff fails to comply with order, this case may be dismissed, without
21 prejudice, for failure to comply with a court order.

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23 IT IS SO ORDERED.

24 Dated: October 21, 2016

25 /s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE
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