

1 On March 29, 2018, the Magistrate Judge issued Findings and Recommendations that
2 Plaintiff's new claim against Naftzger in the FAC was not cognizable and he should be permitted
3 to proceed on his due process claim against Naftzger as stated in the original Complaint, all other
4 claims and Defendants should be dismissed, and the First Amended Complaint should be stricken.
5 (Doc. 19.) The Findings and Recommendation was served that same date and allowed for filing
6 of objections within twenty-one days. (*Id.*) Plaintiff filed timely objections in which he only
7 objects to being restricted to nominal damages on his due process claim against Naftzger, but
8 does not object to dismissal of all other claims and Defendants, nor to the First Amended
9 Complaint being stricken from the record. (Doc. 20.)

10 Plaintiff argues that he should be allowed to proceed on his due process claim against
11 Naftzger for compensatory and punitive damages, since he requested as much in both the original
12 Complaint and the FAC. Plaintiff cites various cases where the plaintiffs were allowed to proceed
13 for punitive damages, but none of the cases cited by Plaintiff allow for punitive damages, or
14 anything beyond nominal damages on only a procedural due process claim. As correctly stated in
15 the Findings and Recommendations, "the basic purpose of a § 1983 damages award should be to
16 compensate persons for injuries caused by the deprivation of constitutional rights." *Carey v.*
17 *Piphus*, 435 U.S. 247, 254 (1978). For this reason, no compensatory damages may be awarded in
18 a § 1983 suit absent proof of actual injury. *Id.*, at 264; *accord*, *Memphis Community School Dist.*
19 *v. Stachura*, 477 U.S. 299, 307 (1986). However, "the denial of procedural due process should be
20 actionable for nominal damages without proof of actual injury." *Carey*, 435 U.S. at 266.
21 Nominal damage awards for the "absolute" right to procedural due process "recognizes the
22 importance to organized society that [this] righ[t] be scrupulously observed" while "remain[ing]
23 true to the principle that substantial damages should be awarded only to compensate actual
24 injury." *Id.* Thus, Plaintiff may pursue and receive an award of nominal damages for the
25 violation of his right to procedural due process, but is not allowed to pursue compensatory or
26 punitive damages since he alleges no basis to have incurred actual injury based on Naftzger's
27 unconstitutional conduct. *Farrar v. Hobby*, 506 U.S. 103, 112 (1992).

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
2 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds the
3 Findings and Recommendations to be supported by the record and by proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. The Findings and Recommendations, issued on March 29, 2018, (Doc. 19), is adopted
6 in full;
- 7 2. This action shall proceed solely for nominal damages on Plaintiff's procedural due
8 process claim against J. Naftzger as stated in the original Complaint (Doc. 1);
- 9 3. All other claims and Defendants are dismissed with prejudice from this action;
- 10 4. The First Amended Complaint (Doc. 13) is STRICKEN from the record in this action;
11 and
- 12 5. The action is referred to the Magistrate Judge for further proceedings in accordance
13 with this order.

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15 IT IS SO ORDERED.

16 Dated: July 9, 2018

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SENIOR DISTRICT JUDGE