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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EARL D. SMITH,  
  
Plaintiff,  
  
v.  
  
MARTINEZ, et al.,  
  
Defendants.

CASE NO. 1:17-cv-01092-MJS (PC)

**ORDER DIRECTING CLERK'S OFFICE  
TO ASSIGN MATTER TO A DISTRICT  
JUDGE**

**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT THIS ACTION  
PROCEED ONLY ON COGNIZABLE  
FIRST AMENDMENT CLAIM AND THAT  
ALL OTHER CLAIMS AND DEFENDANTS  
BE DISMISSED**

(ECF No. 13)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983.

On November 07, 2017, the Court screened Plaintiff's first amended complaint and found that it states a cognizable claim for damages against Defendant Martinez for retaliation in violation of the First Amendment, but no other cognizable claims. (ECF No. 14.) Plaintiff was ordered to file an amended complaint or notify the Court in writing if he wished to proceed only on the cognizable claims. (Id.) Plaintiff responded that he wishes to proceed on his "original" complaint with the cognizable claim against Defendant Martinez. (ECF No. 15.) The Court construes this as Plaintiff electing to proceed only on the cognizable claim contained in the first amended complaint as described in the Court's screening order.

1 Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 10.). However,  
2 no defendants have appeared or consented. Accordingly, the Clerk's Office is HEREBY  
3 DIRECTED to randomly assign this matter to a district judge pursuant to Local Rule  
4 120(e).

5 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 6 1. This action proceed only on the cognizable First Amendment claim for  
7 damages against **Defendant Martinez**; and
- 8 2. All other claims and defendants be dismissed from this action for failure  
9 to state a claim.

10 These findings and recommendations will be submitted to the United States  
11 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C.  
12 § 636(b)(1). Within fourteen (14) days after being served with the findings and  
13 recommendations, Plaintiff may file written objections with the Court. The document  
14 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."  
15 Plaintiff is advised that failure to file objections within the specified time may result in the  
16 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)  
17 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

18 IT IS SO ORDERED.

19 Dated: November 21, 2017

20 /s/ Michael J. Seng  
21 UNITED STATES MAGISTRATE JUDGE  
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