1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8 9 EARL D. SMITH, CASE No. 1: 17-cv-01092-AWI-MJS (PC) 10 Plaintiff, ORDER DENYING AS MOOT DEFENDANT'S MOTION FOR REVIEW 11 OF FINDINGS AND ٧. RECOMMENDATIONS 12 MARTINEZ, et al., 13 (ECF NO. 22) Defendants. 14 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil 15 rights action brought pursuant to 42 U.S.C. § 1983. This matter proceeds on Plaintiff's 16 First Amendment retaliation claim against Defendant Martinez. 17 On November 22, 2017, the undersigned screened Plaintiff's complaint and made 18 findings and recommendations that the action proceed on a First Amendment retaliation 19 claim against Defendant Martinez, but that all other claims and defendants be dismissed. 20 (ECF No. 16.) Simultaneously, the Court ordered Plaintiff to submit documents to initiate 21 service upon Defendant Martinez. (ECF No. 17.) While the findings 22 recommendations were pending, Defendant Martinez was served and he filed the instant 23 request, seeking review of the findings and recommendations by the district judge. (ECF 24 No. 22.) 25 Defendant's request is not well received. Citing Williams v. King, 875 F.3d 500 26 (9th Cir. 2017). Defendant contends that the undersigned does not have jurisdiction to 27 dismiss claims absent Defendant's consent and that the Magistrate Judge's 28

authorization of proceedings against Defendant Martinez instead must be presented to the District Judge via findings and recommendations.

This proposition is legally correct, but it does not reflect what occurred in this case. Despite Defendant's contention that the undersigned "unilaterally dismiss[ed] certain claims and defendants," the undersigned did not dispose of any claims. Instead, the undersigned issued a recommendation to dismiss the claims and submitted that recommendation to the district judge. The findings and recommendations were not dispositive of any claim and therefore not contrary to <u>Williams</u>. Nothing in <u>Williams</u> affects a Magistrate Judge's authority to issue non-dispositive orders. Accordingly, the order requiring service of the complaint on Defendant was not contrary to <u>Williams</u>.

In any event, the findings and recommendations have since been adopted by the district judge. Accordingly, Defendant's motion is moot and on that basis it is HEREBY DENIED.

IT IS SO ORDERED.

¹ Had Defendant simply wished to delay responding to the complaint until the status of the pleadings was resolved, the proper course would have been to request an extension of time.