UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA ERNEST HOWARD SHARPLEY, III. Case No.: 1:18-cv-01122-SAB (PC) ORDER DIRECTING CLERK OF COURT TO Plaintiff, RANDOMLY ASSIGN A DISTRICT JUDGE TO THIS ACTION v. FINDINGS AND RECOMMENDATIONS MALEC, et.al., RECOMMENDING DISMISSAL OF CERTAIN

Defendants.

Plaintiff Ernest Howard Sharpley, III. is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

CLAIMS

[ECF Nos. 1, 7, 9]

On August 31, 2018, the undersigned screened Plaintiff's complaint and found that Plaintiff stated a cognizable retaliation claim against Defendants Malec and Boardman. (ECF No. 7.)

However, Plaintiff did not state any other claims for relief. (Id.) The Court granted Plaintiff leave to amend the complaint or notify the Court in writing of his intent to proceed only the retaliation claim.

(Id.) On September 17, 2018, Plaintiff notified the Court of his intent to proceed only on the retaliation claim. (ECF No. 9.) As a result, the Court will recommend that this action only proceed on the retaliation claim against Defendants Malec and Boardman, and all other claims be dismissed for the reasons stated in the Court's August 31, 2018 screening order. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

Accordingly, it is HEREBY RECOMMENDED that:

- 1. This action proceed on Plaintiff's retaliation claim against Defendants Malec and Boardman;
- 2. All other claims be dismissed for failure to state a claim upon which relief could be granted, consistent with the Court's August 31, 2018 order; and
- 3. The Clerk of Court is directed to randomly assign a District Judge to this action.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within **fourteen (14) days** after being served with these Finding and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d 834, 838-39 (9th Cir. 2014) (citing <u>Baxter v. Sullivan</u>, 923 F.2d 1391, 1394 (9th Cir. 1991)).

Dated: September 19, 2018

IT IS SO ORDERED.

UNITED STATES MAGISTRATE JUDGE

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