

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

VANCE EDWARD JOHNSON,

Plaintiff,

No. CIV S-04-0776 LKK EFB P

vs.

D.L. RUNNELS, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 3, 2011, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days from the date the findings and recommendations were served. Plaintiff has filed objections to the findings and recommendations.

In his objections, plaintiff indicates that he wishes to preserve his equal protection claim and litigate it alongside his Eighth Amendment claim. In the order of August 30, 2010, the magistrate judge dismissed plaintiff's equal protection claim because plaintiff had not specified

1 which defendants he believed violated the Equal Protection Clause or what actions he believed  
2 constitute such violations. Dckt. No. 177 at 5. The court afforded plaintiff the opportunity to file  
3 an amended complaint to cure those deficiencies. Plaintiff elected not to amend his complaint.  
4 See Dckt. No. 192 at 1 (“The Plntf. has allowed the passing of (30) days and has declined to  
5 Amend the Equal Protection Claim aspect of the 14th Amdt.”). Accordingly, the equal  
6 protection claim has been dismissed from the case. On December 23, 2010, plaintiff filed a  
7 “Motion for Correction of Amended Complaint,” in which he stated that he provided a corrected  
8 amended complaint. Docket No. 193. In his Findings and Recommendations, the Magistrate  
9 Judge noted that the corrected complaint had not been received by the court, and stated: “If  
10 plaintiff wishes to file an amended complaint to make changes not already authorized by the  
11 court, he must either obtain defendants’ consent or file a motion for leave to amend concurrently  
12 with the corrected complaint, which should be designated the “Fourth Amended Complaint.”  
13 Docket No. 196 4:12-15. The Magistrate denied plaintiff’s motion for Correction of Amended  
14 Complaint. In his filed Objections to the Findings and Recommendations, Docket No. 197,  
15 plaintiff did not specifically object to this order by the Magistrate, but did refer the Magistrates  
16 earlier holding that the plaintiff’s equal protection claim had been erroneously screened out. The  
17 court takes the opportunity now to clarify to the plaintiff that the Magistrate has left open the  
18 possibility of plaintiff requesting leave to amend the complaint to include sufficient detail of his  
19 equal protection claim. If plaintiff wishes to do so, he must file a request for leave to amend the  
20 complaint, along with a copy of the proposed amended complaint.

21 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule  
22 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire  
23 file, the court finds the findings and recommendations to be supported by the record and by  
24 proper analysis.


25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. The findings and recommendations filed February 3, 2011, are adopted in full;

1                   2. Plaintiff's motions at Docket Nos. 192 and 195, construed as motions for a  
2 partial judgment under Federal Rule of Civil Procedure 54(b), are denied.

3                   So ordered.

4 DATED: March 25, 2011.

5  
6  
7   
8                   LAWRENCE K. KARLTON  
9                   SENIOR JUDGE  
10                  UNITED STATES DISTRICT COURT  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26