

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
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN CURLEY,

Plaintiff,

v.

CHIEF DEPUTY WARDEN CLARK, et
al.,

Defendants.

No. 1:20-cv-00453-NONE-JLT (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
COMPLAINT WITH LEAVE TO AMEND

(Doc. Nos. 1, 12)

THIRTY-DAY DEADLINE

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 November 2, 2020, the assigned magistrate judge issued an order explaining why the claims in plaintiff’s original complaint were deficient, and directing plaintiff to either file an amended complaint, seek voluntary dismissal, or elect to stand on the complaint as originally plead. (Doc. No. 8.) Thereafter, plaintiff filed two documents (Doc. Nos. 9, 10), which the magistrate judge construed as requests to stand on his original complaint (*see* Doc. No. 12 at 1). On December 4, 2020, the magistrate judge filed findings and recommendations, recommending that the complaint be dismissed with leave to amend. (*Id.*) Plaintiff timely filed objections thereto. (Doc. No. 13.) In his objections, plaintiff does not object to the magistrate judge’s

1 conclusions regarding the original complaint, but appears to be requesting leave to amend to
2 specify the identity of certain individuals previously mentioned only in generic terms in the
3 original complaint. (*Id.*) The undersigned finds this request to be consistent with the existing
4 instructions provided by the magistrate judge in the underlying screening order (Doc. No. 8), and
5 the findings and recommendations, which already recommend granting plaintiff leave to amend.

6 The court has reviewed the file and finds the findings and recommendations to be
7 supported by the record and by the magistrate judge's analysis. Accordingly, the court orders as
8 follows:

- 9 1. The findings and recommendations filed December 4, 2020 (Doc. No. 12), are adopted
10 in full;
- 11 2. Plaintiff's complaint is dismissed for failure to state a claim with leave to amend being
12 granted; and
- 13 3. Plaintiff shall file a first amended complaint within thirty days from the date of this
14 order.

15 IT IS SO ORDERED.

16 Dated: February 16, 2021

17 
18 _____
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28