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

KEVIN POPPEN,

Plaintiff,

No. 2:10-cv-0568-MCE-JFM (PC)

vs.

LIONEL FOSTER, M.D., et al.,

Defendants.

ORDER TO SHOW CAUSE

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Plaintiff is a state prisoner proceeding through counsel with a civil rights action pursuant to 42 U.S.C. § 1983. By order filed December 1, 2010, plaintiff's complaint was dismissed and plaintiff was granted thirty days in which to file either an amended complaint clarifying the basis for his claim against defendant Kimura-Yip or a request for voluntary dismissal of said defendant. The thirty day period expired without any response from plaintiff. Accordingly, by order filed January 14, 2011, plaintiff was ordered to show cause in writing, if any he has, why defendant Kimura-Yip should not be dismissed from this action and to submit a proposed amended complaint. Plaintiff has timely responded to the order to show cause. His response is accompanied by a proposed amended complaint that omits his claim against defendant Kimura-Yip and consents to dismissal of said defendant without prejudice.

Good cause appearing, IT IS HEREBY ORDERED that:

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1. The January 14, 2011 order to show cause is discharged;
2. Defendant Kimura-Yip is dismissed without prejudice;
3. The Clerk of the Court is directed to file the proposed amended complaint appended to plaintiff's January 20, 2011 response to the order to show cause;
4. Within ten days from the date of this order defendants Foster, Weinholdt, Saltanian-Nedeh-IV, Heatley and McLean shall file and serve an answer to the amended complaint; and
5. The discovery and scheduling order filed October 22, 2010 remains in full force and effect.

DATED: January 31, 2011.

  
UNITED STATES MAGISTRATE JUDGE

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