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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL,
Plaintiff,
v.
ROBERT W. FOX, et al.,
Defendants.

No. 2:16-cv-1818 JAM CKD P

ORDER

On January 18, 2017, the court screened plaintiff’s complaint and found service of process appropriate for defendant Fox in his official capacity as Warden of the California Medical Facility with respect to a claim arising under the Eighth Amendment for injunctive relief. The court recommended that the remainder of plaintiff’s claims be dismissed. Plaintiff has filed objections to those findings and recommendations.

In light of the objections, and good cause appearing, IT IS HEREBY ORDERED that:

1. The court’s January 18, 2017 findings and recommendations are vacated;
2. Plaintiff’s request for leave to file an amended complaint is granted. Plaintiff’s original complaint is dismissed and plaintiff is granted 30 days within which to file an amended complaint. Counsel for plaintiff is advised as follows with respect to the contents of any amended complaint:

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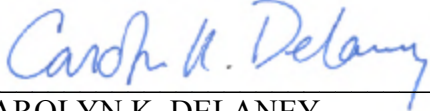
A. Plaintiff's amended complaint must allege in specific terms how each named defendant is involved. There can be no liability for damages under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976).

Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

B. In order for a prisoner to proceed on any federal claim for damages based upon exposure to asbestos, black mold, etc., the prisoner must have suffered a "physical injury" as a result thereof. See 28 U.S.C § 1997e(e).

3. Counsel for plaintiff is granted 14 days within which to pay the \$400 filing fee for this action. If counsel pays the filing fee, additional plaintiffs may be joined to the amended complaint as long as doing so complies with Federal Rule of Civil Procedure 20(a)(1).

Dated: March 23, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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