



1 findings and recommendations, the undersigned found that plaintiff did not plead sufficient facts  
2 demonstrating that defendant Warden Lynch read plaintiff's grievance. (Id. at 3.) The  
3 undersigned found that it was not reasonable to infer that defendant Warden Lynch read  
4 plaintiff's grievance based only on plaintiff's allegation that his grievance went to defendant  
5 Warden Lynch's office. (Id.) Because it did not appear that plaintiff could cure the pleading  
6 defects against defendant Warden Lynch, the undersigned found that no further amendments  
7 should be permitted. (Id. at 3-4.)

8 On April 26, 2022, plaintiff filed objections to the findings and recommendations. (ECF  
9 No. 81.) Plaintiff alleges that he has a grievance showing that defendant Warden Lynch reviewed  
10 his grievance raising his claims regarding his cellmate. (Id. at 1.) Plaintiff alleges that defendant  
11 Warden Lynch denied and signed this grievance. (Id.)

12 As a result, plaintiff may be able to state a potentially colorable claim for relief against  
13 defendant Warden Lynch based on the allegations in the objections. Accordingly, in an  
14 abundance of caution, the April 14, 2022 findings and recommendations are vacated and plaintiff  
15 is granted thirty days to file a third amended complaint.

16 The third amended complaint shall include plaintiff's claims and allegations against  
17 defendants Navarro and Gomez. The third amended complaint shall include plaintiff's claim that  
18 defendant Warden Lynch denied and signed plaintiff's grievance raising his claims regarding his  
19 cellmate. The third amended complaint shall address what plaintiff's grievance stated regarding  
20 plaintiff's safety concerns regarding his cellmate. The third amended complaint shall also  
21 address the date plaintiff submitted the grievance to defendant Warden Lynch and the date  
22 defendant Warden Lynch signed this grievance. If possible, plaintiff shall attach a copy of  
23 defendant Warden Lynch's response to his grievance to the third amended complaint.

24 Accordingly, IT IS HEREBY ORDERED that:

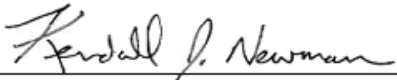
- 25 1. The April 14, 2022 findings and recommendations (ECF No. 79) are vacated;
- 26 2. Plaintiff is granted thirty days from the date of this order to file a third amended  
27 complaint; defendants are not required to respond to the third amended complaint until  
28 ordered by the court;

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3. The Clerk of the Court is directed to send plaintiff the form for a civil rights complaint;

4. If plaintiff does not file a third amended complaint, the undersigned will again recommend dismissal of defendant Warden Lynch.

Dated: May 17, 2022

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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