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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	FRANCISCO MERINO,	No. 2: 21-cv-0572 JAM KJN P
12	Plaintiff,	
13	V.	<u>ORDER</u>
14	GOMEZ, et al.,	
15	Defendants.	
16		
17	Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant	
18	to 42 U.S.C. § 1983. For the reasons stated herein, the April 14, 2022 findings and	
19	recommendations recommending dismissal of defendant Warden Lynch (ECF No. 79) are	
20	vacated, and plaintiff is granted thirty days to file a third amended complaint.	
21	On April 14, 2022, the undersigned ordered defendants Navarro and Gomez to file a	
22	response to the second amended complaint. (ECF No. 79.) On May 4, 2022, defendants Navarro	
23	and Gomez filed an answer to the second amended complaint. (ECF No. 82.)	
24	On April 14, 2022, the undersigned also found that plaintiff's second amended complaint	
25	failed to state a potentially colorable claim for relief against defendant Warden Lynch. (ECF No.	
26	79.) In relevant part, plaintiff alleged that his cellmate attacked him on October 23, 2020. (Id. at	
27	1.) Plaintiff alleged that defendant Warden Lynch knew the danger plaintiff faced from his	
28	cellmate because defendant Warden Lynch read his grievance. (Id. at 2.) In the April 14, 2022	
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findings and recommendations, the undersigned found that plaintiff did not plead sufficient facts demonstrating that defendant Warden Lynch read plaintiff's grievance. (Id. at 3.) The undersigned found that it was not reasonable to infer that defendant Warden Lynch read plaintiff's grievance based only on plaintiff's allegation that his grievance went to defendant Warden Lynch's office. (Id.) Because it did not appear that plaintiff could cure the pleading defects against defendant Warden Lynch, the undersigned found that no further amendments 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. (<u>Id.</u> at 1.) Plaintiff alleges that defendant
 11 Warden Lynch denied and signed this grievance. (<u>Id.</u>)
- As a result, plaintiff may be able to state a potentially colorable claim for relief against
 defendant Warden Lynch based on the allegations in the objections. Accordingly, in an
 abundance of caution, the April 14, 2022 findings and recommendations are vacated and plaintiff
 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;

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2. Plaintiff is granted thirty days from the date of this order to file a third amended
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1	3. The Clerk of the Court is directed to send plaintiff the form for a civil rights
2	complaint;
3	4. If plaintiff does not file a third amended complaint, the undersigned will again
4	recommend dismissal of defendant Warden Lynch.
5	Dated: May 17, 2022
6	Fordall P. Newman
7	KENDALL J. NEWMAN UNITED STATES MAGISTRATE JUDGE
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