

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

ADAM RANDOLPH POWELL,
Plaintiff,
v.
JEFF LYNCH, et al.,
Defendants.

No. 2:23-cv-2275 DAD KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the reasons stated herein, the findings and recommendations filed November 30, 2023 are vacated.

On October 18, 2023, the undersigned issued an order screening plaintiff’s complaint. (ECF No. 7.) The undersigned found that plaintiff’s complaint stated potentially colorable claims against defendants Lynch and Does 1-4 based on their alleged failure to repair the ventilation in plaintiff’s cell. (Id.) The undersigned found that plaintiff’s claims against defendants Lynch and Doe 4 based solely on their supervisory status and all claims against defendants Andes and O’Brien were not potentially colorable. (Id.)

In the October 18, 2023 order, the undersigned granted plaintiff thirty days to file an amended complaint or return the form indicating that he opted to proceed on the complaint as to the potentially colorable claims against defendants Lynch and Does 1-4. (Id.) Thirty days passed

1 from October 18, 2023, and plaintiff did not file an amended complaint or the notice indicating
2 that he opted to proceed on the potentially colorable claims against defendants Lynch and Does 1-
3 4. Accordingly, on November 30, 2023, the undersigned recommended dismissal of this action.
4 (ECF No. 10.)


5 On December 18, 2023, plaintiff filed objections to the November 30, 2023 findings and
6 recommendations. (ECF No. 11.) In the objections, plaintiff states that he thought that he
7 responded to the October 18, 2023 order. (Id. at 1.) Plaintiff states that he wishes to proceed with
8 the potentially colorable claims against defendants Lynch and Does 1-4. (Id.)

9 Good cause appearing, the November 30, 2023 findings and recommendations are
10 vacated. Based on plaintiff's statements in his objections, the undersigned separately orders
11 service of defendant Lynch as to the potentially colorable claims. If the true identity of
12 defendants Does 1-4 is discovered, plaintiff may move to amend his complaint to identify these
13 defendants. The undersigned also construes plaintiff's objections to include a request for the
14 voluntary dismissal of those claims found not potentially colorable in the October 18, 2023 order.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The findings and recommendations filed November 30, 2023 (ECF No. 10) are
17 vacated; and
- 18 2. Plaintiff's claims in the complaint against defendants Lynch and Doe 4 based solely
19 on their supervisory status and all claims against defendants Andes and O'Brien are
20 dismissed. Fed. R. Civ. P. 41(a).

21 Dated: December 21, 2023

22 
23 _____
24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

26 Pow2275.vac
27
28