

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

ELAINE K. VILLAREAL,  
Plaintiff,  
v.  
COUNTY OF FRESNO, et al.,  
Defendants.

No. 1:15-cv-01410-DAD-EPG (PC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND GRANTING  
DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT IN PART

(Doc. Nos. 189, 212)

Plaintiff Elaine K. Villareal is a former state prisoner proceeding *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. This action proceeds against defendant County of Fresno and defendant Mims “on plaintiff’s conditions of confinement claim based on the allegedly dilapidated and decaying condition of the Fresno County South Annex Jail, including alleged conditions such as mold, fungus, crumbling walls, exposed metal, (potentially) asbestos, and an insect infestation,” and on plaintiff’s “conditions of confinement claim based on the alleged lack of access to outdoor exercise.” (Doc. No. 146 at 2.)

On April 30, 2021, the assigned magistrate judge issued findings and recommendations recommending that defendants’ motion for summary judgment (Doc. No. 189) be granted in part. (Doc. No. 212.) The magistrate judge recommended that summary judgment be granted in both

1 defendants' favor on plaintiff's Eighth Amendment claim challenging the conditions of  
2 confinement based on the allegedly dilapidated and decaying condition of the jail, and in  
3 defendant Mims's favor on plaintiff's Eighth Amendment claim challenging the conditions of  
4 confinement based on alleged lack of access to sufficient exercise. (*Id.* at 19–20.) But the  
5 magistrate judge recommended that summary judgment be denied on plaintiff's Eighth  
6 Amendment claim of lack of access to sufficient exercise against defendant County of Fresno.  
7 (*Id.*) In addition, to the extent plaintiff intended to assert her claims against defendant Mims in  
8 her official capacity as well as her individual capacity, the magistrate judge recommended that  
9 plaintiff's claims against defendant Mims in her official capacity be dismissed. (*Id.*) The  
10 pending findings and recommendations were served on the parties and contained notice that any  
11 objections thereto were to be filed within twenty-one (21) days after service. (*Id.* at 20.) To date,  
12 no objections have been filed and the time in which to do so has now passed.

13 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this  
14 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file, the  
15 court finds the findings and recommendations to be supported by the record and proper analysis.

16 Accordingly,

- 17 1. The findings and recommendations issued on April 30, 2021, (Doc. No. 212), are  
18 adopted in full;
- 19 2. Defendants' motion for summary judgment (Doc. No. 189) is granted, in part:
  - 20 a. Summary judgment is granted in favor of defendant Mims on plaintiff's  
21 Eighth Amendment claim challenging the conditions of confinement based  
22 on the allegedly dilapidated and decaying condition of the Fresno County  
23 South Annex Jail;
  - 24 b. Summary judgment is granted in favor of defendant Mims on plaintiff's  
25 Eighth Amendment claim challenging the conditions of confinement based  
26 on alleged lack of access to sufficient exercise;
  - 27 c. Summary judgment is granted in favor of defendant County of Fresno on  
28 plaintiff's Eighth Amendment claim challenging the conditions of

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

confinement based on the allegedly dilapidated and decaying condition of the Fresno County South Annex Jail; and

d. Summary judgment in favor of defendant County of Fresno is denied on plaintiff's Eighth Amendment claim challenging the conditions of confinement based on alleged lack of access to sufficient exercise;

3. Plaintiff's claims against defendant Mims in her official capacity, to the extent plaintiff intended to assert any such claims, are dismissed from this action;

4. Judgment shall be entered in favor of defendant Mims;

5. The Clerk of Court is directed to terminate defendant Mims as a defendant in this action; and

6. This action is referred back to the assigned magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: June 4, 2021

  
UNITED STATES DISTRICT JUDGE