

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
EASTERN DISTRICT OF CALIFORNIA

RICHARD DEAN JOHNSON, et al.,

Plaintiffs,

v.

CITY OF ATWATER, et al.,

Defendants.

Case No. 1:16-cv-01636-AWI-SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(ECF Nos. 19, 22, 23, 25)

Plaintiffs Richard Johnson and Lori Johnson filed this action in the Superior Court for the County of Merced on September 20, 2016. On October 28, 2016, this action was removed by Defendants City of Atwater, Frank Pietro, Tyna Lamison, Samuel Joseph, David Walker, Don Wisdom, Robert Vargas, Dayton Snyder, Ken Lee, Fabian Velasquez, and Adolfo Morales. Defendants City of Atwater, Frank Pietro, Tyna Lamison, Samuel Joseph, David Walker, Don Wisdom, Robert Vargas, Dayton Snyder, Ken Lee, Fabian Velasquez, and Adolfo Morales filed an answer on November 20, 2016. Defendant John Smothers filed an answer on January 25, 2017. Defendants Joseph, Lamison, Lee, Morales, Pietro, Smothers, Snyder, Vargas, Calsques, Walker, and Wisdom filed a motion to dismiss on March 17, 2017. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. (ECF No. 20.)

On April 18, 2017, the Magistrate Judge filed a findings and recommendations. The

1 findings and recommendations recommended granting in part and denying in part Defendants'
2 motion to dismiss. The findings and recommendations was served on the parties and contained
3 notice that any objections to the findings and recommendations were to be filed within fourteen
4 days (14) days from the date of service. The period for filing objections has passed and no
5 objections have been filed.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
7 a de novo review of this case. Having carefully reviewed the entire file, the Court finds the
8 findings and recommendations to be supported by the record and by proper analysis.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations, filed April 18, 2017, is ADOPTED IN FULL;
- 11 2. Defendants' motion to dismiss, filed March 17, 2017, is GRANTED IN PART
12 AND DENIED IN PART as follows:
 - 13 a. Defendants' motion to dismiss is DENIED as to Plaintiff Richard Johnson's
14 claims against the five Doe defendants for illegal seizure in violation of the
15 Fourth Amendment (First Cause of Action) and false arrest/false imprisonment
16 (Sixth Cause of Action);
 - 17 b. Defendants' motion to dismiss is DENIED as to Plaintiffs' claims that Defendant
18 Velasquez violated the Due Process Clause by failing to provide notice prior to
19 removing their signs (Third Cause of Action), retaliated against them for their
20 political speech in violation of the First Amendment (Fourth Cause of Action),
21 and for violation of the Bane Act (Fifth Cause of Action);
 - 22 c. Defendants' motion to dismiss the punitive damages request is DENIED;
 - 23 d. Defendants' motion to dismiss is GRANTED as to the remaining claims and
24 defendants;
- 25 2. Plaintiffs shall file an amended complaint within ten (10) days of the date of
26 service of this order; and
- 27 3. If Plaintiffs fail to file an amended complaint in compliance with this order, this
28 action will proceed on Plaintiff Richard Johnson's claims against the five Doe

1 defendants for illegal seizure in violation of the Fourth Amendment (First Cause
2 of Action) and false arrest/false imprisonment (Sixth Cause of Action); and
3 Plaintiffs' claims that Defendant Velasquez violated the Due Process Clause by
4 failing to provide notice prior to removing their signs (Third Cause of Action),
5 retaliated against them for their political speech in violation of the First
6 Amendment (Fourth Cause of Action), and for violation of the Bane Act (Fifth
7 Cause of Action).

8
9 IT IS SO ORDERED.

10 Dated: May 4, 2017



11 SENIOR DISTRICT JUDGE
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28