1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MICHAEL AARON WITKIN, No. 2:17-cv-02692-DAD-AC (PC) 12 Plaintiff. 13 v. ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND DISMISSING 14 **CERTAIN CLAIMS AND DEFENDANTS** D. BLACKWELL, et al., 15 Defendants. (Doc. No. 22) 16 17 18 Plaintiff Michael Aaron Witkin is a former state prisoner proceeding pro se and in forma 19 pauperis in this civil rights action under 42 U.S.C. § 1983. The matter was referred to a United 20 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 21 On October 23, 2023, the assigned magistrate judge screened plaintiff's second amended 22 complaint and found that plaintiff had stated cognizable First Amendment retaliation and Eighth Amendment deliberate indifference claims against defendant Lotersztain, cognizable First 23 24 Amendment retaliation and Americans with Disabilities Act ("ADA")/Rehabilitation Act ("RA") claims against defendant Blackwell, and cognizable First Amendment retaliation claims 25 26 against Does 1–3. (Doc. No. 22 at 3.) The assigned magistrate judge additionally found that 27 plaintiff adequately alleged supplemental state law claims under the Bane Act and for negligence 28 against those defendants, but that plaintiff failed to state any other cognizable claims against the 1

remaining defendants. (*Id.*) Accordingly, on October 23, 2023, the assigned magistrate judge issued findings and recommendations recommending that this action proceed only on the claims found to be cognizable in the screening order and that all other claims and defendants be dismissed from this action due to plaintiff's failure to state a cognizable claim against them. (*Id.* at 3–4.) The pending findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 7.) To date, no objections have been filed, and the time in which to do so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and proper analysis.

Accordingly,

- 1. The findings and recommendations issued on October 23, 2023 (Doc. No. 22) are adopted in full;
- 2. This action shall proceed on plaintiff's First Amendment retaliation and Eighth Amendment deliberate indifference claims against defendant Lotersztain, First Amendment retaliation and ADA/RA claims against defendant Blackwell, and First Amendment retaliation claims against Does 1–3, as well as plaintiff's supplemental state law claims under the Bane Act and for negligence against these defendants;
- 3. All other claims brought by plaintiff in this action are dismissed;
- Defendants Moss, Wamble, Kuersten, Neuschmid, Popovits, Justin, Voong,
 Arnold, Lockwood, Diaz, and Kernan are dismissed as defendants in this action;
- The Clerk of the Court is directed to update the docket to reflect that defendants
 Moss, Wamble, Kuersten, Neuschmid, Popovits, Justin, Voong, Arnold,
 Lockwood, Diaz, and Kernan have been terminated from this action; and

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1	6. This action is referred back to the assigned magistrate judge for further	
2	proceedings consistent with th	is order.
3	IT IS SO ORDERED.	
4	Dated: February 5, 2024	Dale A. Drogd
5		DALE A. DROZD UNITED STATES DISTRICT JUDGE
6		UNITED STATES DISTRICT JUDGE
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