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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAWN DEVORE,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:18-cv-02487 KJM AC (PS)

ORDER

Plaintiff is proceeding in this action in pro per. The matter was referred to a United States Magistrate Judge as provided by Local Rule 302(c)(21).

On December 13, 2019, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. F&Rs, ECF No. 39. Plaintiff has filed objections to the findings and recommendations, Obj., ECF No. 41, and defendants have responded to the objections, ECF No. 42. The court has considered both parties' filings.

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

1 analysis. The court, however, is persuaded by defendants' argument that the court should dismiss
2 the entire action with prejudice, *see* ECF No. 42 at 3-4 & n.1, and so orders below. Even if
3 defendant Marie Blake was properly served with summons, she is sued in her professional
4 capacity and plaintiff's claims under 42 U.S.C. § 1983 are therefore barred by Eleventh
5 Amendment immunity. The state common law negligence and emotional distress claims are
6 barred for plaintiff's failure to comply with the California Tort Claims Act.

7 Accordingly, IT IS HEREBY ORDERED that:

8 1. The findings and recommendations filed December 13, 2019, are adopted except that
9 plaintiff's claims against defendant Marie Blake also are dismissed with prejudice as noted
10 below.

11 2. Because no claims have been brought against defendants CDCR, Gates, and Cal-
12 OSHA, the Clerk of the Court shall acknowledge their termination from this case on the docket.

13 3. The motion to dismiss (ECF No. 31) is GRANTED and this case is DISMISSED with
14 prejudice as to defendants Welker, Saich, Lewis, Milne and Blake.

15 4. The Clerk of Court shall CLOSE this case.

16 DATED: September 7, 2020.

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CHIEF UNITED STATES DISTRICT JUDGE