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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM TILLMAN,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:22-cv-01997-DAD-EFB (PC)

ORDER ADOPTING IN FULL FINDINGS
AND RECOMMENDATIONS AND
DISMISSING CERTAIN CLAIMS AND
DEFENDANTS

(Doc. No. 12)

Plaintiff William Tillman is a state prisoner proceeding through counsel in this civil rights action brought pursuant to 42 U.S.C. § 1983.¹ The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 18, 2024, the assigned magistrate judge screened plaintiff’s second amended complaint and issued findings and recommendations recommending that this action “proceed on the Eighth Amendment claims and state tort claims for battery and intentional infliction of emotional distress, as set forth above, against defendants Drake and Nardy,” and that all other claims and defendants be dismissed from this action without prejudice due to plaintiff’s failure to state a claim. (Doc. No. 12 at 3–4.)

¹ On November 4, 2022, defendants removed this action from the Amador County Superior Court to this federal court. (Doc. No. 1.)

1 The pending findings and recommendations were served on the parties and contained
2 notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at
3 4.) To date, no objections to the findings and recommendations have been filed, and the time in
4 which to do so has now passed.

5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
6 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
7 findings and recommendations are supported by the record and by proper analysis.²

8 Accordingly:

- 9 1. The findings and recommendations issued on June 18, 2024 (Doc. No. 12) are
10 adopted in full;
- 11 2. This action shall proceed only on plaintiff’s Eighth Amendment claim asserted
12 against defendants Drake and Nardy; plaintiff’s claim for battery and violation of
13 the Tom Bane Civil Rights Act, California Civil Code § 52.1, asserted against
14 defendant Drake; and plaintiff’s claim for intentional infliction of emotional
15 distress asserted against defendants Drake and Nardy;
- 16 3. All other claims brought by plaintiff in this action are dismissed without prejudice
17 to refiling in a separate action or actions;

18 ////

19 ² The pending findings and recommendations are arguably unclear as to whether it is
20 recommended that this action also proceed on plaintiff’s claim for violation of the Bane Act,
21 California Civil Code § 52.1, asserted against defendant Drake. (*See* Doc. No. 11 at ¶¶ 95–104
22 (asserting a “fourth claim . . . for battery/rape, Bane Act violation”); Doc. No. 12 at 3 (“Claim 4
23 for battery against Drake is clearly related to the case at issue In sum, state-law Claims 4
24 and 6 may go forward against defendants Drake and Nardy”); *id.* (recommending that this
25 action proceed only on “the Eighth Amendment claims and state tort claims for battery and
26 intentional infliction of emotional distress”). Out of an abundance of caution, the court clarifies
27 that plaintiff’s allegations in his second amended complaint are sufficient to state a cognizable
28 claim against Drake for intentionally “interfer[ing] by threat, intimidation, or coercion” with a
state or federal constitutional or legal right, in violation of the Bane Act. Cal. Civ. Code § 52.1;
see Doe v. Johnson, No. 2:24-cv-01542-DJC-AC, 2024 WL 4437817, at *4 (E.D. Cal. Oct. 7,
2024) (finding that the plaintiff had sufficiently alleged a Bane Act claim against the defendant
where the plaintiff, a prisoner, had alleged that the defendant, her supervisor, had sexually abused
her); *Schwenk v. Hartford*, 204 F.3d 1187, 1197 (9th Cir. 2000) (noting that prisoners have an
Eighth Amendment right “to be free from sexual abuse”).

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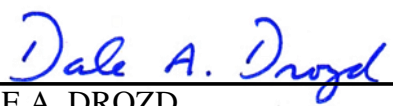
4. Defendants State of California, CDCR, Perez, A. Stinson, M. Azhar, P. Gann, Baca, B. Louie, and S. Reynolds are dismissed as defendants in this action;

5. The Clerk of the Court is directed to update the docket to reflect that defendants State of California, CDCR, Perez, A. Stinson, M. Azhar, P. Gann, Baca, B. Louie, and S. Reynolds have been terminated from this action; and

6. This matter is referred back to the magistrate judge for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: November 26, 2024



DALE A. DROZD
UNITED STATES DISTRICT JUDGE