

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

DONELL THOMAS HAYNIE,
Plaintiff,
v.
CASSANDRA SYSOUVANH,
Defendant.

No. 2:22-cv-02204-DAD-DB (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
DEFENDANT’S MOTION TO DISMISS
PLAINTIFF’S SECOND AMENDED
COMPLAINT

(Doc. Nos. 26, 33)

Plaintiff Donell Haynie is a state prisoner proceeding *pro se* and *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.

On January 17, 2024, the assigned magistrate judge issued findings and recommendations recommending that defendant’s motion to dismiss plaintiff’s second amended complaint (“SAC”) (Doc. No. 26) be denied. (Doc. No. 33 at 10.) Specifically, the magistrate judge concluded that plaintiff’s First Amendment claim should not be dismissed for failure to exhaust administrative remedies prior to filing suit as is required, that plaintiff had sufficiently alleged the elements of his First Amendment claim, and that plaintiff had sufficiently alleged non-consensual sexual contact in violation of the Eighth Amendment. (*Id.* at 4–9.)

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 10.) To date, no objections to the findings and recommendations have been filed, and the time in
4 which to do so has now passed.

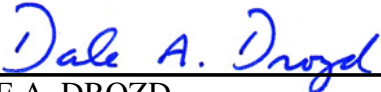
5 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
6 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
7 findings and recommendations are supported by the record and by proper analysis.

8 Accordingly:

- 9 1. The findings and recommendations issued on January 17, 2024 (Doc. No. 33) are
10 adopted in full;
- 11 2. Defendant's motion to dismiss plaintiff's second amended complaint (Doc.
12 No. 26) is denied;
- 13 3. Defendant shall file an answer responding to the claims in plaintiff's second
14 amended complaint no later than twenty-one (21) days after the date of entry of
15 this order; and
- 16 4. This matter is referred back to the magistrate judge for further proceedings
17 consistent with this order.

18 IT IS SO ORDERED.

19 Dated: March 14, 2024

20 
21 _____
22 DALE A. DROZD
23 UNITED STATES DISTRICT JUDGE
24
25
26
27
28