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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MICHAEL W. WILLIAMS,

9 Plaintiff,

10 v.

11 BERNIE WARNER, et al.,

12 Defendants.

CASE NO. C15-5655 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 86), and
15 Plaintiff Michael Williams’s (“Williams”) objections to the R&R (Dkt. 88).

16 On September 21, 2015, Williams filed a 42 U.S.C. § 1983 complaint against
17 thirty-three defendants, including the State of Washington, the Washington Department
18 of Corrections (“DOC”), and various DOC employees (collectively “Defendants”). Dkt.
19 9. Two days later, Williams filed an amended complaint, alleging Defendants violated
20 his due process, equal protection, and First Amendment rights, as well as the Ex Post
21 Facto Clause. Dkt. 19 (“Comp.”) ¶¶ 75–85.
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1 On November 16, 2015, Williams moved for partial summary judgment. Dkts. 77,
2 78. Williams argued that RCW 4.92.075, which provides the state will indemnify state
3 employees acting within the scope of their official duties, violates the Supremacy Clause
4 when applied to § 1983 actions. Dkt. 78. On December 28, 2015, Judge Creatura
5 recommended the Court deny Williams's motion because RCW 4.92.075 does not
6 conflict with § 1983. Dkt. 86. On January 15, 2016, Williams filed objections. Dkt. 88.
7 Defendants did not respond.

8 Federal Rule of Civil Procedure 72(b) governs objections to a magistrate judge's
9 recommended disposition. Rule 72(b) provides:

10 The district judge must determine de novo any part of the magistrate
11 judge's disposition that has been properly objected to. The district judge
12 may accept, reject, or modify the recommended disposition; receive further
13 evidence; or return the matter to the magistrate judge with instructions.

14 Fed. R. Civ. P. 72(b)(3)

15 Williams first argues the Court should strike Defendants' response to his summary
16 judgment motion because Defendants did not serve him with their response. Dkt. 88 at
17 2–3. Even if the Court were to strike Defendants' response,¹ the Court would still reach
18 the same conclusion with respect to the Supremacy Clause issue, as discussed further
19 below.

20 Williams next contends Judge Creatura erred by concluding RCW 4.92.075 does
21 not conflict with § 1983. Dkt. 88 at 3, 8–17. The Court has reviewed Williams's
22 arguments, and finds that they do not compel a different result. As Judge Creatura

¹ Defendants included a certificate of service with their opposition. Dkt. 81 at 4.

1 discussed, RCW 4.92.075 neither prohibits Williams from filing § 1983 claims against
2 state employees nor interferes with Williams’s ability to recover damages for successful
3 claims. *See* Dkt. 86 at 5–7. The Ninth Circuit has also recognized that a state may pay
4 the damages awarded against a state employee. *See Cornwell v. Riverside*, 896 F.2d 398,
5 400 (9th Cir. 1990). As the Ninth Circuit explained, nothing in § 1983 precludes a state
6 from indemnifying an employee. *Id.* (“When Congress has wanted to prohibit payment
7 of damages on behalf of one person by another it has known how to do so with express
8 language. Congress has enacted no such provision here.” (internal citations omitted)).

9 Therefore, the Court having considered the R&R, Williams’s objections, and the
10 remaining record, does hereby find and order as follows:

- 11 (1) The R&R is **ADOPTED**; and
12 (2) Williams’s motion for partial summary judgment is **DENIED**.

13 Dated this 14th day of March, 2016.

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BENJAMIN H. SETTLE
United States District Judge