UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DARYL ANTHONY HICKS,

Plaintiff,

v.

GOSAI, *et al.*,

Defendants.

No. 2:20-cv-02303-KJM-JDP (PC)

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 6, 2022, the magistrate judge filed findings and recommendations, which were served on plaintiff and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has not filed objections to the findings and recommendations. Plaintiff filed a fourth amended complaint which is pending before the magistrate judge. ECF No. 32. Defendants requests the court to screen the fourth amended complaint and extend the deadline to file a responsive pleading. ECF No. 35.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court

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. . . .").

Having reviewed the file, the court adopts the findings and recommendations as to the dismissal of defendant Covello and the denial without prejudice of the motion for injunctive relief. The court agrees plaintiff has not made a sufficient showing to support the issuance of an injunction and for that reason will adopt the recommendation to deny without prejudice plaintiff's motion for injunctive relief. The court, however, declines to adopt the findings and recommendations as to plaintiff's Eighth Amendment claim involving an orchestrated attack on plaintiff by other inmates.

The magistrate judge recommends plaintiff's Eighth Amendment claim be dismissed without prejudice as unrelated. *See* ECF No. 22 at 2. Plaintiff alleges he was physically assaulted by inmates at the direction of defendant Gosai. ECF No. 19 at 4. The magistrate judge concludes plaintiff's allegations do not indicate the claim "bears any relation to the foregoing claim involving sexual assault" and should proceed under a different suit. *See* ECF No. 22 at 3 (citing *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)).

While "unrelated claims against different defendants must be pursued in separate lawsuits," *Hendon v. Defazio*, No. 219CV01177JAMCKDP, 2020 WL 949658, at *2 (E.D. Cal. Feb. 27, 2020) (citing *George*, 507 F.3d at 607), a plaintiff may claim "as many claims as it has against an opposing party," Fed. R. Civ. P. 18. Here, plaintiff is making a claim against defendant Gosai for directing the inmates to assault him and against defendant Ramme for not taking action against those inmates after witnessing the incident. ECF No. 19 at 4. Plaintiff is not making unrelated claims against separate defendants; rather he is making separate, but related claims against the same defendants—Gosai and Ramme. Additionally, plaintiff's physical assault claim is related to his sexual assault claim: both claims allege mistreatment in prison by the same prison officials. For these reasons, the court declines to adopt the recommended dismissal of plaintiff's Eighth Amendment claim against defendants Gosai and Ramme arising from the alleged attack on plaintiff by other inmates. This action will proceed on that additional claim.

Accordingly, IT IS HEREBY ORDERED:

1. The May 6, 2022 findings and recommendations are adopted in part;

2. The court declines to adopt the recommended dismissal of plaintiff's Eighth Amendment claim against defendants Gosai and Ramme arising from the alleged attack on plaintiff by other inmates.

3. Defendant Paul Covello is dismissed;

4. Plaintiff's motion for injunctive relief, ECF No. 20, is denied without prejudice;

5. Defendants' request to extend the deadline to file a responsive pleading until 30 days after the court issues its screening order, ECF No. 35, **is granted.**

6. This matter is referred back to the assigned magistrate judge for all further pretrial proceedings consistent with this order, including to allow the filing of an amended complaint as needed to effect this order.

DATED: December 5, 2022.

CHIEF UNITED STATES DISTRICT JUDGE