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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Shaine Carl Cagle,

10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,

13 Defendants.
14

No. CV-16-03912-PHX-JAT (JFM)

ORDER

15 Pending before the Court is the Report and Recommendation (R&R) of the
16 Magistrate Judge screening the second amended complaint consistent with 28 U.S.C. §
17 1915(A). (Doc. 26). Plaintiff has filed objections to some portions of the R&R. (Doc.
18 29).

19 This Court “may accept, reject, or modify, in whole or in part, the findings or
20 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). It is “clear that
21 the district judge must review the magistrate judge’s findings and recommendations *de*
22 *novo if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d
23 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in original); *Schmidt v. Johnstone*, 263
24 F.Supp.2d 1219, 1226 (D. Ariz. 2003) (“Following *Reyna-Tapia*, this Court concludes
25 that *de novo* review of factual and legal issues is required if objections are made, ‘but not
26 otherwise.’”); *Klamath Siskiyou Wildlands Ctr. v. U.S. Bureau of Land Mgmt.*, 589 F.3d
27 1027, 1032 (9th Cir. 2009) (the district court “must review *de novo* the portions of the
28 [Magistrate Judge’s] recommendations to which the parties object.”). District courts are

1 not required to conduct “any review at all . . . of any issue that is not the subject of an
2 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (emphasis added); *see also* 28
3 U.S.C. § 636(b)(1) (“the court shall make a *de novo* determination of those portions of
4 the [report and recommendation] to which objection is made.”).

5 Here, the R&R screens Plaintiff’s 725 count second amended complaint. Plaintiff
6 objected to the R&R as to counts 575, 576, 577, 578, 614-704, 3-571, 572, 584-593, 594,
7 595, 596, 597, 602, 603, 604, 605, 606, 607, 581, 705-721, 580, 599, 722, and 608-613.¹
8 As to all counts to which there is not an objection, the Court accepts and adopts the R&R.

9 The Court will now turn to Petitioner’s objections:

10 **I. 575, 576, 577, 578.**

11 The R&R concludes that the claims in 575-578 are simply additional factual
12 support for the claim in count 574. (Doc. 26 at 13-14). Thus, the R&R recommends that
13 count 574 proceed and counts 575-578 be dismissed. Plaintiff objects and argues that
14 each count should be independent. (Doc. 29 at 1-2). The Court accepts the R&R and
15 overrules Plaintiff’s objection.

16 **II. 614-704.**

17 The R&R concludes that within the 90 counts of 614-704, Plaintiff actually
18 identifies 5 separate claims, to which the R&R assigned count numbers 614, 615, 616,
19 617 and 618. (Doc. 26 at 16-17). The R&R then recommends the other 85 counts which
20 do not have a specific factual basis be dismissed. Plaintiff objects and argues he has facts
21 to support 6 additional claims (for 11 total), but concedes the other 79 should be
22 dismissed. (Doc. 29 at 2-3). The Court agrees with the R&R that the second amended
23 complaint contains the factual basis to support only 5 counts, and the other 85 should be
24 dismissed. Plaintiff’s objections are overruled.

25 **III. 3-571.**

26 Counts 3-571 allege Plaintiff is not being giving religiously compliant meals. The
27

28 ¹ Plaintiff claims to object to the R&R on counts 723 and 724, but make no substantive objection. (Doc. 29 at 9). The Court overrules this baseless objection.

1 R&R concludes that there should be one count alleging a free exercise of religion
2 violation and one count alleging a RLUIPA violation, rather than one count per meal
3 Plaintiff has eaten. Doc. 26 at 17-20. Plaintiff objects. (Doc. 29 at 3-4). The Court
4 agrees with the R&R and overrules Plaintiff's objections. Counts 5-571 will be
5 dismissed.

6 **IV. 572.**

7 Plaintiff alleges one Defendant would not give him grievance forms. The R&R
8 concludes that Plaintiff has failed to show that, even if this claim is true, Plaintiff was in
9 any way impeded from filing grievances. (Doc. 26 at 24-26). Plaintiff objects, but still
10 fails to allege any actual injury. (Doc. 29 at 4). The Court agrees with the R&R that
11 Plaintiff fails to state a claim in this count. Plaintiff's objections are overruled.

12 **V. 584-593.**

13 In Counts 584-593 Plaintiff claims he was denied access to the courts by the
14 failure of defendants to send his legal mail. The R&R concludes that all of these claims
15 should be dismissed because Plaintiff has failed to allege any actual injury. (Doc. 26 at
16 27-31). Plaintiff objects and speculates that he would have prevailed in various court
17 proceedings had his mail been timely delivered. (Doc. 29 at 4-7).² The Court agrees
18 with the R&R that Plaintiff makes no non-frivolous argument that the result of any
19 proceeding was affected by his allegedly misdirected mail; thus the Court agrees with the
20 R&R that Plaintiff has failed to show an actual injury. Accordingly, Plaintiff's objections
21 are overruled and these counts will be dismissed.

22 **VI. 594-596.**

23 For the reasons stated in Section V above, Plaintiff's objections are overruled and
24 these claims will be dismissed. (See Doc. 26 at 31-32).

25 **VII. 597.**

26 For the reasons stated in Section V above, Plaintiff's objections are overruled and
27 this claim will be dismissed. (See Doc. 26 at 32).

28 ² In Plaintiff's list of objections, he does not include count 587. (Doc. 29 at 7).

1 **VIII. 602-607.**

2 For the reasons stated in Section V above, Plaintiff's objections are overruled and
3 these claims will be dismissed. (*See* Doc. 26 at 32-34).

4 **IX. 581.**

5 For the reasons stated in this Court's order at Doc. 9, this count will be dismissed.
6 (Doc. 26 at 35-36). Plaintiff's objections are overruled. (Doc. 29 at 7).

7 **X. 705-721.**

8 The R&R concludes that count 705 should be allowed to proceed, but the other
9 counts against various defendants should be dismissed for failing to state a claim
10 (because Plaintiff made only conclusory allegations). (Doc. 26 at 36-37). Plaintiff
11 objects (Doc. 29 at 7-9; 10-11) and offers more unfounded conclusory statements. The
12 Court agrees with the R&R, the objections are overruled, and all but count 705 will be
13 dismissed.

14 **XI. 580.**

15 The R&R concludes count 580 fails to state a claim as against any defendant
16 mentioned in it. (Doc. 26 at 40-41). Plaintiff objects to only the dismissal of Defendant
17 Corizon. (Doc. 29 at 9). The Court agrees with the R&R that count 580 fails to state a
18 claim. Plaintiff's objections are overruled and this count will be dismissed.

19 **XII. 599.**

20 The R&R concludes that count 599 should proceed against Defendant Sharp, but
21 Defendant Brower should be dismissed. (Doc. 26 at 42-44). Plaintiff objects but
22 continues to offer only speculative and conclusory statements as to Defendant Brower.
23 (Doc. 29 at 9-10). Thus, Plaintiff's objections are overruled and Defendant Brower will
24 be dismissed.

25 **XIII. 722.**

26 The R&R concludes that Plaintiff's speculative allegations in this count (that
27 Defendant Salas poisoned him under the guise of a TB test) fail to state a claim. (Doc. 26
28 at 44-45). Plaintiff objects, but admits "I can not state affirmatively that Salas poisoned

1 me.” (Doc. 29 at 11). On this record, the Court agrees with the R&R that Plaintiff’s
2 hypothetical conjecture fails to state a claim. The objections are overruled and this count
3 will be dismissed.

4 **XIV. 608-613.**

5 In these counts Plaintiff claims he was not provided with enough food. The R&R
6 concludes this should be a single count (608) and not a separate count for each meal.
7 (Doc. 26 at 45-46). Plaintiff objects claiming he wants a separate count for each meal.
8 (Doc. 29 at 11). The Court agrees with the R&R that a single count is adequate. The
9 objections are overruled and claims 609-613 will be dismissed.

10 **XV. Conclusion**

11 Based on the foregoing, the objections are overruled and the Report and
12 Recommendation (Doc. 26) is accepted and adopted as follows:

13 **IT IS ORDERED** that pursuant to 28 U.S.C. § 1915A, that the following Counts
14 of the Second Amended Complaint (Doc. 21) are **DISMISSED, WITHOUT**
15 **PREJUDICE:**

- 16 5-571,
- 17 572,
- 18 575-578,
- 19 580,
- 20 581,
- 21 584-593,
- 22 594-596,
- 23 597, 598,
- 24 602-607,
- 25 609-613,
- 26 619-704,
- 27 706-721,
- 28 722,

1 723-724, and
2 725.

3 **IT IS FURTHER ORDERED** that pursuant to 28 U.S.C. § 1915A, that the
4 following Defendants are DISMISSED, WITHOUT PREJUDICE:

- 5 Charles Ryan,
- 6 Deputy Warden Unknown Black,
- 7 Bobo,
- 8 Brower,
- 9 Darius,
- 10 DeLacerta,
- 11 DeMarco,
- 12 Durazo,
- 13 Guilfoyle,
- 14 Heet,
- 15 Keefe,
- 16 Koeppel,
- 17 Silvas,
- 18 Smith,
- 19 Squires,
- 20 Swanda,
- 21 Thompson,
- 22 Valazquez, and
- 23 Washburn.

24 **IT IS FURTHER ORDERED** that the following Defendants are required to
25 respond to the following Counts of the Second Amended Complaint (Doc. 21):

- 26 Defendants Corizon (Counts 1, 614, 615, 616, 617 and 618),
- 27 Nurse Unknown Black (Count 1),
- 28 Mares (Count 2),

1 Henry (Counts 3 and 4),
2 Vicklund (Counts 3 and 4),
3 Unknown Transportation Officers Black 1 and 2 (Count 573),
4 Babich (Count 574),
5 Salas (Count 579),
6 Bishop (Count 582),
7 Vargas (Count 583),
8 Sharp (Count 599),
9 Berrellez (Counts 600 and 601),
10 Laux (Count 608) and
11 Roman (705).

12 **IT IS FURTHER ORDERED** that service on Defendants Corizon, Mares,
13 Babich, Salas, Bishop, Berrellez, Henry, Vicklund, Vargas, Sharp, Roman and Laux is
14 hereby ordered as follows:

15 (1) The Clerk of the Court shall send Plaintiff a service packet including a
16 summons and request for waiver forms, a copy of this Order, and a copy of Marshal's
17 Process Receipt & Return form (USM-285) for each Defendant.

18 (2) Plaintiff shall complete and return the service packet to the Clerk of the Court
19 within 20 days of the date of the filing of this Order. The United States Marshal will not
20 provide service of process if Plaintiff fails to comply with this Order.

21 (3) The United States Marshal shall retain the Summons, a copy of such amended
22 complaint, and a copy of this Order for future use.

23 (4) The United States Marshal shall notify said Defendants of the commencement
24 of this action and request waiver of service of the summons pursuant to Rule 4(d) of the
25 Federal Rules of Civil Procedure. The notice to Defendants shall include a copy of this
26 Order. The Marshal shall file waivers of service of the summons or requests for waivers
27 that were returned as undeliverable as soon as they are received. If a waiver of service of
28 summons is not returned by Defendants within thirty days from the date the request for

1 waiver was sent by the Marshal, the Marshal shall:

2 (a) Personally serve copies of the Summons, such amended Complaint and
3 this Order upon Defendants pursuant to Rule 4(e)(2) of the Federal Rules of Civil
4 Procedure.

5 (b) Within ten days after personal service is effected, file the return of
6 service for the Defendants, along with evidence of the attempt to secure a waiver of
7 service of the summons and of the costs subsequently incurred in effecting service upon
8 the Defendants. The costs of service shall be enumerated on the return of service form
9 (USM-285) and shall include the costs incurred by the Marshal for photocopying
10 additional copies of the Summons, such amended complaint, or this Order and for
11 preparing new process receipt and return forms (USM-285), if required. Costs of service
12 will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) and (5) of
13 the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

14 (5) Defendants who agree to waive service of the Summons and such amended
15 complaint shall return signed waiver forms to the United State Marshal, and not to
16 Plaintiff.

17 (6) Said Defendants shall answer such amended complaint or otherwise respond
18 by appropriate motion within the time provided by the applicable provisions of Rule
19 12(a) of the Federal Rules of Civil Procedure.

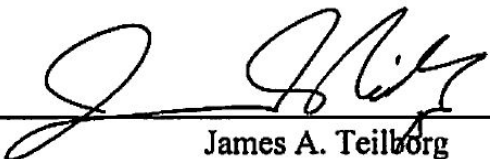
20 (7) Any answer or responsive pleading shall state the specific Defendant(s) by
21 name on whose behalf it is filed. The Court may strike any answer, responsive pleading,
22 or other motion or paper that does not identify the specific Defendant(s) by name on
23 whose behalf it is filed.

24 **IT IS FURTHER ORDERED** that Plaintiff has ninety days from the date of this
25 order to move to amend to identify the fictitiously named defendants, Defendants
26 Unknown Transportation Officers Black 1 and 2 and Unknown Nurse Black, or such
27 defendants shall thereafter be dismissed without prejudice.

28 **IT IS FINALLY ORDERED** that Plaintiff's unilateral motion to reassign this

1 case to Magistrate Judge Metcalf (Doc. 30) is denied. However, the Clerk's office shall
2 send a Consent to Exercise of Jurisdiction by a United States Magistrate Judge form to
3 Plaintiff and each Defendant, who may return them at their option.

4 Dated this 30th day of October, 2017.

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James A. Teilborg
Senior United States District Judge