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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JAMES D. GRIEPSMA,

11 Plaintiff,

12 v.

13 CHARLES M. WEND, et al.,

14 Defendants.

CASE NO. C16-1843JLR

ORDER

15 **I. INTRODUCTION**

16 This matter comes before the court on the Report and Recommendation (“R&R”) of United States Magistrate Judge Mary Alice Theiler (R&R (Dkt. # 95)) and Plaintiff James D. Griepsma’s objections thereto (Obj. (Dkt. # 97)). Also before the court are Mr. Griepsma’s motions filed after his objections: a motion for reconsideration of the court’s previous order (Mot. for Recons. (Dkt. # 98)), a motion for Supreme Court discretionary review of his case (Mot. for S. Ct. Rev. (Dkt. # 99)), and a motion to compel (MTC (Dkt. # 106)).

1 The court has considered the parties' submissions, the relevant portions of the  
2 record, and the applicable law. Being fully advised,<sup>1</sup> the court ADOPTS the R&R,  
3 DISMISSES Mr. Griepsma's complaint with prejudice, and DENIES Mr. Griepsma's  
4 remaining motions.

## 5 II. BACKGROUND

6 Mr. Griepsma is proceeding *in forma pauperis* in this action, in which he alleges  
7 civil rights violations under 42 U.S.C. § 1983. (*See generally* Compl. (Dkt. # 4).) He  
8 asserts a variety of claims relating to his confinement in 2016 as a pre-trial detainee at the  
9 Skagit County jail. (*See generally id.*) Specifically, Mr. Griepsma brings suit against a  
10 number of current and former Skagit County employees<sup>2</sup> and alleges the following  
11 constitutional violations: (1) failure to protect him from assault; (2) deliberate  
12 indifference to his serious medical needs; (3) use of excessive force; (4) interference with  
13 his right of access to court; (5) interference with his right to send and receive mail; (6)  
14 harassment and death threats; (7) denial of his due process rights; and (8) unconstitutional  
15 punishment through his confinement conditions.<sup>3</sup> (*See id.* at 3-7.)

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17 <sup>1</sup> No party requests oral argument, and the court concludes that oral argument would not  
18 be helpful to its disposition of the R&R and Mr. Griepsma's motions. *See* Local Rules W.D.  
19 Wash. LCR 7(b)(4).

20 <sup>2</sup> The Defendants include Chief Corrections Deputy Charles Wend; Sergeants Juanita  
21 O'Neill, Brian Schrader, Paulette Storie, and Aaron McIntosh; Correctional Officers Von  
22 LaQuet, Elias Salinas, David Anderson, Guillermo Garcia, Richard Eichman, Julie Zorn, Richard  
23 Scott, Lecia Kelley, Brianna Rogers, Michael Warner, Nicholas Johnson, and Randolph Parker;  
24 Advanced Registered Nurse Practitioner Sue Baerg; Licensed Practical Nurse Billie Goldsmith;  
25 and Registered Nurse Dawn Annema (collectively, "Defendants"). (*See generally* Compl.)

26 <sup>3</sup> Mr. Griepsma alleges other incidents, such as the correctional officers' refusal to take  
27 pictures of him after an altercation, that do not clearly fall into these categories of claims. (*See*

1 In response, Defendants filed four dispositive motions seeking dismissal of Mr.  
2 Griepsma's claims (MTD Eleven Defendants (Dkt. # 15); MTD Three Defendants (Dkt.  
3 # 38); MTD Five Defendants (Dkt. # 50); MTD Sue Baerg (Dkt. # 67)), as well as a  
4 motion to find Mr. Griepsma's complaint frivolous (Mot. to Find Compl. Frivolous (Dkt.  
5 # 70)). Mr. Griepsma opposed all of these motions. (1st Resp. (Dkt. # 77); 2nd Resp.  
6 (Dkt. # 79); 3rd Resp. (Dkt. # 80); 4th Resp. (Dkt. # 81); 5th Resp. (Dkt. # 82).)

7 On September 14, 2017, Magistrate Judge Theiler issued an R&R granting  
8 Defendants summary judgment on all of Mr. Griepsma's claims, denying Defendants'  
9 motion to find Mr. Griepsma's complaint frivolous, and dismissing the action with  
10 prejudice. (*See* R&R at 6, 35.) In the R&R, Magistrate Judge Theiler thoroughly  
11 recounts background facts for each of Mr. Griepsma's claims, and the court does not  
12 repeat those facts here. (*See id.* at 2-5.) However, because the court focuses on the  
13 medical and excessive force claims below, the court briefly summarizes Magistrate Judge  
14 Theiler's reasoning for dismissing those two claims.

15 First, Mr. Griepsma alleges a series of constitutional violations regarding the  
16 medical care he received, including deliberate indifference by Ms. Baerg for denying him  
17 access to his x-rays, denying him over-the-counter ("OTC") medications and icepacks,  
18 providing him OTC medications in crushed form, ignoring his complaints about chest

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21 R&R at 32-34.) Magistrate Judge Theiler concluded that these incidents do not rise to the level  
22 of constitutional violations. (*See id.*) Mr. Griepsma's objections to these conclusions do not  
state any novel issues not addressed by the R&R. (*See* Obj. at 13-14.) Based on a review of the  
record, the court finds Magistrate Judge Theiler's reasoning persuasive and agrees that these  
incidents do not rise to the level of constitutional violations.

1 pain, and failing to provide him medical approval to see a hand specialist. (*See id.* at  
2 13-16 (citing Compl. at 3-4, 6-7).) Magistrate Judge Theiler found that the evidence does  
3 not support that Ms. Baerg “acted in conscious disregard of an excessive risk to [Mr.  
4 Griepsma’s] health[,]” as set forth in *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). (*See*  
5 R&R at 12, 17.)

6 Second, Mr. Griepsma alleges the use of excessive force against him on May 19,  
7 2016, when he asserts that four or five deputies held him down while Deputy Eichman  
8 punched him in the ribs and Sergeant McIntosh grabbed his hand, thereby  
9 hyperextending and breaking his immobile fingers. (*Id.* at 3, 19 (citing Compl. at 4).)  
10 Magistrate Judge Theiler found that “the medical evidence refutes [Mr. Griepsma’s]  
11 contention of one or more broken fingers or more than *de minimis* injury to his hands or  
12 ribs.” (*Id.* at 21 (citing Baerg Decl. (Dkt. # 26) at 21-24, 56-59; Randall-Secret Decl.  
13 (Dkt. # 27) at 10).) Before the altercation, several defendants and witnesses observed Mr.  
14 Griepsma touch Sergeants McIntosh and Storie while they were transporting him and  
15 then “advance on, kick at, and back [Sergeant] McIntosh towards a set of stairs, pulling  
16 [Sergeant] Storie . . . along with him.” (*Id.* at 20.) They state that “[Deputy Eichman],  
17 who had been watching from the lower floor . . . radioed for assistance, ran up the stairs,  
18 and used his weight to take [Mr. Griepsma] to the floor, but landed on his back with [Mr.  
19 Griepsma] on top of him, punching, spitting, and yelling.” (*Id.*) Further, “[Sergeant]  
20 McIntosh tried to control [Mr. Griepsma’s] arms, while [Sergeant] Storie attempted  
21 control of his waist chains with one hand and grabbed his hair with the other.” (*Id.*)

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1 Magistrate Judge Theiler dismissed Mr. Griepsma’s excessive force claim against  
2 Sergeant Storie, Sergeant McIntosh, Deputy Eichman, and Chief Deputy Wend due to  
3 “an absence of significant and probative evidence supporting [Mr. Griepsma’s] version of  
4 events.” (*Id.* at 22.) Despite Mr. Griepsma’s claim that he never touched Deputy  
5 Eichman or Sergeant McIntosh, Magistrate Judge Theiler found that “[t]he evidence  
6 demonstrates the objective reasonableness of the force employed”—the standard  
7 provided by *Kingsley v. Hendrickson*, --- U.S. ---, 135 S. Ct. 2466, 2473 (2015). (R&R at  
8 18, 20, 22.) Specifically, Magistrate Judge Theiler found that “[Mr. Griepsma] engaged  
9 in a physical altercation with multiple correctional officers[,]” and “[t]he severity of the  
10 security problem and threat was clear . . . .” (*Id.* at 20, 22 (citing 3rd Resp. at 7).)  
11 Magistrate Judge Theiler additionally noted that “[t]he evidence . . . supports the  
12 conclusion [Mr. Griepsma] actively resisted the efforts of a large number of officers to  
13 end the altercation[,]” and “[t]hese circumstances do not support [Mr. Griepsma’s]  
14 allegation of excessive force.” (*Id.* at 22.)

15 On October 2, 2017, Mr. Griepsma timely filed objections to the R&R and  
16 attached a new medical record that offers a summary of a medical appointment he had on  
17 September 28, 2017. (*See generally* Obj.) Later that same day, Mr. Griepsma filed two  
18 additional motions and a declaration: (1) a motion for reconsideration of the court’s  
19 order denying his August 17, 2017, motion to amend his complaint (*see* Mot. for  
20 Recons.), (2) a motion requesting that the Supreme Court review his case (*see* Mot. for S.  
21 Ct. Rev.), and (3) a declaration from Terrance Jon Irby, a fellow inmate at the time of the  
22 alleged excessive force incident. (*See* Irby Decl. (Dkt. # 100).) In the declaration, Mr.

1 Irby states that he “agree[s] to those facts present in the attached motion”<sup>4</sup> and offers his  
2 account of the altercation between Mr. Griepsma and the Defendants on May 19, 2016.  
3 (*See id.* at 1-2.) Finally, on November 22, 2017, Mr. Griepsma filed a motion to compel  
4 the time clock records of specific defendants. (*See* MTC.)

5 The court now evaluates Mr. Griepsma’s objections and motions. First, the court  
6 addresses Mr. Griepsma’s objections in light of the new evidence he submitted. Next, the  
7 court turns to his motion for reconsideration, motion for Supreme Court discretionary  
8 review, and motion to compel.

### 9 III. ANALYSIS

#### 10 A. Objections to R&R

11 A district court has jurisdiction to review a Magistrate Judge’s report and  
12 recommendation on dispositive matters. Fed. R. Civ. P. 72(b)(3). “The district judge  
13 must determine de novo any part of the magistrate judge's disposition that has been  
14 properly objected to.” *Id.* “A judge of the court may accept, reject, or modify, in whole  
15 or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C.  
16 § 636(b)(1). In addition, because Mr. Griepsma is proceeding *pro se*, this court must  
17 interpret his complaint and objections liberally. *See Bernhardt v. L.A. Cty.*, 339 F.3d 920,  
18 925 (9th Cir. 2003).

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21 <sup>4</sup> Because Mr. Griepsma refers to his objections to Magistrate Judge Theiler’s R&R as a  
22 “Motion[,]” the court construes the “motion” in Mr. Irby’s declaration to be Mr. Griepsma’s  
objections. (*See* Obj. at 1.) The other two motions Mr. Griepsma filed that day do not mention  
his excessive force claim. (*See generally* Mot. for Recons.; Mot. for S. Ct. Rev.)

1 The court first addresses Mr. Griepsma’s objections to the dismissal of his claims  
2 not impacted by the new evidence. The court then turns to Mr. Griepsma’s objections to  
3 the dismissal of his remaining claims—the excessive force and medical claims—and  
4 what, if any, impact Mr. Irby’s declaration and the new medical record had.

5 1. Claims with No New Evidence

6 Mr. Griepsma details a litany of objections to the dismissal of his claims not  
7 relating to the new evidence,<sup>5</sup> including the following: objections to Magistrate Judge  
8 Theiler’s legal conclusions; objections to statements of the law; objections to statements  
9 citing Defendants’ declarations and other evidence; and objections to statements citing  
10 his own complaint. (*See generally* Obj.) Defendants contend that “[Mr.] Griepsma’s  
11 objections are not supported by citation to the record or any admissible evidence” and  
12 “often allude[] to immaterial matters that are not in the record.” (Resp. to Obj. (Dkt.  
13 # 101) at 2.) The court agrees with Defendants.

14 Mr. Griepsma’s objections restate arguments he made in his complaint and  
15 responses, thereby failing to raise any novel issues not addressed by the R&R. (*See*  
16 *generally* R&R; Obj.) Moreover, none of Mr. Griepsma’s objections specifically address  
17 Magistrate Judge Theiler’s analysis or reasoning. (*See generally* Obj.) Based on an  
18 independent examination of the record, the court concurs with Magistrate Judge Theiler’s

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22 <sup>5</sup> The following claims are not affected by the new evidence: (1) failure to protect; (2)  
interference with his right of access to court; (3) interference with his right to send and receive  
mail; (4) harassment and death threats; (5) denial of due process; and (6) unconstitutional  
punishment through his confinement conditions. (*See* Compl. at 3-7; Obj. at 17-18; Irby Decl.)

1 recommendation of dismissal.

2 2. Claims with New Evidence

3 Similar to his other objections, Mr. Griepsma's objections to the dismissal of his  
4 excessive force and medical claims restate arguments he previously made and thus fail to  
5 raise any novel issues not addressed by Magistrate Judge Theiler's R&R. (See R&R at  
6 12-22; see generally Obj.) Because Mr. Griepsma submitted new evidence relating to  
7 both claims, however, the court evaluates whether it should consider the new evidence  
8 and the impact this new evidence has on Magistrate Judge Theiler's analysis.

9 a. *Whether to Consider New Evidence*

10 A district court "has discretion, but is not required, to consider evidence presented  
11 for the first time in a party's objection to a magistrate judge's recommendation." *United*  
12 *States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000). In deciding whether to consider  
13 newly offered evidence, "the district court must actually exercise its discretion, rather  
14 than summarily accepting or denying the motion." *Id.* at 622; see also *Brown v. Roe*, 279  
15 F.3d 742, 744 (9th Cir. 2002). "[U]nder 'certain circumstances a district court abuses its  
16 discretion when it fails to consider new arguments or evidence offered by a *pro se*  
17 [litigant] . . . in objecting to a magistrate judge's' findings and recommendations." *Usrey*  
18 *v. Deyott*, No. CV 12-92-H-DLC-RKS, 2014 WL 824866, at \*2 (D. Mon. Mar. 3, 2014)  
19 (emphasis added) (quoting *Sossa v. Diaz*, 729 F.3d 1225, 1231 (9th Cir. 2013)).  
20 Specifically, where "a *pro se* plaintiff, ignorant of the law, offer[s] crucial facts as soon  
21 as he underst[ands] what [is] necessary to prevent summary judgment against him . . . it  
22 [is] an abuse of discretion for the district court not to consider the evidence." *Jones v.*



1 *Blanas*, 393 F.3d 918, 935 (9th Cir. 2004) (emphasis added). The court concludes that it  
2 will consider both pieces of new evidence submitted by Mr. Griepsma.

3 The court will consider Mr. Irby's declaration in evaluating Mr. Griepsma's  
4 excessive force claim. Although Mr. Griepsma does not refer to Mr. Irby's declaration in  
5 his objections (*see generally* Obj.), the declaration clearly provides facts relating to the  
6 excessive force claim (*see generally* Irby Decl.). Mr. Griepsma submitted the declaration  
7 after Magistrate Judge Theiler found "an absence of significant and probative evidence  
8 supporting [Mr. Griepsma's] alternative version of events." (R&R at 22.) Thus, Mr.  
9 Griepsma likely secured Mr. Irby's declaration upon learning that he did not offer enough  
10 evidence to prevent summary judgment against him. *See Jones*, 393 F.3d at 935; (*see*  
11 *generally* Irby Decl.). In light of Mr. Griepsma's *pro se* status and the timing of when he  
12 offered the declaration, the court considers the declaration on review. *See Jones*, 393  
13 F.3d at 935.

14 The same goes for the new medical record. As a threshold matter, the court  
15 construes this medical record as relating to Mr. Griepsma's claim that Ms. Baerg was  
16 deliberately indifferent to his serious medical needs. The record offers a summary of a  
17 September 28, 2017, medical appointment he had. (*See* Obj. at 17-18.) It states that Mr.  
18 Griepsma was at the appointment due to a "lack of mobility[.]" and it lists "Subclinical  
19 hyperthyroidism" and "Acquired deformity of chest wall" as two problems addressed.  
20 (*Id.* at 17.) The record also provides a list of Mr. Griepsma's medications. (*Id.* at 17-18.)  
21 Because Mr. Griepsma alleges that Ms. Baerg denied him chest treatment (Compl. at 3),  
22 the court construes the medical record as pertaining to this claim.

1 Magistrate Judge Theiler concluded that “[t]he evidence does not support a  
2 conclusion [Ms.] Baerg acted in conscious disregard of an excessive risk to [Mr.  
3 Griepsma’s] health on this or any other occasion.” (R&R at 17.) Thus, as with Mr.  
4 Irby’s declaration, Mr. Griepsma may have secured the record—which is relevant to his  
5 allegations about chest pain—upon learning that he did not offer enough evidence. *See*  
6 *Jones*, 393 F.3d at 935. Accordingly, the court considers the evidence on review.

7 *b. Claims Considered in Light of New Evidence*

8 Summary judgment is appropriate if the evidence, when viewed in the light most  
9 favorable to the non-moving party, demonstrates “that there is no genuine dispute as to  
10 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ.  
11 P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*,  
12 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing  
13 there is no genuine dispute of material fact and that he or she is entitled to prevail as a  
14 matter of law. *Celotex*, 477 U.S. at 323. A material fact is a fact relevant to the outcome  
15 of the pending action. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If  
16 the moving party meets his or her burden, then the non-moving party “must make a  
17 showing sufficient to establish a genuine dispute of material fact regarding the existence  
18 of the essential elements of his case that he must prove at trial” in order to withstand  
19 summary judgment. *Galen*, 477 F.3d at 658. The nonmoving party may not rest upon  
20 mere allegations or denials in the pleadings but must present significant and probative  
21 evidence to support his or her claim or defense. *See Intel Corp. v. Hartford Accident &*  
22 *Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991).

1 i. Excessive Force Claim Reviewed with New Evidence

2 To prevail on an excessive force claim under the Fourteenth Amendment's Due  
3 Process Clause, "a pretrial detainee must show only that the force purposely or  
4 knowingly used against him was objectively unreasonable." *Kingsley*, 135 S. Ct. at 2473.  
5 "[O]bjective reasonableness turns on the 'facts and circumstances of each particular  
6 case.'" *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Instead of applying  
7 this standard mechanically, "[a] court must make this determination from the perspective  
8 of a reasonable officer on the scene." *Id.* "A court must also account for the 'legitimate  
9 interests that stem from [the government's] need to manage the facility in which the  
10 individual is detained,' appropriately deferring to 'policies and practices that in th[e]  
11 judgment' of jail officials 'are needed to preserve internal order and discipline and to  
12 maintain institutional security.'" *Id.* (citing *Bell v. Wolfish*, 441 U.S. 520, 540 (1979)).

13 The following non-exclusive list of factors may inform the reasonableness or  
14 unreasonableness of the force used:

15 [T]he relationship between the need for the use of force and the amount of  
16 force used; the extent of the plaintiff's injury; any effort made by the officer  
17 to temper or to limit the amount of force; the severity of the security problem  
at issue; the threat reasonably perceived by the officer; and whether the  
plaintiff was actively resisting.

18 *Id.* (citing *Graham*, 490 U.S. at 396).

19 Magistrate Judge Theiler concluded that certain *Kingsley* factors favor granting  
20 Defendants summary judgment because "the severity of the security problem and threat  
21 was clear given the events leading up to [Mr. Griepsma's physical altercation with  
22 multiple correctional officers], the altercation itself, and in light of the proximity to stairs

1 and [Mr. Griepsma's] position on top of [Deputy Eichman]." (R&R at 22.) Further,  
2 Magistrate Judge Theiler found that "[t]he evidence supports the conclusion [Mr.  
3 Griepsma] actively resisted the efforts of a large number of officers to end the  
4 altercation[,]" and "[t]hese circumstances do not support [Mr. Griepsma's] allegation of  
5 excessive force." (*Id.*)

6 Mr. Irby's declaration speaks to the amount of force Deputy Eichman used (*see*  
7 Irby Decl. at 1 ("The deputy used all of his body weight, right fist, and punched Mr.  
8 Griepsma in the stomach area.")), Sergeant Storie's failure to prevent Deputy Eichman  
9 from using force (*see id.* at 2),<sup>6</sup> the type of force Sergeant McIntosh used (*see id.* ("I seen  
10 [sic] [Sergeant] McIntosh applying twisting, wrenching pressure to force open Mr.  
11 Griepsma [sic] fingers, which I know causes Mr. Griepsma grate [sic] pain to his injured  
12 hand.")), and Mr. Griepsma's statements that his hand was in pain and that he was not  
13 resisting (*see id.* ("Mr. Griepsma was yelling out in pain to stop hurting my hand I'm not  
14 even resisting, at least four times.")). In addition, Mr. Irby concludes that Deputy  
15 Eichman "use[d] excessive force on [Mr. Griepsma]"<sup>7</sup> and that Deputy Eichman "knew  
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17 <sup>6</sup> Mr. Irby's testimony regarding Sergeant Storie appears to relate to a failure to protect  
18 claim rather than an excessive force claim. He testifies that "[Sergeant] Storie could have  
19 prevent [sic] the first assault. She seen [sic] [Deputy] Eichman getting ready to drop." (*Id.* at 2.)  
20 Magistrate Judge Theiler similarly noted that Mr. Griepsma's allegation against Sergeant Storie  
21 "amount[ed] to a failure to protect, rather than a claim of excessive force." (R&R at 22 (citing  
22 3rd Resp. at 2).) Because Mr. Irby's testimony does not relate any force Sergeant Storie may  
have used, the testimony would not change Magistrate Judge Theiler's analysis of Mr.  
Griepsma's excessive force claim against Sergeant Storie.

<sup>7</sup> Because this statement is conclusory and not supported by factual data, it is insufficient  
to create an issue of material fact that would preclude summary judgment. *See Hansen v. United*  
*States*, 7 F.3d 137, 138 (9th Cir. 1993).

1 what he was doing was unlawful” and “had time to deliberate.” (*Id.* at 1-2.) However,  
2 Mr. Irby does not address the events leading up to the use of force on Mr. Griepsma, and  
3 he does not personally witness whether Mr. Griepsma resisted the officers’ efforts.<sup>8</sup> (*See*  
4 *generally id.*) Thus, Mr. Irby’s testimony does not change Magistrate Judge Theiler’s  
5 analysis of Deputy Eichman or Sergeant McIntosh’s use of force because it does not  
6 place any material facts in dispute. *See Anderson*, 477 U.S. at 248; *Galen*, 477 F.3d at  
7 658.

8           Although Mr. Irby’s testimony creates a dispute of fact as to whether Deputy  
9 Eichman punched Mr. Griepsma while taking him to the ground (*compare* Eichman Decl.  
10 (Dkt. # 40) at 3 (“I did not punch [Mr.] Griepsma in my attempt to get him under  
11 control.”), *with* Irby Decl. (“Deputy [Eichman] . . . punched Mr. Griepsma in the  
12 stomach.”)), that fact is not material because it would not change the outcome of Mr.  
13 Griepsma’s claim, *see Anderson*, 477 U.S. at 248. Even if Deputy Eichman punched Mr.  
14 Griepsma in the stomach while taking him to the ground, that alone does not render the  
15 use of force objectively unreasonable in light of the circumstances. As Magistrate Judge  
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18           <sup>8</sup> Mr. Irby’s testimony that “Mr. Griepsma was yelling out . . . I’m not even resisting”  
19 (Irby Decl. at 2) does not place Mr. Griepsma’s resistance in dispute. Mr. Irby does not speak to  
20 any personal observations regarding Mr. Griepsma’s actions. (*See generally id.*) Rather, he  
21 asserts Mr. Griepsma was yelling that he was not resisting (*see id.* at 2)—something Mr.  
22 Griepsma could have done whether or not he was actually resisting the officers’ efforts. Even if  
the court were to construe Mr. Irby’s declaration as stating that Mr. Griepsma was not resisting at  
that moment while on the ground, the totality of the *Kingsley* factors—including the *de minimis*  
injury, the severity of the security problem, and the threat Mr. Griepsma presented through his  
actions leading up to this moment—remains in favor of the officers and suggests the force  
utilized was objectively reasonable. *See* 135 S. Ct. at 2473.

1 Theiler concludes, the evidence shows that Mr. Griepsma did not suffer more than *de*  
2 *minimis* injury, he engaged in an altercation with multiple correctional officers, and he  
3 actively resisted the officers' efforts. (R&R at 21 (citing Baerg Decl. at 21-24, 56-59),  
4 22.) None of these conclusions are affected by Mr. Irby's testimony. (See Irby Decl.)  
5 Thus, several *Kingsley* factors remain in favor of Deputy Eichman: Mr. Griepsma  
6 suffered *de minimis* injury, the severity of the security problem he presented was clear,  
7 and he was actively resisting. See 135 S. Ct. at 2473; (R&R at 21-22). In this context,  
8 whether Deputy Eichman punched Mr. Griepsma is not the type of factual dispute that  
9 would preclude summary judgment. See *Anderson*, 477 U.S. at 248.

10 Similarly, as to Sergeant McIntosh, Mr. Irby's declaration does not create a  
11 genuine dispute of material fact. Mr. Irby's declaration creates a factual dispute as to  
12 whether Sergeant McIntosh used force on Mr. Griepsma's arm or hand. (Compare  
13 McIntosh Decl. (Dkt. # 41) at 4 ("I held [Mr.] Griepsma's arms, not his hands."), with  
14 Irby Decl. at 2 ("I seen [sic] [Sergeant] McIntosh applying twisting, wrenching pressure  
15 to force open Mr. Griepsma[']s fingers.")) As with the evidence against Deputy  
16 Eichman, even if Sergeant McIntosh applied pressure to Mr. Griepsma's hand, that fact  
17 alone does not alter the *Kingsley* factors such that the use of force was objectively  
18 unreasonable. Thus, the factual dispute is not a sufficient disagreement to require  
19 submission to a jury. See *Anderson*, 477 U.S. at 248.

20 Accordingly, the court finds Magistrate Judge Theiler's reasoning persuasive even  
21 in light of Mr. Irby's declaration and concludes that summary judgment on Mr.  
22 Griepsma's excessive force claim is appropriate.

1                   ii. Medical Claim Reviewed with New Evidence

2           Prison officials are deliberately indifferent to serious medical needs “when they  
3 deny, delay, or intentionally interfere with medical treatment.” *Hallett v. Morgan*, 296  
4 F.3d 732, 744 (9th Cir. 2002). The new medical record submitted by Mr. Griepsma states  
5 that “Acquired deformity of chest wall” was a problem addressed, but it does not  
6 comment on Ms. Baerg’s treatment of Mr. Griepsma. (*See* Obj. at 17-18.) Because the  
7 record makes no mention of Ms. Baerg or her interactions with Mr. Griepsma, it does not  
8 change Magistrate Judge Theiler’s analysis of Mr. Griepsma’s deliberate indifference  
9 claim. Accordingly, the court finds that the new evidence does not alter Magistrate Judge  
10 Theiler’s reasoning and concludes that summary judgment on Mr. Griepsma’s deliberate  
11 indifference claim is appropriate.

12           In sum, the court has thoroughly examined the record before it and finds  
13 Magistrate Judge Theiler’s reasoning persuasive. Mr. Griepsma essentially restates the  
14 arguments he made to Magistrate Judge Theiler, and the court independently rejects Mr.  
15 Griepsma’s arguments for the same reasons that Magistrate Judge Theiler did. In  
16 addition, the new evidence Mr. Griepsma submitted with his objections does not place  
17 any material fact in dispute. Accordingly, the court adopts the R&R in its entirety.

18           **B. Motion for Reconsideration of Motion to Amend**

19           Mr. Griepsma moves for reconsideration of the court’s order denying his motion  
20 to amend his complaint. (*See* Mot. for Recons.) Defendants oppose Mr. Griepsma’s  
21 motion and argue that the court should not consider it because “(1) it was filed ex parte

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1 and (2) it does not provide any reasoned analysis or other basis for his proposed  
2 amendment.” (Resp. to Obj. at 2.)

3 Motions for reconsideration are disfavored, and the court ordinarily will deny such  
4 motions unless the moving party shows (a) manifest error in the prior ruling, or (b) facts  
5 or legal authority which could not have been brought to the attention of the court earlier  
6 with reasonable diligence. Local Rules W.D. Wash. LCR 7(h)(1). In addition, a motion  
7 for reconsideration must be filed “within fourteen days after the order to which it relates  
8 is filed.” *Id.* LCR 7(h)(2).

9 Mr. Griepsma’s motion for reconsideration is untimely. The court’s order denying  
10 Mr. Griepsma’s motion to amend was filed on September 13, 2017. (*See* 9/13/17 Order  
11 (Dkt. # 94).) Mr. Griepsma filed the instant motion on October 2, 2017—more than 14  
12 days later. (*See* Mot. for Recons.) Moreover, even if the motion were timely, Mr.  
13 Griepsma does not show manifest error or bring forth new facts or legal authority. *See*  
14 Local Rules W.D. Wash. LCR 7(h)(1); (*see generally* Mot. for Recons.). Accordingly,  
15 the court denies the motion.

### 16 **C. Motion for Supreme Court Discretionary Review**

17 The court construes Mr. Griepsma’s “Motion for Order for a Supreme Court  
18 Discretionary Review” as a request that the Supreme Court review Magistrate Judge  
19 Theiler’s R&R dismissing his complaint. (*See* Mot. for Sup. Ct. Rev.) In the motion,  
20 Mr. Griepsma expresses his disagreement with the R&R. (*See generally id.*) He also  
21 includes citations to case law that relate to his claims. (*See id.* at 3.) Defendants do not  
22 address the motion in their response. (*See generally* Resp. to Obj.)



1 The court denies Mr. Griepsma's motion because it cannot compel the U.S.  
2 Supreme Court to take any action regarding his case. "A district court lacks authority to  
3 compel judges and other court officials to take any action." *Evans v. Suter*, No.  
4 H-07-1557, 2007 WL 1888308, at \*3 (S.D. Tex. June 29, 2007); *see also Panko v.*  
5 *Rodak*, 606 F.2d 168, 171 n.6 (7th Cir. 1979) ("[I]t seems axiomatic that a lower court  
6 may not order the judges or officers of a higher court to take an action."). As a result,  
7 this court cannot order the Supreme Court to review Magistrate Judge Theiler's dismissal  
8 of Mr. Griepsma's complaint. Accordingly, the court denies the motion.

#### 9 **D. Motion to Compel Time Clock Records**

10 Mr. Griepsma moves to compel time clock records of Deputy LaQuet, Deputy  
11 Garcia, Sergeant Schrader, and Deputy Salinas. (*See* MTC at 1.) Defendants oppose the  
12 motion for three reasons. (*See* Resp. to MTC (Dkt. # 107).) First, they argue that the  
13 motion bypasses the discovery rules because Mr. Griepsma never requested discovery  
14 from Defendants. (*Id.* at 1.) Second, they argue that an order to compel time clock  
15 records would be unavailing because deputies do not use a time clock to record their  
16 hours. (*Id.*) Third, they argue that the motion is untimely. (*Id.*)

17 There is no basis for Mr. Griepsma's motion to compel because he never served  
18 discovery requests on Defendants. (*See generally* Dkt.) Mr. Griepsma does not present  
19 evidence that he ever served such requests. (*See generally* MTC.) If Mr. Griepsma did  
20 not serve discovery requests on Defendants, there is no basis for his motion. *See* Fed. R.  
21 Civ. P. 37; *Palmer v. Crotty*, No. 1:07-CV-00148-LJO-DLB PC, 2010 WL 4279423, at

22 //

1 \*1 (E.D. Cal. Oct. 22, 2010). Further, even if Mr. Griepsma had served discovery  
2 requests on Defendants, his motion is untimely because the deadline for  
3 discovery motions passed on June 6, 2017. (See Sched. Order (Dkt. # 35) at 1.)  
4 Accordingly, the court denies the motion.

#### 5 IV. CONCLUSION

6 For the foregoing reasons, the court ADOPTS the Report and Recommendation  
7 (Dkt. # 95) in its entirety. The court hereby ORDERS as follows:

8 (1) The court GRANTS Defendants' dispositive motions (Dkt. ## 15, 38, 50, 67);

9 (2) The court DENIES Defendants' motion to find Mr. Griepsma's complaint  
10 frivolous (Dkt. # 70);

11 (3) The court DISMISSES Mr. Griepsma's complaint (Dkt. # 4) with prejudice;

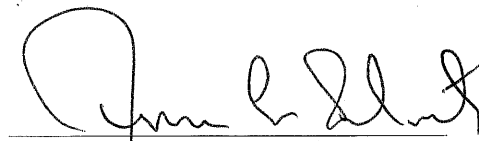
12 (4) The court DENIES Mr. Griepsma's motion for reconsideration (Dkt. # 98);

13 (5) The court DENIES Mr. Griepsma's motion for Supreme Court discretionary  
14 review (Dkt. # 99);

15 (6) The court DENIES Mr. Griepsma's motion to compel (Dkt. # 106); and

16 (7) The court DIRECTS the Clerk to send copies of this Order to Mr. Griepsma,  
17 counsel for Defendants, and Magistrate Judge Theiler.

18 Dated this <sup>th</sup> 11 day of December, 2017.

19   
20 JAMES L. ROBART  
21 United States District Judge  
22