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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARCO GARNICA,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS, ELDON VAIL,
RONALD FRAKER, BRENT CARNEY,
JAY A. JACKSON, JAMIE CALLEY,

Defendants.

CASE NO. C12-5544 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

This matter comes before the court on the Report and Recommendation of the magistrate judge. Dkt. 50. The court has reviewed the relevant documents, including plaintiff's objections (Dkt. 53) and the remaining record.

On June 19, 2013, U.S. Magistrate Judge Karen L. Strombom issued a Report and Recommendation, concluding that (1) plaintiff failed to raise a genuine issue of material fact to establish an Eighth Amendment violation, based upon his consumption of the food provided during the 2010 Ramadan fast; and plaintiff failed to raise a genuine issue of material fact to

1 establish that defendants acted with deliberate indifference to his health and safety; (2)
2 defendants cannot be held liable under RLUIPA for monetary damages; and any request for
3 injunctive relief under RLUIPA is moot; (3) plaintiff failed to raise a genuine issue of material
4 fact as to his claim that the Ramadan 2010 policies and meals burdened the practice of his
5 religion; and (4) plaintiff failed to exhaust his claims relating to the 2010 Eid ul-Fitr Feast. Dkt.
6 50.

7 On July 1, 2013, plaintiff filed objections to the Report and Recommendation, arguing
8 that (1) his Eighth Amendment rights were violated when defendants denied him enough calories
9 and nutrition during the Ramadan 2010 fast to maintain his health, requiring him to seek medical
10 attention and to violate one of the tenets of his religion by breaking his fast; (2) the claim under
11 RLUIPA is not moot; and (3) defendants' policies regarding the Ramadan 2010 fast violated his
12 First Amendment rights to practice his religion. Dkt. 53.

13 On August 6, 2013, defendants filed a response to the objections, arguing that plaintiff
14 failed to show that the 2010 Ramadan box meals were nutritionally deficient or that defendants
15 acted with deliberate indifference; that the RLUIPA claim for injunctive relief is moot; and that
16 plaintiff failed to show that defendants' actions substantially burdened the practice of his
17 religion. Dkt. 54.

18 The court has carefully reviewed the record. The Report and Recommendation carefully
19 and accurately set forth the facts, thoroughly analyzed the facts in relation to the law, and
20 concluded that plaintiff has not raised a material issue of fact regarding his claims under the First
21 and Eighth Amendments, and his claim under RLUIPA. The record shows that defendants
22 attempted to accommodate the inmates' nutritional requirements during the 2010 Ramadan fast,
23 while addressing the institution's need for cost effectiveness and efficiency, and, when
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1 deficiencies were identified, promptly addressed the problems. The court can add nothing more
2 to the well reasoned Report and Recommendation, and concurs with the recommendation.
3 Defendants are entitled to summary judgment. Further, the record shows that plaintiff's claim
4 regarding the 2010 Ramadan Eid ul-Fitr Feast should be dismissed without prejudice because
5 plaintiff failed to exhaust this claim.

6 This case was originally filed in Thurston County Superior Court, and was removed by
7 defendants to federal court. *See* Dkt. 1. In the event that plaintiff files an appeal of this case, *in*
8 *forma pauperis* status should be denied, without prejudice to plaintiff to file an application to
9 proceed *in forma pauperis* with the Ninth Circuit U.S. Court of Appeals.

10 Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Dkt. 50) is
11 **ADOPTED**. Defendants' motion for summary judgment (Dkt. 39) is **GRANTED**. Plaintiff's
12 claim relating to the 2010 Eid ul-Fitr Feast is **DISMISSED WITHOUT PREJUDICE**.
13 Plaintiff's remaining claims are **DISMISSED WITH PREJUDICE**. In the event that plaintiff
14 files an appeal of this case, *in forma pauperis* status is **DENIED**, without prejudice to plaintiff to
15 file an application to proceed *in forma pauperis* with the Ninth Circuit U.S. Court of Appeals

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party's last known address.

18 Dated this 13th day of August, 2013.

19 

20
21 ROBERT J. BRYAN
United States District Judge