

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY LLOYD,

Plaintiff,

v.

BRIAN YANKEY, Correctional Officer;
P.A. JOHNSON, BRUCE KALER,
Medical Doctor, RN SUE STEVEN,
Supervisor for CONMED, P. McCLAN,
Nurse Practitioner formerly known as
John Doe,

Defendants.

No. C12-5913 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT DISMISSING
PLAINTIFF'S CLAIMS

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom. Dkt. 112. The Magistrate Judge recommends that the motion for summary judgment of Defendants Arlen Johnson, A.R.N.P, Bruce Kaler, M.D., Sue Stevens, R.N., and Patricia McClarin (identified in the caption as P. McClan) (Dkt. 103) be granted and Plaintiff's federal claims be dismissed with prejudice and his state law claims be dismissed without prejudice. *Id.* Plaintiff has filed objections to the Report and Recommendation. Dkts. 114, 116. The Court has considered the Report and Recommendation, Plaintiff's objections, and the remaining record, and hereby adopts the Report and Recommendation for the reasons stated herein.

Plaintiff's civil rights complaint contends that the Defendants have denied him adequate medical care and were deliberately indifferent to his medical needs in violation of his Eighth

1 Amendment rights, in violation of his civil rights, and that Defendants committed medical
2 malpractice. Dkt. 4.

3 The Report and Recommendation finds that there is no evidence before the Court that
4 Plaintiff's complaints of little finger pain constituted a serious medical need as required to
5 support an Eighth Amendment claim. Further, even if it is assumed that Plaintiff could establish
6 a serious medical need, there is no evidence that the Defendants acted with conscious disregard
7 of a substantial risk of serious harm to Plaintiff. Dkt. 112 pp. 5-8. Concerning the equal
8 protection claim, the Report and Recommendation finds that Plaintiff has failed to raise a
9 genuine issue of fact that the Defendants acted with purposeful discrimination. *Id.* pp. 8-9. The
10 Report and Recommendation recommends the Court refrain from exercising pendent jurisdiction
11 over the state law medical malpractice claims and they be dismissed without prejudice. *Id.* p. 8.

12 The Court has reviewed the Objections and finds that they are no more than a restatement
13 of Plaintiff's arguments made in response to the motion for summary judgment. The Magistrate
14 Judge considered all relevant admissible evidence and Plaintiff fails to raise a genuine issue of
15 material fact supporting any federal claims against these Defendants. As detailed in the Report
16 and Recommendation, Plaintiff has failed to raise a question of fact relating to the deliberate
17 indifference of any of the Defendants. While Plaintiff may be dissatisfied with his medical
18 treatment he has failed to submit any evidence that the decisions made by Defendants were
19 medically unsound, let alone a manifestation of deliberate indifference to his medical needs.
20 Differences in judgment between an inmate and prison medical personnel regarding appropriate
21 medical diagnosis and treatment are not enough to establish a deliberate indifference claim. See
22 *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989); *Broughton v. Cutter Lab.*, 622 F.2d 458, 460
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1 (9th Cir. 1980). The Defendants have established that they are entitled to summary judgment
2 dismissal of Plaintiff's claims.

3 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen
4 L. Strombom, the Objections to the Report and Recommendation, and the remaining record, does
5 hereby find and ORDER:

- 6 1) The Court adopts the Report and Recommendation.
- 7 2) The renewed motion for summary judgment Defendants Arlen Johnson,
8 Bruce Kaler, Sue Stevens, and P. McClarin (Dkt. 103) is **GRANTED**.
9 Plaintiff's federal claims against Defendants are **Dismissed with**
10 **Prejudice**; Plaintiff's state law claims are **Dismissed without Prejudice**.
- 11 3) The Clerk is directed to send copies of this Order to Plaintiff and to the
12 Hon. Karen L. Strombom.

13 **DATED** this 19th day of February, 2014.

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16 ROBERT J. BRYAN
17 United States District Judge
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