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 DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom. Dkt. 91. The Magistrate Judge recommends that the motion for summary judgment of Defendants Arlen Johnson, A.R.N.P, Bruce Kaler, M.D., and Sue Stevens, R.N. (Dkt. 55) be denied without prejudice, and that Plaintiff's motion for a third extension of time to respond to Defendants' motion (Dkt. 87) be denied as moot.

The Defendants have filed objections to the Report and Recommendation. Dkt. 93. Plaintiff has filed Objections contending that his motion for an extension of time should be granted. Dkt. 94. Plaintiff also filed a motion to amend and supplement Plaintiff's response to the motion for summary judgment. Dkt. 95.

Defendants' objections to the Report and Recommendation are not persuasive. Although the Defendants have corrected many of the deficiencies in their motion, i.e. supplied supporting affidavits of the treating physicians, the filing of new evidentiary materials in an Objection to the

Report and Recommendation is not a proper procedure. The Report and Recommendation properly recommends a denial of the motion in light of the evidence presented to the Magistrate Judge. Because this motion is being denied without prejudice, Defendants may resubmit a motion for summary judgment to the Magistrate Judge.

The Plaintiff's request for relief will be denied as moot. In the event Defendants renew their motion for summary judgment, Plaintiff will have the opportunity to respond.

The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L. Strombom, Plaintiff's Objections to the Report and Recommendation, Plaintiff's motion to amend and supplement his response, and the remaining record, does hereby find and **ORDER**:

1. The Court adopts the Report and Recommendation.

2. The motion for summary judgment of Defendants Arlen Johnson, Bruce Kaler, Sue Stevens, and P. McClan (Dkt. 55) is **DENIED without prejudice.**

3. Plaintiff's third motion for continuance (ECF No. 87) is **DENIED as MOOT**

4. Plaintiff's motion to amend and supplement Plaintiff's response to Defendants' motion for summary judgment (Dkt. 95) is **DENIED as MOOT.**

5. The matter is **re-referred** to the Magistrate Judge for further proceedings.

The Clerk is directed to send copies of this Order to Plaintiff and to the Hon. Karen L. Strombom.

DATED this 19th day of November, 2013.

ROBERT J. BRYAN
United States District Judge