

1
2 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
3 AT TACOMA

4 CULLEN M. HANKERSON,

5 Plaintiff,

6 v.

7 DEPARTMENT OF CORRECTIONS, et
al.,

8 Defendants.
9

CASE NO. C13-5182 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

10 This matter comes before the Court on the Report and Recommendation (“R&R”)
11 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt.71), and
12 Plaintiff’s objections to the R&R (Dkt. 73).

13 **I. PRODCUDERAL & FACTUAL BACKGROUND**

14 On February 1, 2013, Plaintiff Cullen M. Hankerson (“Hankerson”) filed a
15 complaint in Pierce County Superior Court which alleged violations of his civil rights
16 under 42 U.S.C. § 1983 involving Defendants’ alleged conduct in preventing him from
17 taking his legal materials from the county jail to prison. *See* Dkts. 1 and 1-2. On July 18,
18 2013, Defendants removed the action to federal court on the basis of federal question
19 jurisdiction. Dkt. 1.

20 The parties filed cross motions for summary judgment. Dkts. 22 and 40. On
21 September 26, 2013, Judge Creatura issued an R&R recommending that the Court grant
22 Defendant’s motion and deny Hankerson’s motion. Dkt. 71. On October 10, 2013,

1 Hankerson filed objections to the R&R. Dkt. 73. On October 23, 2013, Defendants
2 responded in opposition. Dkt. 77. On November 11, 2013, Hankerson replied. Dkt. 78.

3 II. DISCUSSION

4 The district judge must determine de novo any part of the magistrate judge's
5 disposition that has been properly objected to. The district judge may accept, reject, or
6 modify the recommended disposition; receive further evidence; or return the matter to the
7 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

8 Upon review of Judge Creatura's decision, the Court finds that his
9 recommendations are based on a thorough review of the record and a well-reasoned
10 analysis of the law. As Judge Creatura found, Hankerson failed to demonstrate that the
11 Department of Corrections or its employees were involved in the action of county jail
12 employees, who allegedly prevented Hankerson from taking his legal materials with him
13 to prison. Dkt. 71 at 3. Further, as Judge Creatura properly noted, the record reflects that
14 Hankerson's materials were picked up by a person of Hankerson's choosing, Toni Felton,
15 and the Department is not liable for his inability to obtain those materials. *Id.*
16 Additionally, consistent with Judge Creatura's finding, the Court also finds that
17 Hankerson failed to show that Defendant Cheryl Sullivan, a sergeant working in the
18 mailroom, who allegedly misdirected two pieces of Hankerson's mail, caused him to miss
19 a court deadline or otherwise adversely impacted any legal action. *Id.* at 6 -10. Finally,
20 Judge Creatura properly found Defendants are entitled to qualified immunity because
21 Hankerson failed to show that Department personnel had a duty to train county
22 employees. *Id.* at 10-12.

1 Nothing in Hankerson's objections demonstrates that Judge Creatura's
2 recommendation is in error. As Defendants correctly observe, Hankerson's submissions
3 to the Court do not comply with Fed. R. Civ. P. 72(b)(2) requiring him to file and serve
4 "specific written objections to the proposed findings and recommendations" in the R&R.
5 Dkt. 77 at 2. Hankerson's objections are not specific objections to portions of Judge
6 Creatura's order, rather they are in large part either a repetition of portions of his
7 summary judgment motion (*see, e.g.*, Dkt. 73 at 2-3) or an untimely attempt to challenge
8 Judge Creatura's issuance of a stay in the case (*see, e.g., id.* at 1). As such, the Court
9 finds no merit in Hankerson's objections which would warrant reversal or modification of
10 Judge Creatura's R&R.

11 **II. ORDER**

12 The Court having considered the R&R, Plaintiff's objections, Defendant's
13 response and the remaining record, does hereby find and order as follows:

- 14 (1) The R&R is **ADOPTED**;
- 15 (2) This action is **DISMISSED**; and
- 16 (3) The clerk is directed to terminate all pending motions.

17 Dated this 7th day of November, 2013.

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BENJAMIN H. SETTLE
United States District Judge