

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL THEURICH, individually,

Plaintiff,

v.

KITSAP COUNTY, a Municipal
Corporation organized under the laws of
the State of Washington, and CONMED,
Inc., a Foreign Corporation doing
business in Kitsap, County, Washington,
and BARBARA MULL, BRUCE
KALER, M.D., OFFICER RT #1146,
ARLEN JOHNSON, and C. MCCARTY,

Defendants.

No. C15-5097 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and recommendation of U.S. Magistrate Judge J. Richard Creatura. Dkt. 23. The Court has reviewed the Report and Recommendation, and objections (Dkt. 27), and the remaining record.

Plaintiff brings this civil rights case pursuant to 42 U.S.C. §1983 alleging that Defendants violated his Eighth Amendment rights while he was in custody at the Kitsap County, Washington jail. Dkt. 1. Defendant Officer RT #1146 moved for dismissal based on insufficient service of process under Fed. R. Civ. 12 (b)(5) and for failure to state a claim under Fed. R. Civ. P. 12 (b)(6). Dkt. 18. Plaintiff responded (Dkt. 20), Defendant Officer RT #1146 replied (Dkt. 21), and on July 23, 2015, the Report and Recommendation (Dkt. 23) was filed. The facts are in that Report and Recommendation (Dkt. 23, at 1-4) and are adopted here.

1 The Report and Recommendation recommends denying both motions without prejudice.
2 Dkt. 23. It urges allowing time for Plaintiff to conduct discovery to determine the identity of
3 Defendant Officer RT #1146. Dkt. 23. It recommends the Court deny the motion for failure to
4 state a claim against Officer RT #1146 because Plaintiff's Complaint alleges sufficient facts to
5 state a claim. *Id.* Defendant Officer RT #1146 files objections, raising the same arguments
6 made in support of the motion. Dkt. 27.
7

8 The Report and Recommendation (Dkt. 27) should be adopted, and for the reasons
9 provided therein, the Defendant Officer RT #1146's motion to dismiss (Dkt. 18) should be
10 denied without prejudice as premature. The Report and Recommendation sufficiently addresses
11 the issues raised in the objections.

12 This case should be re-referred to Magistrate Judge J. Richard Creatura for further
13 proceedings.
14

15 **IT IS ORDERED:**

- 16 1. The Report and Recommendation (Dkt. 23) is **ADOPTED**.
- 17 2. Defendant Officer RT #1146's motion to dismiss (Dkt. 18) is **DENIED**
18 **WITHOUT PREJUDICE**.
- 19 3. This case is **RE-REFERRED** to Magistrate Judge J. Richard Creatura for further
20 proceedings.
- 21 4. The Clerk is directed to send copies of this Order to all counsel of record
and to the Hon. J. Richard Creatura.

22 **DATED** this 17th day of August, 2015.

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25 ROBERT J. BRYAN
26 United States District Judge