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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 ROBERT EARLE JOHNSON,

9 Plaintiff,

v.

10 RICHARD MORGAN, et al.,

11 Defendants.

CASE NO. C16-5738 BHS-TLF

ORDER ADOPTING REPORT
AND RECOMMENDATION

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13 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 95), Defendant Forrest Mewes’s (“Mewes”) objection to the R&R (Dkt. 97), and Plaintiff Robert Earle Johnson’s (“Johnson”) objections to the R&R (Dkt. 98).

17 On June 6, 2018, Judge Fricke issued the R&R recommending that the Court grant Defendants G. Steven Hammond, Mewes, Richard Morgan, John Reidy, and Bernard Warner’s (“Defendants”) motion for summary judgment on Johnson’s medical care claims and defer ruling on Johnson’s retaliation claim against Mewes. Dkt. 95. Judge Fricke also found that Johnson alleged an excessive force claim and Mewes did not address this claim in his motion for summary judgment. *Id.* On June 20, 2018, Mewes

1 objected arguing that Jones did not adequately plead an excessive force claim and, even if
2 he did, Mewes is entitled to summary judgment on that claim. Dkt. 97. On June 21,
3 2018, Johnson filed objections regarding the dismissal of his medical claims. Dkt. 98.
4 On July 2, 2018, Defendants responded. Dkt. 102. On July 12, 2018, Johnson replied.
5 Dkt. 103.

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

10 In this case, neither party identifies an error in the R&R. First, the Court agrees
11 with Judge Fricke that the complaint should be construed liberally and, under such a
12 construction, Johnson asserts an excessive force claim. Regarding the merits of
13 Johnson's claim and whether Mewes is entitled to qualified immunity, Judge Fricke
14 should decide these issues first based on a fully briefed motion. Therefore, the Court
15 adopts the R&R on this issue.

16 Second, Johnson asserts that Judge Fricke erred in granting Defendants' motion on
17 his claims for inadequate medical care. Judge Fricke found, and the Court agrees, that (1)
18 Johnson's claim based on his knee is at most a difference of opinion regarding the proper
19 medical treatment and (2) Johnson fails to establish that his cataract qualifies as a serious
20 medical need. Therefore, the Court having considered the R&R, the parties' objections,
21 and the remaining record, does hereby find and order as follows:

- 22 (1) The R&R is **ADOPTED**;

1 (2) Defendants' motion for summary judgment on Johnson's medical claims is

2 **GRANTED;**

3 (3) Defendants Hammond, Morgan, Reidy, and Warner are dismissed;

4 (4) Defendants' motion for summary judgment on Johnson's excessive force
5 and retaliation claims against Mewes is **DENIED;** and

6 (5) The matter is referred to Judge Fricke for further proceedings.

7 Dated this 27th day of August, 2018.

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BENJAMIN H. SETTLE
11 United States District Judge
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