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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOEL CHRISTOPHER HOLMES,

Plaintiff,

v.

MAGGIE MILLER-STOUT, MIKE
DOUGLAS, and KERRY LAWRENCE,

Defendants.

CASE NO. 3:17-cv-05145-RJB

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

THIS MATTER comes before the Court on Defendants' Motion for Summary Judgment.
Dkt. 30. The Court has considered the motion and the remainder of the file herein.

BACKGROUND

A. Procedural history

Plaintiff first filed pleadings, including the initial Complaint, on February 23, 2017. Dkt.

1. The Amended Complaint, Dkt. 21, is the operative complaint.

1 Defendants filed the Motion for Summary Judgment on October 27, 2017. Dkt. 30. On
2 November 16, 2017, Plaintiff requested—and was given—an extension of time to respond to the
3 motion. Dkts. 34, 35, 36. Plaintiff’s request included substantive argument responding to
4 Defendants’ motion, so the Court has construed that pleading (Dkt. 35) as a Response to
5 Defendants’ motion.

6 On November 29, 2017, the Court gave Plaintiff *Rand* warnings explaining the risk of
7 dismissal if Plaintiff failed to sufficiently respond to Defendants’ motion for summary judgment.
8 Dkt. 36. *See also*, Dkt. 33. On December 11, 2017, Plaintiff filed a “supplementary brief of
9 plaintiff opposing defense motion for summary judgement [*sic*],” which the Court construes as a
10 supplement to Plaintiff’s Response. Dkt. 40. *See* Dkt. 35. Defendants filed a Reply on December
11 13, 2017. Dkt. 37.

12 **B. Factual background and claims.**

13 Facts recited herein are agreed or uncontested, except where noted.

14 This cause of action centers on what occurred while Plaintiff was in Department of
15 Corrections (DOC) custody, from approximately May 2013 until December 4, 2014. Dkt. 31-1.
16 According to Plaintiff’s recitation of the facts, on February 7, 2014, Defendant DOC Sargent
17 Mike Douglas threatened Plaintiff with a forced haircut, despite Defendant Douglas’ knowledge
18 that doing so would compromise Plaintiff’s Rastafarian religious beliefs. Dkt. 21 at 3. Plaintiff
19 states that Defendant Douglas made this threat with authorization from Defendant Kerry
20 Lawrence, DOC Corrections Unit Supervisor, who verbally threatened to “knock out” Plaintiff
21 so that Plaintiff’s hair could be cut. *Id.*

22 Defendant Lawrence recalls a conversation with Plaintiff a few days after the February 7,
23 2014 incident, on February 10, 2014, where Defendant Lawrence discussed with Plaintiff
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1 complaints from “some of the unit custody staff . . . about Holmes’s [*sic*] hygiene and the
2 difficulty . . . searching his hair for contraband[.]” Dkt. 31 at 2. Defendant Lawrence states that
3 in that conversation he “stressed that no . . . DOC official would force him [Plaintiff] to cut his
4 hair.” *Id. See also*, Dkt. 31-1 at 8.

5 On February 28, 2014, Plaintiff sent to DOC the following grievance message:

6 . . .riot at Stafford Creek. Maybe there will be one here if the South African born Douglas
7 attempts to cut my hair again—or you and Inslee will all lose your jobs. I have had
enough—The US SUP CT has accepted a case on the issue . . . [of] prison hair.

8 *Id.* at 13. Based on the February 28, 2014 grievance, on March 3, 2014, Defendant Lawrence
9 wrote an initial serious infraction report and cited Plaintiff for violating “WAC 506.” *Id.* at 12,
10 13. *See* WAC 137-25-030 (“506—Threatening another with bodily harm or with any offense
11 against any person or property”). Also on March 3, 2014, Defendant Lawrence spoke with
12 Plaintiff about the grievance, including what Defendant Lawrence called a “threat,” Dkt. 31 at
13 ¶7, and Plaintiff was placed Plaintiff in administrative segregation pending a disciplinary
14 hearing.

15 At a disciplinary hearing held on March 10, 2014, the administrative hearing office
16 reduced the “WAC 506” infraction for threatening bodily harm to a “WAC 663” infraction for
17 intimidation. Dkt. 31-1 at 14. *See* WAC 137-25-030 (“663—Using physical force, intimidation,
18 or coercion against any person”). According to the administrative hearing minutes, Plaintiff told
19 the administrative hearing officer that “Sgt Douglas did demand that I cut my hair in front of 30
20 other inmates. Other officers have also made similar threats.” *Id.* The administrative hearing
21 officer reduced the infraction after finding that “[t]here is no evidence of offender threatening
22 staff with bodily harm, however offender did attempt to intimidate staff.” *Id.* Plaintiff was
23 released from administrative segregation on March 10, 2014. *See id.*

1 While in DOC custody, Plaintiff filed multiple Personal Restraint Petitions (PRPs) to
2 prevent DOC from cutting his hair. The Washington State Court of Appeals granted a
3 preliminary request for relief, but later dismissed the PRP as moot because DOC represented it
4 had no present or future intent to cut Plaintiff’s hair. Dkt. 32-1 at 10. The second PRP was
5 dismissed at the outset, *id.* at 32, and similar appeals of the PRPs failed. *Id.* at 51, 66, 68. A
6 letter from Defendant DOC Superintendent Maggie Miller-Stout to Plaintiff written on January
7 6, 2014, underlines DOC’s official position about Plaintiff’s haircut. The letter addresses a
8 “situation where an officer conducted a pat search . . . [and] made a comment that your hair was
9 an obstacle to search[,]” which, according to the letter, is an opinion that falls within DOC
10 policy, which allows “the Superintendent [Defendant Miller-Stout] to restrict hair styles that
11 present a security risk.” The letter emphasized that “[a]t this time, a directive for your hair to be
12 cut has not been issued, nor is it being considered.” *Id.* at 5. The Amended Complaint alleges
13 “connivance” on the part of Defendant Miller-Stout to get rid of Plaintiff’s hair. Dkt. 21 at 3.

14 Plaintiff was released from DOC custody on December 4, 2014, and according to DOC
15 records, Plaintiff was released without a supervision requirement. Dkt. 31-1 at 18, 19. The
16 Amended Complaint alleges that on August 13, 2015, Plaintiff was subjected to a forced haircut
17 by “WA DOC Post-Release Transitional Housing Facility, Pioneer Human Services-PHS-
18 Hudson House.” Dkt. 21 at 3 (internal quotations omitted). Plaintiff still resides at the Hudson
19 House. *See* Dkt. 35 at 1.

20 The Amended Complaint does not allege discrete claims, but Plaintiff brings this case
21 pursuant to 42 U.S.C. §1983 and the Religious Land Use & Institutionalized Persons Act
22 (RLUIPA). The Amended Complaint seeks “financial compensation for WA DOC/PHS [Pioneer
23 Human Services] forced haircuts in violate of my sincere religious beliefs (Rastafarian).
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1 Injunctive relief barring any MORE forced haircutting of me[*sic*].” Dkt. 21 at 4 (internal
2 quotations and omitted).

3 SUMMARY JUDGMENT STANDARD

4 Summary judgment is proper only if the pleadings, the discovery and disclosure materials
5 on file, and any affidavits show that there is no genuine issue as to any material fact and that the
6 movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is
7 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
8 showing on an essential element of a claim in the case on which the nonmoving party has the
9 burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of
10 fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for
11 the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
12 (1986)(nonmoving party must present specific, significant probative evidence, not simply “some
13 metaphysical doubt.”). *See also* Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a
14 material fact exists if there is sufficient evidence supporting the claimed factual dispute,
15 requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby,*
16 *Inc.*, 477 .S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors*
17 *Association*, 809 F.2d 626, 630 (9th Cir. 1987).

18 The determination of the existence of a material fact is often a close question. The court
19 must consider the substantive evidentiary burden that the nonmoving party must meet at trial –
20 e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, *T.W. Elect.*
21 *Service Inc.*, 809 F.2d at 630. Any factual issues of controversy must be resolved in favor of the
22 nonmoving party only when the facts specifically attested by that party contradict facts
23 specifically attested by the moving party. The nonmoving party may not merely state that it will
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1 discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial
2 to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*).
3 Conclusory, nonspecific statements in affidavits are not sufficient, and "missing facts" will not
4 be "presumed." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

5 DISCUSSION

6 **A. Sec. 1983 claims for damages.**

7 1. Three year statute of limitations.

8 Plaintiff brings this case pursuant to 42 U.S.C. §1983, so the statute of limitations and
9 coordinate tolling rules are determined with reference to Washington law. *Rose v. Rinaldi*, 654
10 F.2d 546 (9th Cir. 1981); *Bianchi v. Bellingham Police Department*, 909 F.2d 1316 (1990).

11 RCW 4.16.080(2) provides a three year statute of limitations for injury to the person or rights of
12 another and applies to personal injury cases brought under §1983. *See Rose*, 654 F.2d at 547.

13 Defendants argue that claims arising out of the February 7, 2014 incident, where
14 Defendant Douglas allegedly ordered Plaintiff to cut his hair, are barred by the applicable three
15 year statute of limitations, because this case was not filed until February 23, 2017. Dkt. 30 at 5.
16 Plaintiff argues that the statute of limitations should run from the date of his release from
17 custody, December 4, 2014, because the "order" by Defendant Douglas to cut Plaintiff's hair
18 "was never (and has never since) been rescinded by WA DOC," so "Plaintiff was theoretically
19 still subject to this demand, until the date of his release from WA DOC" on December 4, 2014.
20 Dkt. 35 at 1.

21 Plaintiff's ongoing harm theory lacks merit, because it rests solely upon taking as true
22 Plaintiff's impression that Defendant Douglas' February 7, 2014 "order" remained in effect until
23 Plaintiff's release. Nothing in the record, beyond Plaintiff's naked interpretation of the February
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1 7, 2014 conversation with Defendant Douglas, would support this conclusion. Plaintiff does not
2 represent that he was actually forced to cut his hair prior to release, that Defendant Douglas
3 himself reiterated to Plaintiff the “order” on any occasion after February 7, 2014, or that any
4 other DOC staff made similar comments after that date. Plaintiff has also not shown any basis for
5 equitable tolling. The statute of limitations should run from February 7, 2014 incident and
6 therefore bars claims arising out of the conduct after that date. Therefore, the §1983 claim for
7 damages against Defendant Douglas should be dismissed.

8 The §1983 claim for damages against Defendant Miller-Stout should also be dismissed,
9 because even it is assumed¹ that, as alleged, Defendant Miller-Stout as DOC Superintendent
10 “connived” with other staff to cut Plaintiff’s hair, the only fact anywhere in the record that could
11 connect a timeframe to her conduct is the January 6, 2014 letter, written approximately 45 days
12 prior to the presumptive statute of limitations timeframe of February 23, 2014. The §1983 claim
13 for damages against Defendant Miller-Stout should also be dismissed.

14 2. Section 1983 claims and qualified immunity generally.

15 There are two elements to §1983 claims: that (1) a person acting under color of state law
16 committed the conduct at issue, and (2) the conduct deprived the plaintiff of some right,
17 privilege, or immunity protected by the Constitution or laws of the United States. Sec. 1983;
18 *Shah v. Cty. of Los Angeles*, 797 F.2d 743, 746 (9th Cir. 1986). Only the second element is at
19 issue in this case.

20 Qualified immunity shields government actors from civil liability under §1983 if “their
21 conduct does not violate clearly established statutory or constitutional rights of which a
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23 ¹ The Court does not reach the merits of this claim. However, the record shows nothing beyond conclusory
24 allegations of conspiracy, not an agreement or meeting of the minds for the underlying retaliation. *See Burns v.*
County of King, 883 F.2d 819, 821 (9th Cir. 1989); *Lacey v. Maricopa Cty.*, 693 F.3d 896, 935 (9th Cir. 2012).

1 reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Courts
2 evaluate two independent questions when considering qualified immunity: (1) whether the
3 officer's conduct violated a constitutional right, and (2) whether that right was clearly established
4 at the time of the incident. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

5 3. Sec. 1983 claim against Defendant Lawrence.

6 The Amended Complaint alleges that constitutional violations occurred when Plaintiff
7 was sent to administrative segregation on March 3, 2014. Dkt. 21 at 3. Plaintiff’s Response
8 furthers the theory, arguing that the record points to an administrative segregation sanction
9 imposed on account of the February 28, 2014 grievance. *See* Dkt. 31-1 at 13. The Court joins the
10 parties in construing the §1983 claim against Defendant Lawrence as a First Amendment
11 retaliation claim. *See* Dkt. 30 at 6; Dkt. 35 at 2.

12 The Court first analyzes whether Defendant Lawrence’s conduct violated Plaintiff’s First
13 Amendment rights.

14 *i. Violation of constitutional right?*

15 “Within the prison context, a viable claim of First Amendment retaliation entails five
16 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
17 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
18 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
19 legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir.2005)
20 (footnote omitted).

21 The prima facie showing is sufficient for Plaintiff to proceed on a First Amendment claim
22 for retaliation when evidence is viewed in Plaintiff’s favor.

1 First: Plaintiff was placed in administrative segregation, which is a sanction reasonably
2 viewed as an “adverse action.” *See Brodheim v. Cry*, 584 F.3d 1262, 1270 (9th Cir. 2009) (“[T]he
3 mere threat of harm can be an adverse action, regardless of whether it is carried out”). This
4 element is satisfied for purposes of Defendants’ motion.

5 Second: Examining the causation element considers whether the protected conduct was
6 the substantial or motivating factor behind the defendant’s conduct. *Brodheim*, 584 F.3d at 1271.
7 The records shows that the February 28, 2014 grievance formed the basis for the “WAC 506”
8 infraction issued by Defendant Lawrence justifying administrative segregation. The evidentiary
9 showing is sufficient for purposes of this motion.

10 Third: The parties disagree about whether the February 28, 2014 grievance merits
11 constitutional protections. Defendants argue that although inmate grievances are generally
12 protected by the First Amendment, Defendant Lawrence cited Plaintiff because the grievance
13 contained a threat, and filing threatening grievances is not protected conduct. Defendants’ logic
14 overlooks *Bradley v. Hall*, 64 F.3d 1276 (9th Cir. 1995 (overruled on other grounds). Although
15 the balancing analysis used in *Bradley* has been overruled, the holding in *Bradley* is still good
16 law. *Brodheim v. Cry*, 584 F.3d 1262, 1272 (9th Cir. 2009). *Bradley* held:

17 We leave open the possibility that there may be situations in which prison officials may
18 properly discipline inmates for criminal threats contained in written grievances. Today
19 we hold only that prison officials may not punish an inmate merely for using “hostile,
20 sexual, abusive or threatening” language in a written grievance.

21 *Bradley*, 64 F.3d at 1281-82. *Bradley* draws a distinction in the context of inmates’ written
22 grievances between general threats, which are protected speech, and criminal threats, which are
23 not. Applied here, Defendants do not argue that the February 28, 2014 grievance was a criminal
24 threat, nor would such an argument find support either in the language of the grievance itself or
in the administrative hearing record. The administrative hearing record reflects that the hearing

1 officer reduced the “WAC 506” infraction for threatening conduct to a “WAC 663” infraction for
2 intimidation after finding “no evidence of offender threatening staff with bodily harm[.]” The
3 February 28, 2014 grievance made only a general, not criminal, threat. The showing for this
4 element is sufficient for purposes of Defendants’ motion.

5 Fourth: When considering whether a sanction chilled First Amendment conduct, Plaintiff
6 need not show that *his* speech was chilled, but only that, by an objective standard, “the adverse
7 action. . . would chill or silence a person of ordinary firmness from future First Amendment
8 activities.” *Brodheim*, 584 F.3d at 1271 (internal quotations and citations omitted). This element
9 is satisfied for purposes of this motion, under circumstances where the record suggests that
10 Plaintiff served eight days in administrative segregation for the content of the February 28, 2014
11 grievance.

12 Fifth: Whether the challenged action reasonably advanced a legitimate correctional goal
13 is an element considering four factors:

14 First and foremost, “there must be a ‘valid, rational connection’ between the prison
15 regulation and the legitimate [and neutral] governmental interest put forward to justify
16 it.” . . . [C]ourts should consider three other factors: the existence of “alternative means
17 of exercising the right” available to inmates; “the impact accommodation of the asserted
18 constitutional right will have on guards and other inmates, and on the allocation of prison
19 resources generally”; and “the absence of ready alternatives” available to the prison for
20 achieving the governmental objectives.

21 *Shaw v. Murphy*, 532 U.S. 223, 228 (2001), citing to *Turner v. Safley*, 482 U.S. 78 (1987) 532
22 U.S. at 228.

23 The connection between Defendants’ legitimate correctional goals and the prison
24 regulation at issue, “WAC 506,” which prohibits threatening another with bodily harm, is readily
apparent, because threats to officer safety impedes their ability to serve and protect inmates. This
factor thus arguably favors Defendants, except that the administrative hearing officer found no
factual basis to cite Plaintiff for threatening conduct.

1 The next factor, alternative means for Plaintiff exercise the constitutional right, does not
2 favor Defendants, because there is no showing of other legitimate means available to Plaintiff to
3 air grievances about treatment by DOC staff in writing, other than the existing grievance system.

4 Considering the impact accommodation will have on guards and other inmates, the record
5 is scant, but this factor does not favor Defendants. As noted in *Brodheim*, “[a] prisoner’s
6 statement in a grievance need not have any more impact on prison security . . . than the
7 prisoner’s unexpressed thoughts.” *Brodheim*, 584 F.3d at 1273 (internal quotations and citations
8 omitted). “It takes little imagination to structure a grievance system . . . that would make a
9 prisoner’s statements . . . invisible to all those involved in the daily operations of the prison,
10 alleviating any security concern.” *Id.*

11 Finally, on the absence of ready alternatives to Defendants to achieve their penological
12 interests, the record is thin, but even assuming that Defendants perceived a threat to DOC staff,
13 there is no showing that a lesser sanction, e.g., a warning, would not have achieved the same or
14 similar outcome.

15 For all five elements, the prima facie showing is sufficient for Plaintiff to proceed on a
16 First Amendment claim for retaliation against Defendant Lawrence. The next question is whether
17 Defendant Lawrence violated clearly established law.

18 *ii. Violation of clearly established law?*

19 As a starting point, the Ninth Circuit has emphasized its recognition that “the prohibition
20 against retaliatory punishment is clearly established law in the Ninth Circuit, for qualified
21 immunity purposes.” *Rhodes* 408 F.3d 559, 569 (9th Cir. 2005). Also clearly established as of
22 March 3, 2014, when Plaintiff was placed in administrative segregation, was inmates’ First
23 Amendment right to file grievances, including content threatening civil lawsuits. *Turner*, 48 U.S.
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1 at 84; *Entler v. Gregoire*, 872 F.3d 1031, 1041 (9th Cir. 2017). Finally, *Bradley*, a Ninth Circuit
2 case issued in 1995, clearly established that “prison officials may not punish an inmate merely
3 for using ‘hostile, sexual, abusive, or threatening’ language in a written grievance.” *Bradley*, 64
4 F.3d at 1281-82. Explicitly left open by *Bradley* was “the possibility that there may be situations
5 in which prison officials may properly discipline inmates for criminal threats contained in
6 written grievances.” *Id.* Also impliedly unanswered by *Bradley* is whether punishment could be
7 imposed for verbal, not written, threats. *See id.*

8 Applied here, on March 3, 2014, the day that Defendant Lawrence cited Plaintiff for an
9 infraction under “WAC 506” for threatening conduct, it was clearly established that a general,
10 non-criminal threat, written in the context of an inmate grievance, was not a legitimate basis to
11 justify administrative segregation. Therefore, qualified immunity does not shield Defendant
12 Lawrence from liability from Plaintiff’s §1983 First Amendment retaliation claim.

13 In summary, the §1983 claims for damages against Defendant Douglas and Defendant
14 Miller-Stout are barred by the statute of limitations and should be dismissed. Summary judgment
15 should be granted in favor of Defendant Douglas and Defendant Miller-Stout for all §1983
16 claims for damages. Summary judgment should be denied as to the §1983 retaliation claim for
17 damages against Defendant Lawrence.

18 **B. RLUIPA claims for damages.**

19 The Amended Complaint makes no explicit reference to RLUIPA, *see* Dkt. 21, but from
20 Plaintiff’s other pleadings, it is apparent that Plaintiff has construed his pleadings to allege a
21 RLUIPA claim for damages. *See, e.g.*, Dkt. 35 at 3. Defendants’ motion so construes the
22 pleadings. Dkt. 30 at 9, 10.

1 To the extent that the Amended Complaint seeks damages under RLUIPA, such claims
2 cannot proceed. Plaintiff cannot obtain damages against any defendant acting in either their
3 official or individual capacity. *See See Sossamon v. Texas*, 563 U.S. 277, 285-86 (2011)
4 (Eleventh Amendment immunity shields state actors acting in official capacity); *Holley v.*
5 *California Dep't of Corr.*, 599 F.3d 1108, 1114 (9th Cir.2010) (same); *Wood v. Yordy*, 753 F.3d
6 899, 904 (9th Cir.2014) (RLUIPA does not authorize size against state actors acting in their
7 individual capacity).

8 Summary judgment in favor of Defendants should be granted as to all claims seeking
9 damages under RLUIPA.

10 **C. Claims for injunctive relief under §1983 and RLUIPA.**

11 Plaintiff seeks injunctive relief, although it is unclear whether Plaintiff seeks injunctive
12 relief under §1983 or RLUIPA. The distinction in this case is of no importance, because under
13 either statutory scheme, a claim for injunctive relief is moot. Plaintiff is no longer in DOC
14 custody, and none of the named defendants controls terms of Plaintiff's housing at Pioneer
15 Human Services, where Plaintiff currently resides. Plaintiff argues that he needs injunctive relief
16 against Defendants because he is likely to reoffend and will again soon be in DOC custody, an
17 argument that is both baseless and premature².

18 Summary judgment in favor of Defendants should be granted as to all claims seeking
19 injunctive relief.

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24 ² The argument is also pessimistic. The Court—and the entire justice system—endeavors to reduce recidivism.

1 THEREFORE, it is HEREBY ORDERED:

2 Defendants' Motion for Summary Judgment (Dkt. 30) is GRANTED IN PART and
3 DENIED IN PART as follows:

4 The 42 U.S.C. §1983 First Amendment retaliation claim for damages may proceed
5 against Defendant Kerry Lawrence. All other claims against all other defendants are HEREBY
6 DISMISSED.

7 IT IS SO ORDERED.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
9 to any party appearing pro se at said party's last known address.

10 Dated this 21st day of December, 2017.

11 

12 ROBERT J. BRYAN
13 United States District Judge