

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER BISTRYSKI,

CASE NO. 17-5369 RJB

Plaintiff,

V.

ORDER ON REPORTS AND RECOMMENDATIONS AND RE- REFERRING CASE

DOC HEALTH SERVICES OF
STAFFORD CREEK CORRECTIONS
CENTER, DOC HEALTH SERVICES ON
MONROE CORRECTIONAL COMPLEX
– SPECIAL OFFENDERS CENTER,
SCOTT LIGHT, DR. MICHAEL FURST,
CHARLES CASEY, SHERYL ALBERT,
DR. G. STEVEN HAMMOND, Chief
Medical Officer, STEVEN SINCLAIR,
Secretary of Washington DOC,
individually and in their official capacities,

Defendants.

THIS MATTER comes before the Court on the Reports and Recommendations of U.S. Magistrate Judge Theresa L. Fricke. Dkts. 33, 34, and 35. The Court has reviewed the Reports and Recommendations, objections, if any, and the remaining file and is fully advised.

FACTS AND PROCEDURAL HISTORY

Plaintiff, a *pro se* prisoner, brings this case pursuant to 42 U.S.C. § 1983, asserting that the Defendants violated his Eighth Amendment right to adequate medical care. Dkt. 32. He seeks both damages and injunctive relief. *Id.* In September 2017, several of the institutional Defendants moved to dismiss his claims against them (Dkt. 21) as did Defendant Dr. Michael Furst (Dkt. 23). A week later, Plaintiff moved to amend his complaint. Dkt. 25. That same day, Plaintiff also filed a motion for a temporary restraining order and for a preliminary injunction. Dkt. 24.

On December 19, 2017, Plaintiff's motion to amend was granted (Dkt. 31), his Amended Complaint (Dkt. 32) was filed, and the Reports and Recommendations recommending this Court grant both motions to dismiss, with prejudice, (Dkts. 33 and 34) were filed. A few days later, on December 22, 2017, a Report and Recommendation recommending denial of the Plaintiff's motion for a temporary restraining order and for a preliminary injunction, based in part on the recommendations on the motions to dismiss, was filed. Dkt. 35. All the Reports and Recommendations refer to the original complaint (Dkt. 6).

On December 29, 2017, some, but not all, the Defendants filed a Motion to Dismiss claims asserted against them in the Amended Complaint. Dkt. 38. This motion is not yet ripe. That same day, Plaintiff filed a “Motion for Reconsideration,” indicating that “[t]his motion constitutes Plaintiff’s written objections to the Report and Recommendation regarding the Motion to Dismiss filed by Defendant Michael Furst, M.D.” Dkt. 40. Accordingly, the Court should construe this pleading as an objection to the Report and Recommendation and not a motion for reconsideration.

DISCUSSION

“An amended complaint supersedes the original, the latter being treated thereafter as nonexistent.” *Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011)(internal quotations and citations omitted).

The Court should decline to adopt the Reports and Recommendations regarding the motions to dismiss (Dkts. 33 and 34) and re-refer the case. The Reports and Recommendations address the allegations in the original complaint. The motions to dismiss (Dkts. 21 and 23) also address allegations in the original complaint and should be denied as moot due to the filing of the Amended Complaint. They may be re-filed, if appropriate. (The Court notes that many of the prior moving parties have renewed their motion (Dkt. 38) based on the allegations in the Amended Complaint.) It is not clear whether Plaintiff's objections relate to allegations in the original complaint (Dkt. 6) or in the Amended Complaint (Dkt. 32). Dkt. 40.

Further, the Court should decline to adopt the Report and Recommendation recommending the denial of Plaintiff's motion for a temporary restraining order and for a preliminary injunction (Dkt. 35), and re-refer assessment of the Plaintiff's motion (Dkt. 24) after consideration of the December 29, 2017 motion to dismiss (Dkt. 38) and in light of the allegations in the Amended Complaint.

ORDER

Accordingly, it is **ORDERED** that:

- The Court **DECLINES TO ADOPT** Reports and Recommendations (Dkts. 33, 34, and 35);
- The Defendants' Motions to Dismiss (Dkts. 21 and 23) **ARE STRICKEN AS MOOT** in light of the newly Amended Complaint; and

- The case **IS RE-REFERRED** to U.S. Magistrate Judge Theresa L. Fricke for proceedings consistent with this order.

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

Dated this 9th day of January, 2018.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge