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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER BISTRYSKI,

Plaintiff,

v.

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

Defendants.

CASE NO. 17-5369 RJB

ORDER ON REPORT AND
RECOMMENDATION

THIS MATTER comes before the Court on the Report and Recommendations of U.S.
Magistrate Judge Theresa L. Fricke. Dkt. 54. The Court has reviewed the Report and
Recommendations, objections, the remaining file and is fully advised.

1 that have not moved to dismiss the case are Defendants Sheryl Albert and Dr. Steven Hammond.
2 There is an order for Plaintiff to show cause why these Defendants should not be dismissed, but
3 Plaintiff has until May 18, 2018 to respond.)

4 On April 11, 2018, the instant Report and Recommendation was filed. Dkt. 54. The
5 Plaintiff filed objections (Dkt. 55) and the Defendants filed a response to the objections (Dkt.
6 57). The Report and Recommendation is ripe for decision.

7 DISCUSSION

8 **Report and Recommendation’s Recommendations and Plaintiff’s Objections**
9 **regarding the Motions to Dismiss.** The Report and Recommendation recommends, in part, that
10 the motion to dismiss by DOC Health Services of Stafford Creek Corrections Center, DOC
11 Health Services of Monroe Corrections Center Special Offender Center and the Medical Care
12 Review Commission (Dkt. 38) be granted because neither a state nor a state agency is a person
13 under § 1983; likewise, a state official acting in their official capacity is not a “person” for
14 purposes of damages claims under § 1983. Dkt. 54. The Report and Recommendation also
15 recommends that the motion to dismiss by individual Defendants Light and Sinclair (Dkt. 38) be
16 granted because Plaintiff still fails to allege sufficient facts for relief against them in his
17 Amended Complaint. Plaintiff does not object to these recommendations.

18 The Report and Recommendation recommends that Defendant Casey’s motion to dismiss
19 (Dkt. 38) be granted. Plaintiff objects to dismissal of the claims against Defendant Casey,
20 arguing that the Report and Recommendation erred in its interpretation of Defendant Casey’s
21 capacity to know of Plaintiff’s substantial risk of harm, that Plaintiff was harmed when he was
22 returned to his cell, and the Report and Recommendation’s finding that “further neurological
23 examination results will not be relevant to the issue before the Court.” Dkt. 55.

1 The Report and Recommendation (Dkt. 54) should be adopted regarding the motion to
2 dismiss by DOC Health Services of Stafford Creek Corrections Center, DOC Health Services of
3 Monroe Corrections Center Special Offender Center and the Medical Care Review Commission,
4 Light, Sinclair and Casey (Dkt. 38); it (Dkt. 38) should be granted and the claims against them
5 dismissed. Plaintiff's objections do not provide a basis to fail to adopt this portion of the Report
6 and Recommendation. While Plaintiff objects to the Report and Recommendation's
7 "interpretation" of Defendant Casey's required state of mind for liability, the Report and
8 Recommendation provides the legal standard, and finds that the facts alleged by Plaintiff, even in
9 the Amended Complaint, fail to state a claim for relief against Casey. Plaintiff's arguments, that
10 he was actually harmed and that the Report and Recommendation erred in stating that a further
11 neurological examination is not relevant, miss the mark. The standard is whether Casey was
12 deliberately indifferent to a serious medical need. For the reasons provided in the Report and
13 Recommendation, Plaintiff failed to adequately plead the elements of the claim in the Amended
14 Complaint, and so Plaintiff's claims against Defendant Casey should be dismissed.

15 The Report and Recommendation recommends granting Defendant Furst's motion to
16 dismiss (Dkt. 49) because Plaintiff's Amended Complaint failed to allege sufficient facts that
17 Defendant Furst had the requisite state of mind. Dkt. 54. Plaintiff objects, arguing that he told
18 Dr. Furst that he thought he was being poisoned, and that Dr. Furst's defense of not believing
19 him is insufficient without "doing due diligence." Dkt. 55. Plaintiff's Amended Complaint
20 undermines his assertion in his objections that no due diligence was done – it indicates that Dr.
21 Furst spoke with Plaintiff, evaluated him, and determined that there was no medical evidence to
22 support Plaintiff's claims that he was being poisoned. Dkt. 32. Plaintiff's desire for more
23 extensive testing is not adequate to show that Dr. Furst was deliberately indifferent to Plaintiff's
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1 medical needs. While Plaintiff argues in his objections that Dr. Furst did not consider any other
2 diagnosis other than that he was delusional, Plaintiff makes no allegations that plausibly support
3 this theory in the Amended Complaint (or in his objections). For the reasons provided in the
4 Report and Recommendation, Plaintiff's claims against Defendant Furst should be dismissed.

5 **Report and Recommendation's Recommendations and Plaintiff's Objections**

6 **regarding the Motions for Preliminary Injunctive Relief.** The Report and Recommendation
7 regarding the motions for preliminary injunctive relief (Dkt. 54) should be adopted. As stated in
8 the Report and Recommendation, in both Plaintiff's motions for injunctive relief, he moves for
9 an order from the Court "to ensure that he receives proper medical care," that is to see "a
10 neurologist that can diagnose him and recommend a course of treatment." Dkts. 24 and 44. The
11 Report and Recommendation recommends that to the extent Plaintiff seeks injunctive relief from
12 Defendants DOC Health Services of Stafford Creek Corrections Center, DOC Health Services of
13 Monroe Corrections Center Special Offender Center, the Medical Care Review Commission,
14 Light, Casey, Sinclair and Furst, his motion should be denied as moot because all claims against
15 these Defendants, by this order, should be dismissed. Dkt. 54. Further, the Report and
16 Recommendation points out that as to Defendants Casey and Light, Plaintiff is no longer housed
17 in the facility where they work, and so would not be able to afford him the relief he seeks. *Id.*
18 Plaintiff does not object to these recommendations.

19 In Plaintiff's second motion for injunctive relief, he specifically seeks an order requiring
20 Defendants Albert and Hammond to ensure he gets proper mental health care. Dkt. 44. The
21 Report and Recommendation recommends denial of this motion as well. Dkt. 54. While
22 Plaintiff argues that there are "serious questions going to the merits of his case" against these
23 Defendants and the balance of hardship tips strongly in his favor, he doesn't actually explain
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1 what those serious questions are or how the balance of hardship tips strongly in his favor. His
2 remaining objection, regarding the Report and Recommendation's description of the testing done
3 on Plaintiff, does not provide a basis to reject the Report and Recommendation.

4 **Conclusion.** The Report and Recommendation (Dkt. 54) should be adopted. This order
5 does not resolve all issues in the case. The case should be re-referred to U.S. Magistrate Judge
6 Theresa L. Fricke for proceedings consistent with this order.

7 **ORDER**

8 Accordingly, it is **ORDERED** that:

- 9
- 10 • The Court **ADOPTS** the Report and Recommendation (Dkt. 54); and
 - 11 • The case **IS RE-REFERRED** to U.S. Magistrate Judge Theresa L. Fricke for
12 proceedings consistent with this order.

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

15 Dated this 11th day of May, 2018.

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17 ROBERT J. BRYAN
18 United States District Judge
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