

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

7  
8 LARRY LLOYD,

Plaintiff,

9 v.

10 MARK RUFENER, et al.,

Defendants.

CASE NO. C17-5627 BHS-TLF

ORDER ADOPTING REPORT  
AND RECOMMENDATION

11  
12  
13 This matter comes before the Court on the Report and Recommendation (“R&R”)  
14 of the Honorable Theresa L. Fricke, United States Magistrate Judge, Dkt. 95, and  
15 Defendants Sgt. Fitzpatrick and C\O Lewis’s (“Defendants”) objections to the R&R, Dkt.  
16 96.

17 On June 13, 2019, Defendants filed a motion to dismiss arguing that dismissal is  
18 warranted under Federal Rule of Procedure 41(b) because Plaintiff failed to timely  
19 comply with the Court’s order granting him leave to file an amended complaint. Dkt. 92.  
20 On July 30, 2019, Judge Fricke issued the R&R recommending that the Court deny  
21 Defendants’ motion to dismiss because Plaintiff substantially complied with the Court’s  
22

1 order. Dkt. 95. On August 8, 2019, Defendants filed objections to the R&R on the basis  
2 that Plaintiff's second amended complaint fails to state a claim. Dkt. 96.

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

7 In this case, the Court concludes that Defendants have failed to properly object to  
8 the R&R. Instead, they cloak a motion to dismiss for failure to state a claim as objections  
9 to an R&R recommending that the Court deny Defendants' motion to dismiss for failure  
10 to follow a Court order. The Court declines to conduct an initial review of the merits of  
11 Plaintiff's complaint. Therefore, the Court having considered the R&R, Defendants'  
12 objections, and the remaining record, does hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**; and  
14 (2) Defendants' Motion to Dismiss, Dkt. 92, is **DENIED**.

15 Dated this 7th day of October, 2019.

16  
17 

18 

---

BENJAMIN H. SETTLE  
United States District Judge