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

7 DESHAN WATSON,

8 Plaintiff,

9 v.

10 WASHINGTON STATE
DEPARTMENT OF CORRECTIONS,
et al.,

11 Defendants.

CASE NO. C17-5968 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

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. 27, and
15 Plaintiff Deshan Watson’s (“Watson”) objections to the R&R, Dkt. 28.

16 On November 15, 2018, Judge Fricke issued the R&R recommending that the
17 Court grant Defendants’ motion for summary judgment on all of Watson’s claims or
18 grant summary judgment on the federal claims and decline to exercise supplemental
19 jurisdiction over the state law claims. Dkt. 27. On November 29, 2018, Watson filed
20 objections. Dkt. 28. On December 12, 2018, Defendants responded. Dkt. 30.

21 The district judge must determine de novo any part of the magistrate judge’s
22 disposition that has been properly objected to. The district judge may accept, reject, or

1 modify the recommended disposition; receive further evidence; or return the matter to the
2 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

3 In this case, Watson objects to Judge Fricke’s recommendation that (1) he failed to
4 establish a genuine issue of material fact regarding Defendants Scott Light (“Light”) and
5 Sara Smith’s (“Smith”) deliberate indifference to Watson’s serious medical need and (2)
6 the Court should dismiss Watson’s Americans with Disabilities Act (“ADA”) and
7 Rehabilitation Act (“RA”) claims. Dkt. 28. First, the Court agrees with Judge Fricke that
8 Watson has failed to submit sufficient evidence that Light or Smith acted with deliberate
9 indifference. All of the medical tests in the record support the conclusion that Watson is
10 not gluten intolerant. Even the records from Watson’s hospitalization indicate that the
11 most likely cause was complications from a kidney stone and not gluten intolerance. In
12 light of these facts, Watson has failed to establish a question of fact that either Light or
13 Smith were indifferent to the serious medical condition of gluten intolerance. Therefore,
14 the Court adopts the R&R on this issue.

15 Second, Watson argues that Defendant Washington State Department of
16 Corrections (“DOC”) can be held liable under the ADA and the RA. Dkt. 28 at 4. The
17 Court agrees and finds that the R&R could be misread on this issue. Judge Fricke
18 recommends dismissing Watson’s § 1983 claim against the DOC because the DOC is not
19 a person subject to suit under § 1983. Dkt. 27 at 7. Regarding Watson’s ADA and RA
20 claims, Judge Fricke concludes that “[a]s discussed above, DOC should be dismissed as a
21 defendant.” Dkt. 27 at 14. While this could be construed as dismissing DOC because it
22 is not subject to suit under either act, it can also be construed as dismissing Watson’s

1 claims because he has failed to show deliberate indifference under both acts. See *Updike*
2 *v. Multnomah Cty.*, 870 F.3d 939, 951 (9th Cir. 2017) (“A public entity may be liable for
3 damages under Title II of the ADA or § 504 of the Rehabilitation Act ‘if it intentionally
4 or with deliberate indifference fails to provide meaningful access or reasonable
5 accommodation to disabled persons.’”) (quoting *Mark H. v. Lemahieu*, 513 F.3d 922,
6 937–38 (9th Cir. 2008)). Regarding the latter, Watson has failed to establish deliberate
7 indifference as to any DOC employee and thus failed to establish DOC’s liability. The
8 Court grants Defendants’ motion on this issue and for this reason.

9 Finally, regarding supplemental jurisdiction, the Court will maintain supplemental
10 jurisdiction to address and adopt the R&R on the merits of Watson’s state law claims
11 because he fails to object to the R&R on these issues. Therefore, the Court having
12 considered the R&R, Watson’s objections, and the remaining record, does hereby find
13 and order as follows:

- 14 (1) The R&R is **ADOPTED**;
- 15 (2) Defendants’ motion for summary judgment is **GRANTED**;
- 16 (3) Watson’s in forma pauperis status is **REVOKED** for purposes of appeal;
- 17 and
- 18 (4) The Clerk shall enter a **JUDGMENT** and close the case.

19 Dated this 31st day of January, 2019.

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BENJAMIN H. SETTLE
United States District Judge