

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH MAURICE SUTTON,

Plaintiff,

v.

RONALD HAYNES, et al.,

Defendants.

CASE NO. 3:21-cv-5595-DGE-DWC

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING PLAINTIFF'S
COMPLAINT

On September 23, 2021, Plaintiff, proceeding pro se and in forma pauperis, filed a civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants Washington State Department of Corrections; Ronald Haynes, Superintendent at SCCC; Sara Kariko, Chief Medical Officer, M.D./Health Care Manager at SCCC; Ryan Herrington, Facility Medical Director at SCCC; and Ron Attard, Food Services Manager (FSM) at SCCC, violated his Eighth and Fourteenth Amendment rights by exposing him to Covid-19. (Dkt. No. 6.)

1 On September 23, 2021, United States Magistrate Judge David W. Christel instructed
 2 Plaintiff to file an amended complaint, curing a number of deficiencies in Plaintiff's pleadings.
 3 (Dkt. No. 7 at 4.)

4 Plaintiff filed his Amended Complaint on December 1, 2021. (Dkt. No. 10.)¹ However,
 5 the deficiencies identified in the original Complaint remained. In fact, the Amended Complaint
 6 was nearly identical to the original Complaint, with only slight changes to a few words. (*See id.*
 7 at 4–6.)

8 On December 10, 2021, Magistrate Judge Christel, finding that Plaintiff had not
 9 adequately amended his Complaint, issued a report and recommendation ("R&R")
 10 recommending that Plaintiff's Complaint and this action be dismissed without prejudice for
 11 failure to state a claim. (Dkt. No. 7.) Plaintiff did not respond to the R&R.

12 The Court, having reviewed Plaintiff's Amended Complaint, the Report and
 13 Recommendation of the Honorable David W. Christel, United States Magistrate Judge, any
 14 objections thereto, and the remaining record, hereby finds and ORDERS as follows:

15 (1) The Report and Recommendation is ADOPTED;

16 (2) Plaintiff's Amended Complaint is DISMISSED without prejudice for failure to state a
 17 claim;

18 (3) Plaintiff's Motion to Voluntarily Withdraw the original Complaint (Dkt. No. 8) is
 19 DENIED;

20 (4) As Plaintiff failed to state a claim upon which relief can be granted, the Court finds
 21 this case is a "strike" under 28 U.S.C. § 1915(g);

22 ¹ Prior to filing the Amended Complaint, Plaintiff filed a Motion to Voluntarily Withdraw his Complaint. (Dkt. No.
 23 9.) Judge Christel ordered Plaintiff to file an amended complaint or otherwise have the action be dismissed for
 24 failure to prosecute. (Dkt. No. 9.) As he later filed his Amended Complaint, the Motion to Voluntarily Withdraw is
 now moot and therefore denied.

1 (5) The Clerk is directed to send copies of this Order to Plaintiff and to the Hon. David
2 W. Christel; and

3 (6) The Clerk shall close this case.

4 Dated this 5th day of January 2021.

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David G. Estudillo
United States District Judge
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