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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PATRICK M. McMILLIAN, ) No.: 1:19-cv-00444-NONE-SAB (PC)  
 )  
Plaintiff, )  
 )  
v. ) ORDER ADOPTING FINDINGS AND  
 ) RECOMMENDATIONS AND GRANTING  
O. DELGADO, et.al., ) DEFENDANTS' MOTION FOR SUMMARY  
 ) JUDGMENT  
Defendants. ) (Doc. Nos. 44, 46)  
 )

Plaintiff Patrick M. McMillain is appearing *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff, who was at the time of the events in question an inmate at the California Correctional Institution in Tehachapi, California, incurred serious injuries when he was struck twice by “less than lethal” riot control weapons during a prison riot. He advances Eighth amendment excessive force and state law negligence claims in this lawsuit. (Doc. No. 32.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 29, 2021, the assigned magistrate judge issued findings and recommendations recommending that defendants be granted summary judgment in their favor, finding that the undisputed facts on summary judgment demonstrated that defendants did not use excessive force during the prison riot and acted reasonably in responding to that riot. (Doc. No. 46.) The findings and recommendations were served on the parties and contained notice that objections were due within twenty-one days. (*Id.* at 18.) No objections were filed and the time to do so has passed.

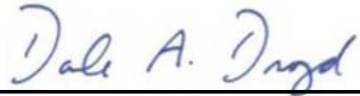
1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de*  
2 *novo* review of this case. Having carefully reviewed the entire file, the court finds the findings and  
3 recommendations to be supported by the record and by proper analysis.

4 Accordingly, the court orders that:

- 5 1. The findings and recommendations filed on September 9, 2021, (Doc. No. 44), are adopted  
6 in full;
- 7 2. Defendants' motion for summary judgment (Doc. No. 38) is GRANTED; and
- 8 3. The Clerk of the Court is directed to enter judgment in favor of defendants close this case.

9  
10 IT IS SO ORDERED.

11 Dated: November 17, 2021

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14 UNITED STATES DISTRICT JUDGE