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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KAREEM J. HOWELL,
Plaintiff,
v.
MR. J. BURNS, et al.,
Defendants.

Case No.: 1:19-cv-00715-JLT-SAB (PC)
ORDER ADOPTING IN FULL FINDINGS
AND RECOMMENDATIONS

Kareem J. Howell is a state inmate proceeding in a civil-rights action filed under 42 U.S.C. § 1983 against Defendants Babb, Burns, and Tumacder. On October 26, 2021, the assigned magistrate judge issued findings and recommendations, recommending that the Court grant Defendants’ motion for summary judgment and that the Clerk of Court enter judgment in favor of Defendants. (Doc. No. 50.) The findings and recommendations were served on the parties and contained notice that objections were due within thirty days. (Id. at 16.) No objections were filed and the time to do so has expired.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, the Court has conducted a *de novo* review of this case. It appears the findings and recommendations failed to consider Plaintiff’s complaint, which was signed under penalty of perjury, as opposing evidence. The Court has reviewed the sworn factual statements—as opposed to legal or medical conclusions—made in the complaint and has considered it as evidence opposing the motion but,

1 even still, reaches the same conclusions as those set forth in the findings and recommendations.

2 As to Plaintiff's Eighth Amendment claim, Plaintiff fails to demonstrate a triable issue of
3 fact that being placed in a cell with mesh windows caused him harm. Defendants provided
4 evidence from an expert witness who asserted that the placement did not cause him harm. In
5 addition, the evidence demonstrates that Plaintiff was offered extensive mental health treatment
6 during the period that he was placed in the cell with the wire mesh windows. Plaintiff has
7 submitted no admissible evidence to the contrary.

8 As to Plaintiff's First Amendment claim, Defendants have established they had a
9 legitimate penological interest in moving Plaintiff to a prison cell with mesh windows because it
10 is undisputed that Plaintiff had repeatedly broken non-mesh windows. Accordingly, the Court
11 orders that:

- 12 1. The findings and recommendations' (Doc. 50) are adopted in full;
- 13 2. Defendants' motion for summary judgment (Doc. 36) is granted; and
- 14 3. The Clerk of Court is directed to enter judgment in favor of Defendants.

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16 IT IS SO ORDERED.

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18 Dated: January 10, 2022

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UNITED STATES DISTRICT JUDGE

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