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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WESLEY COTTON,
Plaintiff,
v.
MEDINA, *et al.*,
Defendants.

Case No. 1:22-cv-00568-JLT-EPG (PC)
FINDINGS AND RECOMMENDATIONS
TO DENY DEFENDANT MEDINA’S
MOTION FOR SUMMARY JUDGMENT
REGARDING EXHAUSTION OF
ADMINISTRATIVE REMEDIES
AND
ORDER GRANTING PLAINTIFF’S
MOTION TO VIEW VIDEO
(ECF Nos. 38, 49)
OBJECTIONS, IF ANY,
DUE WITHIN 30 DAYS

Plaintiff Wesley Cotton is proceeding *pro se* and *in forma pauperis* (IFP) in this civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant Medina moved for summary judgement, arguing that Plaintiff failed to exhaust his administrative remedies as to his failure to protect claim against her. (ECF No. 38). Plaintiff opposed the motion, arguing that Defendant Medina admitted in her answer that he exhausted his administrative remedies and that he did, in fact, exhaust his remedies by filing a grievance. (ECF No. 48). Plaintiff also filed a motion asking the Court to view the recording of his interview in relation to the grievance, as further evidence that he exhausted administrative remedies. (ECF No. 49).

1 For the reasons stated below, the Court grants Plaintiff’s motion for the Court to view
2 the video (ECF No. 49) and recommends that Defendant Medina’s motion for summary
3 judgment (ECF No. 38) be denied.

4 **I. BACKGROUND**

5 **A. Complaint, Screening, and Answers**

6 Plaintiff filed the Complaint commencing this action on May 11, 2022. (ECF No. 1).
7 Plaintiff alleged that on March 19, 2022, two inmates engaged in a fistfight, and in response
8 tower officers, who Plaintiff identified as Doe Defendants, fired two gas cannisters. The gas
9 entered Plaintiff’s caged enclosure, choking him and assaulting his eyesight. (*Id.* 3–5).¹
10 Defendant Medina did not fire the canisters, but failed to protect Plaintiff from the gas, and
11 Plaintiff was not provided with medical care afterwards. (*Id.*)

12 After screening, the Court found that Plaintiff’s Eighth Amendment excessive force
13 claim against Doe Defendants and his failure to protect claim against defendant Medina should
14 proceed past screening. (ECF No. 9 at 1). The Court also found that Plaintiff failed to state a
15 claim for deliberate indifference to his serious medical needs, but gave him an opportunity to
16 amend his complaint. (*Id.* at 9–12). Plaintiff chose to proceed on his original complaint without
17 amending (ECF No. 10), the Court then issued findings and recommendations accordingly
18 (ECF No. 11), which were adopted by the district court judge in full (ECF No. 15).

19 Plaintiff’s complaint was served on Defendant Medina, who filed an answer on March
20 15, 2023. (ECF No. 23). In her answer, Defendant Medina admitted that “there is an
21 administrative grievance process available to Plaintiff and admit[ted] that Plaintiff exhausted
22 those administrative remedies.” (*Id.* at 4).

23 Through discovery, Plaintiff learned the names of Doe Defendants (ECF No. 33) and
24 moved to substitute them (ECF No. 39); the Court granted his motion and ordered service.
25 (ECF No. 45). Formerly Doe Defendants, correctional Officers J. Barajas, G. Chacon, A.
26 Guerrero, I. Sanchez, and B. Markin have appeared and filed their answer. (ECF No. 64).

27
28 ¹ Page numbers refer to the blue CM/ECF numbers in the top right corner of the document.

1 he was subjected to excessive use of force when he was overwhelmed in a caged enclosure by
2 chemical agents deployed by staff during an incident he did not participate in.” (ECF No. 38 at
3 9; ECF No. 38-1 at 12). But in Plaintiff’s complaint, Defendant Medina argues, he alleged that
4 “after the gas canisters were fired, Defendant Medina ordered yard officers to ‘lock Plaintiff
5 inside a cage enclosure and to continue to force inmate/Plaintiff to the exposure of gas that
6 breached Plaintiffs rec enclosure. All the while ignoring Plaintiffs pleas for medical aid.””
7 (ECF No. 38 at 10, quoting Complaint, ECF No. 1 at 4). Defendant Medina argues that
8 Plaintiff’s grievance did not contain enough factual specificity to put the prison on notice of the
9 nature of the wrong for which the prisoner seeks redress. (ECF No. 38 at 10).

10 **C. Plaintiff’s Response to Motion for Summary Judgment (ECF No. 48)**
11 **and Motion to View the Video (ECF No. 49)**

12 Plaintiff filed opposition to Motion for Summary Judgment (ECF No. 48), arguing that
13 Defendant Medina already admitted in her answer that he exhausted his administrative
14 remedies (*id.* at 3, 6)³ and that he did, in fact, exhaust his remedies by filing a grievance (*id.* at
15 4–6).⁴ Throughout his response, Plaintiff mentions the video recording of his interview
16 conducted on April 4, 2022, in connection with the grievance (hereinafter, “Grievance
17 Interview”). (*Id.* at 3, 4, 5, 6.) Plaintiff argues that during that interview, he identified Sgt.
18 Medina, her role, her denial of help and medical, and why he was harmed by her actions. (*Id.* at
19 3, 4, 5).

20 In addition, Plaintiff filed a separate motion asking the Court to view the recording of
21 the Grievance Interview, as further evidence that he exhausted his remedies. (ECF No. 49).

22 **D. Defendant’s Reply (ECF No. 52)**

23 In her Reply, Defendant Medina notes that Plaintiff concedes that an administrative
24 grievance process was available to him, that he filed a grievance, which was assigned log
25

26
27 ³ Page numbers refer to the blue CM/ECF numbers in the top right corner of the document.

28 ⁴ Plaintiff’s references to exhibits in his Response (ECF No. 48) appear to refer to exhibits filed
with his accompanying Motion to View Video (ECF No. 49).

1 #26844, and that he was interviewed in connection with that grievance, and that this interview
2 was recorded. (ECF No. 52 at 2).

3 Defendant Medina disputes, however, that Plaintiff has demonstrated that the grievance
4 and his interview set forth enough facts related to his claim against Defendant Medina. (*Id.* at
5 2–3). She argues that in the Grievance Interview, “Plaintiff makes *no* mention of Defendant
6 Medina and/or any her actions, inactions, or conduct that would otherwise support his failure to
7 protect claim against her.” (*Id.* at 3). Defendant lodged a copy of Grievance Interview with the
8 Court and also asks the Court to “listen to the recording and make its own determination.” (*Id.*).

9 As to her concession that Plaintiff has exhausted administrative remedies in her
10 Answer, Defendant Medina argues that the Court should reject it, because “[t]o the extent
11 Defendant’s answer took any position on exhaustion, not one response concerned any claim
12 that Defendant failed to protect Plaintiff.” (*Id.* at 3, n.3).

13 Defendant Medina maintains that “Plaintiff has failed to present evidence sufficient to
14 put the prison on notice that Defendant Medina in any way failed to protect Plaintiff,” and cites
15 several of her responses to Court’s previous orders showing that “she has never had any
16 interaction with Plaintiff, was not assigned to any yard at the time of the incident of which
17 Plaintiff complains of in this case, and had no role in responding to the incident.” (*Id.* at 3).

18 **II. LEGAL STANDARDS**

19 **A. Summary Judgment**

20 A party may move for summary judgment on a claim or defense. Fed. R. Civ. P. 56(a).
21 Summary judgment in favor of a party is appropriate when there “is no genuine dispute as to
22 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
23 56(a); *Albino v. Baca (Albino II)*, 747 F.3d 1162, 1169 (9th Cir. 2014) (en banc) (“If there is
24 a genuine dispute about material facts, summary judgment will not be granted.”). A party
25 asserting that a fact cannot be disputed must support the assertion by “citing to particular parts
26 of materials in the record, including depositions, documents, electronically stored information,
27 affidavits or declarations, stipulations (including those made for purposes of the motion only),
28 admissions, interrogatory answers, or other materials, or showing that the materials cited do not

1 establish the absence or presence of a genuine dispute, or that an adverse party cannot produce
2 admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1).

3 A party moving for summary judgment “bears the initial responsibility of informing the
4 district court of the basis for its motion, and identifying those portions of ‘the pleadings,
5 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
6 any,’ which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*
7 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)). If the moving party
8 moves for summary judgment on the basis that a material fact lacks any proof, the Court must
9 determine whether a fair-minded jury could reasonably find for the non-moving party.

10 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986) (“The mere existence of a scintilla
11 of evidence in support of the plaintiff’s position will be insufficient; there must be evidence on
12 which the jury could reasonably find for the plaintiff.”). “[A] complete failure of proof
13 concerning an essential element of the nonmoving party’s case necessarily renders all other
14 facts immaterial.” *Celotex*, 477 U.S. at 322. Additionally, “[a] summary judgment motion
15 cannot be defeated by relying solely on conclusory allegations unsupported by factual data.”
16 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

17 In reviewing the evidence at the summary judgment stage, the Court “must draw all
18 reasonable inferences in the light most favorable to the nonmoving party.” *Comite de*
19 *Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 942 (9th Cir. 2011).
20 It need only draw inferences, however, where there is “evidence in the record . . . from which
21 a reasonable inference . . . may be drawn”; the court need not entertain inferences that are
22 unsupported by fact. *Celotex*, 477 U.S. at 330 n. 2 (citation omitted). Additionally, “[t]he
23 evidence of the non-movant is to be believed.” *Anderson*, 477 U.S. at 255.

24 In reviewing a summary judgment motion, the Court may consider other materials in
25 the record not cited to by the parties, but is not required to do so. Fed. R. Civ. P. 56(c)(3);
26 *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001).

1 “When prison officials improperly fail to process a prisoner’s grievance, the prisoner is
2 deemed to have exhausted available administrative remedies.” *Andres v. Marshall*, 867 F.3d
3 1076, 1079 (9th Cir. 2017).

4 On a defendant’s motion for summary judgment for failure to exhaust, the defendant
5 has the initial burden to prove “that there was an available administrative remedy, and that the
6 prisoner did not exhaust that available remedy.” *Albino II*, 747 F.3d at 1172. If the defendant
7 carries that burden, “the burden shifts to the prisoner to come forward with evidence showing
8 that there is something in his particular case that made the existing and generally available
9 administrative remedies effectively unavailable to him.” *Id.* However, “the ultimate burden of
10 proof remains with the defendant.” *Id.* “If material facts are disputed, summary judgment
11 should be denied, and the district judge rather than a jury should determine the facts.” *Id.* at
12 1166.

13 If the Court concludes that Plaintiff has failed to exhaust, the proper remedy is dismissal
14 without prejudice of the portions of the complaint barred by section 1997e(a). *Jones*, 549 U.S.
15 at 223–24; *Lira v. Herrera*, 427 F.3d 1164, 1175–76 (9th Cir. 2005). The failure to exhaust in
16 compliance with section 1997e(a) of the PLRA is an affirmative defense that defendants have
17 the burden of raising and proving. *Jones*, 549 U.S. at 216.

18 **III. DISCUSSION**

19 **A. Plaintiff’s Motion to View Video**

20 Plaintiff asks this Court to view the recording of his Grievance Interview. Plaintiff had
21 the opportunity to view it (ECF No. 49 at 20), and neither Plaintiff nor Defendant Medina raise
22 any objections to its use as an exhibit in resolving the motion for summary judgment or raise
23 any concerns about its authenticity. In fact, both Plaintiff and Defendant Medina urge the Court
24 to view the video and therefore, agree that the video is relevant and probative evidence on the
25 issue of exhaustion of administrative remedies. (ECF No. 49 at 1; ECF No. 52 at 3).

26 Courts may disregard a party’s version of events if it contradicts undisputed video
27 evidence submitted in support of or in opposition to a motion for summary judgment. *Scott v.*
28 *Harris*, 550 U.S. 372, 380 (2007) (holding that summary judgment is appropriate where video

1 evidence contradicts a non-moving party’s version of events). Indeed, in construing a video
2 submitted in support of a summary judgment motion, this Court must “view[] the facts in light
3 depicted by the videotape.” *Id.*

4 Accordingly, the Court **GRANTS** Plaintiff’s Motion (ECF No. 49) to view the video of
5 his Grievance Interview. The Court will treat it as an exhibit filed in support of Plaintiff’s
6 opposition (ECF No. 48) to Defendant’s Motion for Summary Judgment (ECF No. 38).

7 **B. Defendant’s Motion for Summary Judgment**

8 **1. Judicial Admission**

9 As an initial matter, the Court considers Defendant Medina’s statement in her answer
10 that “there is an administrative grievance process available to Plaintiff and admits that Plaintiff
11 exhausted those administrative remedies.” (ECF No. 23 at 4).

12 Regarding judicial admissions, the Ninth Circuit has explained:

13 [U]nder federal law, stipulations and admissions in the pleadings are
14 generally binding on the parties and the Court. . . . Judicial admissions
15 are formal admissions in the pleadings which have the effect of
16 withdrawing a fact from issue and dispensing wholly with the need for
17 proof of the fact. . . . Factual assertions in pleadings and pretrial
orders, unless amended, are considered judicial admissions
conclusively binding on the party who made them.

18 *Am. Title Ins. Co. v. Lacelaw Corp.*, 861 F.2d 224, 226 (9th Cir. 1988) (internal citations
19 omitted). Therefore, unless amended, Defendant Medina’s admission that Plaintiff has
20 exhausted administrative remedies is binding on the parties and the Court.

21 In her reply, Defendant Medina barely addresses this argument. She merely includes a
22 footnote to her reply stating “The Court can easily reject Plaintiff’s contention that Defendant
23 admitted in her answer to Plaintiff’s complaint that he had exhausted administrative remedies.
24 To the extent Defendant’s answer took any position on exhaustion, not one response concerned
25 any claim that Defendant failed to protect Plaintiff.” (ECF No. 52 at 3 n.3). This argument is
26 unavailing. Defendant’s answer was only for Defendant Medina, and the only claim pending
27 against Defendant Medina was for a failure to protect claim. Thus, Defendant Medina’s answer
28 stating that Plaintiff had exhausted administrative remedies is a judicial admission as to the

1 claim against Defendant Medina. Nor has Defendant Medina made any motion to amend her
2 answer or provided any basis to do so. The admission is thus binding on Defendant Medina,
3 and Defendant Medina’s motion for summary judgment is subject to denial on that basis.

4 Nevertheless, as explained below, the Court also recommends finding that Plaintiff
5 exhausted his administrative remedies as to his claim against Defendant Medina.

6 **2. Undisputed facts regarding exhaustion**

7 The Court finds that the following facts are undisputed:⁵

- 8 • The alleged incident giving rise to the events in this action occurred on March
9 19, 2022. (ECF No. 38 at 5, n.2; ECF No. 1 at 3).
- 10 • There was a generally available administrative remedy. (ECF No. 52 at 2).
- 11 • Plaintiff knew about and used the administrative grievance process by filing a
12 grievance related to the March 19, 2022 incident, which was assigned log
13 #246844 (ECF No. 52 at 2; ECF No. 48 at 4).
- 14 • Plaintiff’s grievance, log #246844, was timely filed within 30 days of the
15 incident. (ECF No. 48 at 4; ECF No. 38-1 at 2, 3, 6);
- 16 • Plaintiff’s grievance, log #246844, was identified as an allegation of staff
17 misconduct and referred outside of the institutional grievance process to the
18 CDCR’s Office of Internal Affairs-Allegations Inquiry Management Section
19 (OIA-AIMS), which exhausted all administrative remedies available to Plaintiff
20 as to the allegations made in his grievance. (ECF No. 38 at 5–6; ECF No. 38-1
21 at 2–3; ECF No. 48 at 6; ECF No. 49 at 4).
- 22 • Plaintiff was interviewed on April 4, 2022, in connection with his grievance,
23 log #246844, related to March 19, 2022 incident (Grievance Interview). (ECF
24 No. 48 at 5; ECF No. 52 at 3).

25 Accordingly, the Court finds that there is not a genuine dispute of material fact
26 regarding whether a generally available administrative remedy was available to Plaintiff, and

27 ⁵ Defendant Medina failed to file a “Statement of Undisputed Facts” as required by Local Rule
28 260(a) and Plaintiff failed to provide one in response, Local Rule 260(b). However, after reviewing the
parties’ filings, the Court has determined that neither side disputes these facts.

1 whether Plaintiff timely filed a grievance that was fully exhausted. The only issue in dispute in
2 this motion is whether Plaintiff’s grievance suffices to exhaust Plaintiff’s failure to protect
3 claim against Defendant Medina.

4 **3. Plaintiff’s Grievance**

5 “A grievance suffices to exhaust a claim if it puts the prison on adequate notice of the
6 problem for which the prisoner seeks redress. To provide adequate notice, the prisoner need
7 only provide the level of detail required by the prison’s regulations.” *Sapp v. Kimbrell*, 623
8 F.3d 813, 824 (9th Cir. 2010) (citing *Jones*, 549 U.S. at 219). The Vasquez Declaration
9 provides that the regulations that an inmate must follow in filing a grievance are “set forth in
10 California Code of Regulations, title 15, sections 3480–3487. An inmate may submit a written
11 grievance containing one or more claims, subject to the requirements in section 3482 . . .” (ECF
12 No. 38-1 at 2). In turn, Regs. § 3482(c)(2) requires that a claimant shall:

13 describe all information known and available to the claimant regarding
14 the claim, including key dates and times, names and titles of all
15 involved staff members (or a description of those staff members), and
16 names and titles of all witnesses, to the best of the claimant’s
17 knowledge;

18 The grievance “need not include legal terminology or legal theories,” because “[t]he
19 primary purpose of a grievance is to alert the prison to a problem and facilitate its resolution,
20 not to lay groundwork for litigation.” *Griffin v. Arpaio*, 557 F.3d 1117, 1120 (9th Cir. 2009)).

21 In his grievance, in relevant part, Plaintiff alleged that:⁶

22 [On] March 19 Plaintiff in this matter was subjected to unprovoked
23 and unwarranted attack on his physical person by way of negligence
24 and excessive force by John Doe/Jane Doe officer in observation tower
25 C yard ajointed [sic] caged enclosure by use of dangerous gas canisters
26 dispersed in overzealous manner.

27 Plaintiff on above date heard the “shots,” two loud booms, then
28 seconds later Plaintiff’s caged enclosure was completely overwhelmed
and enveloped in toxic cloud of dangerous gas; which broke the

⁶ This represents the Court’s best understanding of Plaintiff’s handwriting, ignoring capitalization and spelling where immaterial.

1 original zone of activity [where] 3 inmates were involved in a fist
2 fight.

3 Per surveillance cameras stationed on the facility building **it can be**
4 **clearly observed that Plaintiff was assaulted by gasses while**
5 **correctional staff ran for cover into program office and other**
6 **places of cover abandoning Plaintiff in caged enclosure to be**
7 **subjected to the gas and injury.**

8 (ECF No. 38-1 at 8) (emphasis added).

9 In his Grievance Interview, Plaintiff provided this additional information:⁷

10 [2:20] On that day, I was punching on the punching bag that's outside
11 of the yard, between the two gates . . . When I was punching on the
12 bag, a film came over the yard and took my breath. I immediately
13 stopped what I was doing, tried to hold my breath. I couldn't.

14 Breathing hard because of the bag punching, I tried to get to another
15 side of the gate. Gate was locked. I couldn't get over to my building,
16 so for ten minutes, I had to breathe in the substance. I tried to get help
17 immediately, physically, because of my breathing, and I was turned
18 down. They told me to get back to my building, right now . . .

19 [3:37] There's quite a few staff members. I don't know them by names
20 but when I tried to get to the building, they were running this way
21 [Plaintiff gestures on camera], to the program office, to get out of the
22 smelling area.

23 Plaintiff then identified the location of the incident as C yard and stated,

24 [4:12] I believe he shot the canisters off, because I know that sound.
25 . . . They didn't tell us to get down until after the COs started running
26 to the building, to the program office, that's when they said, "get
27 down."

28 When asked if he filed an appeal, at 5:00, Plaintiff says that he "filed a 602," and the
interviewing staff member confirms "for the record, grievance number 246844." When asked if
he has anything else to add to the interview, Plaintiff added:

[5:15] Just that, you know, I wouldn't be here today if I could've got
help that day. And I tried. I asked the Sergeant.

⁷ Numbers in brackets are the time markers, referring to minute and seconds from the start of the recording of the Grievance Interview, as it was provided to the Court by Defendant Medina.

1 Plaintiff's grievance and interview present essentially the same narrative as his
2 complaint in this action: Plaintiff was locked in an enclosure out of which he could not get out,
3 he was being "assaulted by gasses" and struggled to breathe, correctional officers ran for cover
4 past him and abandoned him in the enclosure, he tried to get help and was denied, he
5 specifically "asked the Sergeant" for help but was denied, and the denial of help by "the
6 Sergeant" was the driving force behind his grievance. This sufficiently alerted the prison to the
7 nature of the problem.

8 Defendant Medina argues that Plaintiff failed to properly grieve his claim against her
9 because she was not named in either Plaintiff's grievance or Grievance Interview. (ECF No. 38
10 at 9) ("Grievance Log No. 246844 makes *no* mention of Defendant . . ."); ECF No. 52 at 3) ("In
11 that interview, exactly as in his written Grievance Log No. 246844, Plaintiff makes *no* mention
12 of Defendant Medina . . ."). Defendant Medina also posits that her argument "is further
13 supported and evidenced" by the excerpt from OIA/AIMS investigation report, where "under
14 the heading 'Accused Staff,' there is no mention of Defendant." (ECF No. 38 at 9; ECF No. 38-
15 1 at 12).

16 The Court does not find this argument persuasive. The grievance process is only
17 required to "alert prison officials to a problem, not to provide personal notice to a particular
18 official that he may be sued." *Jones*, 549 U.S. at 219 (citations omitted). Prison regulations
19 require that claimant provides names and titles of staff members involved "to the best of the
20 claimant's knowledge." Regs. § 3482(c)(2). During his Grievance Interview, Plaintiff specified
21 he asked "the Sergeant" for help. (Grievance Interview at 5:15). If that description was not
22 sufficient to identify the particular sergeant involved, the staff who were interviewing Plaintiff
23 had the opportunity to ask follow-up questions. In his grievance, Plaintiff also stated that video
24 surveillance would show staff abandoning him in the cage while running for cover themselves.
25 (ECF No. 38-1 at 8).

26 Moreover, although Defendant Medina is not listed under "Accused Staff" section of
27 the OIA/AIMS report, identifying her by name was not required in order to exhaust Plaintiff's
28 claim against her. Notably, while Regs. § 3482(c)(2) requires claimant to name staff members

1 involved, to the best of his knowledge, Plaintiff’s grievance did not name *any* staff members
2 except as “John Doe/Jane Doe.” (ECF No. 38-1 at 8).

3 The Court thus finds that Plaintiff’s grievance contained enough factual specificity to
4 put the prison on notice as to the nature of the wrong for which Plaintiff now seeks redress in
5 this Court under his failure to protect claim, and recommends that Defendant Medina’s motion
6 for summary judgment for failure to exhaust administrative remedies be denied.

7 **IV. CONCLUSION AND ORDER**

8 Based on the foregoing, the Court **ORDERS** that:

- 9 1. Plaintiff’s Motion to View Video (ECF No. 49) is **GRANTED**;

10 It is further **RECOMMENDED** that:

- 11 1. Defendant Medina’s motion for summary judgment (ECF No. 38) be **DENIED**;

12 These findings and recommendations are submitted to the United States district judge
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
14 days after being served with these findings and recommendations, any party may file written
15 objections with the court. Such a document should be captioned “Objections to Magistrate
16 Judge’s Findings and Recommendations.” Any response to the objections shall be served and
17 filed within fourteen days after service of the objections. The parties are advised that failure to
18 file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson*
19 *v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391,
20 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: March 26, 2024

24 /s/ Eric P. Grogan
25 UNITED STATES MAGISTRATE JUDGE
26
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28