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

8 RAYNE DEE WELLS, JR.,

9 Plaintiff,

10 v.

11 STEVEN DEMARS, et al.,

12 Defendants.

CASE NO. C11-5759 BHS-JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 41), and
15 Plaintiff Rayne Dee Wells Jr.’s (“Wells”) objections to the R&R (Dkt. 43).

16 On October 22, 2012, Judge Creatura issued the R&R recommending that the
17 Court deny Wells’s motion for summary judgment because Wells had failed to show that
18 there are no questions of fact for trial. Dkt. 41 at 6. On October 31, 2012, Wells filed
19 objections arguing that his conditions of confinement were harsher than the conditions
20 addressed in the applicable case law. Dkt. 43.

21 Whether conditions of confinement impose an “atypical and significant hardship”
22 is a case-by-case, fact intensive determination. *Ramirez v. Galaza*, 334 F.3d 850, 860

1 (9th Cir. 2003). In this case, Wells has failed to show that no questions of fact exist
2 regarding the conditions of his dry-cell confinement despite Wells's allegations of the
3 harshness of the confinement. Therefore, the Court having considered the R&R, Wells's
4 objections, and the remaining record, does hereby find and order as follows:

- 5 (1) The R&R is **ADOPTED**; and
6 (2) Wells's motion for summary judgment is **DENIED**.

7 Dated this 6th day of December, 2012.

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BENJAMIN H. SETTLE
11 United States District Judge
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