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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOSEPH DEONN HORNE,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>J. RUTLEDGE, Correctional Officer; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>

No. 09-17378

D.C. No. 4:08-cv-01387-SBA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Submitted September 22, 2010**

Before: WALLACE, HAWKINS and THOMAS, Circuit Judges.

The district court properly granted summary judgment on the excessive force claim because Joseph Deonn Horne (“Horne”) failed to raise a triable issue as to whether prison guards acted “maliciously and sadistically for the very purpose

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

of causing harm” by using pepper spray after Horne repeatedly refused to comply with orders to cease holding his blanket up to the cell door. *Hudson v. McMillian*, 503 U.S. 1, 6 (1992) (citation and internal quotation marks omitted).

Horne’s remaining contentions are unpersuasive.

AFFIRMED.