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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

MICHAEL A. PINKSTON,	)	No. CV-F-00-6193 REC/SMS P
)	
	)	ORDER GRANTING IN PART AND
Plaintiff,	)	DENYING IN PART PLAINTIFF'S
	)	MOTION FOR AMENDMENT AND
vs.	)	RELIEF FROM JUDGMENT (Docs.
	)	146-148), VACATING JUDGMENT
D. FIERRO, et al.,	)	FOR DEFENDANTS ENTERED ON
	)	SEPTEMBER 28, 2005 (Docs.
	)	143-144), GRANTING PARTIAL
Defendant.	)	SUMMARY JUDGMENT FOR
	)	DEFENDANTS AND REMANDING TO
	)	MAGISTRATE JUDGE FOR FURTHER
	)	PROCEEDINGS

Plaintiff has timely moved this court for amendment and relief from the judgment defendants entered on September 28, 2005.

The court denies plaintiff's motion to the extent that plaintiff argues that the court erred in granting summary judgment for defendants with respect to plaintiff's Eighth Amendment claim that defendants provided inadequate medical care.

1 However, the court grants plaintiff's motion to the extent
2 that plaintiff seeks relief from judgment on the ground that
3 defendants did not move for summary adjudication of plaintiff's
4 claim of excessive force in violation of the Eighth Amendment.
5 The First Amended Complaint alleges such a claim in Paragraph 54.
6 The court's Order filed on December 20, 2002 (doc. 84) also
7 states that plaintiff "states a cognizable eighth amendment claim
8 for cruel and unusual punishment and deliberate indifference to a
9 serious medical need against defendants." Therefore, the court
10 erred in footnote 11 of the Order Granting Motion for Summary
11 Judgment (doc. 143) when it stated that plaintiff's contention
12 that prolonged exposure to pepper spray constitute excessive
13 force was not properly before the court.

14 Because defendants' motion for summary judgment did not
15 address this claim, the court vacates the judgment entered on
16 September 28, 2005. The court grants summary adjudication for
17 defendants with respect to plaintiff's claim of deliberate
18 indifference to a serious medical need in violation of the Eighth
19 Amendment for the reasons stated in doc. 143. The court remands
20 this action to the Magistrate Judge for further proceedings,
21 including the filing by defendants of a motion for summary
22 adjudication of plaintiff's claim of excessive force in violation
23 of the Eighth Amendment.

24 ACCORDINGLY:

25 1. Plaintiff's Motion for Amendment and Relief from
26 Judgment is granted in part and denied in part.

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2. The judgment entered on September 28, 2005 is vacated.

3. Defendants are granted partial summary judgment in connection with plaintiff's claim of deliberate indifference to a serious medical need in violation of the Eighth Amendment.

4. This action is remanded to the Magistrate Judge for further proceedings in connection with plaintiff's claim of excessive force in violation of the Eighth Amendment.

IT IS SO ORDERED.

Dated: January 27, 2006
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE