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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN R. EDWARDS,
Plaintiff,

v.

D. CABRAL,
Defendant.

Case No. 1:13-cv-00345 AWI-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO:**

- 1) **FIND ORIGINAL MOTION FOR SUMMARY JUDGMENT (ECF No. 54) TO BE SUPERSEDED BY AMENDED MOTION FOR SUMMARY JUDGMENT (ECF No. 55)**

- 2) **GRANT IN PART AND DENY IN PART DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT (ECF No. 55)**

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Bratton, Cabral, Escoto, and Pascual on Plaintiff's Eighth Amendment medical indifference claims. (ECF Nos. 1 & 8.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

On April 27, 2015, the Magistrate Judge issued Findings and Recommendations to grant Defendants' amended motion for summary judgment (ECF No. 55) as to Escoto

1 and Pascual and deny it as to Bratton and Cabral. (ECF No. 69.) Defendants filed
2 objections to the denial of summary judgment for Bratton and Cabral on May 11, 2015.
3 (ECF No. 70.) Plaintiff filed a statement of non-opposition to the Court's findings and
4 recommendations on May 11, 2015 (ECF No. 71) and a reply to Defendants' objections
5 on May 22, 2015. (ECF No. 72.)

6 In accordance with the provisions of 28 U.S.C. § 636(B)(1), the Court has
7 conducted a *de novo* review of this case. Having carefully reviewed the entire file, the
8 Court finds that the April 27, 2015 Findings and Recommendations to be supported by
9 the record and by proper analysis.

10 Specifically, the Court rejects Defendants' argument that Plaintiff had to suffer
11 lasting physical injury from his exposure to pepper spray in order for (1) Bratton's failure
12 to decontaminate him or for (2) Cabral's disregard of his request for medical attention to
13 violate the Eighth Amendment. Even relatively brief periods of unnecessary pain meet
14 the objective prong of the Eighth Amendment test. See Clement v. Gomez, 298 F.3d
15 898, 904 (9th Cir. 2002)(citing McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992));
16 see also Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014)(serious medical need
17 present where an inmate suffers chronic and substantial pain.) In fact, the Ninth Circuit
18 has specifically held that exposure to the "painful effects of pepper spray" amounts to a
19 serious medical need, regardless of whether such exposure leads to lasting harm.
20 Clement, 298 F.3d at 904; Roberts v. Gonzalez, No. CV 12-2044 2013 WL 4663882, at
21 *7 (C.D. Cal. Mar. 5, 2013); Manriquez v. Huchins, No. 1:09-CV-00456 2010 WL
22 2791560, at *6 (E.D. Cal. July 14, 2010).

23 Similarly, Cabral's inaction in response to Plaintiff's complaints of pain was not
24 objectionable because she mistook an emergency for a routine medical complaint, but
25 because her comment that she "couldn't get involved," combined with her failure to give
26 Plaintiff a medical call slip, suggested she knew of and was ignoring risks to Plaintiff's
27 health.

28 Accordingly, it is HEREBY ORDERED₂ that:

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1. The Court adopts the findings and recommendations (ECF No. 69), filed April 27, 2015, in full;
2. Defendants' amended motion for summary judgment (ECF No. 55), filed December 8, 2014 supersedes the original motion for summary judgment (ECF No. 54), filed December 5, 2014;
3. Defendants' amended motion for summary judgment (ECF No. 55) is GRANTED as to Defendants Escoto and Pascual; and
4. Defendants' amended motion for summary judgment (ECF No. 55) is DENIED as to Defendants Bratton and Cabral.

IT IS SO ORDERED.

Dated: July 16, 2015



SENIOR DISTRICT JUDGE