



1 the Findings and Recommendations are supported by the record and proper analysis in all but one  
2 respect. Specifically, the magistrate judge concluded, correctly, that:

3 Plaintiff has plausibly alleged a deliberate indifference to serious  
4 medical needs claim against Defendant Hackworth by alleging  
5 Hackworth was present and aware of his having been sprayed with a  
6 chemical agent, but that Hackworth disregarded the risk to Plaintiff's  
7 health by refusing to allow Plaintiff to be decontaminated, directly  
8 responding to an inquiry by [Defendant] Hurtado about whether  
9 Plaintiff should be decontaminated by replying, "F..., no."

8 (Doc. 29 at 17.) However, the findings and recommendations also concluded that Plaintiff failed  
9 to allege a deliberate indifference claim against Defendant Hurtado in part because the complaint  
10 alleges that "Hurtado asked Hackworth about decontamination procedures following the chemical  
11 agent incident" and was told by Hackworth not to decontaminate Plaintiff. (*Id.*) There are  
12 circumstances in which consulting a supervisor and following that supervisor's orders may  
13 insulate a subordinate from deliberate indifference liability. *See Franklin v. Scribner*, No. 07-  
14 0438-WVG, 2010 WL 3895113, at \*15 (S.D. Cal. Sept. 29, 2010), *aff'd*, 471 F. App'x 803 (9th  
15 Cir. 2012) ("[Defendant] asked his supervisor whether Plaintiff's Accommodation Chrono  
16 exempted Plaintiff from the lockdown restriction that Plaintiff wear shower shoes when he exited  
17 his cell. He was instructed that Plaintiff had to wear his shower shoes when he exited his cell.  
18 Bass complied with his orders, which he had no discretion to disregard."). However, there is no  
19 bright line rule of indemnification just because a supervisor issued a relevant order. As the  
20 district court in *Blake v. Cal. Dep't of Correction*, No. CV 19-9239-DDP(E), 2022 WL  
21 20356985, at \*5 (C.D. Cal. Mar. 31, 2022), explained:

22 "[I]ndividuals cannot always be held immune for the results of their  
23 official conduct simply because they were enforcing policies or  
24 orders promulgated by those with superior authority." *Grossman v.*  
25 *City of Portland*, 33 F.3d 1200, 1209 (9th Cir. 1994); *see also Baude*  
26 *v. Leyshock*, 23 F.4th 1065 (8th Cir. 2022) ("Subordinate police  
27 officers cannot escape liability when they blindly follow orders.");  
28 *Kennedy v. City of Cincinnati*, 595 F.3d 327, 337 (6th Cir.), *cert.*  
*denied*, 562 U.S. 832 (2010) ("[P]ublic officials have an obligation  
to follow the Constitution even in the midst of a contrary directive  
from a superior or in a policy.") (citations, quotations and brackets  
omitted)); *O'Rourke v. Hayes*, 378 F.3d 1201, 1210 n.5 (11th Cir.  
2004) ("since World War II, the 'just following orders' defense has  
not occupied a respected position in our jurisprudence, and officers

1 in such cases may be held liable under § 1983 if there is a reason why  
2 any of them should question the validity of that order”) (citation and  
3 quotations omitted); *Thaddeus-X v. Blatter*, 175 F.3d 378, 393 (6th  
4 Cir. 1999) (in civil rights case, “[r]eliance on a superior’s orders does  
5 not in itself dissipate all liability”) (citations omitted); *Adams v.*  
6 *Davis*, 2022 WL 263287, at \*8 n.2 (E.D. Tex. Jan. 6, 2022), adopted,  
2022 WL 256493 (E.D. Tex. Jan. 26, 2022) (“The ‘I was only  
following orders’ defense is not a viable defense to a deliberate  
indifference claim. Correctional officers are expected to know and  
follow constitutional standards regarding the safety and health of  
inmates.”).

7 At this stage of the case, the Court believes the deliberate indifference to medical needs claim  
8 against Defendant Hurtado should proceed past screening. The facts as presently alleged do not  
9 materially differentiate Hurtado’s conduct from Hackworth’s. Accordingly, the Court **ORDERS**:

- 10 1. The Findings and Recommendations issued November 30, 2023 (Doc. 34) are  
11 **ADOPTED IN PART.**
- 12 2. This action **PROCEEDS** on Plaintiff’s Eighth Amendment excessive force claims  
13 against Defendants Scalia, Madrigal and Hernandez (Claim One); Eighth Amendment  
14 failure to protect/failure to intervene claims against Defendant Hackworth (Claim  
15 One); and Eighth Amendment deliberate indifference to serious medical needs claims  
16 against Defendants Scalia, Madrigal, Hernandez, Hackworth, and Hurtado (Claim  
17 Four), pursuant to 42 U.S.C. § 1983.
- 18 3. The remaining claims in Plaintiff’s second amended complaint are **DISMISSED.**
- 19 4. This matter is referred to the assigned magistrate judge for further proceedings.

20  
21 IT IS SO ORDERED.

22 Dated: December 26, 2023

  
UNITED STATES DISTRICT JUDGE