

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304,
2 this court has conducted a *de novo* review of this case. Having reviewed the file, the court finds
3 the findings and recommendations now to be supported by the record and by proper analysis, with
4 the exception of the recommendation that the court grant summary judgment as explained below.
5 The court below also addresses the parties' objections.

6 I. Eighth Amendment Claim against Defendant Gomer

7 Plaintiff objects to the magistrate judge's finding that "the facts are insufficient for
8 this court to infer that [defendant] Gomer acted with deliberate indifference to plaintiff's needs
9 [and] [s]ummary judgment should be granted on plaintiff's Eighth Amendment claim against
10 defendant Gomer." Findings at 20. Plaintiff's primary argument is that, by labeling plaintiff's
11 eye issue as "urgent" rather than "emergent," Gomer "knowingly subjected the plaintiff to an
12 unspecified waiting period" before he could see a specialist. Pl.'s Objs. at 6. In her analysis of
13 the negligence claim against Gomer, the magistrate judge finds there is a genuine dispute of
14 material fact regarding "the difference between an 'urgent' request and an 'emergent' request,"
15 such that the court cannot "determine the reasonableness of Gomer's conduct," and summary
16 judgment on the negligence claim is inappropriate. *Id.* at 28. The same factual dispute prevents
17 summary judgment on plaintiff's Eighth Amendment claim against Gomer. At this stage of the
18 litigation, the court must resolve any factual disputes in plaintiff's favor. *Kennedy v. City of*
19 *Ridgefield*, 439 F.3d 1055, 1059 (9th Cir. 2006) (citing *Cunningham v. City of Wenatchee*, 345
20 F.3d 802, 807 (9th Cir. 2003)). Therefore, the court treats as true plaintiff's uncontroverted
21 evidence¹ that: (1) Gomer knew plaintiff's eye needed immediate attention, because it was
22 obvious and because plaintiff told Gomer that Dr. Hearne had advised that he be notified
23 immediately if Mora experienced problems with his vision in the treated eye, (2) Gomer knew an
24 "urgent" request might not be resolved for at least a week, and yet (3) Gomer chose to mark

25 ¹ The court need not rule on defendants' objections to evidence, because the magistrate judge did
26 not rely on the evidence to which defendants object. Findings at 8 ("Because the undersigned has
27 not relied on any of the exhibits to which defendants object, there is no need to rule on those
28 objections."). To the extent the court relies on any additional evidence not relied upon by the
magistrate judge, the court also does not rely on any evidence to which defendants object here,
and so need not rule on defendants' evidentiary objections. *See* Defs.' Objs. at 6–7.

1 plaintiff's eye issue as "urgent" on plaintiff's medical form. *See* Defs.' Objs. at 5; Mora Decl.,
2 ECF No. 55, at 7–9. Given this set of facts, a reasonable jury could find Gomer was deliberately
3 indifferent to plaintiff's serious medical need. *See Hutchinson v. United States*, 838 F.2d 390,
4 393–94 (9th Cir. 1988) (explaining deliberate indifference to serious medical needs of prisoners
5 "may appear when prison officials deny, delay or intentionally interfere with medical treatment,
6 or it may be shown by the way in which prison physicians provide medical care") (citing *Estelle*
7 *v. Gamble*, 429 U.S. 97, 104–05 (1976)). Without more evidence regarding the difference
8 between "urgent" and "emergent," a genuine dispute of material fact prevents the court from
9 granting summary judgment on plaintiff's Eighth Amendment claim against Gomer.

10 II. Defendants' Objections to the Amended Findings and Recommendations

11 In their objections, defendants once again argue the magistrate judge "ignored the
12 'subjective standard' of a deliberate indifference claim." Defs.' Objs., ECF No. 77, at 2.
13 However, the magistrate judge clearly applied the deliberate indifference standard in her analysis
14 of the Eighth Amendment claims. For example, in her discussion of the claim against defendant
15 Eaton, the magistrate judge writes,

16 [D]efendants present no evidence to indicate that Eaton did not find
17 plaintiff's statement that his vision was 'going blurrier day by day'
18 to be true. Further, Eaton's notation that plaintiff was at risk for
19 bumping into things shows that he knew plaintiff's vision loss was a
20 serious medical condition because it 'significantly affect[ed]
[plaintiff's] daily activities.' Whether Eaton's feeling that plaintiff's
condition was not 'alarming' should be credited . . . is the sort of
factual determination that should not be made on summary judgment.

21 Findings at 19 (alterations in original) (citation omitted). This discussion indicates the magistrate
22 judge analyzed whether plaintiff presented evidence to show the defendant "purposefully
23 ignore[d]" plaintiff's medical needs, which is the "subjective standard" to which defendants refer.
24 Defs.' Objs. at 2 ("[A] defendant must purposefully ignore or fail to respond to a prisoner's pain
25 or possible medical need in order for deliberate indifference to be established.") (emphasis added
26 in filed document) (citing *McGuckin v. Smith*, 974 F.2d 1050, 1060 (9th Cir. 1992)). The
27 magistrate judge correctly found that genuine disputes of material facts regarding whether
28 defendants Eaton, Sanderson, Leslie and Kremer were deliberately indifferent prevent the court

1 from granting summary judgment on the Eighth Amendment claims against them. Findings at
2 16–19, 21–24.

3 Additionally, defendants argue “no triable issue exists as to defendant Gomer’s
4 negligence.” Defs.’ Objs. at 2. Though the magistrate judge finds “the undisputed facts show
5 that Gomer took plaintiff’s eye problem seriously and took steps to have him seen by a
6 specialist,” *id.* at 3 (citing Findings at 20), this finding does not necessarily resolve the claim of
7 negligence against defendant Gomer. The magistrate judge correctly finds Gomer may have been
8 negligent in labelling the request for a specialist as “urgent” instead of “emergent,” and factual
9 questions regarding the difference between these two labels prevent the court from granting
10 summary judgment on the negligence claim against defendant Gomer. Findings at 27–28.

11 Defendants also argue that the evidence shows defendants Leslie and Kremer
12 behaved reasonably, and therefore summary judgment is appropriate. However, defendants do
13 not offer any evidence that necessarily controverts plaintiff’s statements that:

14 (1) Leslie and Kremer were specifically instructed by Dr. Park that
15 plaintiff should be lying down and not agitated during the trip
16 following his surgery, (2) that they manacled plaintiff in such a way
17 that he was unable to lie down safely during the trip, (3) that they
18 took a bumpier route than necessary, causing plaintiff to be unable to
lie still and to hit his head; and (4) that they ignored plaintiff’s
complaints that his manacles were too tight and the drive was too
bumpy.

19 Findings at 23 (footnote omitted). Defendants offer affidavits from the defendants that may
20 counter these assertions, but the court of course may not make credibility determinations or weigh
21 evidence at this stage of the proceedings. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249
22 (1986) (“[A]t the summary judgment stage the judge’s function is not [] to weigh the evidence
23 and determine the truth of the matter but to determine whether there is a genuine issue for trial.”).
24 Whether or not “driving Plaintiff in a prison van [] presented a medical risk,” Defs.’ Objs. at 4,
25 and whether or not defendants Leslie and Kremer acted reasonably in transporting plaintiff are
26 questions of fact reserved for the jury, and therefore summary judgment is inappropriate at this
27 stage.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed October 30, 2018 (ECF No. 76) are adopted with the exception of the analysis of plaintiff's Eighth Amendment claim against defendant Gomer.

2. Defendants' motion for summary judgment (ECF No. 47) is granted in part and denied in part as follows:

a. Defendants' motion is denied with respect to plaintiff's Eighth Amendment and negligence claims against defendants Eaton, Gomer, Sanderson, Leslie, and Kremer; and

b. Defendants' motion is granted with respect to plaintiff's claims against defendants Nweke, Powell, and Wooten.

3. The case is referred back to the assigned magistrate judge for all further pretrial proceedings.

DATED: March 28, 2019.


UNITED STATES DISTRICT JUDGE