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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

MARSHALL BURGESS, JR.,	)	
	)	
Plaintiff,	)	3:12-cv-00085-LRH-WGC
	)	
v.	)	
	)	<u>ORDER</u>
BRIAN E. SANDAVAL, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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Before this Court is the Report and Recommendation of U.S. Magistrate Judge William G. Cobb (#123<sup>1</sup>) entered on January 27, 2014, recommending denying Plaintiff's Motion for Summary Judgment (#96) filed on June 28, 2013, and granting in part and denying in part Defendants' Motion for Summary Judgment (#109) filed on July 22, 2013. Defendants filed their Objections to Report and Recommendation of U.S. Magistrate Judge (#124) on February 13, 2014. Plaintiff did not file a response. This action was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 1B 1-4 of the Rules of Practice of the United States District Court for the District of Nevada.

The Court has conducted its *de novo* review in this case, has fully considered the objections of the defendants, the pleadings and memoranda of the parties and other relevant matters of record pursuant to 28 U.S.C. § 636 (b) (1) (B) and Local Rule IB 3-2. The Court determines that the

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<sup>1</sup>Refers to court's docket number.

1 Magistrate Judge's Report and Recommendation (#123) entered on January 27, 2014, should be  
2 adopted and accepted.

3 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and Recommendation  
4 (#123) entered on January 27, 2014, is adopted and accepted, and Plaintiff's Motion for Summary  
5 Judgment (#96) is DENIED.

6 IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (#109) is  
7 GRANTED in part and DENIED in part as follows:

8 (1) Defendants' Motion for Summary Judgment is DENIED as to the Eighth Amendment  
9 excessive force and failure to protect claims against defendants Betancourt, Preston,  
10 Robinson, Payne, Kelly, Peabody, Moore and Taylor; and

11 (2) Defendants' Motion for Summary Judgment is GRANTED as to the Eighth Amendment  
12 deliberate indifference to serious medical need claim against defendants Greene and  
13 Haynes.


14 IT IS FURTHER ORDERED that Plaintiff's Fourteenth Amendment due process claim against  
15 defendant Kelly is DISMISSED to the extent it alleges that Plaintiff was falsely accused of conduct  
16 which led to disciplinary charges against him; however this claim shall PROCEED insofar as Plaintiff  
17 alleges that his disciplinary action was not based on some evidence.

18 IT IS FURTHER ORDERED that Plaintiff's claims for damages against any defendant in his  
19 or her official capacity are DISMISSED.

20 IT IS FURTHER ORDERED that the parties shall submit their proposed joint pretrial order  
21 pursuant to Local Court Rules 16-3 and 16-4 within thirty (30) days of the entry of this order.

22 IT IS SO ORDERED.

23 DATED this 24th day of March, 2014.

24  
25   
26 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE