

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

LUCIOUS WILSON,

Plaintiff-Appellant,

v.

DEPUTY COSIO, No 495876, in individual  
and official capacity,

Defendant-Appellee.

No. 15-56535

D.C. No. 2:12-cv-09724-GW-  
MRW

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
George H. Wu, District Judge, Presiding

Submitted January 18, 2017\*\*

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Lucious Wilson, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging a Fourth Amendment excessive force claim arising from his arrest. We have jurisdiction

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review de novo. *Glenn v. Washington County*, 673 F.3d 864, 870 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment because Wilson failed to raise a genuine dispute of material fact as to whether defendant's use of less-lethal force to disarm Wilson and effectuate his arrest violated Wilson's Fourth Amendment rights. *See Lal v. California*, 746 F.3d 1112, 1115, 1117 (9th Cir. 2014) (setting forth framework for analyzing an excessive force claim under the Fourth Amendment); *see also Glenn*, 673 F.3d at 871-72 (explaining circumstances under which a bean bag gun, which is a "less-lethal" weapon, is permissible).

The district court did not abuse its discretion by denying Wilson's motion for default judgment because the clerk never entered a default. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (setting forth standard of review and factors to consider before entering default judgment).

To the extent that Wilson's request, filed on June 3, 2016, seeks entry of default, the request is denied.

**AFFIRMED.**