

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 25 2017

FOR THE NINTH CIRCUIT

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

CHARLES M. CABRERA,

Plaintiff-Appellant,

v.

JESSIE NEVILLE, Officer, P6900;
NAPHCARE, INC.,

Defendants-Appellees,

and

NEVILLE, Officer; et al.,

Defendants.

No. 16-15829

D.C. No. 2:12-cv-00918-RFB-CWH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware, District Judge, Presiding

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Charles M. Cabrera, a Nevada state prisoner, appeals pro se from the district

* 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).

court's summary judgment in his 42 U.S.C. § 1983 action alleging excessive force and deliberate indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011), and we affirm.

The district court properly granted summary judgment for defendant Neville on Cabrera's excessive force claim because Cabrera failed to raise a genuine dispute of material fact as to whether Neville's actions were objectively unreasonable under the circumstances. *See Martinez v. Stanford*, 323 F.3d 1178, 1184 (9th Cir. 2003) (elements of excessive force claim under the Eighth Amendment); *see also Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473 (2015) (elements of excessive force claim under the Fourteenth Amendment).

The district court properly granted summary judgment for defendant NaphCare, Inc. on Cabrera's deliberate indifference claim because Cabrera failed to raise a genuine dispute of material fact as to whether NaphCare, Inc.'s policies or customs caused the alleged inadequate treatment. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (elements of a § 1983 claim against an entity defendant); *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (elements of medical deliberate indifference claim).

The district court did not abuse its discretion when it denied Cabrera's motion for default judgment against NaphCare, Inc. because the factors weigh against entry of default judgment. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (standard of review and factors to be considered when district court decides whether to enter default judgment).

Cabrera's motion to extend the prison copy work limit (Docket No. 36) is denied.

AFFIRMED.