

1 claims against any other defendants. (ECF No. 14.) Plaintiff was ordered to either file a second
2 amended complaint or notify the Court of his willingness to proceed only on the cognizable
3 claim. (Id. at 18.)

4 On June 7, 2019, Plaintiff filed a second amended complaint. (ECF No. 15.) On July 24,
5 2019, the Magistrate Judge issued findings and recommendations that this action proceed on
6 Plaintiff's complaint against Defendants Chanelo and Peacock, and that all other claims and
7 Defendants be dismissed. (ECF No. 16.) On August 9, 2019, Plaintiff filed objections to the
8 findings and recommendations. (ECF No. 17.)

9 First, the Court notes that in the filed objections, Plaintiff writes that his claim for
10 violation of the Equal Protection Clause of the Fourteenth Amendment is against Defendants
11 Chanelo, Peacock, Salcedo, Marquez, Gaddis, and Tafoya. (ECF No. 17 at 1.) However,
12 Plaintiff's equal protection claim was only brought against Defendants Chanelo and Peacock and
13 that portion of the complaint did not contain any facts concerning these other Defendants. (ECF
14 No. 15 at 23.) Defendants Salcedo, Marquez, Gaddis, and Tafoya were only named in the
15 deliberate indifference claim under the Eighth Amendment concerning their actions regarding the
16 alleged failure to properly interview Plaintiff after the attack. (ECF No. 15 at 14-16.) To the
17 extent Plaintiff is now alleging that Defendants Salcedo, Marquez, Gaddis, and Tafoya violated
18 his Fourteenth Amendment rights for their actions investigating the attack, such facts do not state
19 a claim for violation of the Equal Protection Clause. Plaintiff argues that these Defendants failed
20 to properly interview him concerning the attack and who the perpetrator was, however, Plaintiff
21 concedes that he informed these Defendants that he had been attacked, and concedes that the
22 attacker, Inmate Poumele, and the other Samoan inmate, Inmate Maiava, were both in fact
23 charged with rules violations for possession of weapons stemming from the incident following the
24 interviews of all inmates. (ECF No. 15 at 16.) In addition, Plaintiff concedes he was found not
25 guilty for any of his actions during the incident. (Id.) Thus, the facts do not demonstrate Plaintiff
26 was treated differently from the Samoan inmates through the investigation and punishment phase
27 of the incident.

28 Second, regarding Plaintiff's claim for deliberate indifference to a serious medical need,

1 Plaintiff's objections emphasize that Nurses Vitto and Palomino repeatedly refused to give
2 Plaintiff pain medication for head pain despite his repeated requests for such pain medication, and
3 refused his requests to see a physician. (ECF No. 17 at 13.) Plaintiff was eventually diagnosed
4 by Dr. Patel with posttraumatic headaches and was prescribed Ibuprofen. (Id. at 14.) Plaintiff
5 repeatedly told Dr. Patel that the Ibuprofen was not working for his headaches and demanded a
6 CT Scan. (Id.) The facts alleged do not appear to rise even to the level of medical malpractice or
7 negligence, let alone demonstrate any of the Defendants denied, or intentionally interfered with
8 necessary medical treatment, or that any decision was medically unacceptable or chosen with a
9 conscious disregard of an excessive risk to Plaintiff's health. See Snow v. McDaniel, 681 F.3d
10 978, 988 (9th Cir. 2012) ("A difference of opinion between a physician and the prisoner—or
11 between medical professionals—concerning what medical care is appropriate does not amount to
12 deliberate indifference.").

13 Third, regarding Plaintiff's claim for deliberate indifference for failure to protect him
14 during the prison riot, the cases cited by Plaintiff do not change the analysis conducted in the
15 Magistrate Judge's findings and recommendations. In Stubbs, cited by Plaintiff, the inmate was
16 being chased down a corridor by twenty to thirty inmates and came across two guards who he
17 requested help from, and the guards entered another room and closed the door leaving the inmate
18 to fend for himself. Stubbs v. Dudley, 849 F.2d 83, 84 (2d Cir. 1988). The Second Circuit found
19 the "evidence supported the conclusion that [the officers] had adequate time to assess the serious
20 threat facing Stubbs and a fair opportunity to afford him protection at no risk to himself or the
21 security of the prison but nevertheless callously refused to permit Stubbs to pass with him to
22 safety behind the administration door." Id. at 86-87. In the other case cited by Plaintiff, the
23 Sixth Circuit held that taking all evidence in favor of Plaintiff, a reasonable jury could conclude
24 the officers had an opportunity to prevent a stabbing death by: "(1) by opening the door to the
25 yard to permit Fails to elude Eggleston; (2) by restraining Eggleston at the door; (3) by shutting
26 the door before Eggleston could follow Fails into the yard; and (4) by intervening when Eggleston
27 attacked Fails in the yard as the guards looked on." Walker v. Norris, 917 F.2d 1449, 1453 (6th
28 Cir. 1990). In Walker, there were multiple opportunities for the guards to intervene over an

1 extended time to stop the ongoing attack occurring by one inmate against one other inmate. Id. at
2 1451-52. The facts in the present case do not demonstrate that Defendants were deliberately
3 indifferent to Plaintiff's safety, but were responding to a chaotic riot situation and taking
4 reasonable steps to maintain control through orders to the inmates to prone out in the yard, and
5 coordinated tactics between the team of officers utilizing weapons which in fact dissipated the
6 riot in less than one minute after Plaintiff was attacked, according to Plaintiff's own complaint.
7 (ECF Nos. 11, 14.)

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
9 *de novo* review of this case. Having carefully reviewed the entire file, the Court finds that the
10 Magistrate Judge's findings and recommendations are supported by the record and by proper
11 analysis.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations issued on July 24, 2019, (ECF No. 16), are
14 adopted in full;
- 15 2. This action shall proceed on Plaintiff's second amended complaint, filed June 7,
16 2019, (ECF No. 15), against Defendants Chanelo and Peacock for violation of the
17 Equal Protection Clause of the Fourteenth Amendment;
- 18 3. All other claims and Defendants are dismissed based on Plaintiff's failure to state
19 claims upon which relief may be granted; and
- 20 4. This action is referred back to the assigned Magistrate Judge for further
21 proceedings consistent with this order.

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23 IT IS SO ORDERED.

24 Dated: August 21, 2019

/s/ Lawrence J. O'Neill
25 UNITED STATES CHIEF DISTRICT JUDGE
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