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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHELLY LEMIRE, individually and )  
as a personal representative for )  
the ESTATE OF ROBERT ST. JOVITE, )  
GERARD CHARLES ST. JOVITE, and )  
NICOLE ST. JOVITE, )

Plaintiffs, )

v. )

ARNOLD SCHWARZENEGGER, )  
CALIFORNIA DEPARTMENT OF )  
CORRECTIONS AND REHABILITATION, )  
JAMES E. TILTON, TOM L. CAREY, )  
D.K. SISTO, REBECCA CAHOON, )  
ALFREDO ALCARAZ, RAYMOND WADE, )  
CHERYL ORRICK, GALE MARTINEZ, )  
GORDON WONG, JAMES NUEHRING, )  
SHABREEN HAK, ALVARADO TRAQUINA, )  
ALFREDO NORIEGA, JOHN M. DUSAY, )  
C. HOLLIDAY, JAIME CHUA, DODIE )  
HICKS, )

Defendants. )

2:08-cv-00455-GEB-EFB

ORDER GRANTING EACH  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT AND DENYING  
EACH PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

Each Defendant moves for summary judgment on the remaining Eighth and Fourteenth Amendment claims alleged in this action under 42 U.S.C. § 1983. Alternatively, certain Defendants seek summary judgment on his or her qualified immunity defense to these claims. Further, the Estate Plaintiff moves for summary judgment on the Eighth Amendment claims against Defendants James Nuehring and D.K. Sisto, and the individual Plaintiffs move for summary judgment on the Fourteenth Amendment claims against these same defendants. Each claim concerns the

1 death of Robert St. Jovite ("St. Jovite"), who was an inmate at  
2 California State Prison at Solano ("CSP-Solano") when he died.

### 3 I. Legal Standard

4 A party seeking summary judgment bears the initial burden of  
5 demonstrating the absence of a genuine issue of material fact for trial.  
6 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If this burden is  
7 satisfied, "the non-moving party must set forth, by affidavit or as  
8 otherwise provided in [Federal] Rule [of Civil Procedure] 56, specific  
9 facts showing that there is a genuine issue for trial." T.W. Elec.  
10 Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th  
11 Cir. 1987) (internal quotations marks omitted) (emphasis omitted). This  
12 requires that the non-moving party "come forward with facts, and not  
13 allegations, [that] controvert the moving party's case." Town House,  
14 Inc. v. Paulino, 381 F.2d 811, 814 (9th Cir. 1967). All reasonable  
15 inferences that can be drawn from the evidence "must be drawn in favor  
16 of the non-moving party." Bryan v. McPherson, 608 F.3d 614, 619 (9th  
17 Cir. 2010). When deciding cross-motions for summary judgment, each  
18 motion is evaluated on its own merits, "taking care in each instance to  
19 draw all reasonable inferences against the party whose motion is under  
20 consideration." B.F. Goodrich Co. v. U.S. Filter Corp., 245 F.3d 587,  
21 592 (6th Cir. 2001).

22 When the defendant is the moving party and is seeking summary  
23 judgment on one or more of the plaintiff's claims, the defendant:

24 [H]as both the initial burden of production and the  
25 ultimate burden of persuasion on [the motion]. In  
26 order to carry its burden of production, the  
27 [defendant] must either produce evidence negating  
28 an essential element of the [plaintiff's claim] or  
show that the [plaintiff] does not have enough  
evidence of an essential element to carry its  
ultimate burden of persuasion at trial.

1 Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d  
2 1099, 1102 (9th Cir. 2000) (internal citations omitted).

3 Further, the Eastern District's Local Rule 260(b) prescribes:

4 Any party opposing a motion for summary judgment or  
5 summary adjudication [must] reproduce the itemized  
6 facts in the [moving party's] Statement of  
7 Undisputed Facts and admit those facts that are  
8 undisputed and deny those that are disputed,  
9 including with each denial a citation to the  
particular portions of any pleading, affidavit,  
deposition, interrogatory answer, admission, or  
other document relied upon in support of that  
denial.

10 E.D. Cal. R. 260(b). If the nonmovant does not "specifically . . .  
11 [controvert duly supported] facts identified in the [movant's] statement  
12 of undisputed facts," the nonmovant "is deemed to have admitted the  
13 validity of the facts contained in the [movant's] statement." Beard v.  
14 Banks, 548 U.S. 521, 527 (2006) (finding that a party opposing summary  
15 judgment who "fail[s] [to] specifically challenge the facts identified  
16 in the [moving party's] statement of undisputed facts . . . is deemed to  
17 have admitted the validity of [those] facts"). "Because a district court  
18 has no independent duty 'to scour the record in search of a genuine  
19 issue of triable fact,' and may 'rely on the nonmoving party to identify  
20 with reasonable particularity the evidence that precludes summary  
21 judgment,' . . . the district court . . . [is] under no obligation to  
22 undertake a cumbersome review of the record on the [nonmoving party's]  
23 behalf." Simmons v. Navajo Cnty., Arizona, 609 F.3d 1011, 1017 (9th Cir.  
24 2010) (quoting Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)). The  
25 court also considers a party's evidence cited in support of a party's  
26 position on an undisputed fact where an asserted undisputed fact is  
27 controverted with specific evidence.

## II. Factual Record and Procedural History

1  
2 "Robert St. Jovite entered the custody of the California  
3 Department of Corrections and Rehabilitation [{"CDCR"}] on June 29,  
4 2000" and "was transferred to [CSP-Solano] in January 2002." (Defs.'  
5 Statement of Undisputed Facts ("Defs.' SUF") ¶¶ 1-2.) While housed at  
6 CSP-Solano, St. Jovite was treated by John M. Dusay, a psychiatrist at  
7 CSP-Solano, for depression, anxiety, panic attacks, and early stages of  
8 agoraphobia. Id. ¶¶ 4-19. Defendants state it is undisputed that "St.  
9 Jovite never expressed to [Dr.] Dusay any suicidal thoughts, intentions,  
10 or feelings, and [Dr.] Dusay saw no evidence of suicidal ideations [sic]  
11 when he saw St. Jovite or reviewed his medical records." Id. ¶ 20.  
12 Plaintiffs counter it is disputed whether St. Jovite expressed suicidal  
13 ideation because "St. Jovite stated that his life was becoming  
14 unmanageable as a result of his symptoms of anxiety and depression" and  
15 "[t]here is a question of fact whether or not this level of  
16 hopelessness, when combined with the other risk factors present for St.  
17 Jovite, i.e. depression, anxiety, a life sentence, rises to the level of  
18 expressed suicidal ideation." (Pls.' Response to Defs.' SUF ¶ 20.)  
19 Plaintiffs cite to an inmate appeal form as support for this argument,  
20 which St. Jovite filled out after St. Jovite last met with Dr. Dusay for  
21 treatment. St. Jovite states in the appeal form his "daily life is  
22 almost unmanageable." (Decl. of Geri Lynn Green in Supp. of Response to  
23 Defs.' Mot. for Summ. J., Ex. 16.) Plaintiffs also cite the deposition  
24 testimony of Defendant Alfredo Noriega, a doctor at CSP-Solano, as  
25 support for this argument. However, the cited portion of Dr. Noriega's  
26 testimony does not concern Dr. Dusay's treatment of St. Jovite. Rather,  
27 Dr. Noriega's referenced deposition testimony concerns the significance  
28 to him of the "three strikes" entry in a document he was shown during

1 his deposition. Dr. Noriega's pertinent testimony concerning this entry  
2 is as follows: "In our training, they teach us to look at signs of  
3 people who are about to commit suicide, and [being imprisoned for having  
4 three strikes] is one of those signs of symptoms that may precipitate  
5 inmates committing suicide." (Dep. of Alfredo Noriega 36:16-21.)  
6 Therefore, it is uncontroverted that "St. Jovite never expressed to  
7 [Dr.] Dusay any suicidal thoughts, intentions, or feelings, and [Dr.]  
8 Dusay saw no evidence of suicidal ideations [sic] when he saw St. Jovite  
9 or reviewed his medical records." (Defs.' SUF ¶ 20.) Plaintiffs  
10 dismissed Dr. Dusay as a defendant in this case during oral argument on  
11 these motions.

12 "On May 10, 2006, St. Jovite was housed in Building 8, cell  
13 236 at [CSP-Solano], and John Harden ["Harden"] was his cell mate."  
14 Id. ¶ 49. "Building 8 was a climate-controlled building where general  
15 population inmates on psychotropic medications were housed." Id. ¶ 50.  
16 Defendants Rebecca Cahoon ("Cahoon") and Chris Holliday ("Holliday")  
17 "were the third-watch floor officers for Building 8 on May 10, 2006."  
18 Id. ¶ 53. Defendant Jaime Chua ("Chua") "was the third-watch control  
19 booth officer." Id. "Upon arrival for their work shift [at 2:00 p.m.],  
20 Cahoon and Holliday . . . were required to attend an emergency meeting  
21 called by [Defendant] Captain [James] Nuehring ["Nuehring"]." (Id. ¶  
22 54; (Pls.' Separate Statement of Undisputed Facts ("Pls.' SUF") ¶ 6.)  
23 "Chua did not attend the meeting because, as a control booth officer, he  
24 cannot leave his post . . . ." (Defs.' SUF ¶ 57.) The meeting required  
25 all floor and yard officers and supervisory staff to leave their posts,  
26 including Defendants Sergeant Cheryl Orrick ("Orrick"), Sergeant Gale  
27 Martinez ("Martinez"), and Lieutenant Gordon Wong ("Wong"). (Pls.' SUF  
28 ¶¶ 9, 10, 12.) "The meeting concerned the stabbing of an officer at

1 another prison, and Nuehring went over safety concerns and precautions  
2 when entering a cell." (Defs.' SUF ¶ 54.)

3           The parties dispute how long the meeting called by Nuehring  
4 lasted. Defendants state "[t]he meeting lasted over an hour." Id. ¶ 59.  
5 Plaintiffs respond that "training records indicate the meeting was only  
6 30 minutes." (Pls.' Response to Defs.' SUF ¶ 59.) However the training  
7 record Plaintiffs cite does not support their position that the meeting  
8 lasted only 30 minutes; instead, that training record states the meeting  
9 lasted one hour. (Decl. of Geri Lynn Green in Supp. of Response to  
10 Defs.' Mot. for Summ. J., Ex. 10, at 8.)

11           "Cahoon and Holliday returned to Building 8 at approximately  
12 3:30 p.m." (Defs.' SUF ¶ 59.) Upon returning, Cahoon heard someone yell  
13 "man down." Id. ¶ 60. "[Cahoon] could not immediately tell where the  
14 voice was coming from and asked the inmate to identify the cell number."  
15 Id. Cahoon and Holliday then proceeded to St. Jovite's cell. (Pls.'  
16 Response to Defs.' SUF ¶ 60.) Upon arrival, Cahoon "saw inmate Harden  
17 slapping St. Jovite on the head and shoulder area, and she saw St.  
18 Jovite's legs and his body resting against the corner of the cell."  
19 (Defs.' SUF ¶ 61.) "She also noticed that St. Jovite's head was limp on  
20 his shoulder and his hands were resting on his lap. Cahoon believed that  
21 Harden was hitting St. Jovite and that they were or had been fighting."  
22 Id. ¶ 62. "Cahoon ordered Harden to back away and asked what happened."  
23 Id. "Harden stated that he awoke to find St. Jovite hanging from the  
24 grill over the sink, but Cahoon did not see [a] noose." Id. ¶ 63. Cahoon  
25 "instructed Holliday to call a medical code 2. But before Holliday did,  
26 Cahoon took the radio from him and called the code herself. She ordered  
27 Holliday to retrieve the cut-down kit from the control booth." Id. ¶ 63.  
28 "Holliday went to [the] control booth to retrieve the cut-down kit." Id.

1 ¶ 64. "Cahoon did not order that the cell door be opened. She continued  
2 to tell Harden to back away from St. Jovite." Id. ¶ 65.

3 "While waiting for Holliday to return, Cahoon saw medical  
4 staff approach the building, and she also saw a search and escort  
5 officer run in and walk up the stairs. Cahoon then signaled for Chua to  
6 open the cell door." Id. ¶ 66. "When the door opened, St. Jovite's body  
7 slowly rolled out so his upper body was halfway out the cell." Id. ¶ 69.  
8 "St. Jovite had a sheet around his neck; his face was a purplish color;  
9 he had dried mucous and spit around his mouth; and he was cold to the  
10 touch." Id. ¶ 70. Holliday and Cahoon then walked inside of the cell.  
11 (Pls.' Response to Defs.' SUF ¶ 67.) Cahoon ordered Harden to step out  
12 of the cell, and Defendant Raymond Wade, a search and escort officer,  
13 escorted Harden to the floor level. (Defs.' SUF ¶¶ 67, 72.)

14 Defendants state it is undisputed that Defendant Shabreen Hak  
15 ("Hak"), a medical technical assistant at CSP-Solano, "arrived [at St.  
16 Jovite's cell] as soon as the area was secured." Id. ¶¶ 68, 73.  
17 Plaintiffs respond it is disputed whether Hak was present as soon as the  
18 area was secured because "the time of arrival on multiple incident  
19 reports was changed." (Pls.' Response to Defs.' SUF ¶ 73.) The incident  
20 reports do not show that Hak's arrival time was changed; however, the  
21 time the medical code 2 call was made was changed on some of the  
22 incident reports. Therefore, it is uncontroverted that Hak "arrived [at  
23 St. Jovite's cell] as soon as the area was secured." (Defs.' SUF ¶ 73.)

24 After Hak arrived, "Cahoon stepped aside and let Hak provide  
25 medical attention." Id. "Hak checked St. Jovite's carotid pulse by  
26 moving down the sheet a bit; there was no pulse. He was purplish in  
27 color, and his feet were cold." Id. ¶ 76. "Blood had settled where [Hak]  
28 believed [St. Jovite] had gone into rigor mortis based on her training

1 and experience." Id. Hak then applied an automated external  
2 defibrillator, "which showed a flat line." Id. ¶ 77.

3 Nurse Hill, a CSP-Solano nurse, arrived at St. Jovite's cell  
4 while Hak was applying the automated external defibrillator. Id. ¶ 77.  
5 "Hak stepped aside and let Hill make his own assessment because he was  
6 a registered nurse." Id. ¶ 78. The record is silent on precisely what  
7 Hill did, and Hill is not a defendant in this action. Subsequently,  
8 Defendant Dodie Hicks, a supervising nurse at CSP-Solano, arrived at St.  
9 Jovite's cell. Id. ¶ 94. Hicks testified at her deposition that when she  
10 arrived, Hak, Hill, and other officers were "standing around [St.  
11 Jovite] and nothing was being done." (Dep. of Dorothy Hicks 41:18-21.)  
12 "When [Hicks] arrived, she performed an assessment of St. Jovite. She  
13 found that he had severe bluish discoloration from the nipple line up;  
14 there was no spontaneous respirations; his pupils were fixed and  
15 dilated; and there was no carotid pulse. St. Jovite also had some slight  
16 stiffness." (Defs.' SUF ¶ 94.) "Hicks also noticed that St. Jovite had  
17 mottling, a precursor to lividity or rigor mortis, and was cyanotic,  
18 bluish discoloration caused by the lack of oxygen." Id. ¶ 95. "Based on  
19 Hicks experience and training in nursing and forensics, [Hicks] believed  
20 that St. Jovite's symptoms--dilated and fixed pupils, mottling, and  
21 cyanosis--indicated that death was irreversible." Id. ¶ 96.

22 Defendant Alfredo Noriega ("Dr. Noriega"), a doctor at CSP-  
23 Solano, arrived at St. Jovite's cell "while Hicks was still assessing  
24 St. Jovite." Id. ¶ 97. "Hicks stepped away from St. Jovite and allowed  
25 [Dr.] Noriega to start assessing [St. Jovite]." Id. ¶ 98. Dr. "Noriega  
26 found that St. Jovite had lividity, mottling, and cyanosis; he was not  
27 breathing; and his pupils were dilated and nonreactive." Id. ¶ 99.



1           When Defendants Orrick, Wong, and Martinez arrived at St.  
2 Jovite's cell in response to the medical code 2 call, St. Jovite was  
3 being assessed by medical staff. Id. ¶¶ 80-81, 85, 90-92. Since each of  
4 these Defendants observed medical staff attending to St. Jovite, none of  
5 them performed Cardiopulmonary resuscitation ("CPR") on St. Jovite or  
6 ordered any correctional officer to perform CPR on St. Jovite. Id. ¶¶  
7 81-82, 87, 92-93. Defendant Alfredo Alcaraz, a security and  
8 investigations officer, also responded to St. Jovite's cell as an  
9 observer. Id. ¶ 88. "When [Alcaraz] arrived, he saw a couple of members  
10 of the medical staff with St. Jovite." Id.

11           Paramedics from Vaca Valley Hospital arrived at St. Jovite's  
12 cell approximately 25 minutes after Cahoon made the medical code 2  
13 summons. (Id. ¶ 103; Pls.' SUF ¶ 24.) The Vaca Valley Hospital  
14 paramedics "performed CPR on St. Jovite for approximately twenty  
15 minutes." (Defs.' SUF ¶ 103.) A doctor from Vaca Valley Hospital  
16 declared St. Jovite dead at 4:29 p.m. over the telephone. (Id.; Pls.'  
17 SUF ¶ 25.) Dr. Noriega did not pronounce St. Jovite dead before the Vaca  
18 Valley Hospital paramedics arrived because based on "past experience  
19 with paramedics that arrive at the prison, they do not listen to CDCR  
20 doctors, and will only follow the directions of their doctor at the  
21 [non-prison] hospital." (Defs.' SUF ¶ 102.) However, Dr. Noriega  
22 testified at his deposition that he believed St. Jovite was dead and  
23 could not be revived. (Dep. of Alfredo Noriega 51:18-24.)

24           "After St. Jovite's death, various officers prepared incident  
25 reports stating what they saw. Wong requested that several of the  
26 reports be changed to reflect the incident time as 3:44 p.m., the time  
27 the first responder, Cahoon, called in the medical code." (Defs.' SUF ¶  
28 105.) Six of the incident reports that Wong requested be changed

1 originally stated that Cahoon called in the medical code at 3:40 p.m.  
2 (Decl. of Diana Esquivel in Supp. of Defs.' Mot. for Summ. J., Ex. E, at  
3 16, 20, 24, 27, 29, 33.) Another incident report that Wong requested be  
4 changed originally stated the call was made at 3:45 p.m. Id. Ex. E, at  
5 36.

6 Defendant Tom Carey ("Carey") was the warden at CSP-Solano  
7 from July 2001 to March 31, 2006. Id. ¶ 37. Defendant D.K. Sisto  
8 ("Sisto") "assumed the position of Warden at [CSP-Solano] on May 9,  
9 2006." Id. ¶ 46. In June of 2005, while Carey was serving as warden, the  
10 Court in Coleman v. Schwarzenegger, No. 2:90-CV-00520-LKK-JFM (E.D. Cal.  
11 2005), issued the following order to the CDCR:

12 [I]mplement a policy that establishes clearly and  
13 unequivocally a requirement for custody staff to  
14 provide immediate life support [to inmates], if  
15 trained to do so, until medical staff arrive to  
16 initiate or continue life support measures,  
irrespective of whether the obligation to do so is  
part of the particular custody staff member's duty  
statement.

17 Id. ¶ 31. In response, the "CDCR created and adopted an amended CPR  
18 policy." Id. ¶ 32. "The CPR policy required that all peace officers who  
19 respond[] to a medical emergency [are] mandated to provide immediate  
20 life support, if trained to do so, until medical staff arrive[s] to  
21 continue life support measures." Id. ¶ 33. Additionally, "[t]he CPR  
22 policy mandated responding medical personnel to assume primary  
23 responsibility in the provision of medical attention and life-saving  
24 efforts upon their arrival." Id. ¶ 35. The CPR policy also states that  
25 "combined efforts of both custody and medical personnel are expected.  
26 Both custody and medical personnel are responsible to continue life  
27 saving efforts in unison as long as necessary." (Pls.' Resp. to Defs.'  
28 SUF ¶ 35.) "Carey understood, and trained the custodial staff at [CSP-

1 Solano] with the understanding that, the . . . CPR policy required that  
2 officers perform CPR in a medical emergency until medical staff arrived,  
3 and when medical [staff] arrived, the officers were to acquiesce to  
4 medical staff." (Defs.' SUF ¶ 42.) Carey submitted a declaration to the  
5 Coleman Court averring that as of January 27, 2006, 99.9 percent of the  
6 correctional officers, correctional counselors, lieutenants, and  
7 sergeants at CSP-Solano had been trained on the performance of CPR. Id.  
8 ¶¶ 38-39.

9 Defendant Alvaro Traquina ("Traquina") is the Chief Medical  
10 Officer at CSP-Solano. Id. ¶ 22. As the Chief Medical Officer, "Traquina  
11 was responsible for ensuring that medical staff was properly trained and  
12 certified in providing medical care, including providing life saving  
13 measures such as [CPR], as required by law and medical standards." Id.  
14 ¶ 29. "Traquina also made sure that medical staff met all requirements  
15 for licensure and credentialing, including that they received continuing  
16 education and training and that their licenses were active." Id.

### 17 **III. Discussion**

18 St. Jovite's Estate alleges that prison officials acted with  
19 deliberate indifference to a substantial health or safety risk to St.  
20 Jovite, in violation of St. Jovite's Eighth Amendment right to be free  
21 from cruel and unusual punishment. To prove an Eighth Amendment  
22 violation, St. Jovite's Estate must "objectively show that [St. Jovite]  
23 was deprived of something sufficiently serious, and make a subjective  
24 showing that the deprivation occurred with deliberate indifference to  
25 [St. Jovite's] health or safety." Thomas v. Ponder, 611 F.3d 1144, 1150  
26 (9th Cir. 2010) (internal quotation marks omitted).

27 The second step, showing deliberate indifference,  
28 involves a two part inquiry. First, the [Estate  
Plaintiff] must show that the prison officials were  
aware of a substantial risk of serious harm to [St.

1 Jovite's] health or safety. This part of [the]  
2 inquiry may be satisfied if the [Estate Plaintiff]  
3 shows that the risk posed by the deprivation is  
4 obvious. Second, the [Estate Plaintiff] must show  
5 that the prison officials had no reasonable  
6 justification for the deprivation, in spite of that  
7 risk.

8 Id. (internal citations and quotation marks omitted).

9 The individual Plaintiffs allege in their Fourteenth Amendment  
10 claim that prison officials violated their substantive due process right  
11 of familial association with St. Jovite. "[O]nly official conduct that  
12 'shocks the conscience' is cognizable as a due process violation."  
13 Porter v. Osborn, 546 F.3d 1131, 1137 (9th Cir. 2008) (quoting County of  
14 Sacramento v. Lewis, 523 U.S. 833, 846 (1998)). "[T]he shocks the  
15 conscience standard is met by showing that [a prison official] acted  
16 with deliberate indifference or . . . a more demanding showing that [the  
17 prison official] acted with a purpose to harm [the inmate] for reasons  
18 unrelated to legitimate [prison administrative] objectives." Id.; see  
19 also Kosakoff v. City of San Diego, No. 08-CV-1819-IEG (NLS), 2010 WL  
20 1759455, at \*10 (S.D. Cal. Apr. 20, 2010) (stating a Fourteenth  
21 Amendment claim is based on "a spectrum between a 'deliberate  
22 indifference' standard and a 'purpose to harm' standard") (citing Porter  
23 v. Osborn, 546 F.3d at 1137).

#### 24 **A. Removal of Building 8 Floor Officers**

25 Plaintiffs allege the removal of floor officers from Building  
26 8 to attend a meeting called by Defendant Nuehring constituted  
27 deliberate indifference in violation of the Eighth and Fourteenth  
28 Amendments, because St. Jovite "required direct supervision to protect  
[his] physical safety since the inmate population included violent  
persons, suicidal persons, [and] persons taking psychotropic medications  
with various serious side effects." (Fifth Am. Compl. ¶ 106.) Plaintiffs

1 further allege that, as a result of removing the floor officers, "St.  
2 Jovite suffered serious cruel and unusual punishment and death," and the  
3 individual Plaintiffs "were deprived of their constitutional rights to  
4 familial relationship" with St. Jovite. Id. ¶ 112. Plaintiffs argue  
5 Defendants Nuehring, Sisto, Wong, Orrick, and Martinez were responsible  
6 for the removal of floor officers from Building 8 on the day of St.  
7 Jovite's death. Nuehring, Sisto, Wong, Orrick, and Martinez argue there  
8 is no evidence showing they knew the removal of the Building 8 floor  
9 officers would create a substantial risk to St. Jovite's health or  
10 safety.

11 Even assuming that each of these Defendants was responsible  
12 for the removal decision, the record is devoid of evidence from which it  
13 can be reasonably inferred that any Defendant knew the removal would  
14 subject St. Jovite to a substantial health or safety risk. Cf. Gibson v.  
15 Cnty. of Washoe, Nevada, 290 F.3d 1175, 1197 (9th Cir. 2002) (finding  
16 that "deputies who . . . remained unaware of [a pretrial detainee's]  
17 mental condition cannot be held liable for having been 'deliberately  
18 indifferent' to it"). Nor is there evidence in the record from which it  
19 can be reasonably inferred that the removal created an "obvious" risk of  
20 harm to St. Jovite. Thomas v. Ponder, 611 F.3d at 1150. Therefore, it  
21 has not been shown that a triable issue of material fact exists on the  
22 Eighth or Fourteenth Amendment claims involving the removal issues.

23 **B. Failure to Administer CPR or Other Life-saving Measures**

24 Plaintiffs allege in their complaint that Defendants Cahoon,  
25 Alcaraz, Wade, Holliday, Chua, Wong, Orrick, Martinez, Hak, Hicks, and  
26 Noriega violated the Eighth and Fourteenth Amendments when "these  
27 defendants [knowing] that [St. Jovite] faced a substantial risk of  
28 serious harm, to wit, death, when they found him unconscious on the

1 floor[,] . . . disregarded that risk by failing to apply CPR and to  
2 initiate life saving measures.” (Fifth Am. Compl. ¶ 108.) Plaintiffs  
3 also allege that Wong, Orrick, and Martinez violated the Eighth and  
4 Fourteenth Amendments by failing to order custodial officers to perform  
5 CPR on St. Jovite. Id. ¶ 128.

6 It is uncontroverted that Cahoon and Holliday were the first  
7 officers to arrive at St. Jovite’s cell. (Pls.’ Response to Defs.’ SUF  
8 ¶ 60.) Upon arrival, Cahoon believed that St. Jovite and his cell mate  
9 Harden were or had been fighting, so Cahoon ordered Harden “to back away  
10 and asked what happened.” (Defs.’ SUF ¶ 62.) Once Cahoon assessed the  
11 situation, she signaled for the cell to be opened. Id. ¶ 63, 65-66.  
12 After the cell door was open, Cahoon ordered Harden to step out of the  
13 cell; Wade then escorted Harden to the floor level. Id. ¶ 72. Hak, a  
14 medically-trained prison official, arrived at St. Jovite’s cell as soon  
15 as the cell area was secured. Id. ¶ 73.

16 Since Hak, and subsequently other medically-trained prison  
17 officials, were with St. Jovite from the time the cell area was secured  
18 until paramedics from the Vaca Valley Hospital arrived, Cahoon, Alcaraz,  
19 Wade, Holliday, Chua, Wong, Orrick, and Martinez--the non-medical prison  
20 officials--deferred to the judgment of the medical staff members  
21 concerning whether CPR or other life-saving measures should be used on  
22 St. Jovite. “Under the circumstances, [Cahoon, Alcaraz, Wade, Holliday,  
23 Chua, Wong, Orrick, and Martinez] reasonably relied on the expertise of  
24 the medical professionals and . . . did not act with deliberate  
25 indifference toward [St. Jovite]” by failing to administer CPR or other  
26 life-saving measures. Johnson v. Doughty, 433 F.3d 1001, 1011 (7th Cir.  
27 2006). Nor did Wong, Orrick, and Martinez act with deliberate  
28 indifference when failing to order the non-medical custodial officers to

1 administer CPR on St. Jovite since a medically-trained prison official  
2 was present and assessing whether such a measure should be used.

3 Plaintiffs argue that Wong's request for certain officers to  
4 change the time on their incident reports as to when the medical code  
5 call was made evinces that "the supervisory staff engaged in a concerted  
6 effort to cover up the fact that Cahoon and Holliday failed to [endeavor  
7 to save St. Jovite's life]." (Pls.' Response to Defs.' Mot. for Summ. J.  
8 14:27-28.) It is undisputed that Wong requested certain officers change  
9 the time in their incident reports as to when the medical code call was  
10 made by 1-4 minutes. However, these changes do not support Plaintiffs'  
11 cover-up argument, since the evidence shows that Cahoon and Holliday  
12 took immediate action to secure St. Jovite's cell area, and Cahoon and  
13 Holliday did not administer CPR or other life-saving measures on St.  
14 Jovite because Hak arrived at the cell as soon as the cell area was  
15 secured. (Defs.' SUF ¶ 73.)

16 The record is silent on why Hak failed to perform CPR or other  
17 life-saving measures on St. Jovite. Thus, the issue is whether Hak's  
18 failure to perform CPR or other life-saving measures on St. Jovite  
19 before stepping aside when nurse Hill arrived constitutes deliberate  
20 indifference to saving St. Jovite's life. The uncontroverted facts show  
21 that "Hak checked St. Jovite's carotid pulse by moving down the sheet a  
22 bit; there was no pulse." Id. ¶ 76. Hak saw St. Jovite "was purplish in  
23 color, and his feet were cold." Id. "Blood had settled where [Hak]  
24 believed [St. Jovite] had gone into rigor mortis based on her training  
25 and experience." Id. Hak then applied an automated external  
26 defibrillator ("AED"), "which showed a flat line." Id. ¶ 77. Hak  
27 "stepped aside" when Hill, a CSP-Solano nurse, arrived at St. Jovite's  
28 cell "and let Hill make his own assessment because he was a registered

1 nurse." Id. ¶¶ 77, 78. These uncontroverted facts do not show that Hak  
2 was "aware" that St. Jovite could be revived before she ceded assessment  
3 of St. Jovite's condition to nurse Hill. Thomas v. Ponder, 611 F.3d at  
4 1150. Therefore, even if Hak "should have been aware [that St. Jovite  
5 could be revived], but was not . . . [Hak] has not violated the Eighth  
6 [or Fourteenth] Amendment[s]." Gibson v. Cnty. of Washoe, 290 F.3d at  
7 1188.

8           The record is also silent about what Hill did. But there is no  
9 showing that Hill's conduct has any bearing on the actions of Hicks and  
10 Dr. Noriega--the other medically-trained prison Defendants, and the  
11 uncontroverted facts show that Hicks and Dr. Noreiga did not perform CPR  
12 or other life-saving measures on St. Jovite because each of these  
13 Defendants believed St. Jovite was already dead and could not be  
14 revived. (Defs.' SUF ¶ 96; Dep. of Alfredo Noriega 51:18-24.)

15           Plaintiffs argue that Dr. Noriega did not think St. Jovite  
16 could not be revived since Dr. Noriega did not pronounce St. Jovite  
17 dead, and it is evident that the Vaca Valley Hospital paramedics  
18 concluded St. Jovite could be revived since those paramedics performed  
19 CPR on St. Jovite after Dr. Noriega assessed St. Jovite. (Pls. Response  
20 to Defs. SUF ¶ 100.) However, "[t]here is no indication in the record  
21 that Dr. [Noriega] could have performed any procedure to revive [St.  
22 Jovite]. Consequently, there is no legal significance to the fact that  
23 individuals other than Dr. [Noriega] attempted to revive [St. Jovite]." Toquchi v. Chung,  
24 391 F.3d 1051, 1058 (9th Cir. 2004). Therefore,  
25 notwithstanding the unsuccessful efforts of the Vaca Valley Hospital  
26 paramedics to revive St. Jovite, Dr. Noriega's "response to the  
27 emergency was not deliberately indifferent. The [Plaintiffs'] conclusory  
28



1 assertion to the contrary is insufficient to raise an issue of material  
2 fact." Id.

3           There is no evidence indicating that either Hicks or Dr.  
4 Noriega incorrectly assessed St. Jovite's condition when concluding his  
5 death was irreversible. Nor does the record contain evidence indicating  
6 that either of these Defendants was consciously aware of the possibility  
7 that St. Jovite's life could have been revived. Therefore, Plaintiffs  
8 have failed to show deliberate indifference on the part of Hicks and  
9 Dr. Noriega in light of the observations they made about St. Jovite, and  
10 each of these Defendant's motion is granted.

### 11           **C.     CPR Training**

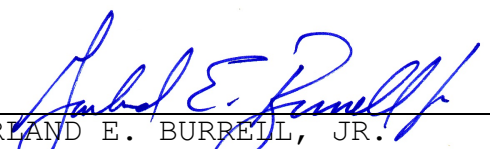
12           Plaintiffs also allege that Defendant Traquina--the Chief  
13 Medical Officer at CSP-Solano, and Defendant Carey--the former warden at  
14 CSP-Solano--acted with deliberate indifference in their supervisory  
15 capacities by failing to properly train medical and custodial staff on  
16 the performance of CPR or other life-saving measures. (Fifth Am. Compl.  
17 ¶¶ 138, 141.) However, there is no evidence showing that either of these  
18 supervisory officials deficiently trained the staff on CPR or on other  
19 life-saving measures, or that CPR was required to be performed on St.  
20 Jovite before a medically trained prison official assessed whether St.  
21 Jovite's body showed life signs. Further, "a supervisor . . . can[not]  
22 be held liable under § 1983 where no . . . constitutional violation has  
23 occurred." Jackson v. City of Bremerton, 268 F.3d 646, 653 (9th Cir.  
24 2001). Here, the issue has not been shown to be whether a Defendant was  
25 properly trained in the performance of CPR or other life-saving  
26 measures; rather, the issue is whether a medically trained Defendant  
27 acted with deliberate indifference when assessing St. Jovite to  
28 determine whether he manifested signs of life or whether he was dead and

1 not revivable. Since it has not been shown that Defendants were  
2 deliberately indifferent to St. Jovite's health when this assessment was  
3 conducted, Traquina and Carey cannot be liable in their supervisory  
4 capacities for Plaintiffs' claims.

5 **IV. Conclusion**

6 For the stated reasons, each Plaintiff's motion for summary  
7 judgment is denied, and each Defendant's summary judgment motion is  
8 granted. Therefore, judgment shall be entered in favor of Defendants in  
9 accordance with this Order and the Orders filed on January 28, 2010 and  
10 April 19, 2010.

11 Dated: February 17, 2011

12  
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14 \_\_\_\_\_  
GARLAND E. BURRELL, JR.  
United States District Judge