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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

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TIMOTHY DEMOND BARRY,
Plaintiff,
vs.
T. FELKER, Warden; J. BISHOP,
Lieutenant; N. ALBONICO, Sergeant,
Defendant.

2:08-CV- 01722-PMP-GWF

ORDER

Before the Court for consideration is the fully briefed Motion for Summary Judgment filed on behalf of Defendants J. Bishop and N. Albonico (Doc. #47).

In his *pro se* Complaint (Doc. #1) filed under the Civil Rights Act, 42 U. S. C. §1983, Plaintiff Barry alleges that he was subjected to cruel and unusual punishment by Defendants Bishop and Albonico in violation of his Eighth Amendment rights. In their Motion for Summary Judgment, Defendants Bishop and Albonico establish that there is no evidence to support Plaintiff Barry’s claims, and also argue forcefully that Defendant Albonico is entitled to qualified immunity. Plaintiff Barry has failed to file a substantive opposition to Defendant’s Motion for Summary Judgment. Indeed, a review of the record before the Court shows that it is highly unlikely that Plaintiff Barry could muster any evidence to do so.

In sum, there is simply no evidence of wonton or unnecessary use of force against Plaintiff Barry by either Defendants Albonico or Bishop. As a result, both

1 Defendants are entitled to summary judgment.

2 Moreover, the Court finds Defendant Albonico is entitled to qualified
3 immunity because under the circumstances presented, no prison officer would
4 reasonably believe that making an inmate, such as Plaintiff Barry, kneel on the
5 ground while other inmates in the prison are searched for an unrecovered weapon
6 after a homicide had been committed is unreasonable or otherwise violates a clearly
7 established constitutional right.

8 **IT IS THEREFORE ORDERED** that the Motion for Summary Judgment
9 on behalf of Defendants J. Bishop and N. Albonico is **GRANTED**, and that the
10 Clerk of Court shall forthwith enter judgment accordingly.

11 **IT IS FURTHER ORDERED** that Defendants *Ex Parte* Request (Doc.
12 #52) is **DENIED** as moot.

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14 DATED: October 27, 2011.

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17 PHILIP M. PRO
18 United States District Judge
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