

1 given the option to proceed against Hilton, Conception, and Jacquinot alone, or to amend his
2 complaint to attempt to cure his claims against the other four defendants. Id. Plaintiff did not file
3 an amended complaint, thus abandoning all claims against Romo, Kett, Perez and Arguinzoni.

4 Defendants Hilton, Conception, and Jacquinot filed the instant motion for summary
5 judgment, pursuant to Federal Rule of Civil Procedure 56, on June 29, 2018. ECF No. 30.
6 Plaintiff failed to file an opposition to the motion. As a result, on August 29, 2018, defense
7 counsel filed a declaration in lieu of a reply. ECF No. 32. The declaration effectively requested
8 that the court deem plaintiff's failure to oppose the summary judgment motion a waiver of any
9 opposition to a grant of the motion. See ECF No. 32 at 2.

10 On December 6, 2018, plaintiff filed a motion for a thirty-day extension of time to file a
11 response to defendants' motion for summary judgment. ECF No. 33. The motion was granted,
12 despite its untimeliness, on December 14, 2018. ECF No. 34. More than thirty days have passed,
13 and plaintiff has yet to file an opposition to the pending motion for summary judgment or file
14 another request for an extension of time to do so. Accordingly, the motion for summary
15 judgment is hereby deemed to be unopposed. See Local Rule 230(1).

16 II. Legal Standards for Summary Judgment

17 Summary judgment is appropriate when the moving party "shows that there is no genuine
18 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.
19 Civ. P. 56(a).

20 Under summary judgment practice, "[t]he moving party initially bears the burden of
21 proving the absence of a genuine issue of material fact." In re Oracle Corp. Sec. Litig., 627 F.3d
22 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving
23 party may accomplish this by "citing to particular parts of materials in the record, including
24 depositions, documents, electronically stored information, affidavits or declarations, stipulations
25 (including those made for purposes of the motion only), admission, interrogatory answers, or
26 other materials" or by showing that such materials "do not establish the absence or presence of a
27 genuine dispute, or that the adverse party cannot produce admissible evidence to support the
28 fact." Fed. R. Civ. P. 56(c)(1)(A), (B). "Where the non-moving party bears the burden of proof

1 at trial, the moving party need only prove that there is an absence of evidence to support the non-
2 moving party's case." Oracle Corp., 627 F.3d at 387 (citing Celotex, 477 U.S. at 325); see also
3 Fed. R. Civ. P. 56(c)(1)(B). Indeed, summary judgment should be entered, "after adequate time
4 for discovery and upon motion, against a party who fails to make a showing sufficient to establish
5 the existence of an element essential to that party's case, and on which that party will bear the
6 burden of proof at trial." See Celotex, 477 U.S. at 322. "[A] complete failure of proof
7 concerning an essential element of the nonmoving party's case necessarily renders all other facts
8 immaterial." Id. at 323. In such a circumstance, summary judgment should be granted, "so long
9 as whatever is before the district court demonstrates that the standard for entry of summary
10 judgment, as set forth in Rule 56(c), is satisfied." Id.

11 If the moving party meets its initial responsibility, the burden then shifts to the opposing
12 party to establish that a genuine issue as to any material fact actually does exist. See Matsushita
13 Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). In attempting to establish
14 the existence of this factual dispute, the opposing party may not rely upon the allegations or
15 denials of its pleadings but is required to tender evidence of specific facts in the form of
16 affidavits, and/or admissible discovery material, in support of its contention that the dispute
17 exists. See Fed. R. Civ. P. 56(c)(1); Matsushita, 475 U.S. at 586 n.11. The opposing party must
18 demonstrate that the fact in contention is material, i.e., a fact "that might affect the outcome of the
19 suit under the governing law," Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); T.W.
20 Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987), and that the
21 dispute is genuine, i.e., "the evidence is such that a reasonable jury could return a verdict for the
22 nonmoving party," Anderson, 477 U.S. at 248.

23 In the endeavor to establish the existence of a factual dispute, the opposing party need not
24 establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed
25 factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the
26 truth at trial." T.W. Elec. Serv., 809 F.2d at 630 (quoting First Nat'l Bank of Ariz. v. Cities
27 Serv. Co., 391 U.S. 253, 288-89 (1968). Thus, the "purpose of summary judgment is to pierce the
28 pleadings and to assess the proof in order to see whether there is a genuine need for trial."

1 Matsushita, 475 U.S. at 587 (citation and internal quotation marks omitted).

2 “In evaluating the evidence to determine whether there is a genuine issue of fact,” the
3 court draws “all inferences supported by the evidence in favor of the non-moving party.” Walls
4 v. Cent. Costa Cnty. Transit Auth., 653 F.3d 963, 966 (9th Cir. 2011). It is the opposing party’s
5 obligation to produce a factual predicate from which the inference may be drawn. See Richards
6 v. Nielsen Freight Lines, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a genuine
7 issue, the opposing party “must do more than simply show that there is some metaphysical doubt
8 as to the material facts.” Matsushita, 475 U.S. at 586 (citations omitted). “Where the record
9 taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no
10 ‘genuine issue for trial.’” Id. at 587 (quoting First Nat’l Bank, 391 U.S. at 289).

11 On June 29, 2018, defendants served plaintiff with notice of the requirements for opposing
12 a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure. ECF No. 30-1. See
13 Klinge v. Eikenberry, 849 F.2d 409, 411 (9th Cir. 1988); Rand v. Rowland, 154 F.3d 952, 960
14 (9th Cir. 1998) (movant may provide notice) (en banc), cert. denied, 527 U.S. 1035 (1999).

15 III. Undisputed Facts

16 Defendants’ Statement of Undisputed Facts, ECF No. 30-3, accurately summarizes the
17 proffered evidence and is adopted in full due to plaintiff’s failure to oppose the motion. It is
18 incorporated here by reference.

19 IV. Discussion

20 The undisputed facts demonstrate that defendants were correctional officer who responded
21 to the riot on October 30, 2015. None of them were aware of any risk to plaintiff’s safety before
22 the riot began. Each acted in response to the emergency in accordance with their training and
23 applicable policies, out of a desire to prevent injury to inmates and staff. Specifically, each
24 defendant announced an alarm as soon as he identified circumstances warranting an alarm.
25 Plaintiff was stabbed by other inmates while lying on the ground immediately following the
26 alarms. Defendants point to the absence of evidence supporting a rational inference that
27 defendants acted with deliberate indifference to plaintiff’s safety. They seek summary judgment
28 on this basis, and on their assertion of qualified immunity.

1 Defendants' showing satisfies their initial burden as the moving party. In order to proceed
2 on a failure to protect claim, plaintiff must identify evidence that would support the inference that
3 defendants knew of and disregarded an excessive risk to his safety. See Farmer v. Brennan, 511
4 U.S. 825, 837 (1994). The duty to protect a prisoner from serious harm requires that prison
5 officials take reasonable measures to guarantee the safety and wellbeing of the prisoner. Id. at
6 832-33. The evidentiary record here shows that defendants took reasonable measures to protect
7 the safety of inmates on Yard A as soon as they became aware of the risk. There is no evidence
8 from which a rational trier of fact could find that the defendants knew in advance of a specific
9 risk to plaintiff, or that they knew in advance that violence was imminent, or that they disregarded
10 the likelihood of injury to inmates once the riot started. Accordingly, defendants have accurately
11 identified a complete failure of proof on deliberate indifference, which is an essential element of
12 plaintiff's claim. See Hearn v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005) (failure to protect
13 violates Eighth Amendment only when defendants act with a sufficiently culpable state of mind,
14 e.g. deliberate indifference).

15 The burden therefore shifts to plaintiff to identify evidence establishing a genuine issue as
16 to this material fact. See Matsushita, 475 U.S. at 586-87. Plaintiff's failure to oppose the motion
17 means that he has failed to meet this burden. Defendants are therefore entitled to judgment in
18 their favor.

19 CONCLUSION

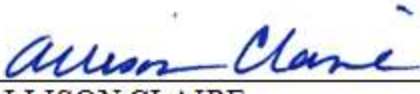
20 IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a district judge
21 to this action.

22 For the reasons explained above, IT IS HEREBY RECOMMENDED that Defendants'
23 motion for summary judgment (ECF No. 30) be GRANTED and this case closed.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, any party may file written
27 objections with the court and serve a copy on all parties. Such a document should be captioned
28 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the

1 objections shall be served and filed within fourteen days after service of the objections. The
2 parties are advised that failure to file objections within the specified time may waive the right to
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 DATED: March 28, 2019

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE
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