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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALLEN EDWARDS,
CDCR #V-17007,

Plaintiff,

v.

MARCUS POLLARD, Warden; B.D.
PHILLIPS, Associate Warden; D. LEWIS,
Associate Warden; GARCIA, Facility
Captain; KATHLEEN ALLISON,
Secretary CDCR; CONNIE GIPSON,
Deputy Direct, CDCR,

Defendants.

Case No.: 2:21-cv-01157-JES-WVG

**ORDER GRANTING DEFENDANT’S
MOTION FOR SUMMARY
JUDGEMENT**

[ECF No. 44]

Plaintiff Allen Edwards (“Plaintiff”), an inmate housed at the Richard J. Donovan Correctional Facility (“RJD”), filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants were deliberately indifferent to Plaintiff’s serious medical needs in violation of the Eighth Amendment when he contracted COVID-19 due to their alleged decisions and actions taken in response to the global pandemic. *See generally* ECF No. 1, Compl.

1 Before the Court is Defendants Motion for Summary Judgment. *See* ECF No. 44.
2 Plaintiff filed an Opposition to Defendants’ Motion, (ECF No. 49), and Defendants filed
3 a Reply, (ECF No. 50).

4 Having reviewed the Parties’ submissions and the applicable law, the Court
5 **GRANTS** Defendants’ Motion for Summary Judgment and **DIRECTS** the Clerk of the
6 Court to enter judgment in favor of Defendants and to close the case.

7 **I. PROCEDURAL BACKGROUND**

8 On June 23, 2021, Plaintiff filed a Complaint under 42 U.S.C. § 1983 alleging that
9 Defendants violated his Eighth Amendment rights when they placed other inmates
10 infected with COVID-19 in his housing unit, ignored public health orders, failed to adopt
11 social distancing and other cleansing measures, and neglected to enforce staff mask
12 mandates. As a result of the alleged failings of Defendants, Plaintiff contracted the virus
13 on December 8, 2020. *See* Compl., ECF No. 1 at 2–5.

14 On October 13, 2019, the Court screened his complaint pursuant to 28 U.S.C §
15 1915A, and directed the U.S. Marshal to effect service on Plaintiff’s behalf. ECF No. 10.
16 Defendants filed their Answer to Plaintiff’s Complaint on August 26, 2022. ECF No. 19.
17 Plaintiff filed an Amended Complaint (“FAC”) on February 14, 2023, and Defendants
18 filed their Answer to this Amended Complaint on March 30, 2023. ECF Nos. 34, 38.

19 Defendants moved for summary judgment on June 7, 2023. ECF No. 44. Plaintiff
20 was notified of the requirements for opposing summary judgment pursuant to *Rand v.*
21 *Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) and *Klinge v. Eikenberry*, 849
22 F.2d 409 (9th Cir. 1988). ECF No. 45.

23 **II. REQUEST FOR JUDICIAL NOTICE**

24 Defendants seek judicial notice of “publications and data from the U.S. Centers for
25 Disease Control (CDC) and World Health Organization (WHO).” ECF No. 44-1 at 2.
26 Federal Rules of Evidence 201 provides, in part, that the Court may take judicial notice
27 of facts that are “capable of accurate and ready determination by resort to sources whose
28 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

1 Specifically, Defendants attach two exhibits to their request. The first exhibit is
2 titled “CDC Museum COVID-19 Timeline” which they indicate is a document published
3 on the CDC website “regarding general information about COVID-19’s history in the
4 United States and around the world from December 12, 2019 through July 8, 2022,
5 available at <http://www.cdc.gov/museum/timeline/covid19.htm>.” ECF No. 44-1 at 2, 5-
6 48. The second exhibit is titled “CDC, Interim Guidance on Management of Coronavirus
7 Disease 2019 (COVID-19) in Correctional and Detention Facilities (March 23, 2020)”
8 which can be found at <https://www.cdc.gov/coronavirus/2019-ncov/index.html>. ECF No.
9 44-1 at 3, 50-75.

10 Plaintiff does not object to Defendants’ request or question the authenticity of
11 these documents. Moreover, this is information found on governmental websites that is
12 available to the public. Therefore, the Court finds that it may take judicial notice of these
13 documents. *See Daniel-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010)
14 (“It is appropriate to take judicial notice of this information, as it was made publicly
15 available by government entities ..., and neither party disputes the authenticity ... or the
16 accuracy of the information displayed therein.”).

17 III. FACTUAL BACKGROUND

18 A. Plaintiff’s Factual Allegations

19 Plaintiff has pre-existing medical conditions of “obesity, pre-diabetes, high blood
20 pressure and respiratory complications requiring a CPAP machine.” First Amended
21 Complaint (“FAC”), ECF No. 34 at 3. As a result of these medical conditions, Plaintiff
22 was categorized as a “high risk medical (HRM)” inmate by CDCR. *Id.* He further claims
23 that these medical conditions “increases [his] risk of death or irreparable injury if infected
24 with or exposed to the deadly COVID-19 virus.” *Id.*

25 In early June of 2021, Plaintiff filed a grievance claiming that RJD officials were
26 permitting “infected inmates to be housed with non-infected inmates,” using ineffective
27 face masks, and providing “inadequate sanitation” of the housing units. *Id.* In addition,
28 RJD correctional officers were “refusing to wear mandatory face coverings.” *Id.* at 4.

1 Between July and December 2020, Plaintiff claims CDCR Secretary Kathleen
2 Allison (hereinafter “Allison”) and CDCR Deputy Director Connie Gipson (hereinafter
3 “Gipson”) authorized the transfer of “dozens of inmates” from the California Institution
4 for Men (“CIM”) who were infected with COVID-19 to other prisons throughout
5 California, including RJD. *Id.* As a result of this transfer of inmates to RJD, coupled with
6 conditions Plaintiff claims were insufficient to stop the spread of COVID-19, an
7 “outbreak occurred in Plaintiff’s immediate housing unit” in December of 2020. *Id.* at 5.
8 Plaintiff alleges Warden Marcus Pollard (hereinafter “Pollard”), Associate Warden B.D.
9 Phillips (hereinafter “Phillips”), Associate Warden D. Lewis (hereinafter “Lewis”), and
10 Facility Captain Garcia (hereinafter “Garcia”) “permitted, orchestrated and allowed
11 COVID-19 confirmed positive inmates” to be housed in the same unit as “non-infected
12 inmates.” *Id.* “As a result of these official actions Plaintiff was severely infected with
13 COVID-19 virus” and continues to suffer from side effects from the virus. *Id.* at 6, 9.

14 **B. Defendants’ Claims and Evidence**

15 On January 31, 2020, the Secretary of the Department of Health and Human
16 Services (HHS) declared the “2019 Novel Coronavirus (2019-nCoV) outbreak a public
17 health emergency.” ECF No. 44-1 at 9. On March 11, 2020, the World Health
18 Organization (WHO) declared COVID-19 a pandemic. *Id.* at 11. Two days later, the
19 President of the United States declared a nationwide emergency due to COVID-19. *Id.*

20 In March of 2020, the CDCR “started implementing preventive measures”
21 including activating “a centrally-located command center where CDCR and CCHCS
22 [California Correctional Health Care Services] experts monitor information, prepare for
23 known and unknown events, and exchange information centrally in order to make
24 decisions and provide guidance quickly.” *Plata v. Newsom*, 445 F. Supp. 3d 557, 562-63
25 (N.D. Cal. 2020).

26 On March 13, 2020, Dr. R. Steven Tharratt, the Director of CCHCS Medical
27 Services, and Gipson authored a memorandum “warning that institutions should prepare
28 for severe staff shortages and laying out the basic informational concerns about COVID-

1 19.” Declaration of J. Hill, RJD Warden (“Hill Decl.”) at ¶ 2, ECF No. 44-4, Ex. A. The
2 memorandum notified the institutions that the CDCR and CCHCS “will implement
3 mandatory screening questions of all persons entering the secured perimeter of the
4 institutions” beginning March 14, 2020. ECF No. 44-4 at 5, Ex. A.

5 On April 3, 2020, the CDC issued an “Interim Guidance on Management of
6 Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities.” ECF
7 No. 44-1 at 50. This guide “covered the clinical manifestations of COVID-19, different
8 diagnoses, diagnostic testing with algorithms, treatment, transmission, and public health
9 definitions based on definitions provided by the U.S. Centers for Disease Control and
10 Prevention (CDC) and WHO.” ECF No. 44 at 7. It also “listed the procedures to be
11 followed for COVID-19 outbreaks, isolation, and quarantine; recommendations and
12 standards for airborne and droplet precautions, surface cleaning, and contact tracing; and
13 operational information on Personal Protective Equipment (PPE).” *Id.* at 7-8.

14 On April 6, 2020, RJD “received a Memorandum authored by Dr. Tharratt and Ms.
15 Gipson setting forth detailed guidelines regarding issues surrounding [PPE].” Hill Decl.,
16 at ¶ 4. The memorandum discussed the difficulty in obtaining PPE and how to use, apply
17 and remove PPE. *Id.*, ECF No. 44-4 at 77-78, Ex. C. Two days later, the CDCR issued
18 another memorandum “authored by Ms. Gipson regarding COVID-related cleaning
19 protocols.” Hill Decl. at ¶ 5, ECF No. 44-4, Ex. D.

20 On April 16, 2020, Dr. Tharratt and Gipson authored another memorandum
21 “setting forth directions from the California Prison Industrial Authority (CalPIA)
22 regarding mandatory use of cloth face masks by all staff and inmates.” Hill Decl. at ¶ 6,
23 ECF No. 44-4, Ex. E. In this memorandum it was determined that once an adequate
24 supply of “two masks per staff member and inmate was procured, masks would become
25 mandatory.” *Id.*

26 On October 27, 2020, Secretary Allison and Federal Receiver Kelso issued a
27 memorandum regarding “staff wearing facial coverings and physical distancing
28 requirements in institutions and facilities.” *Id.* at ¶ 7, ECF No. 44-4, Ex. F. On November

1 25, 2020, Gipson issued another memorandum “regarding a mandatory 14-day modified
2 program.” Hill Decl. at ¶ 8, ECF No. 44-4, Ex. G. This memorandum discussed, among
3 other things, modifications requiring changes to institutions’ programs including
4 prohibition on contact and family visits, limiting movement, feeding inmates in their cells
5 or one housing unit at a time, mandatory wearing of PPE, social distancing, and other
6 limitations to prevent the spread of COVID-19. *Id.*, ECF No. 44-4 at 90-91.

7 Doctor S. Roberts, RJD’s Chief Medical Officer, attests RJD “utilized COVID-19
8 screening checkpoints for all employees,” required “N95 masks for all employees,”
9 “weekly nasal swab testing” for all RJD staff members, implemented social distancing,
10 and “placed limits on the number of people that could congregate in groups.” Declaration
11 of S. Roberts (“Roberts Decl.”) at ¶¶ 2-6, ECF No. 44-5.

12 Associate Warden Lewis attests that if “staff was not compliant with COVID-19
13 protocols, they would be written up or disciplined as necessary.” Declaration of D. Lewis
14 (“Lewis Decl.”) at ¶ 7, ECF No. 44-3. Officers were “trained to follow the appropriate
15 COVID-19 protocols” which included “emails and memoranda updating staff on the most
16 recent safety precautions to take on- and off-shift,” along with “town hall meetings” that
17 were “held every shift to explain the various measures staff were expected to follow.”
18 Lewis Decl. at ¶ 5. Every division was required to “conduct COVID-19 tours and
19 complete a checklist to ensure the appropriate standards for cleanliness were met” and the
20 checklists were “required to be approved by the facility captains and warden.” *Id.* at ¶ 6.

21 “Sanitation measures for communal utilities, such as showers, phones, tables, and
22 other items, were performed by inmate porters and, on occasion correctional staff
23 members.” *Id.* at ¶ 8. Porters were “expected to clean utilities such as telephones after
24 each use” but in addition, “cleaning materials were left alongside the various utilities so
25 that, if an incarcerated person was concerned the item had not been cleaned, they could
26 use sanitation measures to their own comfort.” *Id.*

27 Prior to December of 2020, “RJD experienced only a handful of unrelated COVID-
28 19 cases” but on December 9, 2020, RJD “went from zero to six confirmed cases

1 overnight,” although the “specific cause of the outbreak remains unknown.” Roberts
2 Decl., at ¶ 9. “The number of cases ballooned over the following days, as more tests were
3 conducted in Housing Unit 1.” *Id.* Plaintiff tested positive for COVID-19 on December 8,
4 2020. *See* Declaration of Nathan Guerrero (“Guerrero Decl.”), ECF No. 44-2, Ex. A,
5 Transcript of Deposition of Plaintiff Allen Edwards, at 11:14-16 (“PI’s Depo”).

6 When an inmate tested positive for COVID-19, “they would be immediately
7 rehoused to an appropriate medical bed or established isolation unit.” Lewis Decl. at ¶ 4.
8 Isolation units were “created in the gymnasium to secure additional housing” for inmates
9 who had tested positive. *Id.*

10 IV. LEGAL STANDARD

11 Summary judgment is appropriate “if the movant shows that there is no genuine
12 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”
13 Fed. R. Civ. P. 56(a). A fact is material when it “might affect the outcome of the suit.”
14 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

15 The initial burden of establishing the absence of any genuine issues of material fact
16 falls on the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
17 movant can satisfy this burden in two ways: (1) by presenting evidence that negates an
18 essential element of the non-moving party’s case; or (2) by demonstrating that the non-
19 moving party failed to make a showing sufficient to establish an element essential to that
20 party’s case on which that party will bear the burden of proof at trial. *Id.* at 322–23. In
21 such cases, “there can be ‘no genuine issue as to any material fact,’ since a complete
22 failure of proof concerning an essential element of the nonmoving party’s case
23 necessarily renders all other facts immaterial.” *Id.*

24 Once the moving party has satisfied its initial burden, the non-moving party cannot
25 rest on the mere allegations or denials of its pleading. The non-moving party must “go
26 beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to
27 interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a
28 genuine issue for trial.’” *Id.* at 324. The non-moving party may meet this requirement by

1 presenting evidence from which a reasonable jury could find in its favor, viewing the
2 record as a whole, in light of the evidentiary burden the law places on that party. *See*
3 *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221–22 (9th Cir. 1995). In
4 determining whether there are any genuine issues of material fact, the court must “view[]
5 the evidence in the light most favorable to the nonmoving party.” *Fontana v. Haskin*, 262
6 F.3d 871, 876 (9th Cir. 2001) (citation omitted).

7 V. DISCUSSION

8 Defendants argue that Plaintiff brings a claim against them based on supervisory
9 liability, he has not raised a genuine factual dispute as to his Eighth Amendment claim,
10 and even if there is a triable issue with regard to his Eighth Amendment claim,
11 Defendants are entitled to qualified immunity. *See generally* ECF No. 44.

12 A. Supervisory Liability

13 All named Defendants seek summary judgment on the ground that Plaintiff fails to
14 demonstrate any facts or evidence as to “what each defendant did or did not do, or how
15 that defendant’s acts caused him injury.” ECF No. 44 at 11. Instead, Plaintiff seeks to
16 hold all Defendants liable in their supervisory capacity. *See id.*

17 “A plaintiff must allege facts, not simply conclusions, that show that an individual
18 was personally involved in the deprivation of his civil rights.” *Barren v. Harrington*, 152
19 F.3d 1193, 1194 (9th Cir. 1998). A person deprives another of a constitutional right under
20 section 1983, where that person ““does an affirmative act, participates in another’s
21 affirmative acts, or omits to perform an act which [that person] is legally required to do
22 that causes the deprivation of which complaint is made.”” *Johnson v. Duffy*, 588 F.2d
23 740, 743 (9th Cir. 1978). The “requisite causal connection can be established not only by
24 some kind of direct personal participation in the deprivation, but also by setting in motion
25 a series of acts by others which the actor knows or reasonably should know would cause
26 others to inflict the constitutional injury.” *Id.* at 743-44. There is no respondeat superior
27 liability under § 1983; therefore, supervisors, like the named Defendants, may be held
28 liable for the constitutional violations of his or her subordinates only if they “participated

1 in or directed the violations, or knew of the violations and failed to act to prevent them.”
2 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

3 First, Defendants Allison and Gipson argue that Plaintiff “does not present any
4 evidence that his claims stem from any particular acts or omissions by them.” ECF No.
5 44 at 12. In his verified FAC, Plaintiff maintains that between “July and December 2020,
6 Defendants Allison and Gipson orchestrated, authorized, and ordered the transfer of
7 dozens of inmates confined at [CIM] in Chino, California to various other [CDCR]
8 institutions” including RJD. FAC at 4. In his Opposition, Plaintiff maintains that even
9 though Allison and Gipson had designated RJD as a “High Risk Medical” institution,
10 they permitted the transfer of inmates with COVID to RJD which was the “cause of the
11 COVID-19 outbreak in December 2020, which directly caused Plaintiff’s exposure to the
12 COVID-19 virus.” ECF No. 49 at 5. However, Plaintiff’s Opposition is not signed under
13 penalty of perjury, and therefore, the allegations contained therein do not constitute
14 evidence in opposition to the summary judgment motion.¹

15 When Plaintiff was questioned in his deposition what evidence he had to show that
16 either Allison or Gipson “were aware that these inmates [transferred from CIM] had
17 COVID-19 and that they were deliberately transferring them to RJD,” Plaintiff
18 responded, “I’m not going to be providing that type of information.” Pl.’s Depo. at 58:10-
19 15, ECF No. 44-2, Ex. A. Instead, Plaintiff testified that they should be held liable
20 because [t]hey’re top officials over CDCR ... the ones [who are] higher up are the ones
21 who had to sign orders for transfers.” *Id.* at 58:16-20. Defendants argue in their Reply
22 that none of Plaintiff’s claims or arguments are, in fact, based on personal knowledge.

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25 ¹ See *Jones v. Blanas*, 393 F.3d 918, 923 (9th Cir. 2004) (“[B]ecause Jones is pro se, we must consider
26 as evidence in his opposition to summary judgment all of Jones’s contentions offered in motions and
27 pleadings, where such contentions are based on personal knowledge and set forth facts that would be
28 admissible in evidence, and where Jones attested under penalty of perjury that the contents of the
motions or pleadings are true and correct.”); *Southern California Darts Ass’n v. Zaffina*, 762 F.3d 921,
925-26 (9th Cir. 2014) (“Evidence may be offered to support or dispute a fact on summary judgment
only if it could be presented in an admissible form at trial.”) (internal quote marks omitted).

1 ECF No. 50 at 4. The Court agrees that Plaintiff has not provided any evidence to show
2 that any action by Defendant Allison or Defendant Gipson directly caused him to contract
3 COVID-19 and he only alleges that they should be held liable solely due to their
4 supervisory roles which is not a permissible basis for liability in a Section 1983 action.
5 *See Taylor*, 880 F.2d at 1045.

6 Second, Defendants Pollard, Phillips, Lewis, and Garcia also argue that Plaintiff
7 has “offered no evidence” of any involvement “beyond their role as supervisors.” ECF
8 No. 44 at 12. Plaintiff maintains in his verified FAC that these Defendants designated a
9 section of RJD as “quarantine housing” but all the inmates in that unit became infected
10 with COVID-19. FAC at 8. He further argues that these Defendants “sanctioned [the]
11 practice of housing confirmed COVID-19 positive inmates in the same housing units and
12 cells with non -positive inmates.” *Id.*

13 However, in his deposition, Plaintiff once again makes clear that his only basis for
14 holding these Defendants liable is in their supervisory roles. Plaintiff offers no evidence
15 to support his claim that they purposefully housed inmates who tested positive with
16 inmates who tested negative, instead Plaintiff testifies in his deposition that these
17 Defendants should be held liable because “[a]ll prisoners are in their care.” Pl.’s Depo. at
18 25:3-5, ECF No. 44-2, Ex. A. Plaintiff fails to provide any evidentiary support that he
19 was intentionally housed with an inmate who had tested positive or that he ever came into
20 contact with an inmate or staff member who had been infected with COVID-19 due to the
21 conduct of the named Defendants.

22 In his Opposition, and in his deposition testimony, Plaintiff offers no evidence that
23 he contracted COVID-19 due to any direct, or even indirect, action on the part of any of
24 the named Defendants and instead, he testifies that they should all be held liable solely in
25 their supervisory roles. For these reasons, the Court finds that Defendants have carried
26 their burden of showing an absence of a genuine issue of material fact in dispute and the
27 Court **GRANTS** Defendants’ Motion for Summary Judgment based on supervisory
28 liability.

1 **B. Eighth Amendment claim**

2 Even if Plaintiff were able to establish that Defendants actions somehow caused
3 him to become infected with COVID-19, he is unable to overcome Defendants’ showing
4 that there is no triable issue of material fact to establish that any of the named Defendants
5 acted with deliberate indifference to his health and safety. The Eighth Amendment
6 prohibits the infliction of “cruel and unusual punishments.” U.S. Const. Amend. VIII. In
7 order to state a plausible Eighth Amendment claim for relief, a Plaintiff must allege facts
8 sufficient to show that Defendants acted with ‘deliberate indifference.’” *Castro v. Cnty.*
9 *of Los Angeles*, 833 F.3d 1060, 1068 (9th Cir. 2016); *Ashcroft v. Iqbal*, 556 U.S. 662, 678
10 (2009). “A prison official acts with ‘deliberate indifference ... only if the [prison official]
11 knows of and disregards an excessive risk to inmate health and safety.’” *Toguchi v.*
12 *Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Gipson v. Cnty. of Washoe*, 290
13 F.3d 1175, 1187 (9th Cir. 2002), *overruled on other grounds by Castro*, 833 F.3d at
14 1076). “Under this standard, the prison official must not only ‘be aware of facts from
15 which the inference could be drawn that a substantial risk of serious harm exists,’ but that
16 person ‘must also draw the inference.’” *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825,
17 837 (1994)). Prison officials have a duty to protect inmates from communicable diseases.
18 *See e.g., Helling v. McKinney*, 509 U.S. 25, 33 (1993) (finding prison officials may not
19 “be deliberately indifferent to the exposure of inmates to a serious, communicable
20 disease”); *Hutto v. Finney*, 437 U.S. 678, 682-83 (1978) (affirming a finding of an Eighth
21 Amendment violation where a facility housed individuals in crowded cells with others
22 suffering from infectious diseases, such as Hepatitis and venereal disease, and the
23 individuals’ “mattresses were removed and jumbled together each morning, then returned
24 to the cells at random in the evening”).

25 **1. Defendants Allison and Gipson**

26 Defendants Allison and Gipson move for summary judgment on the grounds that
27 there is no evidence in the record to support a finding that either Defendant was
28 deliberately indifferent to Plaintiff’s health and safety. ECF No. 44 at 14.

1 As an initial matter, there is no dispute or challenge to Plaintiff's claims that
2 contracting COVID-19 posed a serious risk of harm. *See Plata*, 445 F. Supp. 3d at 559
3 (“[N]o one questions that [COVID-19] poses a substantial risk of serious harm” to
4 prisoners.).

5 As set forth above, the basis for his claims against Defendants Allison and Gipson
6 is their purported involvement in transferring inmates to RJD from other institutions who
7 had a positive COVID-19 diagnosis. Specifically, Plaintiff claims he contracted COVID-
8 19 because these inmates were transferred to RJD at the direction of Allison and Gipson.
9 FAC at 4. However, Allison and Gipson argue that Plaintiff offers no evidence to support
10 this claim. Defendants argue that Plaintiff “lacks any evidence that Defendants Allison
11 and Gipson participated in, or were deliberately indifferent regarding, any decision or
12 action affecting prison transfers, social distancing, housing, the use of ‘generic’ face
13 masks, or sanitization.” ECF No. 44 at 14. Instead, Plaintiff was asked if he had any
14 evidence that either Allison or Gipson were “aware that these inmates [from CIM] had
15 COVID-19 and that they were deliberately transferring them to RJD,” and he testified in
16 response “they’re the ones who are over CDCR” and they are the ones who “had to sign
17 orders for transfers.” P’s Depo at 58:10-20, ECF No. 44-2, Ex. A. Even if Plaintiff
18 testifies that Allison and Gipson were responsible for inmate transfers, he presents no
19 evidence that they were actually aware that any of these inmates who were transferred
20 had contracted COVID-19 and they nevertheless housed them with inmates who were
21 purportedly not infected.

22 Thus, the Court finds there is no triable issue of material fact with regard to either
23 Defendant Allison or Gipson’s purported deliberate indifference to a serious risk to
24 Plaintiff’s health or safety.

25 **2. Defendants Pollard, Phillips, Lewis, and Garcia**

26 As to the remaining Defendants, Plaintiff claims that these Defendants failed to
27 comply with CDC guidelines by not practicing social distancing, housing infected
28 inmates with non-infected inmates, providing inadequate sanitation, and permitting

1 correctional officers to refuse to wear masks despite it being against policy. *See* FAC at
2 9.

3 Defendant Lewis submits a declaration attesting that “[a]t no point were any
4 incarcerated persons who tested positive for COVID-19 deliberately housed with inmates
5 who had not tested positive” at RJD. Lewis Decl. at ¶ 2. Instead, isolation units were
6 “created in the gymnasium to secure additional housing when incarcerated people began
7 testing positive for COVID-19 in December of 2020.” *Id.* at ¶ 4.

8 Defendants also submit the declaration of S. Roberts, the Chief Medical Executive
9 at RJD, who attests to the “policies implemented at RJD” in response to the “COVID-19
10 pandemic.” Roberts Decl. at ¶ 2, ECF No. 44-5. Roberts describes the measures that were
11 taken in an attempt to mitigate the spread of COVID-19 including “COVID-19 testing of
12 inmates and staff, the quarantining or isolating of inmates who tested positive or were
13 exposed to COVID-19, the eventual offering of vaccinations to all inmates and staff,”
14 along with the “cleaning and sanitation of housing facilities.” *Id.* at ¶ 3.

15 Roberts also describes the process by which inmates who were transferred from
16 another institution “would be placed in quarantine until it could be determined they were
17 not infected.” *Id.* at ¶ 9. If that inmate did test positive, they “would be placed in an
18 isolation unit.” *Id.* Moreover, until December of 2020, RJD had “experienced only a
19 handful of unrelated COVID-19 cases” but an outbreak did occur in the Housing Unit
20 “overnight on December 9, 2020.” *Id.* The “specific cause of the outbreak remains
21 unknown.” *Id.*

22 In response, Plaintiff admits in his deposition testimony that he was never housed
23 with an inmate who had tested positive for COVID-19 because he has a “single cell.”
24 *See* Pl.’s Depo at 52:21-22. Instead, Plaintiff appears to claim that he contracted COVID-
25 19 because he “got breathed on” by an unknown individual. *Id.* at 31:11. Plaintiff alleges
26 that officials at RJD failed to give them proper masks to prevent the spread of COVID-19
27 and they should have been provided with “KN95 masks.” *Id.* at 31:13-18. Finally, he
28 claims that it was unnamed correctional officers who brought COVID-19 into RJD

1 because they “weren’t wearing masks.” *Id.* at 31:22-25. However, as Lewis attests in her
2 declaration, CDCR policy required staff and inmates to wear masks and “[w]hen staff
3 was not compliant with COVID-19 protocols, they would be written up or disciplined as
4 necessary.” Lewis Decl. at ¶ 7.

5 Here, Plaintiff’s own testimony indicates that he contracted COVID-19 on the day
6 before an outbreak was discovered by RJD officials. Dr. Roberts declares that the
7 “specific cause of the outbreak remains unknown.” Roberts Decl. at ¶ 9. While Plaintiff
8 offers a number of theories as to how he may have contracted COVID-19, he points to no
9 evidence in the record to demonstrate that any action on the part of the named Defendants
10 was the cause of his diagnosis. As Defendants argue in their Reply, Plaintiff appears to
11 hold unnamed correctional officers liable for his contraction of COVID-19 due to the
12 alleged lack of wearing masks and lack of proper sanitation but does not point to any
13 evidence in the record that the named individual Defendants failed to comply with the
14 CDCR’s COVID-19 protocols.

15 The Court finds that Plaintiff has failed to raise a triable issue of material fact that
16 any of the named Defendants were deliberately indifferent to an excessive risk to his
17 health or safety in violation of his Eighth Amendment rights. Accordingly, Defendants’
18 Motion for Summary Judgment is **GRANTED**.² *See Celotex*, 477 U.S. at 323 (“The
19 moving party is ‘entitled to a judgment as a matter of law’ [when] the nonmoving party
20 has failed to make a sufficient showing on an essential element of [his] case with respect
21 to which [he] has the burden of proof.”).

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26 ² Because the Court finds Defendants are entitled to judgment as a matter of law on the merits of
27 Plaintiff’s Eighth Amendment claim, the Court need not address Defendants’ alternative argument that
28 they are entitled to qualified immunity. *See, e.g., Aguilera v. Baca*, 510 F.3d 1161, 1167, 1174 (9th Cir.
2007) (noting that if no constitutional violation occurred the court need not decide whether qualified
immunity applies).

1 **VI. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS** Defendant’s motion for
3 summary judgment as to all counts. Pursuant to Federal Rule of Civil Procedure 58, the
4 Court enters judgment in favor of the Defendants and **ORDERS** the Clerk to close the
5 case.

6 **IT IS SO ORDERED.**

7 Dated: September 20, 2023

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10 Honorable James E. Simmons, Jr.
11 Unites States District Judge
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