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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALFRED DAVID SERNA,
CDCR #E-25219,

Plaintiff,

vs.

ESCOBAR, Correctional Officer;
C. LOPEZ, Correctional Officer;
FRANZ, Correctional Officer,

Defendants.

Case No.: 3:22-CV-00841-JES-DEB

**ORDER GRANTING DEFENDANTS’
MOTION FOR SUMMARY
JUDGMENT PURSUANT TO
FEDERAL RULES OF CIVIL
PROCEDURE 56**

[ECF No. 31]

Plaintiff Alfred David Serna (“Plaintiff” or “Serna”), 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 a serious

1 threat to Serna’s safety in violation of his Eighth Amendment rights. *See* generally ECF
2 No. 1, Compl.¹

3 Before the Court is Defendants Escobar, Lopez, and Franz’s Motion for Summary
4 Judgment. *See* ECF No. 31. Plaintiff filed an Opposition to Defendants’ Motion, *see* ECF
5 No. 48, and Defendants filed a Reply, *see* ECF No. 49.

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

9 **I. PROCEDURAL BACKGROUND**

10 On June 6, 2022, Plaintiff filed a Complaint under 42 U.S.C. § 1983 alleging that
11 Defendants violated his Eighth Amendment rights when they failed to protect him from
12 an attack from another inmate. *See* Compl., ECF No. 1 at 3-5.

13 On August 12, 2022, United States District Judge Janis L. Sammartino screened
14 his Complaint pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A, dismissed his claims
15 against Defendant Madden, and gave him the option to file an amended complaint or
16 proceed on his Eighth Amendment failure to protect claim against the remaining
17 Defendants. *See* ECF No. 6. Plaintiff notified the Court of his intention to proceed with
18 his Eighth Amendment claim only against Defendants Escobar, Lopez, and Franz and the
19 Court directed U.S. Marshal service pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ. P.
20 4(c)(3) as to these named defendants. *See* ECF Nos. 7, 8. Defendants filed an Answer to
21 the Complaint on November 29, 2022. *See* ECF No. 15. The matter was transferred to
22 this Court on March 22, 2023. *See* ECF No. 29.

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26 ¹ Throughout this Order and for ease of consistency and reference, the Court will cite to
27 each document in the record using both the number assigned to the document and the
28 page number automatically generated by its Case Management/Electronic Case File
system (“ECF”).

1 On April 3, 2023, Defendants Lopez, Franz, and Escobar (“Defendants”)² filed a
2 Motion for Summary Judgment. *See* ECF No. 31. The Court notified Plaintiff of the
3 requirements for opposing summary judgment pursuant to *Rand v. Rowland*, 154 F.3d
4 952 (9th Cir. 1998) (en banc). *See* ECF No. 35. United States Magistrate Judge Daniel E.
5 Butcher granted Plaintiff two extensions of time to file his Opposition which he filed on
6 August 23, 2023. *See* ECF Nos. 42, 47, 48. Defendants filed their Reply on September
7 18, 2023. *See* ECF No. 49.

8 II. FACTUAL BACKGROUND

9 A. Plaintiff’s Factual Allegations

10 On April 4, 2022, Serna was assaulted by Inmate Lafita (“Lafita”) “causing stab
11 wounds in face and arm.” Compl. at 3. Both Serna and Lafita were “sprayed in [the]
12 face” causing both to become prone on the floor. *Id.* One minute later, Lafita “got up and
13 grabbed an ADA chair” and hit Serna five times in the back of the head. *Id.*

14 Defendant Correctional Officer Escobar (“Escobar”) was in the control booth and
15 was in charge of controlling cell doors and was the “gunner in case a situation gets out of
16 control.” *Id.* Lafita got up from the floor “after being ordered to get down.” *Id.*

17 Defendants Correctional Officer Lopez (“Lopez”) and Franz (“Franz”) were floor
18 officers and they both [used their pepper spray] “one time during the first attack” by
19 Lafita and a second time when Lafita “got up [and] walked over to Plaintiff with an ADA
20 metal/plastic chair and repeatedly hit him in the head [and] back.” *Id.*

21 Plaintiff alleges he would not have been injured “if the gunner [Correctional
22 Officer] Escobar” had shot Latifa with at least one shot. *Id.* at 4. As he was being
23 attacked by Lafita with the chair, Plaintiff alleges Defendants Franz and Lopez “were
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26 ² In this Order, “Defendants” refers collectively to the three defendants who are the
27 subjects of the instant Motion for Summary Judgment—Lopez, Franz, and Escobar—and
28 not other previously dismissed defendants, unless otherwise noted.

1 standing [two] feet away and watched” but did not “utilize their side baton, instead they
2 froze until other officers responded.” *Id.* Plaintiff alleges that all three officers “knew that
3 there was a substantial risk that Plaintiff would be seriously injured” but they “did
4 nothing to stop the attack on Plaintiff.” *Id.* As a result, Plaintiff has “injuries to eye, head,
5 back, and legs” that still “are affecting Plaintiff daily.” *Id.*

6 Plaintiff seeks declaratory relief, \$500,000 in compensatory damages, \$500,000 in
7 punitive damages and other costs “the Court deems just and proper.” *Id.* at 7.

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

9 On April 4, 2022, Serna and Lafita were both housed in Facility C, Housing Unit
10 13 at RJD. *See* Burns Decl., ECF No. 31-4, Ex. A (hereinafter “Pl.’s Depo.”) at 26:14-22;
11 Escobar Decl., ECF No. 31-5, at ¶ 6. Facility C, Housing Unit 13 is a “two-level
12 building,” which has a “U-shaped dayroom surrounded by approximately 100 cells – 50
13 on each level.” Escobar Decl. at ¶ 2. The dayroom contains three sections, A, B and C,
14 and the control booth is “approximately fifteen feet above the ground, in the middle of
15 the dayroom, facing the dayroom and the surrounding cells.” *Id.* The control booth “is a
16 secured location and has windows on all three sides so that the control booth officer can
17 observe the entire dayroom.” *Id.*

18 On this day, Escobar was “assigned to RJD as a control booth officer in Facility C,
19 Housing Unit 13” and there is “only one officer assigned to the control booth at a time.”
20 *Id.* at ¶¶ 1, 3. His duties included “observing the dayroom and maintaining the safety and
21 security of the institution, the inmates, and the staff.” *Id.* at ¶ 3.

22 In the middle of the first floor, there is a podium “facing the control booth and
23 flanked by the two sides of the U-shaped dayroom.” *Id.* at ¶ 2. Immediately in front of the
24 podium is a “table where two floor officers are stationed” and there are “approximately
25 16 cells and one shower on each floor behind the podium.” *Id.* at ¶ 3. Latifa was assigned
26 to Cell 124 which is on the first floor of Housing Unit 13 and the podium where the floor
27 officers are assigned “is in between Cell 124 and the control booth.” *Id.* at ¶ 6.

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1 Lopez and Franz were both “Housing Unit 13 floor officer[s]” whose duties
2 included “monitoring inmate activities and maintaining the safety and security of the
3 institution, inmates, and the staff.” Franz Decl., ECF No. 31-6 at ¶ 3; Lopez Decl., ECF
4 No. 31-7 at ¶ 3. They were the only “two custody staff on the floor in Housing 13” on the
5 day of the attack. *Id.* at ¶ 6; *Id.* at ¶ 6. Both officers had “access to two use-of-force
6 options: (1) Oleoresin Capsicum (OC) spray, or pepper spray, with an effective range of
7 between six and twelve feet; and (2) a hand-held baton.” *Id.* at ¶ 4; *Id.* at ¶ 4. As the
8 control booth officer, Escobar “had access to three use-of-force options: (1) a Ruger
9 mini-14 rifle; (2) a 40mm launcher; and (3) a large canister of MK-46 OC spray designed
10 for use in large areas only.” Escobar Decl. at ¶ 4.

11 At 9:18 a.m., Serna walked towards Lafita’s cell and arrived at 9:18:17 a.m. *See*
12 Gaither Decl., ECF NO. 31-8, Ex. A, Video Title HU 13 Podium 1-2022-04-04 (“AVSS
13 Podium 1”). A few seconds later, Lafita exits his cell, appears to physically bump into
14 Serna and starts striking Serna in the head and neck region. *See id.*

15 Franz, who was standing at the table in front of the podium facing the dayroom,
16 and Lopez, who was sitting at the table in front of the podium, both “heard a scuff on the
17 ground.” Franz Decl. at ¶ 6; Lopez Decl. at ¶ 6. At approximately 9:18 a.m. on April 4,
18 2022, Escobar, Lopez, and Franz “observed inmates Serna and Lafita physically striking
19 each other in front of cell 124.” Escobar Decl. at ¶ 7; Franz Decl. at ¶ 6; Lopez Decl. at ¶
20 6.

21 Franz and Lopez got up from the table and Franz ordered Serna and Lafita to “Hey,
22 get down.” Gainther Decl., Ex. A., Video Title C 12 FLR 2 CO42013-2022-04-04,
23 Correctional Officer N. Franz Body Warn Camera (“Franz BWC”); C Spare 04
24 CO40004-2022-04-04, (“Lopez BWC”). A “get down” order is a command for inmates to
25 immediately stop fighting and lie on the ground in a prone position.” Franz Decl. at ¶ 9.
26 Lafita assumed a kneeling position over Serna and struck him in the stomach and torso.
27 *See* Gainther Decl., Franz BWC; Lopez BWC. Serna grabbed Lafita’s shirt as Lafita was
28 striking Serna’s torso. *See* Gainther Decl., AVSS Podium 1.

1 Escobar “[i]mmediately after observing inmates Serna and Lafita fighting,”
2 grabbed the “40mm launcher, ordered everyone in the dayroom to ‘get down’ over the
3 public address system, activated an alarm, and aimed the 40mm launcher towards the
4 fight.” Escobar Decl. at ¶ 10. At approximately the same time, Lopez “ordered inmates
5 Serna and Lafita to ‘get down’ three times, and pepper sprayed once.” Lopez Decl. at ¶ 9.
6 Franz “ordered inmates Serna and Lafita to ‘get down’ several times with no effect,
7 pepper sprayed them five times, and called for backup.” Franz Decl. at ¶ 9.

8 The “pepper spray had the intended effect, and inmates Serna and Lafita separated,
9 ceased fighting, and got in the prone position.” Lopez Decl. at ¶ 10; Franz Decl. at ¶ 10.
10 Both Franz and Lopez saw that Serna “made several attempts to get up from the prone
11 position” and multiple times ordered him to “get down” or “stay down.” *Id.* Serna
12 “eventually complied.” *Id.*

13 The fight “appeared to be over” and Franz was “preparing to put on latex gloves to
14 handcuff the inmates, when Lafita quickly made eye contact with [Franz] and grabbed a
15 nearby chair.” Franz Decl. at ¶ 11. Franz “immediately instructed [Lopez] ‘over here’
16 three times and gestured towards Lafita.” *Id.* “At that time, [Lopez] observed inmate
17 Lafita strike inmate Serna with the chair multiple times.” Lopez Decl. at ¶ 12. Both Franz
18 and Lopez told Lafita to “get down” and pepper sprayed him. Franz Decl. at ¶ 12; Lopez
19 Decl. at ¶ 12. However, Lafita “ignored” their orders and “continued striking Serna with
20 the chair.” *Id.* Both Franz and Lopez “put away” their pepper spray canister and got out
21 their “hand-held baton.” *Id.* However, neither officer used their baton because a
22 “responding officer arrived and pepper sprayed Lafita” and the “fight then ended.” *Id.*

23 Escobar “aimed the 40mm launcher towards inmate Serna and Lafita for the entire
24 duration of the fight.” Escobar Decl. at ¶ 11. However, Franz and Lopez were “in
25 between [Escobar] and inmates Serna and Lafita, which blocked a clear line of sight to
26 the fight.” *Id.* Escobar did not fire the launcher “because [he] did not have a clear shot at
27 either inmate while they were fighting and, therefore, firing the 40mm launcher could
28 have incapacitated or injured the floor officers.” *Id.*

1 “After the fight ended, [Franz and Lopez] learned that inmate Lafita was using an
2 inmate manufactured weapon, which was not apparent to [them] at any time during the
3 fight, to stab inmate Serna.” Franz Decl. at ¶ 13; Lopez Decl. at ¶ 13. Escobar also did
4 not “observe an inmate manufactured weapon being used in the fight.” Escobar Decl. at ¶
5 12.

6 III. LEGAL STANDARD

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

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

20 Once the moving party has satisfied its initial burden, the non-moving party cannot
21 rest on the mere allegations or denials of its pleading. The non-moving party must “go
22 beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to
23 interrogatories, and admissions on file,’ designate ‘specific facts showing that there is a
24 genuine issue for trial.’” *Id.* at 324. The non-moving party may meet this requirement by
25 presenting evidence from which a reasonable jury could find in its favor, viewing the
26 record as a whole, in light of the evidentiary burden the law places on that party. *See*
27 *Triton Energy Corp. v. Square D Co.*, 68 F.3d 1216, 1221–22 (9th Cir. 1995). In
28 determining whether there are any genuine issues of material fact, the court must “view[]

1 the evidence in the light most favorable to the nonmoving party.” *Fontana v. Haskin*, 262
2 F.3d 871, 876 (9th Cir. 2001) (citation omitted).

3 IV. DISCUSSION

4 Defendants move for summary judgment on the ground that they were not
5 deliberately indifferent to a serious threat to Serna’s safety in violation of his Eighth
6 Amendment rights.³ *See* Defs.’ Memo. of P&As at 11-15. Defendants point to the
7 “Officers’ body worn camera footage and the prison’s Audio-Visual Surveillance System
8 (AVSS) footage” to demonstrate that none of the named Defendants were deliberately
9 different to Plaintiff’s safety when they responded to the incident that occurred between
10 Serna and Lafita. *Id.* at 11. In addition, Defendants argue that they are entitled to
11 qualified immunity. *See id.* at 11-13.

12 A. Eighth Amendment Failure to Protect

13 “[P]rison officials have a duty . . . to protect prisoners from violence at the hands
14 of other prisoners.” *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (quoting *Cortes-*
15 *Quinones v. Jimenez-Nettleship*, 842 F.2d 556, 558 (1st Cir. 1988)). “The failure of
16 prison officials to protect inmates from attacks by other inmates may rise to the level of
17 an Eighth Amendment violation when: (1) the deprivation is ‘objectively, sufficiently
18 serious’ and (2) the prison officials had a ‘sufficiently culpable state of mind,’ acting with
19 deliberate indifference.” *Hearns v. Terhune*, 413 F.3d 1036, 1040 (9th Cir. 2005)
20 (quoting *Farmer*, 511 U.S. at 834). The second prong of this test is subjective, and “the
21 official must both be aware of facts from which the inference could be drawn that a
22 substantial risk of serious harm exists, and he must also draw the inference.” *See Farmer*,
23 511 U.S. at 837. “Deliberate indifference entails something more than mere negligence
24 but is satisfied by something less than acts or omissions for the very purpose of causing
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27 ³ Plaintiff appears to attempt to raise an Eighth Amendment excessive force claim, for the first time, in
28 his Opposition. However, Plaintiff did not allege an Eighth Amendment excessive force claim in this
action and thus, this argument is not relevant to this Motion.

1 harm or with knowledge that harm will result.” *Hearns*, 413 F.3d at 1040 (quoting
2 *Farmer*, 511 U.S. at 835) (internal alterations omitted). “[A]n official’s failure to
3 alleviate a significant risk that he should have perceived but did not, while no cause for
4 commendation, cannot under [the Supreme Court’s] cases be condemned as the infliction
5 of punishment.” *Farmer*, 511 U.S. at 838.

6 Thus, “deliberate indifference” entails something more than mere negligence, but
7 may be satisfied with proof of something less than acts or omissions “for the very
8 purpose of causing harm,” or that a particular official “acted or failed to act believing that
9 harm actually would befall an inmate; it is enough that the official acted or failed to act
10 despite his knowledge of a substantial risk of serious harm.” *Farmer*, 511 U.S. at 842.
11 “Whether a prison official had the requisite knowledge of a substantial risk” may be
12 inferred if the prisoner produces evidence sufficient to show that the risk was “obvious.”
13 *Id.*

14 As an initial matter, it should be noted that there is no allegation, or any evidence
15 in the record to support an allegation, that any of the named Defendants were aware that
16 Lafita intended to attack or cause Plaintiff harm prior to the incident. There is also no
17 evidence that Defendants failed to respond to the attack by Lafita but instead Plaintiff
18 argues that Defendants “observed inmate Lafita attempting to murder Plaintiff and
19 fail[ed] to use the authorized and available level of force and use of force options to
20 effectively intervene in inmate Lafita’s attempt to murder Plaintiff.” Pl.’s Opp’n at 3.

21 Here, as noted above, the interaction between Serna and Lafita, as well as the
22 response by Officers to this interaction, has been documented by footage from the
23 Officer’s BWC and other cameras throughout the facility. The Court must view the
24 record in the light most favorable to Plaintiff as the non-moving party “so long as
25 [Plaintiff’s] version on the facts is not blatantly contradicted by the video [or audio]
26 evidence.” *Vos v. City of Newport Beach*, 892 F.3d 1024, 1028 (9th Cir. 2018) (citation
27 omitted). However, “[t]he mere existence of video footage of the incident does not
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1 foreclose a genuine factual dispute as to the reasonable inferences that can be drawn from
2 that footage.” *Id.*

3 The video footage provided is not disputed by Plaintiff and provides some clear
4 footage of the entire incident. On April 4, 2022, at approximately 9:18 a.m., Serna is seen
5 walking across the dayroom and arriving at the door of Lafita’s cell. *See* ECF No. 31-8,
6 Ex. A, Video Title HU 13 Podium 1-2022-04-04 (AVSS Podium 1). Just a few seconds
7 later, Lafita comes out of his cell, bumps into Serna and almost immediately begins
8 attacking Serna. *See id.* Defendant Lopez is seated at a table while Defendant Franz is
9 standing at the same table, but neither are facing the view of Lafita’s cell. *See id.* As
10 Lafita begins attacking Serna, both Defendants turn their head towards Serna and Lafita
11 and begin approaching Serna and Lafita. *See id.*

12 Lafita pulls Serna to the ground as Franz and Lopez approach and is continually
13 striking Serna on the head. *See id.* At 9:18:29, Franz and Lopez both pull out their pepper
14 spray canisters. *See id.* Four seconds later, Franz sprays both Serna and Lafita with one
15 burst of pepper spray but Lafita continued attacking Serna. *See id.* It can also be observed
16 that Franz appears to speak into her radio and in her declaration indicates she was calling
17 “for backup.” *See id.*; Franz Decl. at ¶ 9. Both Franz and Lopez maintain that they
18 repeatedly ordered both inmates to “get down” and remain prone but both ignored the
19 orders. *See* Franz Decl. at ¶ 9; Lopez Decl. at ¶ 9. However, it appears that Serna was
20 already down during most of the attack. *See* AVSS Podium 1. Franz sprayed both inmates
21 for a second time a few seconds later but Lafita continued attacking Serna. *See id.* At
22 9:18:34, Escobar spoke over the public address system in the tower and ordered “get
23 down, everyone get down.” *See* ECF No. 31-8, Ex. A, C 13 CNTRL CO4201102-04-04
24 (Correctional Officer R. Escobar Body Worn Camera (BWC)). Escobar aimed the 40mm
25 launcher towards the direction of Serna and Lafita but did not fire the launcher. *See id.* At
26 this same time, Lopez sprays both Serna and Lafita a third time with pepper spray but
27 that did not deter Lafita from continuing the attack. *See* AVSS Podium 1. A few seconds
28 later, Lopez sprays both inmates for a fourth time and Lafita then stands up while Serna

1 grabs Lafita's shirt. *See id.* Lafita walks backward and Serna and Lafita are ultimately
2 separated. *See id.* Lopez aims his pepper spray towards Serna while Franz is attempting
3 to put on latex gloves "to handcuff the inmates." *See id.*; Franz Decl. at ¶ 11.

4 As Franz was attempting to put the gloves on, Lafita picks up a shower chair,
5 approaches Serna, lifts it above his head and hits Serna on the head multiple times. *See*
6 AVSS Podium 1. As he is beating Serna, both Lopez and Franz again spray pepper spray
7 at Lafita and Serna. *See id.* Franz then puts away her pepper spray and removes her baton
8 from her belt. *See id.* A few seconds later, Lopez also puts away his pepper spray and
9 removes his baton. *See id.* The video then shows several officers responding to the
10 incident, and one sprays Lafita with pepper spray in the face which ends the attack. *See*
11 *id.* Escobar has aimed his 40mm launcher towards Serna and Lafita during the duration of
12 the attack but attests that he "did not have a clear shot at either inmate" and if he had
13 fired his launcher it "could have incapacitated or injured the floor officers." *See* Escobar
14 BWC; Escobar Decl. at ¶ 11.

15 Defendants do not dispute Serna's claim that during the attack Lafita used a seven
16 inch long "inmate manufactured weapon/knife/shank that was sharpened to a point" to
17 stab Serna repeatedly in the head. Pl.'s Opp'n at 7. However, Defendants all attest that
18 "[a]fter the fight ended, [they] learned that inmate Lafita was using an inmate
19 manufactured weapon" but "[a]t no point during the fight did [they] observe an inmate
20 manufactured weapon being used in the fight." Escobar Decl., at ¶ 12; Franz Decl. at ¶
21 13; Lopez Decl. at ¶ 13.

22 A careful review of the video footage of the incident indicates that from the time
23 Lafita made initial body contact with Serna to the end of the attack when the outside
24 officer sprayed Lafita in the face with pepper spray was approximately one (1) minute.
25 *See* AVSS Podium 1.

26 Serna argues that Defendants were deliberately indifferent because the "use-of-
27 force options chos[en] by Defendants Franz and Lopez were wholly inappropriate to
28 effectively intervene and to protect Plaintiff given the character and the nature of the

1 lethal attack” by Lafita. *See* Pl.’s Opp’n at 8. In addition, Serna argues there was a
2 “complete failure of Defendant Escobar to use any of the use-of-force options available”
3 for him to use to prevent the “serious bodily injury” by Lafita on Serna. *Id.*

4 Here, the Court finds that Defendants are entitled to summary judgment on Serna’s
5 failure to protect claim because they have met their burden to demonstrate there is no
6 genuine issue of material fact that any of the named Defendants were deliberately
7 indifferent to an excessive risk to Serna’s health or safety. *See Farmer*, 511 U.S. at 834.
8 A review of the video of the incident between Serna and Lafita undeniably shows that
9 Serna was brutally attacked by Lafita. As Serna notes in his Opposition, while the
10 Defendants refer to this entire incident as a fight between these two inmates, the video
11 shows only Lafita as the aggressor. *See* Pl.’s Opp’n at 4. Defendants appear to concede
12 this point in their Reply by agreeing to use the word “incident” instead of “fight.” Defs.’
13 Reply at 3, fn. 1. However, Defendants are correct that whether it was a fight or a one-
14 sided attack, “Defendants owed the same duty to protect Serna.” *Id.* at 3 (citing *Farmer*,
15 511 U.S. at 833).

16 “A prison official’s deliberate indifference may be established through an
17 ‘inference from circumstantial evidence’ or ‘from the very fact that the risk was
18 obvious.’” *Cortez v. Skol*, 776 F.3d 1046, 1050 (9th Cir. 2015) (quoting *Farmer*, 511
19 U.S. at 842). As stated above, neither negligence nor gross negligence constitutes
20 deliberate indifference. *Farmer*, 511 U.S. at 835-36 & n.4. The BWC and dayroom
21 videos show that neither Franz nor Lopez were facing Lafita’s cell at the time the attack
22 started and could not have seen which inmate instigated the incident. However, the video
23 does show that almost immediately after the attack began, both Franz and Lopez
24 approached both inmates and within a few seconds sprayed both inmates with pepper
25 spray, ordered them to lay prone, and called for backup from other officers over the radio.
26 The BWC video of Escobar also shows that he was in the tower when the attack started,
27 he called out for all inmates in the dayroom to get down and aimed his 440mm launcher
28 towards Serna and Lafita. The evidence demonstrates that Defendants did attempt to stop

1 the attack and while Serna undeniably suffered injuries from this attack, his claims that
2 they were just “standing [two] feet away and watch[ing]” while he was being attacked is
3 directly contradicted by the undisputed video evidence. Compl. at 4. Moreover, Serna
4 offers no evidence to dispute Escobar’s sworn testimony in his declaration that he was
5 unable to fire any weapon because he did not have a clear shot at either Serna or Lafita.

6 Moreover, there is no evidence in the record that any of the named Defendants
7 were aware that there was even the possibility that Serna was going to be attacked by
8 Lafita. Instead, Serna’s Opposition focuses on an argument that Franz and Lopez had not
9 received “training concerning CDCR policies and procedures on inmate-on-inmate
10 attacks” and had only been employed by the CDCR for sixteen (16) months at the time
11 the attack occurred. Pl.’s Opp’n at 12-13. As to Escobar, Plaintiff argues that he had
12 purportedly received no “training concerning CDCR policies and procedures as a control
13 officer, no training for how to respond to a Code 1 (one on one incident).” *Id.* at 11.
14 Defendants argue in response that their “training records do not create a genuine dispute
15 of material fact.” Defs.’ Reply at 4. The Court agrees. At most, taking the facts in the
16 light most favorable to Serna, this argument could raise an issue of negligence as to how
17 Defendants responded to the attack by Lafita but does not demonstrate that they were
18 acting with deliberate indifference in the manner in which they responded to the attack.
19 *See Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (“Mere negligence is not
20 sufficient to establish liability.”)

21 The evidence in the record shows that Defendants immediately responded to the
22 incident between Serna and Lafita as they became aware of it, they used force by
23 spraying both inmates several times with pepper spray, ordered all inmates to get down,
24 and called for additional help from other officers who responded within a minute of the
25 beginning of the incident. While Serna argues more should have been done to stop the
26 second part of the attack by Lafita, there is no evidence in the record to show that any of
27 the named Defendants acted with deliberate indifference towards Serna. Thus, the Court
28 **GRANTS** Defendants’ Motion for Summary Judgment as to Plaintiff’s Eighth

1 Amendment failure to protect claim.

2 **B. Qualified Immunity**

3 Defendants move for summary judgment on qualified immunity grounds.
4 Specifically, Defendants argue that they did not violate Serna's constitutional rights and
5 even if the Court "finds constitutional deprivations, those violations are not clearly
6 established." Defs. Memo of P&As at 17.

7 "Government officials enjoy qualified immunity from civil damages unless their
8 conduct violates 'clearly established statutory or constitutional rights of which a
9 reasonable person would have known.'" *Jeffers v. Gomez*, 267 F.3d 895, 910 (9th Cir.
10 2001) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). When presented with a
11 qualified immunity defense, the central questions for the court are: (1) whether the facts
12 alleged, taken in the light most favorable to Plaintiff, demonstrate that the Defendants
13 conduct violated a statutory or constitutional right; and (2) whether the right at issue was
14 "clearly established" at the time it is alleged to have been violated. *Saucier v. Katz*, 533
15 U.S. 194, 201 (2001). Although *Saucier* originally required the Court to answer these
16 questions in order, the U.S. Supreme Court has since held that "while the sequence set
17 forth [in *Saucier*] is often appropriate, it should no longer be regarded as mandatory."
18 *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

19 If the Court finds that Plaintiff's allegations do not make out a statutory or
20 constitutional violation, "there is no necessity for further inquiries concerning qualified
21 immunity." *Saucier*, 533 U.S. at 201. Similarly, if the Court determines that the right at
22 issue was not clearly established at the time of the defendant's alleged misconduct, the
23 court may end further inquiries concerning qualified immunity without determining
24 whether the allegations in fact make out a statutory or constitutional violation. *Pearson*,
25 555 U.S. at 236-37.

26 Here, the Court has found that there is no genuine dispute of material fact
27 regarding Plaintiff's Eighth Amendment claims and thus, no qualified immunity analysis
28 is necessary. *See, e.g., Aguilera v. Baca*, 510 F.3d 1161, 1167, 1174 (9th Cir. 2007)

1 (noting that if no constitutional violation occurred the court need not decide whether
2 qualified immunity applies).

3 **V. CONCLUSION**

4 Accordingly, the Court **GRANTS** Defendants’ Motion for Summary Judgment as
5 to Plaintiff’s Eighth Amendment claims pursuant to Federal Rules of Civil Procedure 56.
6 ECF No. 31. The Clerk of Court is directed to enter judgment on behalf of all Defendants
7 and close the file.

8 **IT IS SO ORDERED.**

9 Dated: October 13, 2023

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12 Honorable James E. Simmons, Jr.
13 United States District Judge
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