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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ROBIN DASENBROCK,

12 Plaintiff,

13 vs.

14 A. ENENMOH, et al.,

15 Defendants.  
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1:11-cv-01884-DAD-GSA-PC

**ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT FILED BY  
DEFENDANT PEREZ-HERNANDEZ,  
WITH LEAVE TO AMEND  
(ECF No. 208.)**

**DEADLINE: June 16, 2017**

**PLAINTIFF'S OPPOSITION OR  
STATEMENT OF NON-  
OPPOSITION DUE ON OR  
BEFORE July 10, 2017**

**DEFENDANT'S REPLY DUE ON  
OR BEFORE July 21, 2017**

23 **I. BACKGROUND**

24 Robin Dasenbrock ("Plaintiff") is a state prisoner proceeding pro se with this civil  
25 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
26 action on November 14, 2011. (ECF No. 1.) On November 29, 2012, Plaintiff filed the First  
27 Amended Complaint. (ECF No. 16.) This case now proceeds with Plaintiff's Second  
28 Amended Complaint filed on September 8, 2015, against defendants Dr. A. Enenmoh,

1 Correctional Officer Perez-Hernandez,<sup>1</sup> Nurse Page, and Nurse Adair, on Plaintiff's claims for  
2 violation of the Eighth Amendment and related negligence. (ECF No. 140.)

3 On October 21, 2016, defendant Perez-Hernandez ("Defendant") filed a motion for  
4 summary judgment. (ECF No. 208.) On December 1, 2016, Plaintiff filed an opposition to the  
5 motion. (ECF Nos. 214-217.) On December 7, 2016, Defendant filed a reply to the opposition.  
6 (ECF No. 218.)

7 **II. DEFENDANT'S MOTION**

8 Defendant's motion for summary judgment is based in part on the allegations in the  
9 First Amended Complaint filed on November 29, 2012 (ECF No. 16).<sup>2</sup> However, the Second  
10 Amended Complaint, filed on September 8, 2015, is now the operative complaint in this action.  
11 (ECF No. 140.) For this reason, Defendant's motion for summary judgment shall be denied,  
12 with leave to amend. Plaintiff shall be granted time to file an opposition to the amended  
13 motion for summary judgment, and Defendant shall be granted time to file a reply to the  
14 opposition. As discussed in the court's order of April 13, 2017, the court shall consider only  
15 one opposition and one reply. (ECF No. 223 at 2:3-15.) Local Rule 230(I).

16 **III. CONCLUSION**

17 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 18 1. Defendant Perez-Hernandez's motion for summary judgment, filed on  
19 December 21, 2016, is DENIED with leave to amend on or before **June 16,**  
20 **2017;**
- 21 2. Plaintiff shall file an opposition, or a notice of non-opposition, to the amended  
22 motion on or before **July 10, 2017;**
- 23 3. Defendant's reply to Plaintiff's opposition, if any, shall be filed on or before  
24 **July 21, 2017;** and

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26 <sup>1</sup> Named in the complaint as Correctional Officer Perez.

27 <sup>2</sup> For example, Defendant cites the First Amended Complaint (ECF No. 16) as the source of  
28 some of Defendant's undisputed facts. (ECF No. 208-3 at 1-2 ¶¶2-5, 12-14.)

