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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

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT DEFENDANT  
PAGE'S MOTION FOR SUMMARY  
JUDGMENT BE GRANTED  
(ECF No. 234.)**

**OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN (14) DAYS**

21 **I. BACKGROUND**

22 Robin Dasenbrock ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
23 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the  
24 Complaint commencing this action on November 14, 2011. (ECF No. 1.) This case now  
25 proceeds with Plaintiff's Second Amended Complaint ("SAC") filed on September 8, 2015,  
26 against defendants Dr. A. Enenmoh, Correctional Officer Perez-Hernandez, Nurse Page, and  
27 Nurse Laura Adair, on Plaintiff's claims for violation of the Eighth Amendment and related  
28 state-law negligence. (ECF No. 140.)

1 On May 12, 2017, defendant Nurse Page (“Defendant”) filed a motion for summary  
2 judgment.<sup>1</sup> (ECF No. 234.) On November 1, 2017, Plaintiff filed an opposition to the motion  
3 for summary judgment.<sup>2</sup> (ECF No. 268.) On November 8, 2017, Defendant filed a reply to the  
4 opposition. (ECF No. 274.) The motion has been submitted upon the record without oral  
5 argument pursuant to Local Rule 230(l), and for the reasons that follow, Defendant’s motion  
6 should be granted.

## 7 **II. THE COURT’S PRIOR FINDINGS AND RECOMMENDATIONS**

8 Each of the four defendants in this case filed a separate motion for summary judgment.  
9 (ECF Nos. 224, 230, 232, 234.) The court entered findings and recommendations addressing  
10 two of the four motions. (ECF Nos. 275, 282.) Plaintiff is proceeding with the same two  
11 claims against all four Defendants, (1) inadequate medical care under the Eighth Amendment,  
12 and (2) related state-law negligence. Plaintiff claims that all four of the defendants failed to  
13 provide him with adequate medical care following his hemorrhoidectomy surgery on December  
14 30, 2010.

15 Due to the similarities in Plaintiff’s claims against each defendant, the same legal  
16 standards apply to all four of the motions for summary judgment. Therefore, the court need not  
17 repeat Plaintiff’s background information or the legal standards for screening of the complaint,  
18 summary judgment, Eighth Amendment medical claims, state-law negligence, judicial notice,  
19 supplemental jurisdiction, California’s Government Claims Act, or qualified immunity. The  
20 parties are referred back to the findings and recommendations entered on November 15, 2017,  
21 and December 12, 2017, if they wish to review the background information and applicable  
22 standards. (ECF Nos. 275, 282.) In the present findings and recommendations, the court  
23 focuses only on the motion for summary judgment filed by Defendant Page.

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25 <sup>1</sup> Concurrently with her motion for summary judgment, Defendant Page served Plaintiff with the  
26 requisite notice of the requirements for opposing the motion. Woods v. Carey, 684 F.3d 934, 939-41 (9th Cir.  
27 2012); Rand v. Rowland, 154 F.3d 952, 960-61 (9th Cir. 1998). (ECF No. 234-3.)

28 <sup>2</sup> This was Plaintiff’s second opposition. On September 4, 2017, the court granted Defendant  
Page’s motion to strike Plaintiff’s first opposition and ordered Plaintiff to file a second opposition not exceeding  
25 pages. (ECF No. 264.)

1 **III. SUMMARY OF PLAINTIFF’S ALLEGATIONS AGAINST DEFENDANT PAGE**  
2 **IN THE SECOND AMENDED COMPLAINT**<sup>3</sup>

3 On February 12, 2010, Nurse Page was working at the E-Yard medical facility at SATF.  
4 After Plaintiff complained in writing about his condition, Plaintiff was called to Nurse Page’s  
5 nurse line and complained about sharp stabbing pains, shortness of breath, dizziness, extreme  
6 fatigue, loss of excessive amounts of blood, and anemia. It is Nurse Page’s job to evaluate  
7 patients and either recommend them to see a doctor in the doctors’ line or, if the condition  
8 warrants, take them to see a doctor forthwith.

9 There is an RN Protocol for chest pain that lists specific actions that must be taken  
10 when patients complain about chest pain. The RN Protocol instructs nurses to notify a  
11 physician immediately when a patient complains of chest pain or other heart symptoms. (Exh.  
12 K – RN Protocol.) Nurses are required to fill out an emergency care flow sheet or document  
13 any information related to the patient’s complaint, obtain past medical history, and refer the  
14 patient to a physician or prepare the patient for transfer to an outside facility, on an urgent  
15 basis. Nurse Page failed to follow any part of this protocol when Plaintiff presented with  
16 symptoms. She would not allow Plaintiff to see a doctor who was eight feet away.

17 Plaintiff had been on heart medication for fifteen years and chronic care for five years,  
18 and he has a documented family history of heart disease that has been in his medical file for ten  
19 years. He told Nurse Page this information and also told her that his own father had recently  
20 died of heart disease and his mother had open heart surgery for her heart problems. When  
21 Nurse Page was told of this, she became angry, looked in Plaintiff’s file at a six-month-old  
22 blood test, diagnosed Plaintiff as not being anemic or having a family history of heart disease,  
23 and told him that high blood pressure is not heart disease. Plaintiff believes that her angry tone  
24 of voice and failure to allow Plaintiff to see a doctor indicated she had no legitimate reason for  
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26 <sup>3</sup> Plaintiff’s complaint is verified and his allegations constitute evidence where they are based on  
27 his personal knowledge of facts admissible in evidence. Jones v. Blanas, 393 F.3d 918, 922-23 (9th Cir. 2004).  
28 The summarization of Plaintiff’s claim in this section should not be viewed by the parties as a ruling that the  
allegations are admissible. The Court will address, to the extent necessary, the admissibility of Plaintiff’s evidence  
in the sections which follow.

1 her actions and may have been motivated by malice. Nurse Page did nothing for Plaintiff's  
2 chest pain except to schedule him to see a doctor in six days. At the time Plaintiff met with  
3 Nurse Page, it was not known how severe Plaintiff's condition was because no doctor was  
4 alerted to Plaintiff's condition.

5 Six days passed while Plaintiff suffered further blood loss and heart-related pain. On  
6 February 18, 2010, he saw Dr. Metts who noted Plaintiff's family history of heart disease and  
7 his fifteen year history in his medical file. A blood test was given to Plaintiff which confirmed  
8 severe anemia. On February 19, 2010, Plaintiff was rushed to Bakersfield Hospital's  
9 Emergency Room for blood transfusions and further tests. This action may have saved his life  
10 because very soon after the blood transfusion his chest pain and symptoms improved by at least  
11 fifty percent.

12 Nurse Page simply allowed Plaintiff to bleed out until only an emergency room visit  
13 could save his life. Nurse Page knew that Plaintiff had had hemorrhoidectomy surgery to treat  
14 "the same bleeding he'd been suffering with for years." (ECF No.140 at 26:20-21.).

15 Based on these allegations, Plaintiff brings claims for violation of the Eighth  
16 Amendment and negligence against Nurse Page.

#### 17 **IV. DEFENDANT'S FACTS<sup>4</sup>**

18 Plaintiff is claiming that defendant Page was deliberately indifferent to his alleged  
19 serious medical needs and committed medical malpractice because, after examining him on  
20 February 12, 2010, in response to his request for health care services, she failed to immediately  
21 refer him to a physician for further evaluation and treatment. (SAC, pages 109-117, paras. 278-  
22 279 on page 155, paras. 290-300 on page 157-158.)

23 Plaintiff had a hemorrhoidectomy performed on him on December 30, 2009. (Barnett  
24 Decl. III, para. 11, Ex. A.) On February 3, 2010, plaintiff was seen by his surgeon who noted  
25 in his report that plaintiff: (a) was definitely feeling better and healing well from the procedure;  
26 and (b) had experienced some bleeding after bowel movements; otherwise plaintiff made no  
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28 <sup>4</sup> Summarized from Defendant's Statement of Undisputed Facts 1-45. (ECF No. 234-2.)

1 other complaints regarding his medical condition at that time. (Barnett Decl. III, para. 12, Ex.  
2 B.)

3 As of February 12, 2010, plaintiff had secured an appointment to see Dr. Metts on  
4 February 18, 2010. (Barnett Decl. III, para. 13.) On February 10, 2010, plaintiff filled out a  
5 Health Care Services Request Form. (Barnett Decl. III, para. 14, Ex. C.) When describing the  
6 reasons why plaintiff was requesting health care, he said he was on chronic care for his heart  
7 (plaintiff equated this with his history of hypertension) and had experienced dizziness and  
8 shortness of breath whenever he exerted himself; plaintiff made no mention of suffering from  
9 any chest pain or any other acute condition that would indicate the need for immediate  
10 emergency treatment. (Barnett Decl. III, para. 14, Ex. C.)

11 In response to plaintiff's Request, Nurse Page reviewed his medical file and examined  
12 and evaluated him on February 12, 2010. (Barnett Decl. III, para. 14, Ex. C.) Nurse Page  
13 indicated in her examination notes (which are on the same document as the Health Care  
14 Services Request Form dated 2/10/10) that plaintiff had a doctor's appointment scheduled on  
15 February 18, 2010. (Barnett Decl. III, para. 14, Ex. C.) Plaintiff reported to Nurse Page that he  
16 was fatigued--tired all of the time, had heart problems and a history of hypertension.

17 The records do not reflect a history of cardiac problems. (Barnett Decl. III, para. 14,  
18 Ex. C.) The history indicates that plaintiff mistakenly equated hypertension with heart  
19 problems. Nurse Page discussed with plaintiff the distinction between hypertension, anemia  
20 and being a patient with heart problems. (Barnett Decl. III, para. 14, Ex. C.) Nurse Page  
21 examined plaintiff and concluded that he was alert and oriented and not in acute distress. She  
22 took plaintiff's temperature (97.8 degrees), pulse (70) and blood pressure (130/80), all of which  
23 were within normal ranges. (Barnett Decl. III, para. 14, Ex. C.)

24 Nurse Page's examination notes taken on February 12, 2010, contain no reference to any  
25 complaint by plaintiff that he had chest pains, only his confusion as to heart problems versus  
26 hypertension and anemia. (Barnett Decl. III, para. 14, Ex. C.) Nurse Page's examination notes  
27 indicate that, based on her training and experience, the lack of objective signs of acute distress  
28 requiring emergency treatment, and the existing scheduled doctor's appointment, she made a

1 professional medical judgment and determined that plaintiff did not require an immediate  
2 referral to a physician and that it was appropriate to have him evaluated at the scheduled  
3 doctor's appointment on February 18, 2010. (Barnett Decl. III, para. 15.) Under the  
4 circumstances, this judgment was reasonable and met the standard of care in the medical  
5 community. (Barnett Decl. III, para. 15.) The medical records affirm that plaintiff did not make  
6 any further request for medical care after his examination by Nurse Page and before his  
7 appointment with Dr. Metts on February 18, 2010. (Barnett Decl. III, para. 16.)

8 During plaintiff's examination by Dr. Metts on February 18, 2010, he related a brief  
9 history of chest pains, a family history of cardiac disease, fatigue, dizziness, shortness of breath  
10 and bleeding (not a lot) from his rectum when he had a bowel movement. (Barnett Decl. III,  
11 para. 17, Ex. D.) Dr. Metts examined plaintiff and concluded that his heart had a regular rate  
12 and rhythm and his blood pressure was 116/78. (Barnett Decl. III, para. 17, Ex. D.) Dr. Metts  
13 diagnosed plaintiff as suffering from hypertension, hepatitis C and hemorrhoids. He  
14 characterized plaintiff's reported chest pain as mild. He did not diagnose anemia at that time.  
15 (Barnett Decl. III, para. 17, Ex. D.) Dr. Metts did not consider any of the presenting complaints  
16 so acute and significant so as to require an emergency referral. As part of his evaluation, he  
17 ordered some blood work. (Barnett Decl. III, para. 17, Ex. D.)

18 The next day the blood test results were received. Dr. Metts ordered that plaintiff be  
19 transported to Mercy Hospital. (Barnett Decl. III, para. 18, Ex. E.) Dr. Metts diagnosed  
20 plaintiff as suffering from a slow chronic gastrointestinal bleed and anemia which was  
21 consistent with plaintiff's presenting complaints and studies. There was no diagnosis of heart  
22 problems or referral for cardiac workup as none was indicated. (Barnett Decl. III, para. 18, Ex.  
23 E.) The plaintiff was transferred to the hospital for workup and treatment of anemia and  
24 suspected slow bleed on a non-emergency basis. (Barnett Decl. III, para. 18, Ex. E.) Before  
25 transport to the hospital, plaintiff was sent to Triage and Treatment for evaluation. Over a two-  
26 hour period nurses noted three separate times that plaintiff was not in pain or discomfort and  
27 his presentation was stable. (Barnett Decl. III, para. 19, Ex. F.) About fifteen minutes before

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1 plaintiff went to the hospital he told staff that he was feeling fine. (Barnett Decl. III, para. 19,  
2 Ex. F.)

3 Plaintiff was examined by Dr. Magalong at Mercy Hospital on February 19, 2010, and  
4 admitted for anemia, secondary to the passage of blood from his rectum. (Barnett Decl. III,  
5 para. 20, Ex. G.) The history obtained was positive for hypertension, but no cardiac related  
6 condition or symptoms. Dr. Magalong also noted that plaintiff was not in any form of distress.  
7 (Barnett Decl. III, para. 20, Ex. G.) His blood pressure was 129/88, his pulse was 78 and his  
8 temperature was 97.6 --again, all within normal ranges. His heart had a regular rate and rhythm.  
9 (Barnett Decl. III, para. 20, Ex. G.) Dr. Magalog's plan was to admit plaintiff for a blood  
10 transfusion and anemia workup. (Barnett Decl. III, para. 20, Ex. G.)

11 Plaintiff was admitted to the hospital in stable condition. (Barnett Decl. III, para. 20, Ex.  
12 G.) There is no mention of any chest pain and no diagnosis of cardiac problems, nor any  
13 indications of any history or symptoms indicating a need for a cardiac referral in Dr. Magalog's  
14 report. (Barnett Decl. III, para. 20, Ex. G.) While plaintiff was at Mercy Hospital,  
15 gastroenterologist and general surgical consultations were performed which are consistent with  
16 the evaluations by Dr. Metts and Dr. Magalong. (Barnett Decl. III, para. 21, Exs. H, I and J.)  
17 Both of the consulting doctors affirmatively state that there was no significant past medical  
18 history other than presenting complaints related to anemia. (Barnett Decl. III, para. 21, Exs. H,  
19 I and J.) None of the physicians recommended any evaluation of plaintiff by a cardiologist, nor  
20 did they note any heart related concerns. (Barnett Decl. III, para. 21, Exs. H, I and J.) Plaintiff  
21 was discharged on February 23, 2010 in improved and stable condition. (Barnett Decl. III,  
22 para. 21, Exs. H, I and J.)

23 After Dr. Barnett reviewed the above-mentioned records and obtained all of the facts  
24 concerning the relevant care and treatment rendered to the plaintiff, and based upon his  
25 education, training, qualifications, and experience, Dr. Barnett determined the treatment  
26 rendered to the plaintiff by Nurse Page was appropriate. (Barnett Decl. III, para. 22.) It is his  
27 medical expert opinion that no action, inaction, conduct, error, or omission on the part of Nurse  
28 Page had any causal connection to any alleged injuries or damages claimed by the plaintiff.

1 Given the circumstances, the medical care and treatment which Nurse Page rendered to the  
2 plaintiff was appropriate and consistent with the plaintiff's medical condition and presenting  
3 circumstances. (Barnett Decl. III, para. 22.) Nothing that Nurse Page either did, or did not do,  
4 played any causal role, to a reasonable degree of medical probability, in causing harm to the  
5 plaintiff. (Barnett Decl. III, para. 22.) Nurse Page was not responsible for the plaintiff's care  
6 and treatment before or after Plaintiff saw her on February 12, 2010. (Barnett Decl. III, para.  
7 22.)

8 Plaintiff alleged that he presented a claim to the Board as required by the Act. (SAC, p.  
9 2, para. IIC.) Plaintiff did not attach any government claims to his complaint to support that  
10 allegation or to prove that the allegations in the claim fairly reflect the allegations in the  
11 complaint. (SAC.) The Board's records show, however, that Plaintiff presented one  
12 government claim—G596404—to the Board between January 1, 2007, and April 10, 2014.  
13 (Brooks Decl., Ex. A; Foley Decl. ¶ 4.) Plaintiff presented G596404 to the Board on April 6,  
14 2011. (Brooks Decl., Ex. A.) Plaintiff received a letter from the Board dated April 20, 2011,  
15 informing him that his claim had been received. (Brooks Decl., Ex. A) Although the claim  
16 fairly reflects the allegations in Plaintiff's Second Amended Complaint, that claim was "being  
17 accepted only to the extent it asserts allegations that arise from facts or events that occurred  
18 during the six months prior to the date it was presented." (Brooks Decl., Ex. A.)

19 **V. PLAINTIFF'S RESPONSE<sup>5</sup>**

20 Plaintiff disputes all of Defendant's facts except the following:

21 Plaintiff had a hemorrhoidectomy performed on him on December 30, 2009. (Barnett  
22 Decl. III, para. 11, Ex. A.) On February 10, 2010, plaintiff filled out a Health Care Services  
23 Request Form. (Barnett Decl. III, para. 14, Ex. C.) In response to plaintiff's Request, Nurse  
24 Page reviewed his medical file and examined and evaluated him on February 12, 2010. (Barnett  
25 Decl. III, para. 14, Ex. C.) While plaintiff was at Mercy Hospital, gastroenterologist and  
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27 <sup>5</sup> Summarized from Plaintiff's Undisputed Facts, (ECF No. 271), and Response to Defendant's  
28 Statement of Undisputed Facts, (ECF No. 273).



1 general surgical consultations were performed which are consistent with the evaluations by Dr.  
2 Metts and Dr. Magalong. (Barnett Decl. III, para. 21, Exs H, I and J.) Plaintiff was discharged  
3 on February 23, 2010 in improved and stable condition. (Barnett Decl. III, para. 21, Exs H, I  
4 and J.) Plaintiff alleged that he presented a claim to the Board as required by the [California  
5 Tort Claims] Act. (SAC, p. 2, para. IIC.) The Board's records show that Plaintiff presented one  
6 government claim—G596404—to the Board between January 1, 2007, and April 10, 2014.  
7 (Brooks Decl., Ex. A; Foley Decl. ¶ 4.) Plaintiff received a letter from the Board dated April  
8 20, 2011, informing him that his claim had been received. (Brooks Decl., Ex. A.)

9 Following is a summary of Plaintiff's arguments and supporting facts.<sup>6 7</sup>

10 1. Nurse Page knew Plaintiff was at a substantial risk of serious harm when  
11 Plaintiff met with her on February 12, 2010 because:

- 12 a. She noted this on her triage form (Exh. J);  
13 b. She had previously documented on 1-14-10 and 2-2-10 that Plaintiff had  
14 a history of heart trouble (Exhs. I & Y);  
15 c. She noted Plaintiff's worsening condition on 2-2-10 (Exh. I);  
16 d. Plaintiff complained to her on his medical care request forms of  
17 shortness of breath and dizziness, and noted that he was on chronic care  
18 for his heart (Exhs. I & J);  
19 e. She knew that he was a chronic care patient with hypertension when she  
20 saw him on 2-2-10 and 1-12-10 (Exhs. I & Y);

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22 \_\_\_\_\_  
23 <sup>6</sup> These facts are taken from Plaintiff's Response to Defendant Page's Statement of Undisputed  
24 Facts. (ECF No. 273.)

25 <sup>7</sup> Plaintiff requests the court to take judicial notice of over 200 pages of documents that include,  
26 inter alia, copies of his medical records and prison appeals, summaries of the Plata cases, various CDCR written  
27 health care services policies, Defendant Page's Responses to Plaintiff's Requests for Admissions, the Declaration  
28 of inmate Collin Walsh, Plaintiff's Govt Claim Form #596404, and Responses by defendant Enemoh to  
Plaintiff's Interrogatories. (ECF No. 270.) These are not the type of facts for which judicial notice is appropriate  
because they are subject to reasonable dispute, are not generally known, and are not capable of accurate and ready  
determination by resort to sources whose accuracy cannot be questioned. Therefore, the court should deny  
Plaintiff's request for judicial notice. However, these documents should be accepted as Plaintiff's evidence in  
opposition to the motion for summary judgment.

- 1 f. Plaintiff's 7362 form indicated a need for immediate emergency  
2 treatment per CDCR Protocols (Exhs. H & I);
- 3 g. Her triage notes indicate Plaintiff's history of cardiac problems;
- 4 h. The Protocol states that one of the diagnoses for cardiovascular chronic  
5 care is hypertension (Exh. L) and Page admits that she knows it (Exh. G  
6 ¶61);
- 7 i. Her notes reflect she knew about the hypertension (Exh. cc);
- 8 j. Plaintiff informed her on 2-10-10 that "walking to chow is difficult;"
- 9 k. On 2-18-10, when Plaintiff met with Dr. Metts, he complained that since  
10 his surgery 6-8 weeks prior, he had severe fatigue, dizziness, and  
11 stabbing pain in his chest for 5 minutes at a time during the last 2 weeks  
12 (Exh. K).

13 2. Nurse Page did not act reasonably in providing medical care for Plaintiff,

14 because;

- 15 a. She examined Plaintiff on February 12, 2010, judged that he was not  
16 anemic, and decided Plaintiff only needed to see the doctor for a routine  
17 visit six days later;
- 18 b. She refused to let Plaintiff see a doctor eight feet away (SAC at 109);
- 19 c. She did not follow the Protocol for chest pain, should have notified a  
20 physician STAT (Exh. H.), and admits that she had the requisite training  
21 (Exh. G ¶42);
- 22 d. She failed to provide the basic medical services required by Plata, which  
23 state that routing referrals should be made within 14 days (see bottom of  
24 every 7362 form); on 2-2-10, she scheduled Plaintiff for an appointment  
25 19 days after her last referral;
- 26 e. She did not refer Plaintiff for immediate emergency treatment under  
27 Protocols and Plata after Plaintiff mentioned acute symptoms on his 2-

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1 10-10 7362 form that would indicate a need for immediate emergency treatment  
2 (Exh. J);

3 f. In scheduling Plaintiff for the February 18, 2010 appointment, she  
4 violated Protocol which requires a visit with the PCP (primary care  
5 physician) within 5 days;

6 g. She failed to document the 2-18-10 referral (Exh. J), which is against  
7 protocols (Exh. bb);

8 h. Her chosen course of treatment was unacceptable under new medical  
9 care policies and procedures according to the Plata lawsuit agreement;

10 i. She did not follow specific instructions required for nurses on Nursing  
11 Protocols (Exh. aa), which she said she was familiar with (Exh. G);

12 j. She did not check on Plaintiff during the 6 days before his 2-18-10  
13 appointment, even though Plaintiff indicated “now walking to chow is  
14 difficult,” showing that he could not walk to medical.

15 k. Inmate Collin Walsh declared that Plaintiff’s condition was deteriorating  
16 during those 6 days (Exh. mm).

17 3. Plaintiff suffered harm as a result of Nurse Page’s conduct because:

18 a. The differences shown by the symptoms listed on the CDCR 7362 Forms  
19 of 22-10 (Exh. I), 2-12-10 (Exh. J), and Dr. Metts examination on 2-18-  
20 10 (Exh. K);

21 b. Exhs. I, J, X, and Y document that Plaintiff suffered injury from Nurse  
22 Page’s breach of duty;

23 c. At his 2-19-10 visit with Dr. Metts, Plaintiff needed emergency testing  
24 (EKG, x-ray) and was transported to the hospital on an urgent basis  
25 (Exh. E-code 2, Exhs. M, N);

26 d. Dr. Metts diagnosed him with heart problems (Exh. K at line 18), he was  
27 in pain and his heart rate fluctuated (Exh. M at line 24), Plaintiff was not  
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1 feeling fine (Exh. M), and he said he had blood in his stool, was dizzy,  
2 and had low blood pressure;

- 3 e. He had “severe anemia” with passage of bright red blood (Exh. O);
- 4 f. He was not in stable condition when he entered the hospital, as shown by  
5 the fact that they gave him sandwiches and juice (Exh. O);
- 6 g. After the transfusions, his blood pressure continued to fluctuate, which  
7 shows significant cardiovascular related symptoms;
- 8 h. There is a direct causal connection between Nurse Page’s actions and  
9 Plaintiff’s 2 weeks of unnecessary pain and suffering, causing him to be  
10 afraid he would die.

11 4. Plaintiff’s claim was properly submitted to the VCGCB in compliance with  
12 California’s Tort Claims Act, because:

- 13 a. Defendant Enenmoh stated that Plaintiff’s claim “fairly reflects the  
14 allegations in Plaintiff’s First Amended Complaint,” (Defendant  
15 Enenmoh’s Fact #137), and the court recognized that the First and  
16 Second Amended Complaints were identical (ECF No. 223);
- 17 b. In their undisputed fact #45, Defendants themselves state “although the  
18 claim fairly reflects the allegations in Plaintiff’s Second Amended  
19 Complaint;”
- 20 c. Plaintiff submitted the claim to a corrections officer for mailing on 2-12-  
21 11, so under the prison mailbox rule it was submitted on that date, not  
22 April 6, 2011;
- 23 d. Plaintiff disputes that the claim was only accepted for allegations of  
24 events occurring six months prior to the date it was submitted, because  
25 Gretchen Brook’s letter, an official VCBCG document (Exh. S), states  
26 the date of Incident as “Unspecified;” which shows that the claim  
27 includes “current ongoing injury” as listed on Plaintiff’s claim form, and  
28 thus Plaintiff proceeds on a continuing violation theory.

1 **VI. ANALYSIS**

2 The parties have not disputed that Plaintiff had a serious medical need on February 12,  
3 2010, when he met with Nurse Page.

4 Defendant submits evidence via her expert witness's opinion that she did not act with  
5 deliberate indifference or negligence against Plaintiff when she met with him on February 12,  
6 2010, and judged that Plaintiff did not need immediate medical care and could instead wait to  
7 see the doctor for a routine visit. (Barnett Decl., ECF No. 234-5.) Dr. Barnett, a physician  
8 licensed by the state of California who earned his medical degree from Harvard Medical School  
9 in 1975, has set forth sufficient information about his education and experience to qualify as an  
10 expert witness. (Id. ¶¶1-7.) He reviewed Plaintiff's health records and evaluated the care  
11 provided to Plaintiff by Nurse Page, concluding that the care met the standard of care in the  
12 medical community, and "[n]othing that Nurse Page either did or did not do, played any causal  
13 role, to a reasonable degree of medical probability, in causing harm to the plaintiff." (Id. ¶¶9,  
14 22.) The court finds that Defendant has met her burden of demonstrating that she did not act  
15 with deliberate indifference or negligence against Plaintiff or cause him harm. The burden  
16 now shifts to Plaintiff to produce evidence of a genuine material fact in dispute that would  
17 affect the final determination in this case.

18 Plaintiff's evidence consists of his own declaration, the declaration of inmate Collin  
19 Forth, Plaintiff's medical records, and other records. Plaintiff argues that Nurse Page was  
20 aware of his symptoms because he told her about his symptoms and she made notes showing  
21 that she knew. Plaintiff submits copies of the medical request forms he completed stating that  
22 he suffered from chest pain, fatigue, and hypertension. Plaintiff also submits evidence that  
23 Nurse Page had met with him before and knew about his medical history.

24 Plaintiff contends that Nurse Page must have made the inference that Plaintiff had a  
25 substantial risk of serious harm. He argues that she knew that Plaintiff was receiving chronic  
26 care, suffered from hypertension, and had a history of a heart condition. He asserts that she  
27 knew the nurse's Protocols she was supposed to follow and was required, according to his  
28 symptoms, to administer emergency care or refer him immediately to a physician. Her triage

1 notes indicate that Plaintiff “has a history of hypertension,” which Plaintiff equates to a history  
2 of cardiac problems, because one of the diagnoses of cardiovascular chronic care program is  
3 Hypertension.

4 Plaintiff’s evidence that Nurse Page knew about his symptoms not prove that she drew  
5 the inference that Plaintiff had a substantial risk of serious harm. There is no evidence that  
6 Defendant had the requisite state of mind for an Eighth Amendment violation. In fact,  
7 Defendant’s notes indicate that she did not believe Plaintiff had a heart condition or anemia.  
8 Even if Plaintiff had urgent symptoms there is no deliberate indifference if Nurse Page was not  
9 aware.

10 With respect to whether Nurse Page’s conduct caused Plaintiff harm, Plaintiff, a  
11 layperson, is not qualified to make a medical diagnosis, to determine whether Nurse Page’s  
12 conduct was within the appropriate standard of care, or to decide whether Nurse Page’s actions  
13 were the cause of any injury. Plaintiff does not have the credentials to qualify as an expert  
14 witness, and therefore such evidence is not admissible.

15 In light of the foregoing, the court finds that Plaintiff has not met his burden of  
16 producing admissible evidence creating a genuine dispute of material fact for trial, and  
17 therefore Defendant Page is entitled to summary judgment against him.

## 18 **VII. CONCLUSION AND RECOMMENDATIONS**

19 Defendant Page has submitted evidence that she did not act with deliberate indifference  
20 or negligence when interacting with Plaintiff on February 12, 2010, or cause him injury.  
21 Plaintiff did not produce any admissible evidence in response that created a disputed issue of  
22 material fact for trial. Accordingly, Defendant is entitled to judgment on Plaintiff’s claims  
23 against her, and Defendant’s motion for summary judgment, filed on May 12, 2017, should be  
24 granted.

25 Accordingly, based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 26 1. Defendant Page’s motion for summary judgment, filed on May 12, 2017, be  
27 GRANTED; and
- 28 2. Judgment be entered in favor of Defendant Page; and

