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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 MICHAEL KLEIN,

12 Plaintiff,

13 vs.

14 DR. CONANAN,

15 Defendant.  
16

1:13-cv-00600-DAD-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT DEFENDANT  
CONANAN'S MOTION FOR SUMMARY  
JUDGMENT BE GRANTED  
(ECF No. 55.)

OBJECTIONS, IF ANY, DUE WITHIN  
TWENTY (20) DAYS

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18 Michael Klein ("Plaintiff") is a former state prisoner proceeding *pro se* and *in forma*  
19 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on the  
20 original Complaint filed by Plaintiff on April 25, 2013, against defendant Dr. E. Conan  
21 ("Defendant") for failure to provide adequate medical care in violation of the Eighth  
22 Amendment. (ECF No. 1.)

23 Defendant Conan filed a motion for summary judgment on the basis that Plaintiff  
24 cannot put forth any evidence of deliberate indifference to his medical needs, and that the  
25 undisputed evidence demonstrates that Defendant Conan addressed Plaintiff's medical needs  
26 as soon as they were brought to Defendant's attention. In response, Plaintiff largely requests  
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1 additional discovery to determine whether Defendant had a duty to provide medical attention at  
2 a time before Defendant states he first learned of Plaintiff's medical needs.

3 After review of all submitted evidence and the statement of undisputed facts, the Court  
4 grants Defendant's motion. Construing all evidence presented in the light most favorable to  
5 Plaintiff, the Court finds there is no genuine issue of material fact regarding whether Defendant  
6 was deliberately indifferent to Plaintiff's serious medical needs. All evidence presented  
7 establishes that Defendant addressed Plaintiff's medical needs when presented to him and there  
8 is no evidence of deliberate indifference. Plaintiff's requests for additional discovery are  
9 untimely and fall far short of raising a triable question of fact.

10 **I. PLAINTIFF'S CLAIMS**

11 At the time of the events at issue, Plaintiff was an inmate in the custody of the  
12 California Department of Corrections and Rehabilitation (CDCR) at Avenal State Prison  
13 (ASP). Plaintiff brings this civil rights action against Defendant Dr. Conanán, M.D., an  
14 employee of the CDCR at ASP. Plaintiff claims that Dr. Conanán was deliberately indifferent  
15 to his serious medical needs, resulting in injury.

16 Specifically, Plaintiff alleges that when he was transferred to ASP from the Deuel  
17 Vocational Institution (DVI) in Tracy, California, he was in possession of his medical records,  
18 which indicated that he had Hepatitis C, "with a genome-type disease." (Complaint at 3 ¶IV.)  
19 Plaintiff alleges that he requested a liver biopsy at DVI, which was denied. Upon his arrival at  
20 ASP, Plaintiff again requested a liver biopsy, which was denied by Dr. Conanán. Dr. Conanán  
21 explained that "my enzyme level and viral load" did not warrant it. (Id.) Plaintiff further  
22 alleges that he was not prescribed "any medication whatsoever." (Id.) Plaintiff alleges that  
23 "this failure drastically increased the risk for expedited [*sic*] and irreversible damage being done  
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1 to my liver. This did in fact occur and now resulted in Petitioner's condition being  
2 untreatable."<sup>1</sup> (Id. at 4:2-5.)

## 3 **II. LEGAL STANDARDS**

### 4 **A. Summary Judgment**

5 Any party may move for summary judgment, and the court shall grant summary  
6 judgment if the movant shows that there is no genuine dispute as to any material fact and the  
7 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a) (quotation marks  
8 omitted); Washington Mutual Inc. v. U.S., 636 F.3d 1207, 1216 (9th Cir. 2011). Each party's  
9 position, whether it be that a fact is disputed or undisputed, must be supported by (1) citing to  
10 particular parts of materials in the record, including but not limited to depositions, documents,  
11 declarations, or discovery; or (2) showing that the materials cited do not establish the presence  
12 or absence of a genuine dispute or that the opposing party cannot produce admissible evidence  
13 to support the fact. Fed. R. Civ. P. 56(c)(1) (quotation marks omitted). The Court may  
14 consider other materials in the record not cited to by the parties, but it is not required to do so.  
15 Fed. R. Civ. P. 56(c)(3); Carmen v. San Francisco Unified School Dist., 237 F.3d 1026, 1031  
16 (9th Cir. 2001); accord Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010).

17 Defendant does not bear the burden of proof at trial and in moving for summary  
18 judgment, he need only prove an absence of evidence to support Plaintiff's case. In re Oracle  
19 Corp. Securities Litigation, 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp. v. Catrett,  
20 477 U.S. 317, 323 (1986)). If Defendant meets his initial burden, the burden then shifts to  
21 Plaintiff "to designate specific facts demonstrating the existence of genuine issues for trial." Id.  
22 This requires Plaintiff to "show more than the mere existence of a scintilla of evidence." Id.  
23 (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

24 In judging the evidence at the summary judgment stage, the Court may not make  
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26 <sup>1</sup> Plaintiff's exhibits to the Complaint provide evidence that he was transferred to ASP in  
27 October 2007 and requested treatment which was denied, and that on July 5, 2012, he was informed of the results  
28 of a liver biopsy showing he has untreatable stage four cirrhosis of the liver. (ECF No. 1 at 7.)

1 credibility determinations or weigh conflicting evidence, Soremekun v. Thrifty Payless, Inc.,  
2 509 F.3d 978, 984 (9th Cir. 2007) (quotation marks and citation omitted), and it must draw all  
3 inferences in the light most favorable to the nonmoving party and determine whether a genuine  
4 issue of material fact precludes entry of judgment, Comite de Jornaleros de Redondo Beach v.  
5 City of Redondo Beach, 657 F.3d 936, 942 (9th Cir. 2011) (quotation marks and citation  
6 omitted), cert. denied, 132 S.Ct. 1566 (2012). The Court determines only whether there is a  
7 genuine issue for trial and in doing so, it must liberally construe Plaintiff's filings because he is  
8 a *pro se* prisoner. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010) (quotation marks  
9 and citations omitted).

### 10 **B. Deliberate Indifferent to Serious Medical Needs**

11 Deliberate indifference to the serious medical needs of an inmate is “cruel and unusual  
12 punishment” under the Eighth Amendment of the U.S. Constitution. See Estelle v. Gamble,  
13 429 U.S. 97, 104–06, (1976). To demonstrate deliberate indifference, “plaintiffs must show  
14 that [prison officials] were (a) *subjectively aware* of the serious medical need and (b) failed to  
15 adequately respond.” Conn v. City of Reno, 591 F.3d 1081, 1096 (9th Cir. 2010), *vacated*, —  
16 U.S. —, 131 S.Ct. 1812 (2011), *reinstated in relevant part*, 658 F.3d 897 (9th Cir. 2011).  
17 An inmate challenging denial of treatment must allege that the denial “was medically  
18 unacceptable under the circumstances,” and made “in conscious disregard of an excessive risk  
19 to [the inmate]'s health.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996).

### 20 **III. EVALUATION OF FACTS IN LIGHT OF LAW**

21 In its motion for summary judgment, Defendant claims that he first learned that Plaintiff  
22 may require treatment for hepatitis C in 2012 and provided treatment for Plaintiff thereafter.

23 The facts regarding the treatment from 2012 onward are largely undisputed. In  
24 particular, Plaintiff agreed that the following facts set forth by Defendant were undisputed by  
25 Plaintiff, while often claiming they were irrelevant to Plaintiff's claims because they did not  
26 address the earlier period of time when he did not receive treatment. (ECF No. 61, at p. 5-9):

1 11. After he was assigned as plaintiff's primary care physician, Dr. Conanen met  
2 with plaintiff on June 1, 2012, July 5, 2012, August 1, 2012, September 5, 2012,  
3 and October 10, 2012 to address plaintiff's hepatitis C concerns.  
(Conanan Decl. ¶¶ 10, 12, 13, 15, and 17, Exhs. B, E, F, H, and I.)

4 12. Dr. Conanen and plaintiff discussed the option to await implementation of  
5 the new medication which had less side effects and better results or proceed  
6 under the old protocol. Plaintiff expressed his desire to wait for the new  
medication to be approved.  
(Conanan Decl. ¶ 12.)

7 13. A liver biopsy is required to assess whether an inmate qualifies for hepatitis  
8 C treatment.  
(Conanan Decl. ¶ 10.)

9 15. The liver biopsy revealed that plaintiff already had stage 4 liver cirrhosis at  
10 the time that Dr. Conanen began treating him.  
(Conanan Decl. ¶ 11, Exh. D.)

11 16. Dr. Conanen ordered an ultrasound of plaintiff's liver on August 1, 2012, . . .  
12 <sup>2</sup> The August 24, 2012 ultrasound showed hepatitis C consistent with the results  
of plaintiff's June 15, 2012 liver biopsy.  
13 (Dr. Conanen Decl. ¶¶ 13, 14, Exhs. F and G.)

14 17. CCHCS implemented the new hepatitis C protocol at ASP sometime  
15 between mid September 2012 and early October 2012. This new protocol  
16 utilized a more effective medication which had less negative side effects than  
the medication used under the previous protocol.  
(Conanan Decl. ¶¶ 12, 16.)

17 19. While waiting for the new protocol to go into effect, Dr. Conanen continued  
18 to meet with plaintiff on a monthly basis to discuss plaintiff's concerns and  
treatment options.  
(Conanan Decl. ¶¶ 12-15.)

19 20. On October 10, 2012, Dr. Conanen ordered a PT/INR for plaintiff because  
20 plaintiff's PT/INR test was not as current as was required to qualify for hepatitis  
C treatment under the new hepatitis C protocol.  
21 (Conanan Decl. ¶ 17, Exh. I.)

22 21. Sometime in December 2012 or early January 2013, plaintiff received a  
23 pneumonia vaccination, which was also required for admission to the hepatitis C  
treatment program.  
(Conanan Decl. ¶ 19, Exh. J.)

24 22. On January 17, 2013, Dr. Conanen sent a request to CCHCS for approval to  
25 begin treating plaintiff's hepatitis C under the new hepatitis C protocol.  
(Conanan Decl. ¶ 20, Exh. K.)

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27 <sup>2</sup> The Court has deleted the portion of this purported fact that was disputed by Plaintiff.

1 23. On April 11, 2013, Dr. Conanán received notice that CCHCS had approved  
2 plaintiff for treatment under the new hepatitis C protocol.  
(Conanan Decl. ¶ 21, Exh. L.)

3 24. Plaintiff's hepatitis C treatment began on May 9, 2013. For the next forty-  
4 eight weeks, Dr. Conanán met with plaintiff every one to four weeks to examine  
5 him and adjust his medications as necessary.  
(Conanan Decl. ¶ 22, Exh. M.)

6 25. At the end of the hepatitis C treatment, plaintiff's viral load was  
7 undetectable, meaning that the treatment was successful.  
(Conanan Decl. ¶¶ 22, 23, Exh. M.)

8 Based on these undisputed facts, there is no genuine issue for trial regarding the  
9 deliberate indifference claim from 2012 onward. These facts establish that from 2012 on,  
10 Defendant responded to Plaintiff's serious medical needs. Moreover, these facts indicate that  
11 Defendant acted with an intent to attend to Plaintiff's health, rather than act in conscious  
12 disregard of an excessive risk to his health.

13 The parties dispute, however, whether Defendant had knowledge that Plaintiff required  
14 medical care prior to 2012. Defendant has submitted the Declaration of the Defendant in  
15 support of Defendant's Motion for Summary Judgment. (ECF No. 55-3.) He declares under  
16 oath that he "neither met with Mr. Klein nor had knowledge of his medical condition at any  
17 time prior to 2012." (ECF No. 55-3, ¶ 7.) Defendant provides the following explanation for  
18 his role prior to 2012:

19  
20 Between 2007 until August 2014, I was a physician and surgeon for CDCR at  
21 ASP. In my capacity as a physician and surgeon, I saw patients to whom I was  
assigned as their primary care physician at ASP.

22 Between 2007 and August 2014, I was also the hepatitis C "champion" at ASP.  
23 In CDCR terminology, a doctor is referred to as a "champion" in the field in  
24 which he or she is assigned as the designated clinician for the facility. In my  
25 capacity as the hepatitis C clinician, I treated inmates with hepatitis C after  
26 being referred their care by their primary care physician. If an inmate's primary  
care physician determined that the inmate did not qualify for hepatitis care, I  
was not made aware of that inmate's needs. I also provided hepatitis C care to  
inmates who I independently evaluated in my capacity as their primary care  
physician. . . .

27 During 2007, I was not Mr. Klein's primary care physician and his care was

1 never referred to me. I neither met with Mr. Klein nor had knowledge of his  
2 medical condition at any time prior to 2012.

3 According to Mr. Klein's medical records, his hepatitis C concerns were  
4 addressed by Nurse Practitioner Isabel Mathos, Physician's Assistant Nancy  
5 Siegrist, and Certified Physician's Assistant-C Julie Kelly at ASP during fall  
6 2011 and early 2012. None of these professionals referred Mr. Klein's care to  
7 me and I had no knowledge of Mr. Klein's medical condition during this period.

8 (ECF No. 55-3, ¶¶ 3-8.)

9 Defendant also attaches and authenticates medical notes from 2011 onward. (ECF No.  
10 55-3, Exhibits A-L to Declaration of E. Conanan.) These notes corroborate the version of  
11 events set forth by Defendant for the time period of 2011 onward, and indicate that Plaintiff  
12 received treatment beginning in July 2012 once Plaintiff began seeing Defendant.

13 Those medical notes do not cover the period prior to 2011. They do however include  
14 certain references to the earlier period of time. On September 15, 2011, the notes state in  
15 relevant part:

16 The patient is a new arrival from North Kern State Prison with history of  
17 hepatitis C, genotype 1b. The patient says that he came back. Last time he was  
18 not able to great a treatment with \_\_\_\_\_ [blank in original]. He does not know  
19 [sic] he wants to have treatment right now. He says that he is going to do more  
20 research and think about it. . . . I discussed also heptatis C treatment benefits and  
21 risks on taking it. He will think about it and he will return to the clinic.

22 (ECF. No. 55-3 at 10.) On June 1, 2012, the medical notes state in relevant part:

23 The patient has been known to have hepatis C since about 2009 and review of  
24 records shows that the patient has always been ordered to have viral load for his  
25 hepatitis C but never been offered treatment or even a liver biopsy. When I  
26 asked the patient, it was confirmed that nothing has been discussed about his  
27 treatment plan. He states that he always is asked to have his blood drawn to be  
28 tested by no specific plan reported. The patient has never been treated for  
29 hepatitis C in the past.

30 (ECF No. 55-3 at 16). Thus, there is evidence that Plaintiff previously saw someone regarding  
31 his hepatitis, but did not receive treatment. There is no description of why he did not receive  
32 treatment earlier. Nevertheless, there is no indication that Defendant was involved in the  
33 earlier consultations or that Defendant was aware of Plaintiff's diagnosis regarding Hepatitis C  
34 before Defendant saw him in 2012 and began treating Plaintiff.

1 Plaintiff opposes Defendant's motion with his own Declaration. (ECF No. 61 at 31-35.)

2 Plaintiff offers this version of events regarding his care prior to 2012:

3  
4 In October of 2007, I arrived at ASP where I sought a liver biopsy and treatment  
5 for my Hepatitis C. . . . My Primary Care Physicians (PCP), who I'm not certain  
6 of who that was during 2007 through 2009 had ordered blood tests when I  
7 requested a biopsy and treatment. Because I am still unaware of who my PCP's  
8 were in 2007-2009, I have not been able to properly amend the complaint to add  
9 all defendants, thus further discovery is needed. . . . Despite having elevated  
10 ALT levels, almost 20 years of being infected with hepatitis C, being over 45  
11 years of age, and my request for a liver biopsy from defendant and my PCPs, I  
12 paroled in 2009 without a liver biopsy nor treatment. On parole, I did not have  
13 insurance nor a job and could not afford a biopsy or treatment. Subsequently I  
14 was arrested and rehoused as ASP in August of 2011 where I again sought a  
15 liver biopsy from defendant and my PCPs but was denied. Ten (10) months  
16 later in June of 2012, defendant assumed the position of my PCP and ordered a  
17 liver biopsy that same day, which revealed I had Stage 4 Cirrhosis of the liver.

18 Plaintiff's version of events largely corroborates Defendant's in that Defendant was not  
19 Plaintiff's primary care physician before June of 2012 and began treating Plaintiff's condition  
20 after that time.

21 Plaintiff also attempts to demonstrate Defendant's knowledge of his condition by  
22 pointing the fact that Defendant Conanan was the HCV-treating clinician between 2007 and  
23 2014. Indeed, Defendant admits that he served this role, but explains that he would  
24 nevertheless only know of a hepatitis C issue if the patient saw him directly or the patient was  
25 referred by a primary care physician:

26  
27 Between 2007 and August 2014, I was also the hepatitis C "champion" at ASP.  
28 In CDCR terminology, a doctor is referred to as a "champion" in the field in  
which he or she is assigned as the designated clinician for the facility. In my  
capacity as the hepatitis C clinician, I treated inmates with hepatitis C after  
being referred their care by their primary care physician. If an inmate's primary  
care physician determined that the inmate did not qualify for hepatitis care, I  
was not made aware of that inmate's needs. I also provided hepatitis C care to  
inmates who I independently evaluated in my capacity as their primary care  
physician.

(Declaration of Dr. Conanan, ECF 55-3 at 2.) In response, Plaintiff points to various  
documents standing for the proposition that the primary care physician refers appropriate



1 patients for treatment to the HCV-treating clinician. (ECF No. 61 at 130.) Plaintiff's purported  
2 facts appear consistent with Dr. Conan's explanation however, i.e., that the primary care  
3 physician must refer a patient to the HCV-treating clinician before that clinician knows of the  
4 patient's hepatitis medical needs. Plaintiff has not put forth any evidence indicating that Dr.  
5 Conan knew of Plaintiff's medical needs prior to 2012, or that Dr. Conan would have  
6 known of those needs by virtue as serving as the prison's HCV-treating clinician.

7 Based on the evidence presented, the Court finds that there is no genuine issue of  
8 material fact precluding summary judgment. Based on the evidence presented, construed  
9 liberally in favor of the Plaintiff, the Court recommends an order that Plaintiff has failed to  
10 present evidence indicating that Defendant Conan acted with deliberate indifference to the  
11 serious medical needs of an Plaintiff. Plaintiff has failed to present evidence indicating that  
12 Defendant was subjectively aware of the serious medical need, or that Defendant failed to  
13 adequately respond. Accordingly, Defendant Conan is entitled to summary judgment.

14 Although the basis of the Court's recommendation is Defendant Conan's lack of  
15 knowledge of Plaintiff's medical condition before becoming his primary care physical in 2012,  
16 the overall timeline is worth noting. Plaintiff was infected with hepatitis C for approximately  
17 20 years. When Plaintiff was on parole, Plaintiff did not have insurance and could not afford  
18 any treatment on his own. (ECF No. 61 at 33.). Defendant Conan is the doctor who  
19 ultimately successfully treated Plaintiff after 48-weeks of supervised treatment. (ECF 55-3 at  
20 6.) Under the circumstances, Plaintiff's attempts to hold Defendant Conan liable for  
21 deliberate indifference to Plaintiff's medical needs in violation of the U.S. Constitution does  
22 not seem fitting.

#### 23 **IV. PLAINTIFF'S REQUEST FOR CONTINUANCE TO CONDUCT ADDITIONAL** 24 **DISCOVERY**

25 In Plaintiff's opposition to summary judgment, he requests a continuance to conduct  
26 further discovery regarding Defendant Conan's role as an HCV-treating clinician, and of his  
27 medical records from his earlier prison stay.

1 Plaintiff's request is denied. The Court, Magistrate Judge Austin, already denied  
2 Plaintiff's motion to modify the scheduling order and for issuance of a subpoena on June 22,  
3 2015. (ECF No. 53). In that order, the Court explained:

4  
5 The discovery phase for this case lasted eight months, from October 8, 2014 to  
6 June 8, 2015. A review of the record shows that Plaintiff sought out his medical  
7 records even before discovery was opened, when he filed a motion on May 19,  
8 2014 seeking to review his medical records at ASP. (ECF No. 19.) On May 21,  
9 2015, Defendant responded to Plaintiff's motion, claiming that Plaintiff was  
10 scheduled for a review of his medical records to occur on May 22, 2014. (Decl.  
11 of Kelly A. Samson, ECF. No. 21 at 3 ¶7.) Plaintiff did not file a reply to  
12 Defendant's response or indicate that he was unable to review his medical  
13 records on the scheduled date. (See ECF No. 24.)

14 Further, Plaintiff acknowledges that "[o]n or about October 6, 2014, Plaintiff  
15 request[ed] his medical file from A.S.P.;" on January 9, 2015, Defendant  
16 provided medical records pursuant to a request for production of documents; and  
17 "[o]n all occasions disclosure of medical records were provided." (ECF No. 52  
18 at 1:19-24.) Based on this record, Plaintiff knew by January 9, 2015, which  
19 documents were available from his medical file at ASP. Now, five months later,  
20 Plaintiff requests the court to reopen discovery so he can begin another search  
21 for medical records from 1990-2007, purportedly kept in Nevada.

22 Plaintiff has not shown that he used due diligence in attempting to obtain his  
23 earlier medical records before discovery closed on June 8. Plaintiff provides no  
24 explanation why he did not attempt before now to discover documents which he  
25 knew, in January 2015, were not available from his ASP files. Therefore,  
26 Plaintiff's motions shall be denied.

27 (ECF No. 53 at 2-3.) The Court confirms that earlier ruling and denies the request for a  
28 continuance.

Moreover, it does not appear that Plaintiff is aware of facts "essential to justify its  
opposition," under Federal Rule of Civil Procedure 56(d). Plaintiff does not indicate a  
likelihood that additional facts would reveal that Defendant Conanan was in fact Plaintiff's  
primary care physician at an earlier time. Rather, it appears that Plaintiff seeks discovery about  
additional potential defendants to add to the litigation in addition to, or in lieu of, Defendant  
Conanan. The Court declines to continue the summary judgment motion for that purpose.

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1 **V. PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE**

2 In connection with his opposition to Defendant’s Motion for Summary Judgment,  
3 Plaintiff requests that the Court take judicial notice of (1) The “Hepatitis C Clinical  
4 Management Program,” and (2) the “Hepatitis C Guidelines.” Federal Rule of Evidence 201  
5 provides that “The court may judicially notice a fact that is not subject to reasonable dispute  
6 because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be  
7 accurately and readily determined from sources whose accuracy cannot reasonably be  
8 questioned.” Fed. R. Evid. 201.

9 The Court finds that the documents attached are not the sort of facts that are subject to  
10 judicial notice because they are not facts that are generally known or from sources whose  
11 accuracy cannot be questioned. That said, Plaintiff’s declaration attests that “these documents  
12 are medical policies and procedures implemented by CDCR and are public records which were  
13 in effect at the time . . . .” (ECF No. 61 at 2.) They are thus documents authenticated by  
14 Plaintiff and properly submitted in connection with summary judgment.

15 The Court thus recommends denying Plaintiff’s motion for judicial notice, but  
16 considering the documents as admissible evidence submitted in connection with Plaintiff’s  
17 motion for summary judgment.

18 **VI. CONCLUSION AND RECOMMENDATIONS**

19 Based on the foregoing, the Court finds no disputed questions of fact that preclude  
20 summary judgment on Plaintiff’s claim for deliberate indifference to medical care in violation  
21 of the Eighth Amendment against Defendant Conan. Accordingly, **IT IS HEREBY**  
22 **RECOMMENDED** that Defendant Conan’s motion for summary judgment, filed on August  
23 17, 2015, be GRANTED.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty**  
26 **(20) days** after being served with these findings and recommendations, any party may file  
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1 written objections with the Court. Such a document should be captioned "Objections to  
2 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be  
3 served and filed within ten days after service of the objections. The parties are advised that  
4 failure to file objections within the specified time may result in the waiver of rights on appeal.  
5 Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
6 F.2d 1391, 1394 (9th Cir. 1991)).

7  
8 IT IS SO ORDERED.

9 Dated: February 24, 2016

/s/ Eric P. Grogan  
10 UNITED STATES MAGISTRATE JUDGE  
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