

1 On May 9, 2018, the findings and recommendations were adopted in full, and summary
2 judgment was granted in Defendant Onyeje’s favor on Plaintiff’s claim. (Doc. 58.) Currently,
3 this case currently proceeds only against Defendant Navarro.

4 On May 17, 2018, the Court issued an order to show cause why summary judgment
5 should not be granted to Defendant Navarro. To ensure that Plaintiff has full notice and a
6 reasonable opportunity to respond, the Court provided its reasoning, and permitted Plaintiff to
7 file a response within twenty-one (21) days of that order. Defendant Navarro was also permitted
8 an opportunity to respond. That deadline has passed, and no party has filed any response.

9 Therefore, the matter is deemed submitted, and the Court makes the following findings
10 and recommendations that summary judgment be granted *sua sponte* in favor of Defendant
11 Navarro.

12 **II. Summary Judgment to a Non-Moving Party**

13 **A. Legal Standards**

14 Federal Rule of Civil Procedure 56(f) provides as follows:

15 (f) Judgment Independent of the Motion. After giving notice and a reasonable
16 time to respond, the court may:

- 17 (1) grant summary judgment for a nonmovant;
- 18 (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties
material facts that may not be genuinely in dispute.

19 “District courts unquestionably possess the power to enter summary judgment *sua sponte*, even
20 on the eve of trial.” *Norse v. City of Santa Cruz*, 629 F.3d 966, 971 (9th Cir. 2010) (footnote
21 omitted). The Ninth Circuit has affirmed a *sua sponte* grant of summary judgment to non-
22 moving defendants, where the findings on the claim at issue in another defendant’s motion for
23 summary judgment applied to the non-moving defendants as well. *See City of Colton v.*
24 *American Promotional Events*, 614 F.3d 998, 1004 n. 2 & 1008 (9th Cir. 2010). “However, the
25 procedural rules governing Rule 56 apply regardless of whether the district court is acting in
26 response to a party’s motion, or *sua sponte*.” *Norse*, 629 F.3d at 971 (citing *Routman v.*
27 *Automatic Data Processing, Inc.*, 873 F.2d 970, 971 (6th Cir. 1989); *Ind. Port Comm’n v.*
28 *Bethlehem Steel Corp.*, 702 F.2d 107, 111 (7th Cir. 1983)).

1 “Reasonable notice implies adequate time to develop the facts on which the litigant will
2 depend to oppose summary judgment.” *Norse*, 629 F.3d at 972 (quoting *Portsmouth Square, Inc.*
3 *v. S’holders Protective Comm.*, 770 F.2d 866, 869 (9th Cir. 1985)). However, it is well settled
4 that a “district court may grant summary judgment without notice if the losing party has had a
5 full and fair opportunity to ventilate the issues involved in the motion.” *In re Harris Pine Mills v.*
6 *Mitchell*, 44 F.3d 1431, 1439 (9th Cir. 1995) (quoting *United States v. Grayson*, 879 F.2d 620,
7 625 (9th Cir. 1989)).

8 **B. Discussion**

9 In this case, Plaintiff brought claims against Defendants Onyeje and Navarro for
10 deliberate indifference to serious medical needs in violation of the Eighth Amendment. At the
11 time of the events at issue, Defendant Onyeje was the Chief Medical Officer at Pleasant Valley
12 State Prison (“PVSP”), and Defendant Navarro was the Health Care Appeals Coordinator at
13 PVSP. Plaintiff alleges that Defendant Onyeje violated his right to medical care because he
14 denied Plaintiff’s third request for hernia surgery, and Defendant Navarro failed to permit the
15 surgery in response to Plaintiff’s appeals.

16 On May 9, 2018, the Court granted summary judgment to Defendant Onyeje, finding that
17 the denial of Plaintiff’s third request for hernia surgery was not deliberately indifferent under the
18 circumstances, because it was medically acceptable and within the standard of care. Plaintiff did
19 not make any showing that the denial was medically unacceptable under the circumstances, and
20 therefore there was no material issue of fact for trial. Because the basis of Plaintiff’s claim
21 against both Defendants whether the denial of his third request for surgery was medically
22 acceptable under the circumstances, summary judgment is also appropriate for Defendant
23 Navarro.

24 Furthermore, Plaintiff has had a full opportunity to litigate this issue in Defendant
25 Onyeje’s motion for summary judgment. Plaintiff filed a lengthy opposition to the motion for
26 summary judgment attempting to show a disputed material issue of fact. Plaintiff also submitted
27 objections to the findings and recommendations regarding Defendant Onyeje’s motion, which
28 were considered by the Court. Therefore, Plaintiff has presumably presented all the evidence

1 and arguments he has concerning whether the denial of his third request for hernia surgery was
2 medically unacceptable in this case. *See Harris Pine Mills*, 44 F.3d at 1440 (affirming *sua*
3 *sponte* grant of summary judgment despite lack of notice where losing party had a “full and fair
4 opportunity to ventilate the issue” on which summary judgment turned). Since the findings and
5 recommendations were accepted and a final ruling was issued on Defendant Onyeje’s motion,
6 Plaintiff is precluded from relitigating the finding that the denial of his third request for hernia
7 surgery was medically acceptable and within the standard of care. Therefore, Plaintiff’s claim
8 that Defendant Navarro was deliberately indifferent in denying the same request for surgery in
9 response to Plaintiff’s appeals could not be proved if a trial were held.

10 **III. Conclusion and Recommendation**

11 For the reasons explained above, IT IS HEREBY RECOMMENDED that the Court grant
12 summary judgment *sua sponte* in favor of Defendant Navarro on Plaintiff’s claim for deliberate
13 indifference in violation of the Eighth Amendment. Fed. R. Civ. P. 56(f).

14 These Findings and Recommendations will be submitted to the United States District
15 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen**
16 **(14) days** after being served with these Findings and Recommendations, the parties may file
17 written objections with the Court. The document should be captioned “Objections to Magistrate
18 Judge’s Findings and Recommendations.” The parties are advised that failure to file objections
19 within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772
20 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: June 26, 2018

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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