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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL BILLINGSLEY,

Plaintiff,

No. CIV S-08-3048 KJM GGH (TEMP) P

vs.

KADAVARI, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants’ motion for summary judgment.

The governing scheduling order set the deadline for pretrial motions, except motions to compel discovery, at September 24, 2010. See Order (Docket No. 19). Neither side filed any pretrial motions before that deadline. Defendants filed the instant motion for summary judgment on February 7, 2011, approximately four-and-a-half months too late. Defendants have not filed a motion for leave to file a dispositive motion beyond the deadline, nor do they attempt to show good cause for such a late submission anywhere in their motion for summary judgment.¹

¹ Defendants do implicitly acknowledge the expiration of the motion filing deadline in their pretrial statement, asking in paragraph 13 for permission to file a motion for summary judgment “in the absence of any pretrial statement from plaintiff[.]” Defendants’ Pretrial Statement at 6 (Docket No. 25). They do not explain how the lack of a pretrial statement from

1 In the absence of any showing of good cause, or even any attempt to show it, the motion should
2 be denied as untimely.

3 Accordingly, IT IS HEREBY RECOMMENDED that:

4 1. Defendants' February 7, 2011, motion for summary judgment be denied as
5 untimely.

6 2. The pretrial conference be set for September 7, 2011, at 10:00 a.m. before
7 District Judge Kimberly J. Mueller, in Courtroom No. 3, with plaintiff appearing telephonically.

8 3. Trial of this case be set to commence November 7, 2011, at 10:00 a.m. before
9 District Judge Kimberly J. Mueller, in Courtroom No. 3.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
12 days after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
15 shall be served and filed within fourteen days after service of the objections. The parties are
16 advised that failure to file objections within the specified time may waive the right to appeal the
17 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: June 3, 2011

19 /s/ Gregory G. Hollows

20 _____
21 GREGORY G. HOLLOWES
22 UNITED STATES MAGISTRATE JUDGE

23 GGH:hm - bill3048.46

24 _____
25 plaintiff (originally due on December 24, 2010, three months after the motion filing deadline)
26 impeded their ability to file a motion for summary judgment before the applicable deadline, nor
is any connection between the two apparent to the court. Defendants waited another month after
filing their pretrial statement before they filed the motion for summary judgment.