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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSEPH DANNY PROPHET,
Plaintiff,

CASE NO. 1:07-cv-01785 AWI GSA PC

ORDER DENYING PLAINTIFF’S MOTION
FOR SUMMARY JUDGMENT

v.

KEN CLARK, et al.,
Defendants.

(Document 18)

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On December 24, 2009, Plaintiff filed a motion for summary judgment. On May 5, 2008, Plaintiff filed his second amended complaint. On August 27, 2010, Magistrate Judge Gary Austin screened the complaint and dismissed the complaint with leave to amend.

Pending before the court is Plaintiff’s December 24, 2009 motion for summary judgment. Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56©; Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Poller v. Columbia Broadcast System, 368 U.S. 464, 467 (1962); Southern California Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir 2003). When the moving party has the burden of proof at trial, that party must carry its

1 initial burden at summary judgment by presenting evidence affirmatively showing, for all essential
2 elements of its case, that no reasonable jury could find for the non-moving party. E.E.O.C. v. Union
3 Independiente De La Autoridad De Acueductos Y Alcantarillados De Puerto Rico, 279 F.3d 49, 55
4 (1st Cir. 2002); United States v. Four Parcels of Real Property, 941 F.2d 1428, 1438 (11th Cir.1991)
5 (en banc).

6 In this action Plaintiff asks for summary judgment based on the second amended complaint.
7 However, this complaint has been dismissed. Thus, there is no operative pleading for the court to
8 grant summary judgment on. As such, Plaintiff's summary judgment motion must be denied.

9 Accordingly, Plaintiff's motion for summary judgment is DENIED.

10
11 IT IS SO ORDERED.

12 Dated: September 15, 2010


13 _____
14 CHIEF UNITED STATES DISTRICT JUDGE