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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARINO ANTONIO HERNANDEZ,

Plaintiff,

v.

J. MARCELO, et al.,

Defendants.

Case No. 1:19-cv-01219-NONE-JLT (PC)

**FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF’S MOTION TO
STRIKE DEFENDANTS’ AFFIRMATIVE
DEFENSES**

(Doc. 28)

14-DAY DEADLINE

Before the Court is Plaintiff’s motion to strike Defendants’ affirmative defenses from their answer to Plaintiff’s complaint. (Doc. 28.) For the reasons set forth below, the Court recommends that Plaintiff’s motion be denied.

Defendants filed their answer to Plaintiff’s complaint on July 16, 2020. (Doc. 24.) Federal Rule of Civil Procedure 12(f) provides that a party must file a motion to strike a defense from an answer within 21 days of being served with the pleading. Fed. R. Civ. P. 12(f)(2). Taking into account the extra time provided by Rules 6(d) and 6(a)(1)(C), Plaintiff should have submitted his motion to prison officials for mailing by August 10, 2020. *See Douglas v. Noelle*, 567 F.3d 1103, 1106-07 (9th Cir. 2009) (under the prison mailbox rule, a document submitted by a *pro se* prisoner is deemed filed “at the time [he] delivered it to ... prison authorities for forwarding to the court clerk”) (internal quotation marks and citation omitted). Plaintiff’s motion and proof of service, however, are dated August 13, 2020 (Doc. 28 at 10, 11), and the Court received the

1 motion on August 17, 2020. Plaintiff's motion is therefore untimely, and the Court recommends
2 denial on this ground.

3 Assuming *arguendo* that Plaintiff timely submitted the motion, the Court still
4 recommends denial. In general, courts view motions to strike "with disfavor because [they] are
5 often used as delaying tactics, and because of the limited importance of pleadings in federal
6 practice.... Accordingly, courts often require a showing of prejudice by the moving party." *S.E.C.*
7 *v. Sands*, 902 F. Supp. 1149, 1165–66 (C.D. Cal. 1995) (internal quotation marks and citations
8 omitted); *see also Hernandez v. Balakian*, No. 1:06-cv-01383-OWW-DLB, 2007 WL 1649911, at
9 *1 (E.D. Cal. 2007). Plaintiff moves to strike all but one of Defendants' affirmative defenses
10 (Doc. 28 at 4-9), but he fails to allege or demonstrate any prejudice arising from the defenses.

11 Based on the foregoing, the Court RECOMMENDS that Plaintiff's motion to strike
12 Defendants' affirmative defenses (Doc. 28) be DENIED. These Findings and Recommendations
13 will be submitted to the United States District Judge assigned to this case, pursuant to the
14 provisions of 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of service of these Findings and
15 Recommendations, Plaintiff may file written objections with the Court. The document should be
16 captioned, "Objections to Magistrate Judge's Findings and Recommendations." Failure to file
17 objections within the specified time may result in waiver of rights on appeal. *Wilkerson v.*
18 *Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th
19 Cir. 1991)).

20 IT IS SO ORDERED.

21
22 Dated: **January 5, 2021**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE