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

CLINTON WAGNER,

Plaintiff,

No. 2: 09-cv-3166 KJM KJN P

vs.

MOSS POSNER, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s August 7, 2012 motion for declaratory judgment. On August 8, 2012, defendants filed an opposition to this motion. For the following reasons, plaintiff’s motion for declaratory judgment is denied.

On July 6, 2012 the court granted in part and denied in part defendants’ summary judgment motion. In particular, the court denied defendants’ summary judgment motion as to claims made against defendants Nangalama and Sahota. In the pending motion, plaintiff moves for “declaratory judgment” against defendants Nangalama and Sahota.

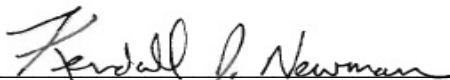
“[A] party may not make a *motion* for declaratory relief, but rather, the party must bring an *action* for a declaratory judgment.” Kam–Ko Bio–Pharm Trading Co. Ltd–Australasia v. Mayne Pharma (USA) Inc., 560 F.3d 935, 943 (9th Cir. 2009) (quoting Int’l Bhd. of Teamsters

1 v. E. Conference of Teamsters, 160 F.R.D. 452, 456 (S.D.N.Y. 1995). Such a motion is
2 inconsistent with the Federal Rules of Civil Procedure. Id. A court may properly construe a
3 motion for declaratory relief as a motion for summary judgment. See id.

4 The undersigned does not construe plaintiff's motion for declaratory judgment as
5 a motion for summary judgment because it does not meet the requirements of a summary
6 judgment motion. Moreover, the deadline for filing a summary judgment motion has passed.

7 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for declaratory
8 judgment (Dkt. No. 128) is denied.

9 DATED: August 10, 2012

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12 _____
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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