

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANNY MURPHY COSTON,  
Plaintiff,  
v.  
ANDREW NANGALAMA, et al.,  
Defendants.

No. 2:10-cv-2009-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. ECF No. 110. Rule 12(c) provides that “[a]fter the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings.” “Judgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

Plaintiff’s motion must be denied on both procedural and substantive grounds. Pursuant to the court’s discovery and scheduling order, the deadline for filing dispositive motions was July 11, 2012. ECF Nos. 44, 54. Plaintiff’s motion is thus, untimely. In addition, the defendants previously sought summary judgment and in denying that motion, the court found numerous disputed issues of fact for trial. *See* ECF Nos. 67, 73; ECF No. 80 (Pretrial Order) at 5 (summary

1 of disputed factual issues). Those same factual disputes preclude entry of judgment as a matter  
2 law in favor of plaintiff.

3 For these reasons, IT IS HEREBY RECOMMENDED that plaintiff's motion for  
4 judgment on the pleadings (ECF No. 110) be denied.

5 These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
10 objections shall be served and filed within fourteen days after service of the objections. The  
11 parties are advised that failure to file objections within the specified time may waive the right to  
12 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
13 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: June 30, 2014.

15   
16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28