

1 plaintiff in this action. See ECF No. 76. A report is to be filed and served by January 4, 2017.
2 Pending the court’s review of this report, the deadline for plaintiff’s oppositions to the pending
3 motions will be vacated until further order of this court.

4 Plaintiff is informed that the pending motions, filed pursuant to Federal Rules of Civil
5 Procedure 12(c) and 12(b)(6),² are pre-discovery motions based on the adequacy of the
6 allegations set forth in plaintiff’s operative First Amended Complaint (FAC). See ECF No. 13.
7 In contrast, the “Rand Notice” to which plaintiff refers sets forth the requirements for opposing a
8 motion for summary judgment, which may be filed only after the close of discovery. The detailed
9 response described in the Rand Notice is not required in opposing the pending motions.

10 The court also notes that, in reviewing plaintiff’s FAC and granting his request for
11 appointment of counsel, the undersigned found that this action would benefit from the filing of a
12 Second Amended Complaint (SAC). See e.g. ECF Nos. 18, 46. Therefore, once a new deadline
13 has been set, plaintiff may, in addition to submitting his arguments in opposition to the pending
14 motions, submit a proposed SAC (and motion for leave to proceed on the proposed SAC) that
15 attempts to cure the deficiencies of the FAC.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s request for extended time, ECF No. 81, is granted in part.

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21 ² “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable
22 legal theory or sufficient facts to support a cognizable legal theory.” Mendiondo v. Centinela
23 Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a
24 plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.” Bell
25 Atlantic Corp. v. Twombly, 550 U.S. 540, 570 (2007). A claim is facially plausible when a
26 plaintiff pleads “factual content that allows the court to draw the reasonable inference that the
27 defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The
28 court must “accept factual allegations in the complaint as true and construe the pleadings in the
light most favorable to the nonmoving party.” Manzarek v. St. Paul Fire & Marine Ins. Co., 519
F.3d 1025, 1031 (9th Cir. 2008). However, the court cannot “accept as true allegations that are
merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re Gilead
Scis. Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008).

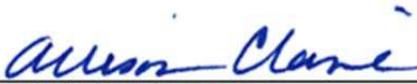
The legal standards governing Rule 12(c) motions are the same as that which governs a
Rule 12(b)(6) motion. Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir. 2012).

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2. The current deadline for plaintiff to oppose defendants' pending motions is vacated pending further order of this court.

SO ORDERED.

DATED: December 20, 2016



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE