1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 VANCE BLAINE, No. 2:13-cv-2163 KJM AC P 12 Plaintiff. 13 v. **ORDER** 14 CALIFORNIA HEALTH CARE FACILITY, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner, requests extended time to respond to defendants' pending 18 19 motions to dismiss and for judgment on the pleadings. See ECF No. 81; see also ECF Nos. 65, 20 70, 80. The current deadline is January 20, 2017. See ECF Nos. 73, 76. Plaintiff, who is visually impaired, has filed his request and supporting declaration with the assistance of another person.¹ 21 22 Plaintiff avers in part that he is unable to oppose the motions because there has been no discovery 23 in this case. 24 Also pending in this case is a status report from the Office of the Attorney General 25 requested by this court on December 5, 2016, concerning the prison resources available to support 26 ¹ The court again recounts that, although plaintiff's request for appointment of counsel was 27 granted on June 8, 2015, ECF No. 46, court staff have been unable to locate an attorney to 28 represent plaintiff; therefore, plaintiff must proceed in this action pro se, ECF No. 57. 1

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

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

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

Accordingly, IT IS HEREBY ORDERED that:

Scis. Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008).

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

² "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 540, 570 (2007). A claim is facially plausible when a plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The 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

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).

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 UNITED STATES MAGISTRATE JUDGE