

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

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

ETUARTE SEKONA,
Plaintiff,
v.
F. CUSTINO,
Defendant.

No. 2:16-CV-0517-JAM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is defendant’s motion for leave to file a second dispositive motion, ECF No. 153.

Previously, this action proceeded against two defendants – Custino and Snow. On May 24, 2019, both defendants filed a motion for summary judgment. See ECF No. 118. Ultimately, on November 21, 2019, the motion was granted as to defendant Snow but denied as to plaintiff’s Eighth Amendment safety claim against defendant Custino. See ECF No. 143. On February 20, 2020, defendant Custino filed a designation of counsel for service upon the reassignment of the case to new counsel at the California Attorney General’s Office. See ECF No.151.

///
///

1 According to defendant's current counsel, upon being assigned the case, he
2 conducted a review and discovered that plaintiff's claim against defendant may be barred by res
3 judicata. Defendant states that allowing a second dispositive motion on the issue before trial
4 could result in a substantial savings of time. Defendant also argues that plaintiff would not be
5 prejudiced by an early pre-trial determination of the issue because the defense would be disclosed
6 in pre-trial status reports and he would thus have to prepare for such a defense at trial even absent
7 a second dispositive motion. Defendant has filed concurrently with his motion a motion for
8 judgment on the pleadings. See ECF No. 154.

9 Plaintiff has not opposed defendant's request for leave to file a second dispositive
10 motion, specifically a motion for judgment on the pleadings. Instead, plaintiff has filed an
11 opposition to defendant's motion for judgment on the pleadings. See ECF Nos. 158 and 159.
12 Defendant has filed a reply. See ECF No. 160.

13 Because plaintiff has not opposed the request to file a second dispositive motion,
14 and good cause appearing therefor, defendant's motion for leave to file a motion for judgment on
15 the pleadings will be granted. Defendant's motion for judgment on the pleadings, filed on
16 February 27, 2020, will be deemed properly filed. Plaintiff's motion for an extension of time to
17 file an opposition to defendant's motion will be granted and plaintiff's opposition, filed on March
18 23, 2020, will be deemed timely. Defendant's fully-briefed motion for judgment on the pleadings
19 will be addressed by separate findings and recommendations.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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

Accordingly, IT IS HEREBY ORDERED that:

1. Defendant’s motion for leave to file a motion for judgment on the pleadings, ECF No. 153, is granted;
2. Defendant’s motion for judgment on the pleadings, ECF No. 154, is deemed properly filed;
3. Plaintiff’s motion for an extension of time to file an opposition to defendant’s motion, ECF No. 156, is granted; and
4. Plaintiff’s opposition to defendant’s motion, ECF Nos. 158 and 159, is deemed timely.

Dated: March 30, 2020



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE