

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

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

JESS RICO MARTINEZ,

Plaintiff,

vs.

BILL WHITMAN, et al.,

Defendants.

1: 06 CV 01074 LJO YNP SMS (PC)

FINDINGS AND RECOMMENDATIONS RE
MOTION FOR SUMMARY JUDGMENT
(DOC 43)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is Plaintiff’s motion for summary judgment.

The case must be sufficiently advanced in terms of pretrial discovery for the summary judgment target to know what evidence likely can be mustered and be afforded a reasonable opportunity to present such evidence. Portsmouth Square, Inc., v. Shareholders Protective Comm., 770 F.2d 866, 869 (9th Cir. 1985). Rule 56 contemplates that the opposing party have a sufficient opportunity to discover information essential to its position. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). Here, Defendants have yet to be served. A recommendation of dismissal has been entered, based upon Plaintiff’s failure to prosecute, and to provide information for service of process. A motion for summary judgment by Plaintiff at this state in the litigation is therefore premature.

1 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's motion for summary
2 judgment be denied.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within
5 twenty days after being served with these findings and recommendations, Plaintiff may file
6 written objections with the court. Such a document should be captioned "Objections to
7 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
8 objections within the specified time may waive the right to appeal the District Court's order.
9 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

10
11
12 IT IS SO ORDERED.

13 **Dated: February 4, 2010**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE