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

DEXTER S.C. FARLOUGH,

Plaintiff,

vs.

1: 07 CV 1108 AWI WMW PC

FINDINGS AND RECOMMENDATION
RE MOTION FOR SUMMARY JUDGMENT
(DOC 14)

NICHOLAS DAWSON, et al.,

Defendants.

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.

Plaintiff's motion consists of a four page declaration indicating that he has been deprived of access to the law library on certain occasions. This action proceeds on the August 11, 2008, first amended complaint. Defendants have not been served, and no defendant has entered an appearance.

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

1 sufficient opportunity to discover information essential to its position. See Anderson v. Liberty
2 Lobby, Inc., 477 U.S. 242, 250 (1986). Until such time as Defendants have entered an
3 appearance and had the opportunity to conduct discovery, Plaintiff's motion is premature. Once
4 Defendants have filed an answer, a discovery order will be entered, and a deadline for the filing
5 of dispositive motions will be set.

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

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

18 IT IS SO ORDERED.

19 **Dated:** April 30, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE