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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 HOWARD YOUNG,

1:07-cv-01121-GSA-PC

12 Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AS PREMATURE
(Doc. 45.)

13 vs.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND REHABILITATION,
et al.,

16 Defendants.
17 _____/

18 **I. BACKGROUND**

19 Plaintiff, Howard Young ("plaintiff"), is a prisoner proceeding pro se and in forma pauperis in
20 this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 2, 2007.
21 (Doc. 1.) On August 15, 2007, plaintiff consented to Magistrate Judge jurisdiction, and no other parties
22 have appeared in this action. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of
23 the Eastern District of California, the Magistrate Judge shall conduct any and all proceedings in the case
24 until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

25 On August 31, 2009, plaintiff filed the first amended complaint. (Doc. 9.) On March 5, 2009,
26 the court dismissed the first amended complaint, with leave to amend. (Doc. 19.) On August 31, 2009,
27 plaintiff filed the second amended complaint. (Doc. 42.) On June 21, 2010, the court screened the
28 second amended complaint and found only one cognizable claim, for retaliation against defendant

1 Officer Barron. (Doc. 55.) Plaintiff has been granted leave to file a third amended complaint or to
2 proceed on the claim found cognizable by the court. Id.

3 On November 20, 2009, plaintiff filed a motion for summary judgment, which is now before the
4 court. (Doc. 45.)

5 **II. JURISDICTION**

6 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court must have
7 before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660,
8 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454
9 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of Los Angeles, 444 F.3d 1118, 1126 (9th
10 Cir. 2006). If the court does not have an actual case or controversy before it, it has no power to hear the
11 matter in question. Id.

12 At this point in time, there is no case or controversy before the court, and the court has no
13 jurisdiction to grant summary judgment. Plaintiff's cognizable claims have not been determined, and
14 defendants have not been served. Until and unless the court finds that plaintiff has stated cognizable
15 claims for relief under section 1983 and the defendants against whom the claims are stated have been
16 served and made an appearance in this action, the court will not have jurisdiction to issue any orders
17 awarding the relief plaintiff seeks. Therefore, the court finds that plaintiff's motion for summary
18 judgment must be denied as premature.

19 **III. CONCLUSION**

20 Based on the foregoing, IT IS HEREBY ORDERED that plaintiff's motion for summary
21 judgment, filed on November 20, 2009, is DENIED as premature.

22
23 IT IS SO ORDERED.

24 **Dated: June 22, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE