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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GREGORY DOWNS,

CASE NO. 1:09-cv-00714-SMS PC

Plaintiff,

ORDER DENYING MOTION
FOR SUMMARY JUDGMENT
AS PREMATURE

v.

CALIFORNIA BOARD OF
PRISON TERMS, et al.,

(Doc. 10)

Defendants.

_____ /

Plaintiff Gregory Downs is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On August 31, 2009, Plaintiff filed a motion for summary judgment. Fed. R. Civ. P. 56.

This action was filed on April 22, 2009, and in a separate order issued concurrently with this order, the Court dismissed Plaintiff's complaint, with leave to amend, for failure to state a claim. Plaintiff's complaint is in the screening stage, and against whom this action will ultimately proceed has not been determined. Plaintiff's motion for summary judgment is premature given that no defendant has yet been served or made an appearance in this action.

Accordingly, Plaintiff's motion for summary judgment is HEREBY DENIED as premature.
IT IS SO ORDERED.

Dated: September 10, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE