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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 THOMAS GOOLSBY,

12 Plaintiff,

13 vs.

14 FERNANDO GONZALES, et al.,

15 Defendants.
16

1:11-cv-00394-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S
MOTION TO OPEN DISCOVERY
(Doc. 38.)

17 **I. BACKGROUND**

18 Thomas Goolsby ("Plaintiff") is a state prisoner proceeding pro se and in forma
19 pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the
20 Complaint commencing this action on March 8, 2011. (Doc. 1.) This case now proceeds on
21 Plaintiff's First Amended Complaint, filed on September 17, 2012, against defendant T.
22 Steadman ("Defendant") for retaliation in violation of the First Amendment.¹ (Doc. 13.)

23 On April 17, 2014, Defendant filed a motion to declare Plaintiff a vexatious litigant and
24 require payment of security. (Doc. 31.) On May 29, 2014, the court entered findings and
25 recommendations, recommending that Defendant's motion be denied. (Doc. 37.) The parties
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28 ¹ On April 22, 2013, the court dismissed all remaining claims and defendants from this action based on
Plaintiff's failure to state a claim. (Doc. 17.)

1 were allowed thirty days in which to file objections to the findings and recommendations. Id.
2 To date, no objections have been filed.

3 On June 9, 2014, Plaintiff filed a motion for the court to open discovery in this action.
4 (Doc. 38.) On June 12, 2014, Defendant filed an opposition to the motion. (Doc. 40.) On June
5 23, 2014, Plaintiff filed a reply to the opposition. (Doc. 41.)

6 **II. MOTION TO OPEN DISCOVERY**

7 Plaintiff requests the court to open discovery in this action, because evidence vital to
8 Plaintiff's case may be lost, as it has been more than four years since the incident underlying
9 the complaint occurred. Plaintiff argues that discovery should proceed because Defendant is in
10 poor health and time is of the utmost importance. Plaintiff also notes that Defendant's motion
11 to declare Plaintiff a vexation litigant and require security is no longer at issue because it was
12 denied by the court.

13 In opposition, Defendant argues that Plaintiff's motion is premature, because Defendant
14 has not yet filed an answer to the First Amended Complaint. Defendant argues that the motion
15 to declare Plaintiff a vexatious litigant and require security was not an answer to the complaint.
16 Defendant also argues that Plaintiff is mistaken in his assertion that the motion to declare
17 Plaintiff a vexatious litigant and require security is resolved, because the court's findings and
18 recommendations remain pending.

19 In reply, Plaintiff argues that Defendant is stalling and has chosen not to file an answer,
20 causing prejudice to Plaintiff by delaying discovery which is inevitable. Plaintiff argues that
21 the filing of an answer will not affect Plaintiff's discovery or Plaintiff's claims.

22 **Discussion**

23 The discovery phase of this litigation is not yet open. Plaintiff is directed to paragraph
24 eight of the court's First Informational Order, filed on March 10, 2011. (Doc. 2 at 4 ¶ 8.) In
25 that order, Plaintiff was specifically informed that he may not conduct discovery until
26 defendants file an answer and the court issues the discovery order. Defendant Steadman's
27 motion to declare Plaintiff a vexatious litigant and require security is not an answer. The court
28 will issue a scheduling order setting a schedule for discovery after Defendant has filed an

1 answer to the complaint. Plaintiff's request to open discovery at this stage of the proceedings
2 shall be denied.

3 **III. CONCLUSION**

4 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion to open
5 discovery, filed on June 9, 2014, December 2, 2013, is DENIED.

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7 IT IS SO ORDERED.

8 Dated: **June 25, 2014**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE