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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RIGOBERTO POLANCO,

CASE NO. 1:11-cv-01421-BAM PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION FOR
RESPONSE TO DENYING OF MOTION FOR
SUMMARY JUDGMENT

v.

DEPARTMENT OF CORRECTIONS, et al., (ECF No. 36)

Defendants.

Plaintiff Rigoberto Polanco (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action was filed on August 15, 2011, and is currently pending screening. (ECF No. 1.) On August 20, 2012, an order issued denying Plaintiff’s motion for summary judgment as premature. (ECF No. 35.) On September 6, 2012, Plaintiff filed a motion stating he is moving forward with his motion for summary judgment because there is sufficient evident to support this action. (ecf No. 36.)

As Plaintiff was advised in the order issued August 20, 2012, the Court has not yet screened his complaint and no Defendants have been served in this action. Federal Rule of Civil Procedure 56 contemplates that, prior to filing a motion for summary judgment, the opposing party should have a sufficient opportunity to discover information essential to its position. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). In other words, 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).

1 Until such time as Defendants have entered an appearance and had the opportunity to conduct
2 discovery, Plaintiff's motion is premature. Once Defendants have filed an answer, a discovery order
3 will be entered, and a deadline for the filing of dispositive motions will be set. At this juncture in
4 the proceedings, Plaintiff's motion for summary judgment is premature and any further such motions
5 for summary judgment that are filed prior to the parties being served and allowed an opportunity to
6 conduct discovery shall be stricken from the record.

7 Accordingly, Plaintiff's motion, filed September 6, 2012, is HEREBY DENIED.

8
9 IT IS SO ORDERED.

10 **Dated: September 11, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE