2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 HORACE BELL, Case No.: 1:12-cv-01248-AWI-SAB (PC) 12 Plaintiff, ORDER DENYING PLAINTIFF'S MOTION FOR DISCOVERY 13 v. [ECF No. 40] 14 S HEBERLING, et al., 15 Defendants. 16 Plaintiff Horace Bell is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 17 1983. 18 19 Now pending before the Court is Plaintiff's motion for discovery, filed May 5, 2014. 20 Plaintiff filed the instant complaint on March 21, 2012, in the Kings County Superior Court. 21 On July 27, 2012, the complaint was removed from the Kings County Superior Court to this Court by 22 defendants S. Heberling and J. Scheer. 23 On November 8, 2013, the Court screened and dismissed plaintiff's complaint, with leave to 24 amend, for failure to state a cognizable claim for relief. ECF No. 33; 28 U.S.C. § 1915A(a). Plaintiff filed a first amended complaint on November 20, 2013. On January 24, 2014, the 25 26 undersigned issued Findings and Recommendations recommending that the action proceed solely on 27 Plaintiff's Eighth Amendment claim against defendants S. Heberling, J. Sheer, and E. Nesmith, and all

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other claims and defendants be dismissed from the action for failure to state a cognizable claim.

Plaintiff filed objections to the Findings and Recommendations on February 24, 2014. The District Judge has yet to rule on the Findings and Recommendations.

Plaintiff's motion for discovery must be DENIED as premature. As Plaintiff was advised in the Court's First Information Order, "[a]fter an answer is filed, the court will issue an order opening discovery and setting the deadlines for completing discovery, amending the pleadings, and filing pretrial dispositive motions. No discovery may be conducted without court permission until an answer is filed and the court issues the discovery order." (ECF No. 7 at ¶ 8, emphasis in original.) Because no answer to the complaint has been filed or is required to be filed by defendants, the discovery phase of this action is not open, and Plaintiff's motion for discovery shall be DENIED as premature. In addition, Plaintiff is reminded that discovery propounded on a party is self-executing, and must be served directly on the party from whom discovery is sought, and parties should not file copies of their discovery with the court. (ECF No. 7 at ¶ 8; Local Rules 250.2, 250.3, 250.4.)

Based on the foregoing, Plaintiff motion for discovery is DENIED.

IT IS SO ORDERED.

Dated: **May 6, 2014**

UNITED STATES MAGISTRATE JUDGE

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