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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ANTWOINE BEALER,

12 Plaintiff,

13 vs.

14 R. BRANNUM, et al.,

15 Defendants.
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1:12-cv-01516-AWI-GSA-PC

ORDER DENYING PLAINTIFF'S RULE 56
MOTION TO DEFER RULING ON MOTION
FOR SUMMARY JUDGMENT, WITHOUT
PREJUDICE TO RENEWAL OF THE
MOTION WITHIN THIRTY DAYS
(Doc. 54.)

THIRTY-DAY DEADLINE

19 **I. BACKGROUND**

20 Antoine Bealer ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis
21 with this civil rights action pursuant to 42 U.S.C. § 1983. On September 14, 2012, Plaintiff
22 filed the Complaint commencing this action. (Doc. 1.) This case now proceeds with the Fourth
23 Amended Complaint filed on March 28, 2014, against defendants Rios and Brannum for use of
24 excessive force in violation of the Eighth Amendment. (Doc. 21.)

25 On March 2, 2015, the court issued a Discovery and Scheduling Order establishing
26 pretrial deadlines for the parties, including a deadline of November 2, 2015, to complete
27 discovery, and a deadline of January 11, 2016, to file dispositive motions. (Doc. 45.) This case
28 is now in the discovery phase.

1 On April 13, 2015, Defendants filed a motion for summary judgment. (Doc. 52.) On
2 May 11, 2015, Plaintiff filed an opposition to the motion. (Doc. 55.) On May 18, 2015,
3 Defendants filed a reply. (Doc. 57.) The motion for summary judgment is pending.

4 On May 12, 2015, Plaintiff filed a motion for the court to defer its ruling on
5 Defendants' motion for summary judgment until the discovery phase has concluded. (Doc. 54.)
6 Plaintiff's motion to defer the court's ruling is now before the court.

7 **II. RULE 56 – MOTION TO DEFER RULING ON MOTION FOR SUMMARY** 8 **JUDGMENT**

9 Pursuant to Federal Rule of Civil Procedure 56(d)(2), if Plaintiff shows by affidavit or
10 declaration that for specified reasons he cannot present facts to oppose Defendants' motion for
11 summary judgment, the Court may defer ruling on the motion to allow time for further
12 discovery. In order to gain a continuance under Rule 56(d), Plaintiff must identify by affidavit
13 the specific facts that further discovery would reveal, and explain why those facts would
14 preclude summary judgment. Tatum v. City and County of Sacramento, 441 F.3d 1090, 1100
15 (9th Cir. 2006); Tuvalu v. Woodford, No. CIV S-04-1724 RRB KJM P, 2007 WL 2900175, at
16 1-4 (E.D. Cal. Sept. 28, 2007).

17 **Discussion**

18 Plaintiff seeks to defer the court's ruling on Defendants' summary judgment motion to
19 allow more time for discovery. However, Plaintiff has not shown by affidavit or declaration,
20 that, for specified reasons, he cannot present facts essential to justify his opposition. To defer
21 the court's ruling, Plaintiff must submit a declaration¹ establishing the following: facts
22 indicating a likelihood that controverting evidence exists as to a material fact; specific reasons
23 why such evidence was not discovered or obtained earlier in the proceedings (i.e. "good
24 cause"); the steps or procedures by which he proposes to obtain such evidence within a
25 reasonable time; and an explanation of how those facts will suffice to defeat the pending

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27 ¹ The declaration must be dated and signed by Plaintiff, attesting under penalty of perjury to
28 facts known by the declarant, in substantially the following form: "I declare under penalty of perjury that the
foregoing is true and correct. Executed on (date). (Signature)." Such a declaration, if properly prepared, is
admissible in federal court with the same effect as an affidavit. 28 U.S.C. § 1746.

1 motion for summary judgment (i.e., to rebut the movant's allegations of no genuine issue of
2 material fact). Tatum, 441 F.3d at 1101. Plaintiff has not submitted any declarations or offered
3 any evidence that meets the above standard. Therefore, Plaintiff's request to defer the court's
4 ruling shall be denied, without prejudice to renewal of the motion within thirty days.

5 **III. CONCLUSION**

6 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's Rule 56 motion to
7 defer the court's ruling on Defendants' motion for summary judgment, filed on May 18, 2015,
8 is DENIED, without prejudice to renewal of the motion within thirty days from the date of
9 service of this order.

10 IT IS SO ORDERED.

11 Dated: May 21, 2015

12 /s/ Gary S. Austin
13 UNITED STATES MAGISTRATE JUDGE

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