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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ALBERT J. HAMILTON,)	Case No.: 1:15-cv-00661-AWI-SAB (PC)
)	
Plaintiff,)	
)	FINDINGS AND RECOMMENDATION
v.)	RECOMMENDING PLAINTIFF’S MOTION
)	FOR SUMMARY JUDGMENT BE DENIED
CLENDEHEN,)	
)	[ECF No. 56]
Defendant.)	
)	
)	

Plaintiff Albert J. Hamilton is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States Magistrate Judge on May 28, 2015. Local Rule 302. Defendant has not consented or declined Magistrate Judge jurisdiction.

This action proceeds on Plaintiff’s Eighth Amendment claim for failure to protect against Defendant Clendehen.

Currently pending before the Court is Plaintiff’s motion for summary judgment, filed August 22, 2016. Defendant filed an opposition on August 29, 2016.

In his motion, Plaintiff requests that the Court grant judgment in his favor because Defendant has “insisted not to hand over the full CDC-incident reports to the court.” (Mot. at 2, ECF No. 56.) Plaintiff further contends that Defendant has failed to file a responsive pleading. (Id.) Plaintiff’s motion must be denied as both premature and improper. First, Plaintiff’s motion did not comply with

1 Local Rule 260(a), which requires that “[e]ach motion for summary judgment or summary
2 adjudication shall be accompanied by a ‘Statement of Undisputed Facts’ that shall enumerate
3 discretely each of the specific material relied upon in support of the motion and cite the particular
4 portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document
5 relied upon to establish that fact.” Compliance with Local Rule 260(a) is mandatory, and as a result of
6 Plaintiff’s failure to include a Statement of Undisputed Facts with his motion, it is procedurally
7 defective and should be denied, without prejudice, on that ground. Second, Plaintiff failed to provide
8 evidence in support of his contention that he is entitled to summary judgment. Finally, the Court has
9 not yet issued a discovery and scheduling order, and Plaintiff’s discovery-related arguments are
10 without merit as the discovery phase of this action is not yet open. Pursuant to the Court’s First
11 Informational Order, issued on May 1, 2015, “After defendants’ answers are filed, the Court will issue
12 an order opening discovery and setting deadlines for completing discovery, amending the pleadings,
13 and filing dispositive motions. No discovery may be initiated until the Court issues a discovery order
14 or otherwise orders that discovery begin.” (Order, at 4:17-19, ECF No. 4.)

15 Accordingly, it is HEREBY RECOMMENDED that Plaintiff’s motion for summary judgment
16 be DENIED, without prejudice.

17 This Findings and Recommendation will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
19 being served with this Findings and Recommendation, the parties may file written objections with the
20 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
21 Recommendation.” The parties are advised that failure to file objections within the specified time may
22 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
23 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24
25 IT IS SO ORDERED.

26 Dated: November 7, 2016


27 UNITED STATES MAGISTRATE JUDGE