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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BARRY L. BROOKINS,

12 Plaintiff,

13 vs.

14 RAJENDRA DWIVEDI,

15 Defendant.
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1:18-cv-00645-DAD-GSA-PC

**ORDER DENYING PLAINTIFF’S THIRD
MOTION TO COMPEL AS PREMATURE
(ECF No. 64.)**

19 Barry L. Brookins (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
20 with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff’s
21 Complaint filed on May 10, 2019, against sole defendant Dr. Rajendra Dwivedi (“Defendant”)
22 for failing to provide adequate medical care in violation of the Eighth Amendment. (ECF No.
23 1.) On March 3, 2020, defendant Dwivedi filed a motion to dismiss, which is pending. (ECF
24 No. 46.) Discovery has not been opened.

25 On September 10, 2020, Plaintiff filed a motion to compel production of documents.
26 (ECF No. 64.) This is Plaintiff’s third motion to compel.¹
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28 ¹ Plaintiff filed the first motion to compel on May 21, 2020, and the second motion to compel on
June 24, 2020. (ECF Nos. 59, 61.) Both motions were denied as premature. (ECF Nos. 60, 62.)

1 Plaintiff's motion shall again be denied as premature. Plaintiff is reminded that discovery
2 in this case has not as yet been opened. When this case is ready for discovery the court will issue
3 a scheduling order opening discovery. Discovery will not be opened until after Defendant has
4 filed an answer to the complaint.² Therefore, it is not time for discovery in this case and therefore
5 Plaintiff's motion to compel must necessarily be denied. Neither Plaintiff nor Defendant is
6 permitted to participate in discovery at this time. Neither party should send discovery requests
7 or responses to the other until after discovery has been opened.

8 Plaintiff asserts in his motion to compel that Defendant has not responded to documents
9 Plaintiff sent to Defendant on July 22, 2020. As discussed above, Defendant cannot be
10 compelled to provide responses to Plaintiff's discovery requests until after discovery has been
11 opened.

12 For these reasons, Plaintiff's motion to compel shall be denied as premature, without
13 prejudice to renewal of the motion *after discovery has been opened*.

14 Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to compel, filed on June
15 September 10, 2020, is DENIED as premature, without prejudice.

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17 IT IS SO ORDERED.

18 Dated: September 15, 2020

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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26 ² Defendant Dwivedi filed a motion to dismiss on March 6, 2020. (ECF No. 46.) Under Rule
27 12(a)(4), the filing of Defendant's motion to dismiss extends the time for Defendant to file an answer until after the
28 motion to dismiss has been resolved. Fed. R. Civ. P. 12(a)(4); See Hernandez v. Avis Budget Group, Inc., 1:17-cv-
00211-DAD-EPG, 2018 WL 10323280 (E.D. Cal. November 2, 2018).