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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID BRIAN SCANLAN

Plaintiff,

CIV S-09-2808 CKD P

vs.

D.K. SISTO, et al.

Defendants.

ORDER

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in an action under 42 U.S.C. § 1983. On July 25, 2011, plaintiff filed a motion for summary judgment. When plaintiff filed the motion, defendants had already filed a motion to dismiss, which remains pending. Defendants now seek an extension of time in which to respond to the motion for summary judgment, asking that they be excused from filing an opposition until after the court rules on their motion to dismiss.

Defendants are correct that they need not respond to the motion for summary judgment before the court rules on their motion to dismiss. However, there is no need for an extension of time. The defendants filed their motion to dismiss in lieu of an answer; the time for discovery does not begin until after a defendant filed an answer; therefore, the discovery period for this case has not yet begun. Usually, a motion for summary judgment is appropriate only after the parties have had an opportunity to develop the factual underpinnings of a case through

1 discovery. This case is no exception, so the motion for summary judgment is premature. The
2 court will deny it without prejudice. Plaintiff will have the opportunity to renew the motion or
3 file a new motion for summary judgment according to the scheduling order that the court will
4 issue after the defendants have filed their answers.¹

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The motion for summary judgment (Docket No. 37) is denied without
7 prejudice, as premature.

8 2. The motion for an extension of time in which to respond to the motion for
9 summary judgment (Docket No. 39) is denied as moot.

10 Dated: September 16, 2011

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12 CAROLYN K. DELANEY
13 UNITED STATES MAGISTRATE JUDGE

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scan2808.ord

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26 ¹ With this order, the court expresses no opinion or finding on the merit of the pending motion to dismiss.