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

MICHAEL BAZLEY,

Plaintiff,

No. CIV S-10-1343 LKK EFB P

vs.

M. GATES, et al.,

Defendants.

ORDER

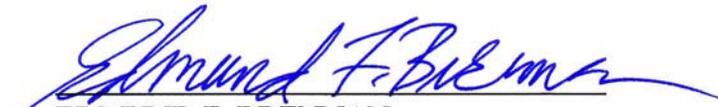
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Plaintiff is a state prisoner proceeding without counsel and *in forma pauperis* in an action brought under 42 U.S.C. § 1983. He filed a motion for summary judgment on November 2, 2010 (Dckt. No. 17), prior to the filing of defendants’ answer which was filed on December 19, 2010 (Dckt. No. 19). Defendants’ opposition to the motion (Dckt. No. 21) argues that the motion is premature because: 1) it was filed before defendants’ answer was due, or filed; and 2) prior to discovery as to plaintiff’s claims defendants can neither present, nor be expected to present, facts essential to an opposition. Dckt. No. 21 at 1; *see* Fed. R. Civ. P. 56(f). Defendants’ arguments are well-taken, as plaintiff’s motion is indeed premature. *See Martinez v. Whitman*, 2010 U.S. Dist. LEXIS 9766, 2010 WL 475347, at *1 (E.D. Cal. Feb. 4, 2010) (citing *Portsmouth Square, Inc., v. Shareholders Protective Comm.*, 770 F.2d 866, 869 (9th Cir. 1985) (“The case must be sufficiently advanced in terms of pretrial discovery for the summary judgment target to know

1 what evidence likely can be mustered and be afforded a reasonable opportunity to present such
2 evidence.”); *see also Young v. Nooth*, 2009 U.S. Dist. LEXIS 31232, 2009 WL 995074, at *1 (D.
3 Or. Apr. 13, 2009). By separate order, the court sets deadlines for discovery and the filing of
4 dispositive motions. After the parties have had an opportunity to conduct discovery in
5 accordance with those deadlines, plaintiff may file a new motion for summary judgment, or a
6 statement indicating his intent to renew the November 2, 2010 motion for summary judgment.

7 Accordingly, plaintiff’s motion for summary judgment is denied without prejudice.

8 Dated: January 7, 2011.

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10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE
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