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

ANTHONY R. TURNER,

Plaintiff,

No. 2:11-cv-0451 MCE JFM (PC)

vs.

DIANE SHEPARD, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

On February 17, 2011, plaintiff, a state prisoner proceeding pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983. On July 25, 2011, plaintiff filed a motion for summary judgment.

A court must grant summary judgment if the pleadings and supporting documents, viewed in the light most favorable to the non-moving party, “show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Under summary judgment practice, the movant bears the initial responsibility of presenting the basis for its motion and identifying those portions of the record, together with affidavits, that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp., 477 U.S. at 323. Summary judgment should not be entered where relevant evidence remains to be discovered.

1 See Klingele v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988). In light of the virtually
2 non-existent evidentiary record, summary judgment at this stage would be premature. No
3 discovery has taken place. Indeed, defendants have not yet been served with the complaint.
4 Therefore, the court should deny plaintiff's motion as premature.

5 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion for
6 summary judgment be denied without prejudice.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
9 days after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised
12 that failure to file objections within the specified time may waive the right to appeal the District
13 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: September 29, 2011.

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17 UNITED STATES MAGISTRATE JUDGE

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