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

JOSEPH A. SHERMAN,  
Plaintiff,

No. CIV S- 11-0820 JAM GGH PS

vs.

CITY OF DAVIS,  
Defendant.

ORDER

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Plaintiff, is proceeding in this action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302(21), pursuant to 28 U.S.C. § 636(b)(1).

Presently pending on this court’s law and motion calendar for November 17, 2011 is defendants’ motion to dismiss. On September 27, 2011, plaintiff filed a document entitled “motion for summary judgment.” The motion has not been noticed for hearing. Plaintiff has not filed an opposition to the motion to dismiss. Therefore, to the extent possible, the court will construe plaintiff’s filing as an opposition to the motion to dismiss. To the extent that the motion is one for summary judgment, it will be vacated without prejudice as premature, pending a ruling on the motion to dismiss.

Good cause appearing, IT IS ORDERED that: Plaintiff’s motion for summary judgment, filed September 27, 2011, is vacated without prejudice as premature. To the extent the

1 motion can be construed as an opposition to the motion to dismiss, it will be so construed.

2 DATED: November 8, 2011

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/s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE

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